



3. Attached as Exhibit 2 is a true and correct copy of the Secretary of State 2008 Recount Guide. This was made publicly available through the Secretary of State's website at <http://www.sos.state.mn.us/home/index.asp?page=1405>.

4. Attached as Exhibit 3 is a true and correct copy of an email string, the most recent email of which is dated December 2, 2008, from Deputy Secretary of State Jim Gelbmann to David Lillehaug, counsel for the Franken campaign and copying my co-counsel, Tony Trimble.

5. Attached as Exhibit 4 is a true and correct copy of a December 4, 2008 email with an attachment entitled "Detailed Instructions for Sorting All Currently-Rejected Absentee Ballots Cast In The U.S. Senate Race." Mr. Gelbmann sent this email and attachment to election officials in each county in Minnesota as well as to Mr. Trimble.

6. Attached as Exhibit 5 is a true and correct copy of a December 7, 2008 email (and attachments) with the Subject "Updated Information on Sorting of Rejected Absentee Ballots." Mr. Gelbmann sent this email to election officials in each county in Minnesota as well as to Mr. Trimble.

7. Attached as Exhibit 6 is a true and correct copy of an email string (with attachment), the most recent email of which is dated December 12, 2008, from Terri Haarstad, Minnetrista City Clerk, to Mr. Gelbmann. Ms. Haarstad copied Mr. Lillehaug and Mr. Trimble on the email.

8. Attached as Exhibit 7 is a true and correct copy of an email string, the most recent email of which is dated December 4, 2008, from Mr. Gelbmann to Mr. Trimble

and copying Msrs. Lillehaug and Ritchie. Earlier emails in the string contain correspondence between various county election officials and Mr. Gelbmann.

9. Attached as Exhibit 8 is a true and correct copy of an email string, the most recent email of which is dated December 12, 2008 from Mr. Gelbmann to counsel for both campaigns. This exhibit contains an email correspondence from Gary Poser, Director of Elections from the Minnesota Secretary of State's Office to "County Election Officials and City Recount Officials." Attached to this email, and included in this exhibit, are a December 10, 2008 letter from Alan I. Gilbert, Solicitor General, to the Canvassing Board and an "Errors Abstract."

10. Staff for the Coleman campaign are monitoring publicly available information and have communicated with various election officials to determine if and how various counties and cities within Hennepin County are responding to the requests from the Secretary of State's office and/or the Canvassing Board to re-sort rejected absentee ballots. While it is a fluid situation, I have been informed by reliable sources, and currently believe to be true, the following:

a. As reported by Mr. Gelbmann to the State Canvassing Board on December 12, 2008 (at a meeting I attended), approximately 50 counties or Hennepin County cities had not yet indicated publicly whether or, if so, when they will comply with a request to segregate, count and open purportedly wrongly rejected absentee ballots. As of 12:00 p.m. on December 15, 2008, that number stands at approximately 32 and includes:

BIG STONE
CARLTON
CARVER
CHIPPEWA
CROW WING
FARIBAULT
GRANT
KANABAC
KOOCHICHING
MCLEOD
RED LAKE
RICE
ROCK
SHERBURNE
SIBLEY
STEVENS
WRIGHT
HENNEPIN-BLOOMINGTON
HENNEPIN-CHANHASSEN
HENNEPIN-CORCORAN
HENNEPIN-DAYTON
HENNEPIN-EDINA
HENNEPIN-GREENWOOD
HENNEPIN-HANOVER
HENNEPIN-LORETTO
HENNEPIN-MEDICINE LAKE
HENNEPIN-NEW HOPE
HENNEPIN-PLYMOUTH
HENNEPIN-RICHFIELD
HENNEPIN-ROCKFORD
HENNEPIN-ST. ANTHONY
HENNEPIN-TONKA BAY

b. As reported by Mr. Gelbmann to the State Canvassing Board on December 12, 2008, and as further amended by information provided by the Secretary of State's office and research conducted by Coleman campaign staff, 15 counties or Hennepin County cities have either affirmatively refused to segregate rejected absentee ballots into any categories or have refused to publicly sort. These include:

FREEBORN
HUBBARD
RAMSEY
SAINT LOUIS
STEARNS
HENNEPIN-EXCELSIOR
HENNEPIN-HASSAN TOWNSHIP
HENNEPIN-INDEPENDENCE
HENNEPIN-MAPLE PLAIN
HENNEPIN-MINNETONKA BEACH
HENNEPIN-MOUND
HENNEPIN-OSSEO
HENNEPIN-SHOREWOOD
HENNEPIN-SPRING PARK
HENNEPIN-ST. BONIFACIUS

c. Based in part on the Coleman campaign staff’s review of rejected absentee ballot envelopes received from local election officials, Brooklyn Center placed at least one wrongly rejected absentee ballot envelope in a fifth pile even though the signature did not match but it was witnessed by an election judge. On the other hand, in Scott County there are numerous examples of rejected ballots due to signatures not matching; they were not placed in the fifth pile even though some were witnessed by an election judge.

d. As reported by Mr. Gelbmann to the State Canvassing Board on December 12, 2008, the City of Duluth apparently has relied on the absence of a date on the absentee ballot envelope to determine whether to accept or reject absentee ballots. Based on the Coleman campaign staff’s review of rejected absentee ballot envelopes received from local election officials and other publicly available information, no other counties have placed any rejected absentee ballot envelopes into the fifth pile for this reason.

e. Hennepin County has stated an intention to convene its Canvassing Board—even though some cities within it have not yet segregated purportedly wrongful rejected absentee ballots.

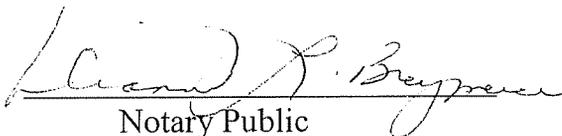
f. Based on publicly available information that certain counties or Hennepin County cities have now reported the results of their re-sorting to the Secretary of State and the fact that none of these counties provided notice to the Coleman campaign, I believe that approximately nine counties or Hennepin County cities have re-sorted rejected absentee ballots without providing 24 hours notice and did so in a non-public manner. These include:

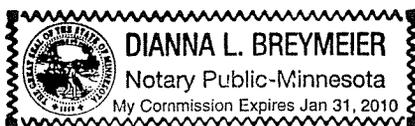
CASS
CHISAGO
LAC QUI PARLE
WASHINGTON
HENNEPIN-LONG LAKE
HENNEPIN-MINNEAPOLIS
HENNEPIN-MINNETONKA
HENNEPIN-ROGERS
HENNEPIN-WAYZATA

FURTHER AFFIANT SAYETH NOT.

  
James K. Langdon

Subscribed and sworn to before me  
this 5<sup>th</sup> day of December, 2008.

  
Notary Public



# **Exhibit 1**

# SECRETARY OF STATE

## RECOUNT PLAN

November 18, 2008

### ***Recount Scope***

The votes cast at the November 4, 2008 State General Election for the office of United States Senate for Norm Coleman and Al Franken in all the counties of Minnesota.

The votes cast at the November 4, 2008 State General Election for the office of State Senate, District 16 for Lisa A. Fobbe and Alison Krueger in Benton, Mille Lacs, Morrison and Sherburne Counties.

The votes cast at the November 4, 2008 State General Election for the office of State Representative, District 12B for Al Doty and Mike Lemieur in Morrison and Crow Wing Counties.

The votes cast at the November 4, 2008 State General Election for the office of State Representative, District 16A for Gail Kulick Jackson and Sondra Erickson in Benton, Mille Lacs, Morrison and Sherburne Counties.

The recount is limited in scope to the determination of the number of votes validly cast for the candidates to be recounted. Only the ballots cast in the election and the summary statements certified by the election judges may be considered in the recount process.

### ***State Recount Official***

Gary Poser, Director of Elections, Office of the Minnesota Secretary of State is hereby designated State Recount Official.

### ***Designated Recount Officials***

The State Recount Official will designate officials to perform a recount of all ballots cast for United States Senate, Senate District 16 and House Districts 12B and 16A. See the attached schedule for the individuals designated as Recount Officials and for the number of teams of Table Officials at each recount location.

## ***Recount Schedule***

Deputy Recount Officials are authorized to commence recounting the ballots at any time after 8 a.m., Wednesday, November 19, 2008 pursuant to the authority of the Deputy Recount Officials as described in the Recount Procedures.

The recount official may alter the schedule if a recount location becomes unavailable, or if in the opinion of the recount official the change is necessary to permit the recount to proceed promptly and efficiently. The change must not unnecessarily delay the progress of the overall recount. If a change is necessary the following applies:

- a) A change to time or location must be clearly posted in the office of the recount official and at the originally scheduled location.
- b) The recount official must immediately notify the State Recount Official of the change.

## ***Recount Process***

The recount shall be open to the public.

The recount shall proceed according to *Minnesota Statutes* §204C.35 and *Minnesota Rules Chapter* 8235, and to the Recount Procedures attached to this Plan and adopted by the State Canvassing Board.

In jurisdictions with multiple recounts under this plan, challenged ballots shall be returned to the ballots for the precinct in which the ballots were cast in order for the ballot to be counted in any subsequent recount. After the last recount in that jurisdiction, ballots challenged in any of the multiple races shall be sealed in envelopes noting each of the races in which the ballot is challenged.

Deputy Recount Officials will print use the recount summary statement as provided by the State Recount Official. A template of the recount summary statement is attached to this Plan.

All county and local election officials are hereby directed to provide the sealed election materials, including voted ballots and precinct summary statements from the 2008 state general election to the recount official designated for that jurisdiction.

The Deputy Recount Officials shall forward in a secure manner directed by the State Recount Official, the completed recount summary statement, the incident log, and all challenged ballots to the State Recount Official, who shall secure the challenged ballots, compile the results and prepare the recount report for the State Canvassing Board.

## ***Meeting of the State Canvassing Board***

The State Canvassing Board will meet to resolve the disposition of the challenged ballots and to canvass the results of the recounts on December 16, 2008 at Saint Paul, Minnesota at 9 AM.

The meeting will continue until the reports of the recounts authorized in this plan are completed and may recess from time to time.

## Minnesota Secretary of State

### U.S. Senate Recount Official Designations and Locations November 18, 2008

County	City if designated	Name of Deputy Recount Official	Title of Deputy Recount Official	Phone Number	Start Date	Start Time	Recount Address	Room Name or Number	Number of Teams
Aitkin		Kirk Peysar	County Auditor	218-927-7354	November 20th	9:00 AM	40 Club Convention Center; 950 2nd Street Northwest; Aitkin, MN	Room 1	4
Anoka		Rachel Smith	Elections Manager	763-323-5277	November 19th (will conduct recount on 11/22 if needed)	9:00 AM	Anoka County Government Center. 2100 3rd Ave., Anoka, MN 55303	Room 710	10 to 12
Becker		Ryan L. Tangen	Auditor-Treasurer	218-846-7311	November 24th	1:00 PM	915 Lake Ave	Courtroom 1	3
Beltrami		Kay Mack	Beltrami County Auditor	218-333-4104	November 19th	9:00 A.M.	Administration Building 701 Minnesota Ave NW Bemidji	County Board Room	5
Benton		Joan Neyssen	Auditor Treasurer	320 968 5008	November 21st	9:00 AM	231 Dewey St Foley Mn 56329 Courthouse Annex	Commissioners Board Room	4 or 5
Big Stone		Michelle Knutson	Auditor	320-839-6366. Ext 2	November 19th	9:00 AM	Big Stone County Courthouse	Commissioners Room	2

Blue Earth	Patty O'Connor	Director Taxpayer Services	507-304-4341	November 24th	9:00 AM	410 South Fifth St	Steamboat - Lower Level	2 to 3
Brown	Marlin C. Helget	Auditor- Treasurer	507-233-6617	November 24th	8:30 AM	LEC 15 S. Washington St	LEC Training Center	3
Carlton	Paul G. Gassert	Carlton County Auditor	218-384-9133	November 20th	9:00 AM	Courthouse 301 Walnut Ave Carlton MN 55718	Boardroom or ITV Room	3 to 4
Carver	Laurie Engelen	County Auditor	952-361-1907	November 19th	9:00 AM	Carver Government Center, 600 E 4th Str, Chaska	Training Room	4
Cass	Shari Splichal	Deputy Auditor- Treasurer	218-547-7275	November 19th	9:00 AM	Cass County Land Dept & Service Center, 218 Washburn Ave E (State Hwy 87)	Cass County Land Dept Public Meeting Room	5
Chippewa	Jon Clauson	Auditor Treasurer	320-269-7447	November 19th	8:00 AM	Chippewa County Courthouse. 629 North 11th Street. Montevideo. MN 56265	Assembly Room	1
Chisago	Dennis J. Freed	Chisago County Auditor	651-213-8500	November 19th	9:00 AM	Chisago County Government Center. 313 North Main Str. Center City MN 55012	Room 142	3

Clay	Lori J Johnson	Clay County Auditor-Treasurer	218-299-5262	November 19th	10:00 AM	807 N 11th St	Commission Board Room	4
Clearwater	Allen Paulson	County Auditor	218-694-6520	November 20th	10:00 AM	213 Main Ave N. Bagley MN 56221	Commissioners Room	1
Cook	Braidy Powers	Auditor-Treasurer	218-387-3646	November 19th	9:00 AM	Courthouse 411 West 2nd Street Grand Marais. MN	Commissioners	2
Cottonwood	Jan Johnson	County Auditor Treasurer	507-831-1342	November 20th	9:00 AM	900 3rd Avenue, Windom MN	Meeting Room	2
Crow Wing	Deborah Erickson	County Auditor	218-824-1045	November 20th	9:00 AM	Land Services Building 322 Laurel Street. Brainerd. MN 56401	Lower Level Meeting Rooms 1 & 2	9
Dakota	Joel Beckman	Director of Property Taxation and Records	651-438-4329	November 19th (will conduct recount on Saturday 11/22)	9:00 AM	Judicial Center, 1590 Hwy 55, Hastings	Lower Level	8
Dodge	Sara Marquardt	Accounting Services Director/ Election Administrator	507-635-6233	December 1st	9:30 AM	22 6th Street East. Mantorville. MN	Conference Room B	1
Douglas	Vicki L. Doehling	Douglas County Elections Administrator	320-762-3881	November 19th	8:30 AM	305 8th Avenue W., Alexandria	TBD	4
Faribault	John L. Thompson	Faribault County Auditor	507-526-6211	November 19th	8:30 AM	Faribault County Courthouse, 415 North Main, Blue Earth	County Board Room	1

Fillmore		Shirl Boelter	Fillmore County Auditor Treasurer	507-765-2666	November 20th	9:00 AM	101 Fillmore Street E	County Courtroom	3
Freeborn		Dennis A. Distad	County Auditor Treasurer	507-377-5121	November 19th	9:00 AM	Freeborn County Government Center, Albert Lea	TBD	6
Goodhue		Carolyn Holmsten	Finance Director	651-385-3021	November 24th	9:00 AM	509 W 5th Street. Red Wing (Government Center)	Room 205	4
Grant		Chad Van Santen	Grant County Auditor	218-685-4521	November 20th	9:00 AM	Grant County Courthouse, Elbow Lake	Commissioners Room	1
Hennepin	-Corcoran -Greenfield -Hanover -Independence -Loretto -Maple Plain -Medina -Minnetrista -Mound -Rockford -Spring Park -St. Bonifacius	Michelle Des Jardin	Elections Manager	612-348-5103	November 20th	9:30 AM	Independence City Hall 1920 Co Rd 90 Independence MN	Community Room	5
Hennepin	Bloomington	Thomas Ferber	City Clerk	952-563-4925	November 20th	9:00 AM	Bloomington Civic Plaza. 1800 West Old Shakopee Road. Bloomington	Rehearsal Hall	4

Hennepin	Brooklyn Center -Champlin	Sharon Knutson	City Clerk	763-569-3306	November 24th	9:30AM	Community Center, 6301 Shingle Creek Parkway, Brooklyn Center	Conference Room	4
Hennepin	Brooklyn Park -Dayton -Hassan -Osseo -Rogers	Devin Montero	City Clerk	763-493-8180	November 19th (will conduct recount on 11/22 if needed)	9:00 AM	Community Activity Center. 5600 85th Avenue North	Gymnasium	3-6 teams
Hennepin	Crystal	Janet Lewis	City Clerk	763-531-1145	November 19th	8:00 AM	4141 Douglas Drive North	Council Chambers	3 ?
Hennepin	Eden Prairie	Kathleen Porta	City Clerk	952-949-8414	November 19th	9:00 AM	8080 Mitchell Rd, Eden Prairie	City Council Chamber	6
Hennepin	Edina	Debra Mangen	Edina City Clerk	952-826-0408	November 19th	8:30 a.m.	Edina City Hall. 4801 West 50th Street. Edina. MN 55424	Edina City Council Chambers	7-10 teams not yet finalized
Hennepin	Golden Valley	Susan Virnig	City Clerk	763-593-8010	November 19th	9:00 AM	7800 Golden Valley Rd	Council Chambers	3
Hennepin	Hopkins	Terry Obermaier	City Clerk, City of Hopkins		November 19th	1:00 p.m.	City Hall 1010 1st St S	Raspberry Room A and B	2
Hennepin	Maple Grove	Stevie Koll Anderson	Deputy Clerk	763-494-6004	November 19th (will conduct recount on 11/22 if needed)	9:00 a.m.	Maple Grove Government Center - 12800 Arbor Lakes Parkway	Emergency Operations Center	5 to 6
Hennepin	Minneapolis -Ft Snelling	Cynthia Reichert	Director of Elections - Assistant City Clerk	612 673 2073	November 19th	9:00 a.m.	732A Harding St NE, Elections Warehouse	Warehouse	Up to 10

Hennepin	Minnetonka -Deephaven -Greenwood -Long Lake -Orono -Minnetonka Beach -Wayzata -Woodland	David Maeda	City Clerk	952-939-8218	November 20th	8:00 AM	Minnetonka City Hall, 14600 Minnetonka Blvd	Council Chambers	3 to 4
Hennepin	New Hope	Valerie Leone	City Clerk	763-531-5100	November 24th	9:00 AM	New Hope City Hall 4401 Xylon Ave N New Hope	Park & Rec Conf Room	3
Hennepin	Plymouth -Medicine Lake	Sandra R. Engdahl	City Clerk	763-509-5080	November 19th	9:30 a.m.	City of Plymouth. 3400 Plymouth Blvd.. Plymouth. MN 55447	Medicine Lake Conference Room	5
Hennepin	Richfield	Nancy Gibbs	City Clerk	612-861-9738	November 19th	8:00 AM	Richfield City Hall. 6700 Portland Avenue S. Richfield	Council Chambers	6
Hennepin	Robbinsdale	Tom Marshall	City Clerk		November 20th	8:30 AM	4100 Lakeview Ave N., Robbinsdale		1
Hennepin	St. Anthony	Barb Suciu	City Clerk	612-782-3313	November 19th	9:00 a.m.	3301 Silver Lake Road	Council Chambers	2
Hennepin	St. Louis Park	Nancy Stroth	City Clerk	952-928-2840	November 19th	8:30 AM	5005 Minnetonka Blvd, City Hall	Council Chambers, 3rd Lfr	5 to 6
Hennepin	Shorewood -Tonka Bay -Excelsior	Jean Panchyshyn	Deputy Clerk	952-474-3236	November 19th	9:00 a.m.	Southshore Community Center. 5735 Country Club Road. Shorewood. MN	Dining Room (kitchen side)	3

							555331		
Houston		Char Meiners	Houston County Auditor	507-725-5803	November 19th	8:00 a.m.	304 S Marshall Street; Houston County Courthouse	Commissioners room	5
Hubbard		Pam Heeren	Hubbard County Auditor-Treas.	218-732-3196	November 19th	8:30AM	Courthouse, 301 Court Ave, Park Rapids MN	Basement meeting room	3
Isanti		Terry F. Treichel	Isanti County Auditor-Treasurer	763-689-1644	November 20th	8:30 AM	Isanti County Government Center. 555 18th Ave SW. Cambridge. MN 55008	Isanti County Board Room	2
Itasca		Marsha Goslovich	Election Administrator	218-327-2849	November 19th	8:00 AM	Itasca County Courthouse, 123 NE 4th St., Grand Rapids, MN 55744	Board Room #121	6
Jackson		Ben Pribyl	Auditor Treasurer	507-847-2763	November 24th	8:00 AM	Courthouse, 405 4th Str, Jackson	County Attorney's Conference Room	1
Kanabec		Denise Cooper	Kanabec County Auditor-Treasurer	320.679.6430	November 21st	9:00 AM	Kanabec Cty Courthouse 18 North Vine Street Mora MN 55051	Meeting Rooms 3 & 4	2
Kandiyohi		Sam Modderman	County Auditor Treasurer	320-231-6262	November 19th	9:00 AM	County Office Building - 400 Benson Ave SW . Willmar. MN	Lower Level Meeting Room	3

Kandiyohi	Willmar	Kevin Halliday	City Clerk	320-214-5166	November 19th	9:00 AM	City Office Building - 333 SW 6th St. Willmar. MN	Conference Room	3
Kittson		Marilyn Gustafson	Auditor-Treasurer	218-843-2655	November 20th	9:00 AM	Kittson County Courthouse 410 5th St South Hallock	Upstairs Meeting Room	1
Koochiching		Bob Peterson	Auditor Treasurer	218-283-1112	November 24th	9:00 AM	Court House, 715 4th Str, International Falls	County Board	1
Lac Qui Parle		Brad Anderson	Elections Administrator	651-556-0642	November 21st	9:00 AM	Courthouse 600 6th St Madison MN 56256	Commissioner's Room	1
Lake		Steve McMahon	County Auditor Treasurer	218-834-8315	November 19th	9:30 AM	613 3rd Ave, Two Harbors, MN	Lake County Law Enforcement Center	2
Lake Of The Woods		John W. Hoscheid	Auditor	218-634-4504	November 24th	9:00 AM	206 8th Ave SE Suite 260 Baudette.Mn 56623	lake of the Woods Court Room	2
Le Sueur		Carol Blaschko	County Auditor	507-357-2251	December 1st	1:00 PM	LeSueur County Courthouse, 88 S Park Ave, LeCenter	Commissioners Room	2
Lincoln		Kathleen Schreurs	Lincoln County Auditor	507-694-1529	November 19th	1:30 PM	319 N. Rebecca St.	Auditor Treasurer Conference Room	3
Lyon		Paula Van Overbeke	Lyon County Auditor Treasurer	507-537-6050	November 19th	9:00 AM	Lyon County Government Center. 607 W Main Str. Marshall. MN 56259	Room 3	3

McLeod		Cindy Schultz	County Auditor	320-864-1260	November 19th	9:30 AM	2385 Hennepin Ave W, Glencoe MN 55336	Large Conference Room	Wed - 2 teams / Thurs - 3 teams
Mahnomen		Frank Thompson	County Auditor	218-935-5669	November 21st	9:00 AM	311 North Main St. - County Courthouse	Board Meeting Room	1
Marshall		Domita Taus	Election Adminsitrator	218-745-4851	November 20th	9:00 AM	208 E Colvin Ave. Ste 11. Warren. MN 56762	Meeting Room I	1
Martin		James Forshee	Auditor Treasurer	507-238-3266	November 20th	9:00 AM	Law Enforcement Center, 201 Lake Ave, Fairmont	Basement Conference Room	2 teams of 3 people
Meeker		Barb Loch	Meeker County Auditor	320-693-5212	November 20th	8:00 AM	Meeker County Courthouse, 325 Sibley Ave N, Litchfield	Community Room Level 1 of Courthouse	2
Mille Lacs		Philip Thompson	Auditor-Treasurer	320-983-8302	November 21st	9:00 AM	Courthouse. 635 2nd St SE. Milaca	County Board Room	2
Morrison		Andy Lokken	Elections Administrator	651-556-0646	November 20th	9:00 AM	213 SE 1st Ave, Little Falls	TBD	2
Mower		Doug Groh	County Auditor	507-437-9528	November 24th	8:15 AM	201 1st St NE, Austin MN	Mower County Board Room	4
Murray		Heidi Winter	Auditor Treasurer	507-836-6148	November 19th	10:30 AM	2500 28th St, Slayton MN 56172	Commissioners Board Room	2
Nicollet		Bridgette Kennedy	Nicollet County Auditor-Treasurer	507-934-0349	November 20th	9:30 a.m.	Nicollet County Government Center	Emergency Operating Center	2
Nobles		Sharon A. Balster	Nobles County Auditor-Treasurer	507-295-5258	November 19th	10:00 A.M.	Nobles County Government Center. 315 Tenth Street	Farmers Room 120	3

Norman		Richard D Munter	Auditor Treasurer	218-784-5471	November 19th	9:00 AM	16 East 3rd Avenue. Ada Courthouse	TBD	3
Olmsted		Mark Krupski	Director of Property Records and Licensing	507-328-7663	November 19th	8:00 AM	Mayo Civic Center, 30 Civic Center Drive SE, Rochester	Grand Ballroom	13
Otter Tail		Wayne Stein	County Auditor	218 998-8041	November 19th (will conduct recount on 11/22 if needed)	9:00 AM	Government Services Center - 510 Fir Ave W.. Fergus Falls. MN 56537	County Board Room/Otter Tail Lake Room and perhaps other rooms as well	8
Pennington		Kenneth Olson	Pennington County Auditor	218-683-7000	November 20th	9:00 AM	Pennington County Courthouse 101 Main Ave N., Thief River Falls. MN 56701	Meeting Room	1 to 2
Pine		Cathy Clemmer	County Auditor	320-591-1670	November 19th	12:00 noon	635 Northridge Dr NW, Pine City MN 55063	County Board Room - 1st Flr	4
Pipestone		Joyce Steinhoff	County Auditor	507-825-6750	November 19th	9:00 AM	Pipestone County Courthouse, 416 Hiawatha Ave. S, Pipestone	Commissioners Room	2
Polk		Gerald J. Amiot	Polk County Auditor Treasurer	218-281-2554	November 19th	9:00 AM	Polk County Government Center, 612 North Broadway, Crookston	Former Large District Courtroom (2nd Flr)	2
Pope		Donna Quandt	County Auditor Treasurer	320-634-5705	November 19th	9:00 AM	130 E Minnesota Ave	Commissioners Rm	1 or 2
Ramsey		Joseph Mansky	Elections Director	651-266-2171	November 19th	8:30 AM	50 W Plato Blvd, St. Paul MN	Elections Division Offices	8

Red Lake	Bob Schmitz	County Auditor Treasurer	218-253-4894	November 20th	9:30 AM	124 Langevin Ave, Red Lake Falls, MN 56750	County Commissioner Board Room	2
Redwood	Jean Price	Redwood County Auditor Treasurer	507-637-4013	November 19th	9:00 AM	Courthouse, 250 S Jefferson Str, Redwood Falls	Board Room	1
Renville	Larry Jacobs	Renville County Auditor- Treasurer	320-523-2071	November 20th	9:30 AM	County Office Building 105 South 5th St. Olivia. MN	County Office Building Rm 116	2
Rice	Fran Windschitl	Auditor Treasurer	507-332-6122	November 20th. 2008	8:00 a.m.	320 Northwest 3rd Street. Faribault. MN 55021	Government Services Building - Commissioners Room	6
Rock	Gloria Rolfs	County Auditor Treasurer	507-283-5060	December 3rd	9:00 AM	Law Enforcement Center, 1000 N Blue Mound Ave	Sheriffs Meeting Room	6 to 8
Roseau	Anne K. Granitz	Roseau County Auditor	218-463-1282	November 20th	9:00 AM	Roseau County Courthouse - 606 5th Avenue SW - Roseau. MN 56751	Roseau County Courthouse Meeting Room	1 to 2
St. Louis	Don Dicklich	County Auditor	218-762-2380	November 19th (May recount on 11/22 if needed)	9:00 AM	Courthouse, 100 N 5th Ave W, Duluth MN	County Board Room	5
Scott	Andy Lokken	Elections Administrator	651-556-0646	December 3rd	8:00 AM	Scott County Conference Center 205 4th Ave W Shakopee MN	TBD	3

Sherburne		Diane Arnold	Auditor Treasurer	763-241-2867	November 25th	8:30 AM	Government Center 13880 Business Center Drive. Elk River. MN 55330	Sherburne County Board Room	6
Sibley		Lisa Pfarr	Sibley County Auditor	507-237-4070	November 19th	9:00 AM	Sibley County Courthouse 400 Court Avenue. Gaylord. MN 55334	Sibley County Courthouse Auditorium (North and South Meeting Rooms)	3
Stearns		Randy R. Schreifels	Stearns County Auditor Treasurer	320 656-3900	November 19th	8:30 AM	Stearns County Administration Center. 705 Courthouse Square. St. Cloud MN 56303	Stearns County Board Room and Room 499	5
Steele		Laura Ihrke	Steele County Auditor	507-444-7414	November 20th	9:00 AM	Steele County Administration Center. 630 Florence Ave. Owatonna. MN 55060	Boardroom	5
Stevens		Brad Anderson	Elections Administrator	651-556-0642	November 26th	9:00 AM	County Courthouse	TBD	1
Swift		Byron Giese	County Auditor	320-843-4069	November 20th	8:30 AM	County Courthouse	Commissioners Room	1
Todd		Andy Lokken	Elections Administrator	651-556-0646	November 25th	9:30 AM	Old Courthouse	Elections Room	2
Traverse		Kit Johnson	County Auditor Treasurer	320-563-4242	November 20th	9:00 AM	702 2nd Ave N	TBD	1
Wabasha		Denise Anderson	Supervisor - Deputy Auditor Treasurer	651-565-2648	November 20th	8:30 AM	Wabasha County Courthouse, 625 Jefferson Avenue, Wabasha MN	Conference Room	3

Wadena	Rosalie A. Miller	Elections Coordinator	218-631-7650	November 21st	9:00 AM	415 Jefferson Str, S. Wadena MN		4
Waseca	Joan Manthe	Waseca County Auditor	507-835-0617	November 21st	9:00 AM	307 N State St. Courthouse	Jury Room	2
Washington	Carol Peterson	Elections Supervisor	651-430-8271	November 19th (will conduct recount on 11/22 if needed)	8:00 a.m.	14949 62nd Street North, Stillwater. MN - Government Center - South Building	County Board Room. 100A & 100B	8
Watsonwan	Donald Kuhlman	Watsonwan County Auditor	507-375-2500	November 20th	8:15 A.M.	710 2nd Ave So. St. James. MN. 56081	Commissioner's Room Lower Level	1
Wilkin	Wayne Bezenek	County Auditor	218-643-7169	November 22nd (Saturday)	8:00 a.m.	300 S 5th ST Breckenridge MN	Courtroom	5
Winona	Cheri MacLennan	County Auditor	507-457-6320	December 3rd	9:00 AM	Government Center, 177 Main Str, Winona	County Board Room	4
Wright	Gary Poser			December 3rd	9:00 AM	Wright County Courthouse, 10 2nd Str NW, Buffalo MN	Community Room 120A and B	4
Yellow Medicine	Lois M. Bonde	County Auditor-Treasurer	320-564-3132	November 20th	8:30 AM	Yellow Medicine County Courthouse, 415 9TH AVE, Granite Falls MN 56241	Boardroom	2

**Minnesota Secretary of State**  
 Legislative Recount Official Designations and Locations  
 November 18, 2008

**House District 12B**

County	Name of Deputy Recount Official	Title of Deputy Recount Official	Daytime Phone Number	Start Date	Start Time	Recount Address	Room Name or Number	Number of Teams
Crow Wing	Deborah Erickson	Crow Wing Auditor	218-824-1045	November 20th	9:00 AM	Land Services Building, 322 Laurel Str, Brainerd MN	Lower Level Meeting Rooms 1 & 2	3
Morrison	Andy Lokken	Elections Administrator	651-556-0646	November 19th	10:00 AM	213 SE 1st Ave, Little Falls	TBD	2

**House District 16A**

County	Name of Deputy Recount Official	Title of Deputy Recount Official	Daytime Phone Number	Start Date	Start Time	Recount Address	Room Name or Number	Number of Teams
Benton	Joan Neyssen	Auditor Treasurer	320-968-5008	November 24th	8:30 AM	231 Dewey St Foley, Courthouse Annex	Commissioners Board Room	2
Mille Lacs	Philip Thompson	Auditor Treasurer	320-983-8465	November 19th	9:00 AM	Courthouse. 635 2nd St SE. Milaca	County Board Room	2
Morrison	Andy Lokken	Elections Administrator	651-556-0646	November 19th	9:00 AM	213 SE 1st Ave, Little Falls	TBD	2
Sherburne	Diane Arnold	Auditor Treasurer	763-241-2867	November 24th	8:30 AM	Government Center 13880 Business Center Drive. Elk River	Sherburne County Board Room	2

**Senate District 16**

County	Name of Deputy Recount Official	Title of Deputy Recount Official	Daytime Phone Number	Start Date	Start Time	Recount Address	Room Name or Number	Number of Teams
Benton	Joan Neyssen	Auditor Treasurer	320-968-5008	November 24th	8:30 AM	231 Dewey St Foley, Courthouse Annex	Commissioners Board Room	2
Mille Lacs	Philip Thompson	Auditor Treasurer	320-983-8465	November 20th	9:00 AM	Courthouse. 635 2nd St SE. Milaca	County Board Room	2
Morrison	Andy Lokken	Elections Administrator	651-556-0646	November 19th	9:00 AM	213 SE 1st Ave, Little Falls	TBD	2
Sherburne	Diane Arnold	Auditor Treasurer	763-241-2867	November 24th	8:30 AM	Government Center 13880 Business Center Drive. Elk River	Sherburne County Board Room	4

# **Minnesota Secretary of State's Administrative Recount Procedures For the General Election, November 4, 2008**

The US Senate recount is an administrative recount held pursuant to Minnesota Statutes, section 204C.35 and Minnesota Rules, section 8235.

1. Recount locations are open to the public and the media and there will be a public viewing area in each recount location. Cell phones and video cameras may be used in the public viewing area, as long as their use is not disruptive.
2. The State Canvassing Board will appoint a Deputy Recount Official for each recount location throughout the state. The Deputy Recount Official may designate an Assistant Deputy Recount Official to preside whenever he or she needs to leave the room. The Deputy Recount Official or a designated Assistant Recount Official must be in the room at all times while ballots are being counted. The Deputy Recount Official shall appoint as many Table Officials as he or she deems appropriate. Only the Deputy Recount Official, the Assistant Recount Official, and the appointed Table Officials may touch the ballots. The Deputy Recount Official shall determine and publicly announce the schedule for the recount, including the start and end times and all breaks within each day, and any changes in the schedule. The candidates' Lead Representatives may appeal to the Deputy Recount Official for modifications to the schedule.
3. All ballots properly cast on Election Day, and all non-rejected absentee ballots properly cast and received by an election official before 8:00 p.m. Election Day (including those cast by voters who were in line to vote by 8:00 p.m. on Election Day) will be counted.
4. All candidate representatives must present written credentials to the Deputy Recount Official and each candidate must designate one representative as his Lead Representative at each counting location.
5. The Lead Representative may serve as a "Roving Representative" who is allowed in the counting area to answer questions from other representatives of that candidate, but are not necessarily assigned to a counting table. A second Roving Representative is allowed at the discretion of each candidate.
6. Ballots, as defined in paragraph 3, will be sorted and counted by teams of at least two Table Officials, who shall be designated by the Deputy Recount Official.

7. Each candidate may have one representative who is authorized to challenge ballots at each counting table. If the Deputy Recount Official determines that there is adequate space at each Table, each candidate may add a second representative to the table to observe the sorting and counting of the ballots, provided both candidates have a second representative to add to the Table(s). Only one representative for each candidate, who shall be designated by the candidate's Lead Representative to challenge ballots, will be allowed to challenge ballots. If the candidate representative who is authorized to challenge ballots believes a ballot presents a unique situation that has not previously presented itself, he or she may request that the ballot be set aside and discussed at the end of the sorting process when the candidate's Roving Representative is available to advise the candidate's representative. This clause shall not apply when the candidate does not have a Roving Representative at that ballot counting location.
8. One of the Table Officials will sort the ballots into three piles, based upon the principles of voter intent outlined in Minnesota Statutes, section 204C.22: one pile for Coleman, one for Franken, and one for all other ballots (those for other candidates, undervotes, overvotes, etc.). The Table Official must make it clear into which pile he or she is placing the ballot and allow both candidates' representatives to view the ballot. Candidate representatives are not allowed to touch or otherwise handle a ballot.
9. As the Table Official sorts the ballots, he or she shall remove all ballots that are marked as duplicate ballots and place those duplicate ballots in a fourth pile. At the conclusion of the sorting process, the Table Official shall open the envelope of original ballots for which duplicates were made for that precinct and sort the original ballots in the same manner as they sorted all other ballots. The Table Official shall disregard this step if there is not an envelope of original ballots, in which case the duplicate ballots will be sorted.
10. The candidate's representative authorized to challenge ballots at a Table may challenge the decision of which of the three piles the Table Official place a ballot. He or she must state a reason for the challenge pursuant to M.S. (2008) Section 204C.22. Challenges may not be automatic or frivolous. The Table Official will reexamine the ballot to determine into which pile it should be placed. If either candidate's representative who is authorized to challenge ballots does not agree with the Table Officials' final determination, the ballot will be placed in one of two new piles of challenged ballots. One pile of challenged ballots will be for all ballots challenged by Coleman's representative; the second pile of challenged ballots will be for all ballots challenged by Franken's representative. Challenges may be withdrawn at any time.

11. When all ballots for the precinct have been sorted, each pile will then be counted by creating stacks of 25 ballots, which shall be cross-stacked into five distinct piles – one for Coleman ballots, one for Franken ballots, one for all other non-challenged ballots, one for ballots challenged by the Coleman Representative and one for ballots challenged by the Franken Representative. The Table Officials will each count one of the candidate's piles. The Table Official who is done first will then count the pile of other ballots, and the piles of challenged ballots. Vote counts for each candidate, all other ballots, ballots challenged by Coleman's representative and ballots challenged by Franken's Representative will be announced and recorded. Either candidate's representative may ask to have a pile counted a second time.
12. A label will be placed on white space on the back of the challenged ballot that will note the precinct, the candidate whose representative made the challenge, and the reason for the challenge pursuant to M.S. (2008) Section 204C.22. Each of the challenges will be given a sequential number, starting with all ballots challenged by Coleman's representative and continuing with all ballots challenged by Franken's representative. For example, if each candidate's representative challenges five ballots in a single precinct, the five challenged ballots by Coleman's Representative shall be numbered one through five; the five ballots challenged by Franken's Representative shall then be numbered six through ten.
13. Vote totals will be noted on the recount summary statement. Challenged ballots are recorded in the Challenged by Coleman column or the Challenged by Franken column. Challenged ballots are placed in a Challenged Ballots Envelope. Once the ballots are all counted and recorded, the original ballots for which there were duplicates made shall be placed back in their original envelope and the pile of duplicate ballots shall be placed back with all other ballots. The preceding sentence shall not apply to original ballots that were challenged by either candidate. Those original ballots shall be placed in a challenged ballot envelope.
14. At the end of each day, the Deputy Recount Official will make four copies of the recount summary statements referenced in paragraph 13, recount incident logs as defined in this paragraph, and both sides of each challenged ballot. One copy of each item will be retained by the Deputy Recount Official, one will be forwarded to the Office of the Secretary of State, and one copy will be provided to each Lead Representative for each candidate. If the Table Officials must leave the room to make the copies, they will be accompanied by each candidate's representative and the names of everyone who left the room with the ballots will be noted on an incident log. The incident log shall also be used to record any other activity that the Table Officials believe should be recorded, including, but not limited to, the names of all individuals at the Table.
15. After copies have been made, the Deputy Recount Official shall seal the original challenged ballots in one envelope, the Deputy Recount Official's copies in another envelope and the copies for the Office of the Secretary of State in a third envelope. At least two Table Officials will sign over the seal of all 3 envelopes.

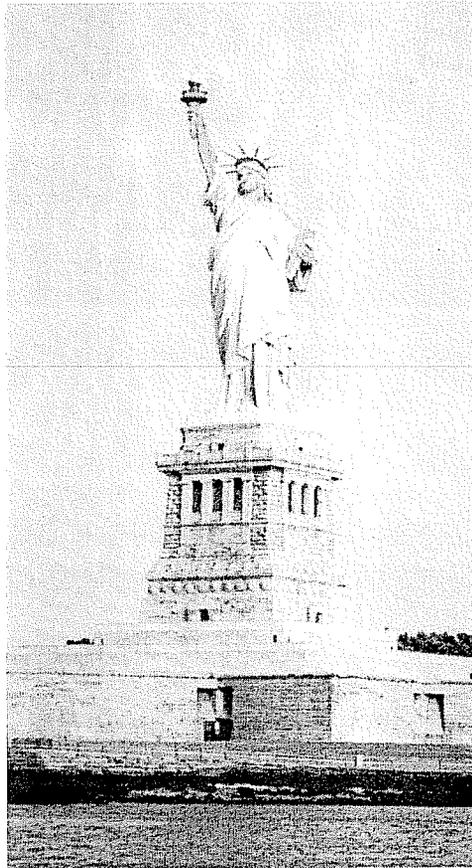
16. Challenged ballots must be stored securely during breaks in the counting process, at night if the recount for the County or City has not finished, and after the counting is complete. No lunch break shall be taken during the middle of the sorting and counting process for a single precinct. The counting and sorting of a precinct must conclude before the Table concludes the recount procedures for that day.

**Preparation for the Canvassing Board Meeting on December 16:**

- 1 The Recount Summary Statements and each of the challenged ballots will be presented to the Canvassing Board for resolution of the challenge.
2. A candidate's representative may present the basis of the challenge to the Canvassing Board. This presentation may be in written and/or oral form. The opposing candidate's representative may respond to the challenge and state why he or she believes the original determination of the Table Official should be upheld.

## **Exhibit 2**

# 2008 Recount Guide



**Office of the Minnesota Secretary of State**

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100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

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# 1.0 INTRODUCTION

This guide is for election officials and their staff who may be a participant in an election recount. Please use this guide with the Secretary of State publication “Minnesota Election Laws.” Citations in this guide refer to the Minnesota election laws (M.S. citations) or rules (M.R. citations). If you are using an interactive electronic edition of this guide, you may simply click on the citations to retrieve current statute or rule.

Portions of this guide contain procedures based on best practices, rather than statute or rule. If employing these portions, do not consider the information to hold the same authority as that information governed by federal and state law.

## 2.0 ELECTION RECOUNTS

Recounts are typically administrative proceedings with the scope limited to the manual recount of the ballots validly cast for the office or ballot question and the declaration of the results. A recount is performed by a canvassing board or by its staff (*M.S. 204C.35; 204C.36; M.R. 8235.0200*)

### 2.1 ELECTION CONTESTS

Contests are judicial proceedings which occur following the filing of a lawsuit. A recount is one possible remedy in an election contest. Any voter in the election district (not just a candidate) may file a contest lawsuit. Time for notice of a contest for an office which is recounted pursuant to M.S.204C.35 or M.S. 204C.36 shall begin to run upon certification of the results of the recount by the canvassing board. (*M.S. 209*)

### 2.2 STATE AND FEDERAL CONTESTS

#### 2.2.1 AUTOMATIC RECOUNTS

There is an automatic manual recount of votes cast for federal and state contests in a primary when:

- The difference between the votes cast for the candidates for nomination to a federal or state office is less than one-half of one percent of the total number of votes counted for that office.
- Or, if the difference in vote count is ten votes or less and the total number of votes cast for the nomination is 400 or less and the difference determines the nomination.

There is an automatic manual recount of votes cast for federal and state contests in a general election when:

- The difference between the votes of the winning candidate and any other candidate is less than one-half of one percent of the total number of votes counted for that office.
- Or, if the difference in vote count is ten votes or less for an office in which 400 votes or less votes were cast.

The governing body assumes the responsibility for the expenses of the recount; however, the losing candidate may waive the recount by filing a written notice of waiver with the canvassing board. (*M.S.204C.35, subd. 1*)

#### 2.2.2 DISCRETIONARY RECOUNTS

A losing candidate whose name was on the ballot can request a manual recount of votes cast, at the losing candidate's expense, when the vote difference is greater than the what is described in 2.2.1 above. The request for a recount must be filed by the candidate during the time for filing a contest for the particular primary or election. If such a request is filed, the votes are manually recounted.

The candidate requesting the recount may provide the filing officer with a list of up to three precincts that are to be recounted first. This candidate can waive the balance of the recount after these precincts have been counted. If the candidate provides such a list, the recount official must determine the expenses for recounting those precincts. (M.S. 204C.35 subd. 2)

## **2.3 COUNTY, SCHOOL DISTRICT AND MUNICIPAL ELECTIONS**

### **2.3.1 REQUIRED RECOUNTS**

While there is no automatic recount for county, school district, and municipal elections, a losing candidate for nomination or election to a county, municipal, or school district office may request a manual recount of the votes cast for the nomination or election to that office if the difference between the vote cast for that candidate **and** for a winning candidate for nomination or election is less than one-half of one percent of the total votes counted for that office or if the difference between the vote cast for that candidate and for a winning candidate for nomination or election is ten votes or less, and the total number of votes cast for the nomination or election of all candidates is no more than 400. In case of offices where two or more seats are being filled from among all the candidates for the office, the one-half of one percent difference is between the elected candidate with the fewest votes and the candidate with the most votes from among the candidates who were not elected. The governing body assumes the responsibility for the expenses of the recount. (M.S. 204C.36, subd. 1)

### **2.3.2 DISCRETIONARY RECOUNTS**

A losing candidate can request a manual recount, at the losing candidate's expense, when the vote difference is greater than what is described in 2.3.1 above.

The candidate requesting the recount may provide the filing officer with a list of up to three precincts that are to be recounted first and may waive the balance of the recount after these precincts have been counted. If the candidate provides a list, the recount official must first determine the expenses for recounting those precincts (M.S. 204C.36, subd. 2)

## **2.4 BALLOT QUESTIONS**

### **2.4.1 GOVERNMENT EXPENSE**

A manual recount of votes cast for a ballot question may be requested by any person eligible to vote on the question if the difference between the votes for and the votes against the question is less than or equal to one-half of one percent of the votes counted for that question, or if the difference between the vote cast for that and the votes against the question is ten votes or less, and the total number of votes cast for the nomination or election of all candidates is no more than 400. (M.S. 204C.36, subd. 3)

### **2.4.2 VOTER EXPENSE**

If the difference between the votes for and the votes against the question is greater than the above difference (also see M.S. 204C.36, subd.1), the recount may proceed at expense of the person requesting the recount.

## 3.0 RECOUNT REQUESTS

### 3.1 CANDIDATE REQUESTS

Candidates must file a written request for the recount with the filing officer, along with a bond, cash or surety in an amount set by the governing body of the jurisdiction or the school board of the school district for the payment of the recount expenses (if applicable). Candidates for state and federal offices file a written request for the recount with the filing officer. Candidates for county offices file a written request for the recount with the county auditor. Candidates for municipal or school district offices file a written request with the municipal or school district clerk as appropriate. All requests must be filed during the time for notice of contest of the primary or election for which a recount is sought.

Again, the candidate requesting the recount may provide the filing officer with a list of up to three precincts that are to be recounted first and may waive the balance of the recount after these precincts have been counted. If the candidate provides a list, the recount official must first determine the expenses for recounting those precincts as described in 2.2 and 2.3 above. (M.S. 204C.35, subd. 2; 204C.36, subd. 5)

### 3.2 BALLOT QUESTION

In the matter of a ballot question recount, the written request for the recount must be filed with the filing officer of the county, municipality, or school district placing the question on the ballot, and must be accompanied by a petition containing the signatures of 25 voters eligible to vote on the question. If the difference between the votes for and the votes against the question is greater than the difference provided in M.S.204C.36, subd.1, the person requesting the recount shall also file with the filing officer of the county, municipality, or school district a bond, cash, or surety in an amount set by the appropriate governing body for the payment of recount expenses. The written request, and any bond, cash, or surety required must be filed during the time for notice of contest for the election for which the recount is requested. (M.S. 204C.36, subd. 3)

### 3.3 TIME LIMITS

The request for a recount must be submitted in writing to the election jurisdiction within 5 days of the canvass of the primary election. The request for a recount must be submitted in writing to the election jurisdiction within 7 days of the canvass of the general election. (M.S. 204C.35, subd. 2; 204C.36; 209.021 subd. 1)

## 4.0 RECOUNT EXPENSES

A person or candidate requesting a discretionary recount is responsible for the following expenses: the compensation of the Secretary of State, or designees, and any election judge, municipal clerk, county auditor, administrator, or other personnel who participate in the recount; the costs of necessary supplies and travel related to the recount; the compensation of the appropriate canvassing board and costs of preparing for the canvass of recount results; and any attorney fees incurred in connection with the recount by the governing body responsible for the recount.

Responsibility of expenses can change in certain circumstances. If the winner of a race is changed by an optional recount, the cost of the recount is paid by the jurisdiction conducting the recount. The jurisdiction conducting the recount is also responsible for the cost of the recount when the result of a manual recount is different from the result reported on election day by a margin greater than the standard for acceptable performance of voting systems. This standard is one-half or one percent and is found in M.S. 206.89, subd. 4. (M.S. 204C.35, subd. 3; 204c.36, subd. 2; 204C.36, subd.4)

## 5.0 RECOUNT OFFICIALS

### 5.1 STATE RECOUNTS

The Secretary of State or Secretary of State's designee is the recount official for recounts conducted by the State Canvassing Board. (M.R. 8235.0200)

The County Auditor is the recount official for any state office voted for only in one county. (M.S. 204C.33)

### 5.2 COUNTY, MUNICIPAL AND SCHOOL DISTRICT RECOUNTS

The county auditor or auditor's designee is the recount official for recounts conducted by the county canvassing board. The county auditor or auditor's designee conduct recounts for county offices. The municipal clerk or clerk's designee is the recount official for recounts conducted by the municipal governing body. The school district clerk or clerk's designee is the recount official for recounts conducted by the school board, or by a school district canvassing board as provided in M.S. 205A.10, subd. 5.

(M.R. 8235.0200)

### 5.3 ALTERNATIVE RECOUNT ASSIGNMENTS

When the person who would otherwise serve as recount official is a candidate for the office to be recounted, the appropriate canvassing board shall select an election official from another jurisdiction to conduct the recount.

(M.R. 8235.0200)

## 6.0 GIVING NOTICE

Within 24 hours after determining that an automatic recount is required or within 48 hours of receipt of a written request for a recount and filing of a security deposit if one is required, the official in charge of the recount shall send notice to the candidates for the office to be recounted and the county auditor of each county wholly or partially within the election district. The notice must include the date, starting time, and location of the recount, the office to be recounted, the number of teams that will be counting precincts, and the name of the official performing the recount. The notice must state that the recount is open to the public, and in case of an automatic recount, that the losing candidate may waive the recount. (M.S. 204C.361; M.R. 8235.0300)

Notification is also critical in securing the public perception of valid and accurate recount proceedings. It should extend well beyond specified requirements. Including non-essential personnel will demonstrate the openness of the procedures, communicate an accurate and consistent message, and could foster inter-departmental support if needed. Specific effort should be made to contact all interested parties in a ballot question recount. There is also value in being able to state that these parties were requested to be present at the recount in the event that persons are unhappy with the outcome of a recount.

## 7.0 SECURING ELECTION MATERIALS

The official who has custody of the voted ballots is responsible for keeping secure and making available to the recount all election materials. Registration cards of voters who registered on Election Day may be processed as required by part M.R. 8200.2700. All other election materials must be kept secure by precinct as returned by the election judges until all recounts have been completed and until the time for contest of election has expired.

(M.R. 8235.0400)

## **8.0 FACILITIES, ACCESSIBILITY, AND EQUIPMENT**

All recounts must be accessible to the public. In a multi-county recount the secretary of state may locate the recount in one or more of the election jurisdictions or at the site of the canvassing board. Each election jurisdiction where a recount is conducted shall make available without charge to the recount official or body conducting the recount adequate accessible space and all necessary equipment and facilities. (M.S. 8235.0600)

## **9.0 GENERAL PROCEDURES**

This portion of the guide contains procedures based on best practices, rather than statute or rule. If employing these portions, do not consider the information to hold the same authority as that information governed by federal and state law. At the opening of a recount, the recount official or legal adviser must present the procedures for the process, such as those contained in this section.

### **9.1 ELECTION MATERIALS**

The custodian of the ballots shall make available to the recount official the precinct summary statements, the precinct boxes or containers containing the sealed envelopes of voted ballots, and any other election materials requested by the recount official. No ballots or election materials may be handled by candidates, their representatives, or members of the public. (M.R. 8235.0700)

### **9.2 PREPARE AND ORGANIZE**

#### **9.2.1 PRIOR TO THE RECOUNT**

Prior to the recount, prepare a recount packet with a checklist. Have all forms, exhibits, supplies and contact information organized to insure that all information given to individuals is provided in a consistent format. This will save time and allow the focus of a recount to be on election specific issues. (See appendix for a sample worksheet) Determine how results will be released - as counting progresses or at completion. Determine how many original copies of recount results are needed.

#### **9.2.2 FACILITIES**

Setting up the facilities is important. In addition to setting up the room where the recount takes place, remember to consider security needs and parking availability for those involved in the process. The required number of counting tables should be set up. Be aware of logistics as you set up the room (e.g., bringing and removing election materials; bathrooms unlocked). The table for the candidates, with places for the candidates' counsels or representatives, should be separate from the tables where the counting takes place. Set up the room so there is "staging area", counting area, and a viewing area.

Only those people directly involved in the recount should be present within the recount area (the staging and counting areas). These individuals are limited to the recount official and legal adviser, officials of the election jurisdiction, candidates and their representatives, and the technical persons necessary to the operation of the counting equipment. However, the public and the press must be admitted into the room where the recount is being conducted, outside the recount area, to observe the proceedings. Badges should be provided which identify the people present and their different capacities. (M.R. 8235.0700)

Remember, although not required, beverages such as coffee and water are usually welcomed. You may also need to provide meals and refreshments as the recount team may be required to remain on site for an extended timeframe.

### 9.2.3 STAFFING AND TRAINING

Bring as many staff as you will need. Require name badges for all authorized personnel. Establish firm guidelines for release of ALL information both to the media and between staff members. Schedule the training/information dissemination session for staff. Keep your team informed.

## 10.3 OBSERVATION

The recount official shall arrange the counting of the ballots so that the candidates and their representatives may observe the ballots as they are recounted. If other election materials are handled or examined by the recount officials, the candidates and their representatives may observe them. The recount official must ensure that public observation does not interfere with the counting of the ballots and prepare a summary of the recount vote by precinct. (M.R. 8235.0700)

## 10.4 MANAGING THE PROCESS

Preside, you are in charge. Acknowledge everyone present (your team, candidates, legal counsels, election officials, public, and press). Everyone has a role. Always explain what is about to occur and explain why. Be completely thorough and transparent. If there is ANY doubt about a precinct's results, count it again. Be respectful and expect respect. Be ready to think on your feet. Never hold a private conversation with only one of the parties. Always appear in control of yourself and the situation (despite a little natural nervousness).

Orally review with all present:

- Roles of recount officials, observers and staff.
- Procedures for the recount.
- Open sealed containers only when recount team and observers are present.
- Keep all ballot access in full view.
- Separate recounted ballots by type: Candidate names; yes/no; undervotes; overvotes; disputed ballots, etc.
- Compare results to original.
- If manual count differs from the original results, you may want to have a different recount team validate the results, count again.
- Look in piles for incorrectly sorted ballots.

Remember that a candidate's legal counsel is there to find advantage for their client. That's their job. If candidates or their representatives have concerns or suggestions, listen. Make sure everything you do and that occurs in the recount fills the process with accountability, credibility and trust. Make a defensible decision and carry it out consistently.

## 11.0 EXAMPLE INSTRUCTIONS

### 11.1 HAND COUNT INSTRUCTIONS

This is an **administrative** recount held pursuant to M.S. 204C.35 and M.R. 8235. It is **not** to determine who was eligible to vote. It is **not** to determine if campaign laws were violated. It is **not** to determine if absentee ballots were properly accepted. It is **not** - except for recounting the ballots - to determine if judges did things right. It is simply to physically recount the ballots **for this race!** It is an opportunity for everyone, particularly

the losing candidate, to satisfy themselves that ballots were, in fact, counted properly in a close race.

If we find a difference in the vote count, you need to be aware that this is not unusual and that this is why we have the recount law. Normally any errors by the judges or the machine are random errors and generally offset one another. Characteristically what we find is that a slight change one way in one precinct is balanced off by a corresponding change in the other direction in another precinct. Normally the results of the election are not changed by these adjustments, but it does happen.

I am the recount official. **No one else touches the ballots** once they are out of the sealed cases unless I specifically allow it. Make any concerns regarding the process known immediately to me. Ballots will be recounted by precinct. We will count one precinct at a time. As provided in M.S. 204C.361(b). This means that a recount official shall maintain the segregation of ballots by precinct but the recount official may recount more than one precinct at a time in physically separate locations within the room in which the recount is administered.

Ballots will be removed from the sealed case(s) and staff will turn all ballots to be facing in the same direction. I will separate the ballots into several piles: One for each candidate, one for write-ins, and ones for blank or defective for the office we are recounting. Voter's intent will be determined pursuant to M.S. 204C.22. The candidate or his/her representative (but not both) has the right to challenge which piles I have decided to place the ballot in. Challenges may not be automatic or frivolous. The challenger needs to describe why they challenge the decision. I may decide they are right. If I do not agree and the challenge is not withdrawn, I will write why it is challenged on the ballot and place it in an envelope marked "Challenged Ballots". The challenged ballots will be brought to the canvass board and they will examine them and make a decision how to count them. Challenges may be withdrawn if it appears it would be meaningless to press the issue. Staff will count the ballots by piling the ballots in groups of 25. Vote counts for each candidate will be announced. The candidate or his/her representative can challenge how they were counted and we will switch between the staff and recount them. Counts will be recorded for each precinct on the recount summary statement. The ballots will be resealed in the cases. At the end of the recount, I will write on the front of the challenged ballot envelope which precinct(s) and how many ballots are in the envelope, seal it and have staff assisting with the recount sign over the flap of the envelope. The recount summary statement and challenged ballots will be presented to the canvass board. The Board will decide how or whether to count each ballot. After completing the recount in each precinct, I will furnish a report of the recount results for that precinct. After the recount is finished here today, the ballots, other than challenged ballots, will be resealed and returned to the County Auditor. The State (County) Canvassing Board will declare the winning nominee after reviewing the summary statement of the recount vote prepared by the Recount Official, and resolving any ballot challenges.

## 12.0 COUNTING AND CHALLENGING BALLOTS

### 12.1 COUNTING

Ballots must be recounted by precinct. The recount official opens the sealed envelope of ballots and recount them in accordance with M.S. 204C.22. If a candidate or candidate's representative disagrees with the recount official's determination of whether and for whom the ballot should be counted, the ballot may be challenged. At a recount of a ballot question, the manner in which a ballot is counted may be challenged by the person who requested the recount or that person's representative. After the count of votes for the precinct has been determined, all ballots except the challenged ballots must be resealed in the ballot envelopes and returned with the other election materials to the custodian of the ballots. After the count of votes for all precincts has been determined, the challenged ballot envelope must be sealed and kept secure for presentation to the canvassing board. The requirement that ballots be recounted by precinct means that a recount official shall maintain the segregation of ballots by precinct but the recount official may recount more than one precinct at a time in

physically separate locations within the room in which the recount is administered.  
 (M.S. 204C.361; M.R. 8235.0800)

## 12.2 CHALLENGES

Challenges may not be automatic or frivolous and the challenger must state the basis for the challenge. The precinct name, the reason for the challenge, and the name of the person challenging the ballot must be marked on the back of each challenged ballot before it is placed in an envelope marked "Challenged Ballots". (M.R. 8235.0800)

## 13.0 DETERMINING VOTER INTENT

Minnesota law requires that every effort be made to accurately count all votes on a ballot. This means that a ballot or vote must not be rejected for a technicality if it is possible to decide what the voter intended, even though the voter may have made a mistake or the ballot is damaged. Intent is determined only from the face of the ballot. Use the following rules to decide what a voter intended:

### 13.1 COUNTED

- If a name is written in the proper place but write in not marked, count the voter for that individual whether or not write-in is marked to the left of the written in name.

FEDERAL OFFICES	
U.S. SENATOR	
VOTE FOR ONE	
<input type="radio"/>	ROBERT FITZGERALD <small>Independence Party</small>
<input type="radio"/>	MARK KENNEDY <small>Republican</small>
<input type="radio"/>	AMY KLOBUCHAR <small>Democratic-Farmer-Labor</small>
<input type="radio"/>	MICHAEL JAMES CAVLAN <small>Green Party</small>
<input type="radio"/>	BEN POWERS <small>Constitution Party</small>
<input type="radio"/>	<u>John Smith</u> <small>Write-In</small>

- A mark made out of place but close enough to a name or line to determine voter intent are counted.

FEDERAL OFFICES	REPUBLICAN PARTY	FEDERAL OFFICES	FEDERAL OFFICES
UNITED STATES SENATOR	FEDERAL OFFICES	UNITED STATES SENATOR	UNITED STATES SENATOR
VOTE FOR ONE	UNITED STATES SENATOR	VOTE FOR ONE	VOTE FOR ONE
<input checked="" type="radio"/> JACK SHEPARD	<input checked="" type="radio"/> JACK SHEPARD	<input type="radio"/> JACK SHEPARD X	<input type="radio"/> JACK SHEPARD
<input type="radio"/> NORM COLEMAN	<input type="radio"/> NORM COLEMAN	<input type="radio"/> NORM COLEMAN	<input type="radio"/> NORM COLEMAN
CONTINUE VOTING ON THE NONPARTISAN BALLOT	CONTINUE VOTING ON THE NONPARTISAN BALLOT	CONTINUE VOTING ON THE NONPARTISAN BALLOT	CONTINUE VOTING ON THE NONPARTISAN BALLOT

- If two or more different marks used, count those provided the marks do not mark the ballot distinguishing characteristics where the voter's intent is to identify the ballot.

<b>SUPREME COURT</b>
<b>ASSOCIATE JUSTICE 3 VOTE FOR ONE</b>
<input checked="" type="checkbox"/> ALAN LAWRENCE NELSON
<input type="checkbox"/> PAUL H. ANDERSON
<input type="checkbox"/> TRITINGELSTAD
<b>ASSOCIATE JUSTICE 4 VOTE FOR ONE</b>
<input checked="" type="checkbox"/> LOUIE SKJERVEN GILDEA
<input type="checkbox"/> DEBORAH HEDLUND
<input type="checkbox"/> JILL CLARK
<input type="checkbox"/> F. RICHARD GALLO, JR.
<b>2ND DISTRICT COURT</b>
<b>JUDGE 21 VOTE FOR ONE</b>
<input checked="" type="checkbox"/> JOY D. BARTSCHER
<input type="checkbox"/> CONNIE S. VERSEN
<input type="checkbox"/> JOHN P. GURK
<input type="checkbox"/> JAMES C. SWYDER, C.F.
<input type="checkbox"/> PAUL GOOPREY
<input type="checkbox"/> GAIL CHANG BOHR
<input type="checkbox"/> HOWARD ORENSTEIN
<input type="checkbox"/> RICHARD F. CARLSON, JR.

- If marks are made next to two candidates and an attempt was made to erase one of the two, vote is counted for the remaining marked candidate.

<b>UNITED STATES SENATOR VOTE FOR ONE</b>	<b>UNITED STATES SENATOR VOTE FOR ONE</b>
<input checked="" type="checkbox"/> DARRYL STANTON	<input checked="" type="checkbox"/> DARRYL STANTON
<del><input checked="" type="checkbox"/> BILL DAHN</del>	<input checked="" type="checkbox"/> BILL DAHN
<input type="checkbox"/> STEPHEN WILLIAMS	<input type="checkbox"/> STEPHEN WILLIAMS
<input type="checkbox"/> JACK ULDRICH	<input type="checkbox"/> JACK ULDRICH
<input type="checkbox"/> KURT MICHAEL ANDERSON	<input type="checkbox"/> KURT MICHAEL ANDERSON
<input type="checkbox"/> DOUG WILLIAMS	<input type="checkbox"/> DOUG WILLIAMS
<input type="checkbox"/> DEAN BARKLEY	<input type="checkbox"/> DEAN BARKLEY
<b>CONTINUE VOTING ON THE NONPARTISAN BALLOT</b>	<b>CONTINUE VOTING ON THE NONPARTISAN BALLOT</b>

- If an attempt is made to obliterate a write-in name a vote is counted for the remaining write-in name or marked candidate.

<b>FEDERAL OFFICES</b>
<b>U.S. SENATOR</b>
<b>VOTE FOR ONE</b>
<input checked="" type="checkbox"/> ROBERT FITZGERALD <small>Republican Party</small>
<input type="checkbox"/> MARK KENNEDY <small>Republican</small>
<input type="checkbox"/> AMY KLOBUCHAR <small>Democratic Party</small>
<input type="checkbox"/> MICHAEL JAMES CAVLAN <small>Green Party</small>
<input type="checkbox"/> BEN POWERS <small>North Star Party</small>
<input type="checkbox"/> [REDACTED]

- A write-in for governor without lieutenant governor is counted as a vote for the team of candidates including lieutenant governor.
- Count all printed names with a mark made opposite them and all names written-in, not exceeding the number to be elected for that office.
- Misspellings for names written-in are ok provided that voter intent can be determined.
- If voter's choice can only be determined for some of the offices on the ballot, only count those offices on the ballot.
- If voter uniformly uses same mark to mark the ballot, count if possible.
- A ballot cannot be rejected because it is slightly soiled or defaced.
- A ballot that has one or more blank offices is not defective.

## 13.2 NOT COUNTED

- Mark more candidates than to be elected or nominated ballot is defective for that office.
  - All other offices on the ballot are counted if possible.

<b>UNITED STATES SENATOR</b> <b>VOTE FOR ONE</b>
<input checked="" type="radio"/> DARRYL STANTON <input checked="" type="radio"/> BILL DAHN <input type="radio"/> STEPHEN WILLIAMS <input checked="" type="radio"/> JACK ULDRICH <input type="radio"/> KURT MICHAEL ANDERSON <input type="radio"/> DOUG WILLIAMS <input type="radio"/> DEAN BARKLEY
<b>CONTINUE VOTING ON THE          NONPARTISAN BALLOT</b>

- For a primary, if the voter marks candidates from more than one party, the ballot is totally defective.

INDEPENDENCE PARTY	REPUBLICAN PARTY	DEMOCRATIC-FARMER-LABOR PARTY
FEDERAL OFFICES	FEDERAL OFFICES	FEDERAL OFFICES
<b>UNITED STATES SENATOR</b> <b>VOTE FOR ONE</b>	<b>UNITED STATES SENATOR</b> <b>VOTE FOR ONE</b>	<b>UNITED STATES SENATOR</b> <b>VOTE FOR ONE</b>
<input checked="" type="radio"/> DARRYL STANTON <input type="radio"/> BILL DAHN <input type="radio"/> STEPHEN WILLIAMS <input type="radio"/> JACK ULDRICH <input type="radio"/> KURT MICHAEL ANDERSON <input type="radio"/> DOUG WILLIAMS <input type="radio"/> DEAN BARKLEY	<input checked="" type="radio"/> JACK SHEPARD <input type="radio"/> NORM COLEMAN  <b>CONTINUE VOTING ON THE          NONPARTISAN BALLOT</b>	<input checked="" type="radio"/> 'DICK' FRANSON <input type="radio"/> AL FRANKEN <input type="radio"/> BOB LARSON <input type="radio"/> PRISCILLA LORD FARIS <input type="radio"/> OLE SAVIOR <input type="radio"/> ROB FITZGERALD <input type="radio"/> ALVE ERICKSON
<b>CONTINUE VOTING ON THE          NONPARTISAN BALLOT</b>		<b>CONTINUE VOTING ON THE          NONPARTISAN BALLOT</b>

- If the voter used an identifying mark or mark with the intent to identify the ballot, the entire ballot is defective.

<b>UNITED STATES SENATOR</b> <b>VOTE FOR ONE</b>
<span style="font-size: 2em; font-weight: bold;">AH</span> <input checked="" type="radio"/> DARRYL STANTON <input type="radio"/> BILL DAHN <input type="radio"/> STEPHEN WILLIAMS <input type="radio"/> JACK ULDRICH <input type="radio"/> KURT MICHAEL ANDERSON <input type="radio"/> DOUG WILLIAMS <input type="radio"/> DEAN BARKLEY
<b>CONTINUE VOTING ON THE          NONPARTISAN BALLOT</b>

- If a voter has voted yes and no on a ballot question, that question is not counted but the rest of the ballot must be counted if possible.
- No write-in votes counted for a primary or a special primary.
  - Any names written on a primary or special primary ballot are not counted.
- If marks are made opposite of more printed candidate names or write-ins allowed for an office, the ballot is defect for that particular office.
- If the number of candidates for an office is equal to the number of individuals to be elected to that office, and the voter has not marked any name, no vote is counted for any candidate for that office.
- A specific office is considered blank when no name or response to a question is marked and no name is written-in.

*(M.S. 204C.22)*

## 14.0 CANVASSING BOARD

The recount official presents the summary statement of the recount and any challenged ballots to the canvassing board. The candidate or candidate representative who made the challenge may present the basis for the challenge to the canvassing board. The canvassing board rules on the challenged ballots and incorporate the results into the summary statement. The canvassing board certifies the results of the recount. Challenged ballots must be returned to the election official who has custody of the ballots. (M.R. 8235.1100)

## 15.0 REPORTING RECOUNT RESULTS

Notify interested parties of the outcome of the recount and cross reference recount findings in all permanent records. File a copy of Report of Recount Canvass in or with:

- Apparent winner
- Apparent loser
- Secretary of State (for state elections)
- Media
- Precinct tally lists
- Canvass book
- Election work folder
- Voting Equipment vendor if recount demonstrated equipment problems

# APPENDIX

## NOTICE OF ELECTIONS RECOUNT

Date of Notice:

Notice to Candidates:

Notice to Auditor:

Dates of Recount:

Starting Times:

Location:

Office to be Recounted:

The recount is open to the public.

The losing candidate may waive the recount by filing notice of waiver with the State Canvassing Board.

Mark Ritchie  
Secretary of State

# EXAMPLE LOCAL RECOUNT FORM-NOTICE TO CANDIDATES

[insert date]

Name  
Address  
Address

SUBJECT: OFFICIAL NOTICE OF RECOUNT COUNTY COMMISSIONER [ ]

The purpose of this letter is to officially inform you that pursuant to M.S. § 204C.36, a recount has been requested by candidate [insert candidate name] [at his own expense] or [and must be provided without cost pursuant to state law].

The [Supervisor of Elections of County Auditor] will be conducting a recount of the [insert name of contest and district number] office and will be counting [number of segregated precincts that will be counted at one time] beginning on [insert date] at [insert time] in Room [insert room] of the [insert location and address]. This recount will be open to the public and candidates may be represented by counsel.

If you have any questions or concerns regarding this recount process, please feel free to contact me directly at [insert phone number].

Sincerely,

[insert name]  
[Supervisor of Elections or County Auditor]

c:..... [insert name], \_\_\_\_\_ County Attorney  
[insert name], \_\_\_\_\_ County Administrator  
County Public Information  
County Commissioners  
Appropriate Clerks  
Candidates

# RECOUNT CHECKLIST

## Forms and Instructions for Recount Team

List of duties for recount team

Steps in recount procedure

Checklist

General procedures

Oral Instructions

Automatic recount legal steps

Emergency contact numbers

Counter training & training schedule

Location and date

Backup location identified

4 to 8 hours to pull training materials together

Training to be 2 hours – 6 sessions

Recount official training

Develop materials & schedule training

Determine number of team leaders

State Law

With index to recount specific sections

Legal

Is recount progress public knowledge? Will determine how results are released.

## Recount Events

Schedule recount activities

Establish calendar of events

Notify:

OSS Staff

Candidates

County Auditors

County courthouse security

Media –draft media press release

Counters and team leads

Law Enforcement

Capitol Security – if necessary

National Guard – if necessary

Canvassing Board

Schedule information session for recount team

Establish firm guidelines for release for ALL information to media & staff

Designate media point of contact

Only media point of contact has authority to give recount results

Inquires

Training

Legal

Media

Other

Clearly list individual staff and department duties

Event coordinator

Should we hire a coordinator?

Vendor contract list

Coordination Plan

## **Ballot Handling**

### Transportation

Identify who will schedule (control) ballot transport

Memo to involved jurisdictions of procedure for preparing ballots for transportation.

Determine delivery schedule

### Security around ballots

Hire security

24/7 security

### **Counting Method will be by (single or multiple) precinct.**

Determine ballot workflow on-site

## **Observers and Media**

Know and enforce limitation on number of observers

Check observers /media in and out. Keep a log

Provide easily identifiable name badges & require their use.

Provide observer/media packet. Include:

Schedule of Events

Governing Laws, Purposes & processes.

Copy of original results

Contact information.

## **Recount Results**

Determine how results will be released; as count progresses or at completion?

Notify interested parties of recount outcome.

Notify Canvassing Board.

## **Logistics**

Staffing: on-going or in shifts?

Identify number of recounters

Identify Recount Officials

Costs

Furniture – Table & Chairs

Recount Set Up

May need partitions

Include an outer walkway for media and observers.

Parking for counters (shuttle needed?)

After hours environment – heating/cooling on timer

Miscellaneous

After hours contacts – Refer to Emergency Contact List

Maps

Supplies – envelopes, paper, pens, etc.

## **Other Non-Statewide Recounts**

Centralized

Counters

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## **Exhibit 3**

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**From:** Jim Gelbmann [Jim.Gelbmann@state.mn.us]  
**Sent:** Tuesday, December 02, 2008 9:41 AM  
**To:** 'Lillehaug, David'; Jim Gelbmann  
**Cc:** Stephanie Schriock; Marc Elias; Hamilton, Kevin J. (Perkins Coie); Bill Pentelovitch; 'Tony Trimble'; fknaak@klaw.us  
**Subject:** RE: Data Practices Request  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Mr. Lillehaug:

The communication that was sent to all county and city election officials is copied below:

Dear County Auditors and County and City Election Officials:

Once again I would like to thank you for helping the Secretary of State's Office conduct a hand recount of the ballots cast in the U.S. Senate contest. I know this task has required much more work than anyone originally anticipated, and we are very grateful for your assistance. I have attached a transcript of comments made by Canvassing Board Member Chief Judge Kathleen Gearin (Second Judicial District) last week relative to the professional assistance you have provided for the state. Subsequent to those comments, the Board unanimously approved a motion thanking you. I've said it before, and I'll say it again, without your assistance, the professionalism under which this recount has been conducted would never have been possible.

At last week's meeting of the State Canvassing Board, the Board members expressed an interest in knowing the number of Absentee Ballots that may have been mistakenly rejected. In other words, the Board has heard anecdotal evidence of absentee ballots being rejected, even though the facts surrounding the ballot did not meet one of the four reasons stated in statute upon which an absentee ballot may be rejected. For example, if an absentee ballot was sent to the wrong precinct on election night and rejected by the election judges at that precinct, it could be argued that ballot does not meet one of the four statutory reasons.

The purpose of this e-mail is to once again ask for your assistance. We need your help in reviewing all previously-rejected absentee ballots and determining the number of ballots that were rejected for each of the following four statutory reasons:

The ballot was rejected because the voter's name and address on the return envelope are not the same as the information provided on the absentee ballot application.

2. The voter's signature on the return envelope is not the genuine signature of the individual who made the application for the ballot and the signature is required under applicable Minnesota law, or the certificate has not been completed as prescribed in the directions for casting an absentee ballot.

3. The voter was not registered and eligible to vote in the precinct or has not included a properly completed voter registration application. Elections personnel shall use available voter rosters to determine whether the voter was registered.

4. The voter had already voted at the election, either in person or by absentee ballot. Elections personnel shall use available voter rosters to determine whether the voter had already voted.

In addition, please create a fifth category of rejected absentee ballots as described below:

5. If the rejected absentee ballot does not meet one of these four reasons, or if the reason used to reject the absentee ballot is not based on factual information (e.g. the voter was initially determined not to be registered to vote at the address given, but a subsequent review determines the voter was registered at that address), that ballot should be counted as part of a fifth category of previously- rejected absentee ballots - absentee ballots that were mistakenly rejected on or before election day.

If the election judges do not agree into which of the first four categories the ballot should be placed (e.g. because it was appropriately rejected for more than one reason), simply assign the ballot to one of the appropriate categories at random. If the election judges disagree as to whether the ballot was appropriately or inappropriately rejected, please assign the ballot to the fifth category. Please note the disagreement on a sticky note and attach it onto white space on the envelope.

The State Canvassing Board is primarily interested in determining how many ballots throughout the state would be included in this fifth category of rejected absentee ballots. **At this time we are not asking you to open or count the votes contained in any of the five categories of rejected absentee ballots, nor are we asking you to compile a list of names and addresses of the absentee voters who have their ballots placed in any of these five categories.** We simply are looking for the number of rejected absentee ballots that were legitimately rejected for one of the four statutory reasons and the number of rejected absentee ballots that were mistakenly rejected by a County Absentee Ballot Board and/or election judges at the individual precincts.

We understand that this will require a significant amount of work on your part. This review should be done with the assistance of two election judges of different parties and you or a member of your staff. It must be done in a public setting where the public and representatives of the two campaigns would be allowed to observe, but not participate in the review nor question the election judges' decision into which category each previously-rejected absentee ballot is placed. In other words, candidates are not to be given the opportunity to challenge the decisions relative to the category into which each previously -rejected absentee ballot is placed.

Throughout the process, you should keep the previously-rejected absentee ballots with their precinct supply box. At the end of the process, you may keep the five categories of previously-rejected absentee ballots segregated using rubber bands or paper clips, but must store them securely in the appropriate precinct supply box.

If you are willing to assist us in this process, the State will reimburse you for the cost of hiring two election judges (or additional election judges if you intend to operate more than one table) plus an amount 0.25 for each rejected absentee ballot reviewed. Since many counties had a minimal number of rejected absentee ballots, every county that participates will receive a minimum of \$25.00 for their effort. We would ask that this task be completed no later than close of business on Thursday, December 18. Additional details about the specific process to be used will be forthcoming. **However, I would appreciate it if you would complete the following survey and return it to me as soon as possible.**

\_\_\_\_\_ Yes we would be willing to assist with this process

\_\_\_\_\_ No we are not willing to assist with this process, but would make our rejected absentee ballots available to representatives of the Secretary of State's Office or other County or City election officials

from neighboring jurisdictions so the task can be completed.

If you are willing to participate in this process, please identify a date, time and location when you would begin sorting the rejected absentee ballots. Please forward this email to any municipal clerks in your county if they maintain possession of the rejected absentee ballots.

Please do not begin any earlier than Monday, December 8 and plan to complete the review and submit the

numbers of rejected absentee ballots for each of the five categories forwarded to the Secretary of State's Office by 5:00 p.m., Thursday, December 18.

Date When We Will Begin Sorting Rejected Absentee Ballots: \_\_\_\_\_

Time When We Will Begin Sorting Rejected Absentee Ballots: \_\_\_\_\_

Location Where We Will Begin Sorting Rejected Absentee Ballots:  
\_\_\_\_\_

My best regards!!!

Sincerely,

Jim

Jm Gelbmann

Deputy Secretary of State

180 State Office Building

Saint Paul, Minnesota 55155

(651) 201-1344 (office)

(651) 334-4077 (cell)

Jim Gelbmann

Deputy Secretary of State

180 State Office Building

Saint Paul, Minnesota 55155

(651) 201-1344 (office)

(651) 334-4077 (cell)

---

**From:** Lillehaug, David [mailto:dlillehaug@fredlaw.com]

**Sent:** Tuesday, December 02, 2008 7:51 AM

**To:** Jim Gelbmann

**Cc:** Stephanie Schriock; Marc Elias; Hamilton, Kevin J. (Perkins Coie); Bill Pentelovitch

**Subject:** Data Practices Request

Dear Mr. Gelbmann -- I understand that, late yesterday, the Secretary of State's office sent a communication to county auditors and other local election officials regarding absentee ballots. Pursuant to the Minnesota Government Data Practices Act, I request a copy of that communication. As the Franken campaign considers this matter time-sensitive, I would appreciate your office's prompt response to this request.

12/15/2008

David Lillehaug  
Fredrikson & Byron, P.A.  
612-492-7321

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NOTICE: E-mail correspondence to and from the Office of the Secretary of State of Minnesota may be public data subject to the Minnesota Data Practices Act and/or may be disclosed to third parties

## **Exhibit 4**

**From:** Jim Gelbmann [Jim.Gelbmann@state.mn.us]  
**Sent:** Thursday, December 04, 2008 12:03 PM  
**To:** 'phil thompson'; Jim Gelbmann; Dennis Distad; Tony P. Trimble; allen.paulson@co.clearwater.mn.us; anne.granitz@co.roseau.mn.us; barb.loch@co.meeker.mn.us; becky.murphy@co.beltrami.mn.us; ben.pribyl@co.jackson.mn.us; elections@CO.COOK.MN.US; election@co.nicollet.mn.us; byron.giese@co.swift.mn.us; carolyn.holmsten@co.goodhue.mn.us; auditor@co.grant.mn.us; char.meiners@co.houston.mn.us; charleen.west@co.wadena.mn.us; cmaclennan@co.winona.mn.us; cindy.schultz@co.mcleod.mn.us; cwcauditor@co.crow-wing.mn.us; denise.cooper@co.kanabec.mn.us; djfreed@co.chisago.mn.us; auditor@co.sherburne.mn.us; dicklichd@co.st-louis.mn.us; auditor@co.watonwan.mn.us; donna.quandt@co.pope.mn.us; dougg@co.mower.mn.us; rcelections@co.rice.mn.us; frank.thompson@co.mahnomen.mn.us; gerald.amiot@co.polk.mn.us; gloria.rolfs@co.rock.mn.us; hwinter@co.murray.mn.us; jake.sieg@lqpco.com; james.forshee@co.martin.mn.us; jan.h.johnson@co.cottonwood.mn.us; jleisen@co.wabasha.mn.us; joan.manthe@co.waseca.mn.us; jneyssen@co.benton.mn.us; elections@co.dakota.mn.us; john\_h@co.lake-of-the-woods.mn.us; john.thompson@co.faribault.mn.us; jclauson@co.chippewa.mn.us; elections@co.ramsey.mn.us; joyce.steinhoff@co.pipestone.mn.us; karen.busch@co.todd.mn.us; kschreurs@co.lincoln.mn.us; ktolson@co.pennington.mn.us; elections@co.washington.mn.us; kpeysar@co.aitkin.mn.us; kit.johnson@co.traverse.mn.us; larry\_b@co.redwood.mn.us; larry\_j@co.renville.mn.us; laura.ihrke@co.steele.mn.us; lengelen@co.carver.mn.us; pfarrl@co.sibley.mn.us; lois.bonde@co.yellow-medicine.mn.us; lori.johnson@co.clay.mn.us; mgustafson@co.kittson.mn.us; marlin.helget@co.brown.mn.us; marsha.goslovich@co.itasca.mn.us; mkes@co.scott.mn.us; Vote@co.hennepin.mn.us; michelle\_k@co.big-stone.mn.us; neilwiese@co.stevens.mn.us; fuller.pamela@co.olmsted.mn.us; pheeren@co.hubbard.mn.us; patty.oconnor@co.blue-earth.mn.us; paul.gassert@co.carlton.mn.us; paulavanoverbeke@co.lyon.mn.us; elections@co.anoka.mn.us; elections@co.stearns.mn.us; rick.munter@co.norman.mn.us; bob.hiivala@co.wright.mn.us; bob.peterson@co.koochiching.mn.us; raschmitz@co.red-lake.mn.us; cblaschko@co.le-sueur.mn.us; russn@co.morrison.mn.us; rtlange@co.becker.mn.us; sam\_m@co.kandiyohi.mn.us; sara.marquardt@co.dodge.mn.us; scott.peters@co.marshall.mn.us; cass.voter@co.cass.mn.us; sbalster@co.nobles.mn.us; sboelter@co.fillmore.mn.us; steve.mcmahon@co.lake.mn.us; terry.treichel@co.isanti.mn.us; t.reddick@mail.co.douglas.mn.us; wbezenek@co.wilkin.mn.us; wstein@co.ottertail.mn.us; kay.mack@co.beltrami.mn; CCJohnso@co.pine.mn.us; tferber@ci.bloomington.mn.us; kengberg@ci.bloomington.mn.us; tmarshall@ci.robbinsdale.mn.us; tgerhardt@ci.chanhassen.mn.us; doboszanski@ci.rogers.mn.us; sjenkins@townofhassan.com; sknutson@ci.brooklyn-center.mn.us; sengdahl@ci.plymouth.mn.us; sborders@cityofdayton.mn.com; rcolotti@ci.champlin.mn.us; greenwood@visi.com; ngibbs@cityofrichfield.org; nacyc@cityofrockford.org; llarson@ci.osseo.mn.us; kbachmeier@ci.corcoran.mn.us; kporta@edenprairie.org; janet.lewis@ci.crystal.mn.us; devin.montero@brooklynpark.org; daniel-hanover@comcast.net; danay@cityofdeephaven.org; cheri@ci.excelsior.mn.us; johnson@ci.greenfield.mn.us; terryo@hopkinsmn.com; thirsch@ci.independence.mn.us; jmoeller@ci.long-lake.mn.us; cpatnode@ci.loretto.mn.us; skollanderson@ci.maple-grove.mn.us; cityhall@mapleplain.com; chad.adams@ci.medina.mn.us; dmaeda@eminnetonka.com; mregnier@ci.minnetonka-beach.mn.us; thaarstad@ci.minnetrista.mn.us; bonnieritter@cityofmound.com; vleone@ci.new-hope.mn.us; lv@ci.orono.mn.us; stboni@visi.com; jpanchyshyn@ci.shorewood.mn.us; wlewin@mchsi.com; clink@cityoftonkabay.net; sandy@wayzata.org; shelley@cityofwoodlandmn.org; Michelle.DesJardin@co.hennepin.mn.us

**Cc:** fknaak@klaw.us; Lillehaug, David

**Subject:** Final Instructions For Rejected Absentee Ballot Envelope Sorting

**Attachments:** Detailed Instructions for Sorting Rejected Absentee Ballots rtf

Greetings:

The document for which you have all been waiting. I apologize for the delay in getting this to you. If you haven't already done so, please e-mail me if you are willing to conduct a public sorting of your rejected absentee ballots. If so, please designate the date, time and location.

Thank you and please consider my sincere apologies for imposing on your time. I really appreciate any cooperation you are able to provide.

12/15/2008

My best regards.

Sincerely,

Jim Gelbmann  
Deputy Secretary of State  
(651) 201-1344  
(651) 334-4077

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NOTICE: E-mail correspondence to and from the Office of the Secretary of State of Minnesota may be public data subject to the Minnesota Data Practices Act and/or may be disclosed to third parties

# Detailed Instructions For Sorting All Currently-Rejected Absentee Ballots Cast In The U.S. Senate Race

## PURPOSE

The State Canvassing Board has heard anecdotal evidence of individuals who have had their absentee ballot rejected for the 2008 General Election through no fault of their own. These ballots were rejected as a result of administrative or clerical errors made by election workers and judges who were overworked and stressed in their attempts to deal with one of the largest voter turnouts in Minnesota History. Ballots that were sent to the wrong precinct, registered voters who were incorrectly characterized to be non-registered due to an innocent oversight by an election judge or Absentee Ballot Board, or disabled individuals whose signature marks were not recognized as signatures by Election Judges are just several examples of voters who were disenfranchised by errors made by others.

The State Canvassing Board, which is responsible for certifying that the results of the election are accurate, is interested in learning approximately how many of these disenfranchised voters exist among the estimated 10,000 to 12,000 rejected absentee and mail-in ballots cast. Simultaneously, the Board is seeking an Attorney General's Opinion to determine if it has the authority to open these mistakenly-rejected absentee ballot envelopes and count the votes in the U.S. Senate race.

**At this time, the purpose is not to open and count the votes in these mistakenly rejected absentee ballots. Instead it is to provide the State Canvassing Board with an estimate of the number of absentee ballots that were rejected for legitimate reasons along with the number of absentee ballots that were mistakenly rejected.**

This task goes beyond a mere listing of the reasons for rejecting an absentee ballot that are listed on the envelope. It requires the election workers to further document that the reasons listed are accurate. The integrity of our election system, and the need to make sure every effort is made to count every vote that is legitimately cast by a qualified, registered voter, is dependent upon your voluntary participation in this process. No voter should be required to rely on an election contest to ensure his or her vote is counted by the State Canvassing Board. If the Board lacks the authority to count absentee ballots that were mistakenly rejected, it is critical that the Board be able to document the number of mistakenly-rejected absentee ballots in its final certification of the election results.

## INSTRUCTIONS

Every county or city that has agreed to assist in this project is asked to participate in a sorting of the rejected absentee ballots into five distinct categories. All jurisdictions who decline to participate will be asked to provide detailed information consistent with these reporting standards to the State Canvassing Board and such information may also be subject to data practices requests by the two Senate campaigns. The Office of the Secretary of State reserves the right to complete the project on behalf of the jurisdiction if a local jurisdiction declines to complete the project themselves.

Those jurisdictions with 20 or fewer rejected absentee ballots may opt to do the sorting of the ballots themselves in a public process that is announced at least 24 hours in advance, or they may opt to make copies of rejected absentee ballot envelopes and the corresponding applications and mail them to the Secretary of State's Office where they will be sorted in a public setting on a date and time announced by the Secretary of State. The local election official of the jurisdictions that opt to have the Secretary of State's Office complete the

review and sorting of the ballots shall be available to respond to inquiries by the secretary of state as to whether the voter signed in on the roster, is noted on the roster as having voted by absentee ballot or is noted as having registered on election day, or as to whether it appears that there may be a voter registration application in the original envelope.

All other jurisdictions with more than 20 rejected absentee ballots that are willing to assist the Secretary of State's Office with this project in exchange for compensation that will be detailed below, are asked to contact Jim Gelbmann, Deputy Secretary of State, by e-mailing him the date, time and location the public sorting of the rejected ballots will take place. Jim's e-mail address is: [jim.gelbmann@state.mn.us](mailto:jim.gelbmann@state.mn.us) .

### **Preparing for the Sorting of Rejected Absentee Ballots**

The sorting of rejected absentee ballots must be conducted in a public setting. Representatives of the two Senate Campaigns and all other interested individuals must be allowed to watch – but not participate in or challenge – the sorting of the ballots. The Election Official who is responsible for the sorting of the ballots shall establish a reasonable public viewing area within the room where the ballots are to be sorted. No candidate representative has the right to question or challenge the decision made by the election official(s) and/or election judges relative to the category into which each absentee ballot is placed. The Election Official has the right to request that any individual who attempts to interfere with, or influence the decision of, the panel to leave the room.

The Primary Election Official for each location shall be designated by the Office of the Secretary of State. The Official shall appoint two individuals to assist with the sorting of the ballots. These individuals must be either non-partisan professional election staff employed by the jurisdiction or municipalities within the jurisdiction, or two qualified election judges, one from each of two different major political parties.

The Election Official must establish a date, time and location for the sorting of the ballots and must notify Deputy Secretary of State Jim Gelbmann of this date, time and location at least 48 hours in advance. (This will give our Office adequate time to give the candidates' representatives the required 24 hours notice.)

The review will begin on or about December 8, 2008 and will continue until all previously rejected absentee ballot envelopes in the jurisdiction(s) both retained at county or city offices after processing by an absentee ballot board and/or those retained with precinct materials, are reviewed. The State and Election Official agree that this process should be completed on or before December 18, 2008, unless civil litigation delays completion. The results of the review, along with all explanatory notes shall be electronically transmitted to the Secretary of State as well as mailed to the State on or before December 18, 2008, pursuant to instructions to be provided by the Secretary of State.

If the Election Official responsible for the review has made copies of the envelopes, they may use the copies to conduct the review instead of the original previously-rejected absentee ballot envelopes. Election Officials may conduct preliminary investigations relative to each rejected absentee ballot prior to the actual public sorting process. For example, if an absentee ballot was rejected because an individual was determined to be not registered to vote, the Election Official and his or her assistants may verify the non-registered status of the voter on election day by reviewing either the election day roster and/or the Statewide Voter Registration System (SVRS). In any event, a further investigation of the reason for the rejection of the ballot must be conducted – either during the public sorting process or in preparation for the process.

Throughout the process, Election Officials must keep previously-rejected absentee ballot envelopes secure and not separated from the materials they were stored with prior to the sorting process. At the end of the process, Election Officials may keep the five categories of previously-rejected absentee ballot envelopes segregated using rubber bands or paper clips, but must continue to store them securely, as they were prior to the sorting process.

### **Conducting the Sorting of The Previously-Rejected Absentee Ballots**

#### **I. Previously-rejected non-UOCAVA absentee ballot envelopes not processed for acceptance or rejection by an absentee ballot board (accepted and rejected in the precinct)**

These envelopes will be reviewed and sorted based on the following five criteria. Absentee ballots received after election-day need not be included in this sorting process and shall not be reported as part of any of the five categories.

1. The ballot envelope was rejected because the voter's name and address on the return envelope are not the same as the information provided on the absentee ballot application.
2. The voter's signature on the return envelope is not the genuine signature of the individual who made the application for the ballot, or the certificate has not been completed as prescribed in the directions for casting an absentee ballot. Ballot envelopes that have signatures that are similar, but not identical to, the signature on the application should not be placed in this category, but shall be placed in category five. For example, if a voter signed that application James R. Gelbmann, but signed the ballot envelope Jim Gelbmann using similar handwriting, that ballot envelope shall be placed in category five. Also, if the voter signed using a signature mark on both the application and the envelope that the election judges did not recognize as a legal signature, that ballot shall be placed in category five.
3. The voter was not registered and eligible to vote in the precinct or has not included a properly completed voter registration application. Election personnel shall use available voter rosters and/or SVRS to determine whether the voter was registered on Election Day. Voters whose records in SVRS are "inactive" as well as voters whose records are challenged because of a felony status or other reason were properly rejected and should be put in this category, unless they included a voter registration application with their absentee ballot. Also include in this category voters who have died prior to election-day.

If the review of a ballot envelope determines that the ballot envelope was rejected because it was inadvertently delivered to the wrong precinct, election personnel shall use that precinct's voter roster and/or SVRS to determine whether the individual was registered at the address for the other precinct on Election Day. If they were, that ballot shall be placed in category five.

- 3a. If the reason for rejection of the absentee ballot was that the voter's name does not appear on the roster or in SVRS, the actual absentee ballot envelope must be reviewed instead of the copy. Without opening the secrecy envelope, the official making the review

shall attempt to determine if a voter registration card or form is enclosed in the secrecy envelope. If it is determined that a voter registration card or form is likely to be included inside the secrecy envelope, the Election Official shall report that ballot separately as part of Category 3a. If the secretary of state is making the review, then the election official who provided the materials to the secretary of state shall make the actual physical review under this item.

4. The voter had already voted at the election, either in person or by absentee ballot. Elections personnel shall use available voter rosters to determine whether the voter had already voted.

Election Officials shall create a fifth category of previously rejected absentee ballot envelopes as described below:

5. If the rejected absentee ballot envelope does not meet one of the four reasons listed in categories 1 through 4, or if the reason used to reject the previously-rejected absentee ballot envelope is not based on factual information (e.g. the voter was initially determined not to be registered to vote at the address given, but a subsequent review determines the voter was registered at that address), that absentee ballot envelope will be counted as part of a fifth category of previously-rejected absentee ballot envelopes - absentee ballot envelopes that were mistakenly rejected on election day.

If the Election Official and his or her two assistants do not agree into which of the first four categories the ballot envelope should be placed (e.g. because it was appropriately rejected for more than one reason), the previously rejected absentee ballot envelope will be assigned at random to one of the appropriate categories. If the election judges do not agree as to whether the previously-rejected absentee ballot envelope was appropriately or inappropriately rejected, the ballot will be assigned to the fifth category. Please note the disagreement on a 'sticky note' and attach it onto the envelope.

The Election Official shall make reasonable efforts to keep the public informed throughout the sorting process. For each ballot placed in the fifth category, the Election Official shall briefly state the reasoning for placing the ballot in the fifth category. For example, the Official may say: "This voter was initially determined to be a non-registered voter on or prior to election day, but a further review confirms that the voter was registered on election day.

**The Election Officials will not open or count the votes contained in any of the five categories of rejected absentee ballot envelopes, nor will Election Officials compile a list of names and addresses of voters whose previously-rejected absentee ballot envelopes are placed in any of these five categories.**

The Deputy Secretary of State shall be available by phone to provide additional detailed instructions or clarifications to Election Officials to supplement these paragraphs, as necessary. His Office number is (651) 201-1344. His cell phone number is (651) 334-4077.

## **II. Previously-rejected ballot envelopes, both UOCAVA and non-UOCAVA, that were**

**originally accepted by an absentee ballot board but rejected at the precinct.**

These envelopes should automatically be placed in the fifth category described above, unless the previously-rejected absentee ballot envelope was appropriately rejected because the person already voted or was known to be deceased on November 4, 2008.

### **III. Previously-rejected UOCAVA absentee ballot envelopes rejected by an absentee ballot board**

These envelopes will be reviewed to and sorted as follows:

1. The voter's name on the return envelope fails to appear in substantially the same form as on the application;
2. The voter has not signed the federal oath;
3. The voter has not set forth the same voter's passport number, or Minnesota driver's license or state identification card number, or the last four digits of the voter's Social Security number as submitted on the application, if the voter has one of these documents, and, after making a reasonable effort, the election judges cannot satisfy themselves through other information provided by the applicant or voter that the ballots were returned by the same person to whom the ballots were transmitted; or
4. The voter has already voted at that election, either in person or by absentee ballot. Elections personnel shall use available voter rosters or other UOCAVA materials to determine whether the voter had already voted. Also include in this category envelopes that were rejected because the voter died prior to November 4.

The Election Officials will create a fifth category of previously rejected absentee ballot envelopes as described below:

5. If the rejected absentee ballot envelope does not meet one of the four reasons listed in categories 1 through 4, or if the reason used to reject the previously-rejected absentee ballot is not based on factual information, that absentee ballot envelope will be counted as part of a fifth category of previously-rejected absentee ballots - absentee ballot envelopes that were mistakenly rejected on or before election day.

If the election judges do not agree into which of the first four categories the ballot envelope should be placed (e.g. because it was appropriately rejected for more than one reason), the previously rejected absentee ballot envelope will be assigned at random to one of the appropriate categories. If the election judges do not agree as to whether the previously-rejected absentee ballot envelope was appropriately or inappropriately rejected, the ballot will be assigned to the fifth category. Please note the disagreement on a 'sticky note' and attach it onto the envelope.

**The Election Official will not open or count the votes contained in any of the five categories of rejected absentee ballot envelopes, nor will the Election Official compile a list of names and addresses of voters whose previously-rejected absentee ballot**

**envelopes are placed in any of these five categories.**

The Deputy Secretary of State shall be available by phone to provide additional detailed instructions or clarifications to Election Officials to supplement these paragraphs, as necessary. His Office number is (651) 201-1344. His cell phone number is (651) 334-4077.

#### **IV. Optional: Mail Ballots**

At the discretion of the local Election Official, previously rejected ballots from mail ballot precincts may also be reviewed to determine whether any were rejected due to an administrative error, through no fault of the voter.

The only authorized reasons for rejecting a ballot in a mail ballot precinct are:

1. The voter did not sign the return envelope.
2. The return envelope was not signed by an authorized witness.
3. It was known that the voter had died prior to November 4.

Any previously-rejected mail-in ballot that is determined to have been mistakenly rejected shall be included in "category 5" for non-UOCAVA ballots.

#### **Post-Sorting Instructions**

After sorting all previously-rejected absentee ballots into the five aforementioned categories, the Election Official and his or her two assistants shall count the number of ballots in each category. This shall include a count of the number of ballots in categories 1, 2, 3, 3a, 4, and 5 for non-UOCAVA ballots and/or the number of ballots in categories 1, 2, 3, 4, and 5 for UOCAVA ballots.

The Election Official shall report the number of ballots in each category to the individuals in the public viewing area.

Election Officials may keep the categories of previously-rejected ballot envelopes segregated using rubber bands or paper clips, and must return them to the location in which they were being securely stored, as they were prior to the sorting process.

The number of ballots in each category shall be reported electronically to the State using a survey tool (details of which will be sent to all participating Election Officials by the end of the day on December 4). Please be sure to identify the jurisdiction for which you are reporting and the name of the Election Official and all assistants who participated in the sorting of the ballots. The Election Official shall also report whether he or she included any previously-rejected mail-in ballots in his or her sorting procedures.

After transmitting the results of the sorting process electronically, the Election Official shall fax or mail the results, including the Election Official's Signature, to the Deputy Secretary of State. The Fax number is: 651-215-0682. The mailing address is: Jim Gelbmann, Deputy Secretary of State, 180 State Office Building, Saint Paul, Minnesota 55155.

#### **Compensation**

All local jurisdictions willing to assist the Secretary of State in this process will be reimbursed for the cost of hiring two election judges (or additional election judges if you intend to operate more than one table) at the rate paid on Election Day plus an amount of \$0.25 for each rejected absentee ballot and/or mail-in ballot reviewed. Since many counties had a minimal number of

rejected absentee ballots, every county that participates will receive a minimum of \$25.00 for their effort. A contract for these services will be sent to you shortly.

## **Exhibit 5**

**From:** Jim Gelbmann [Jim.Gelbmann@state.mn.us]  
**Sent:** Sunday, December 07, 2008 12:29 AM  
**To:** Jim Gelbmann; 'phil thompson'; 'Jim Gelbmann'; 'Dennis Distad'; 'Tony P. Trimble'; allen.paulson@co.clearwater.mn.us; anne.granitz@co.roseau.mn.us; barb.loch@co.meeker.mn.us; becky.murphy@co.beltrami.mn.us; ben.pribyl@co.jackson.mn.us; elections@co.cook.mn.us; election@co.nicollet.mn.us; byron.giese@co.swift.mn.us; carolyn.holmsten@co.goodhue.mn.us; auditor@co.grant.mn.us; char.meiners@co.houston.mn.us; charleen.west@co.wadena.mn.us; cmaclennan@co.winona.mn.us; cindy.schultz@co.mcleod.mn.us; cwcauditor@co.crow-wing.mn.us; denise.cooper@co.kanabec.mn.us; djfreed@co.chisago.mn.us; auditor@co.sherburne.mn.us; dicklichd@co.st-louis.mn.us; auditor@co.watonwan.mn.us; donna.quandt@co.pope.mn.us; 'doug@co.mower.mn.us'; rcelections@co.rice.mn.us; frank.thompson@co.mahnomen.mn.us; gerald.amiot@co.polk.mn.us; gloria.rolfs@co.rock.mn.us; hwinter@co.murray.mn.us; jake.sieg@lqpc.com; james.forshee@co.martin.mn.us; jan.h.johnson@co.cottonwood.mn.us; jleisen@co.wabasha.mn.us; joan.manthe@co.waseca.mn.us; jneyssen@co.benton.mn.us; elections@CO.DAKOTA.MN.US; john\_h@co.lake-of-the-woods.mn.us; john.thompson@co.faribault.mn.us; jclauson@co.chippewa.mn.us; 'elections@co.ramsey.mn.us'; joyce.steinhoff@co.pipestone.mn.us; karen.busch@co.todd.mn.us; kschreurs@co.lincoln.mn.us; ktolson@co.pennington.mn.us; elections@co.washington.mn.us; kpeysar@co.aitkin.mn.us; kit.johnson@co.traverse.mn.us; larry\_b@CO.REDWOOD.MN.US; larry\_j@co.renville.mn.us; laura.ihrke@CO.STEELE.MN.US; lengelen@co.carver.mn.us; pfarrl@co.sibley.mn.us; lois.bonde@co.yellow-medicine.mn.us; lori.johnson@co.clay.mn.us; mgustafson@co.kittson.mn.us; marlin.helget@co.brown.mn.us; marsha.goslovich@co.itasca.mn.us; mkes@co.scott.mn.us; Vote@co.hennepin.mn.us; michelle\_k@co.big-stone.mn.us; neilwiese@co.stevens.mn.us; fuller.pamela@co.olmsted.mn.us; pheeren@co.hubbard.mn.us; patty.oconnor@co.blue-earth.mn.us; paul.gassert@co.carlton.mn.us; paulavanoverbeke@co.lyon.mn.us; 'elections@co.anoka.mn.us'; elections@co.stearns.mn.us; rick.munter@co.norman.mn.us; bob.hiivala@co.wright.mn.us; bob.peterson@co.koochiching.mn.us; raschmitz@co.red-lake.mn.us; cblaschko@co.le-sueur.mn.us; russn@co.morrison.mn.us; rtlange@co.becker.mn.us; sam\_m@co.kandiyohi.mn.us; sara.marquardt@co.dodge.mn.us; scott.peters@co.marshall.mn.us; cass.voter@co.cass.mn.us; sbalster@co.nobles.mn.us; sboelter@co.fillmore.mn.us; steve.mcmahon@co.lake.mn.us; terry.treichel@co.isanti.mn.us; t.reddick@mail.co.douglas.mn.us; wbezenek@co.wilkin.mn.us; wstein@co.ottertail.mn.us; kay.mack@co.beltrami.mn; CCJohnso@co.pine.mn.us; 'tferber@ci.bloomington.mn.us'; 'kengberg@ci.bloomington.mn.us'; tmarshall@ci.robinsdale.mn.us; tgerhardt@ci.chanhassen.mn.us; doboszenski@ci.rogers.mn.us; sjenkins@townofhassan.com; sknutson@ci.brooklyn-center.mn.us; sengdahl@ci.plymouth.mn.us; sborders@cityofdayton.mn.com; rcolotti@ci.champlin.mn.us; greenwood@visi.com; ngibbs@cityofrichfield.org; nacyc@cityofrockford.org; llarson@ci.osseo.mn.us; kbachmeier@ci.corcoran.mn.us; kporta@edenprairie.org; janet.lewis@ci.crystal.mn.us; devin.montero@brooklynpark.org; daniel-hanover@comcast.net; danay@cityofdeephaven.org; cheri@ci.excelsior.mn.us; johnson@ci.greenfield.mn.us; terryo@hopkinsmn.com; thirsch@ci.independence.mn.us; jmoeller@ci.long-lake.mn.us; cpatnode@ci.loretto.mn.us; skollanderson@ci.maple-grove.mn.us; cityhall@mapleplain.com; chad.adams@ci.medina.mn.us; dmaeda@eminnetonka.com; mregnier@ci.minnetonka-beach.mn.us; thaarstad@ci.minnetrista.mn.us; bonnieritter@cityofmound.com; vleone@ci.new-hope.mn.us; lv@ci.orono.mn.us; stboni@visi.com; jpanchyshyn@ci.shorewood.mn.us; wlewin@mchsi.com; clink@cityofonkabay.net; sandy@wayzata.org; shelley@cityofwoodlandmn.org; Michelle.DesJardin@co.hennepin.mn.us; NSTROTH@stlouispark.org  
**Cc:** fksnaak@klaw.us; 'Lillehaug, David'; 'Tony P. Trimble'; Marc Elias

**Subject:** Updated Information on Sorting of Rejected Absentee Ballots

**Attachments:** County 2008 Rejected Absentee Ballot Survey.doc; JPA Previously Rejected ABsv7.doc; Locations and Times for Sorting of Rejected Absentee Ballots (revised 12-7).xls

Good Morning Everyone:

After the flurry of e-mails Thursday morning about the sorting of rejected absentee ballots into five categories, I want to extend my most heartfelt thanks to everyone who has agreed to help us with this task. The State Canvassing Board has requested this information, and without your assistance, the Office of the Secretary of State would not be able to provide adequate information to the Board. I do understand how overworked everyone is and I do feel very guilty asking for you to complete yet another task that many felt you have already done. I hope the Detailed Instructions sent out Thursday help explain the reason for, and the parameters of, this task. Houston County had a public sort on Friday, and while they did not have many rejected absentee ballots, they did identify two of fifteen that were mistakenly rejected and placed in category five.

### **ADDITIONAL CLARIFICATIONS AND INSTRUCTIONS**

#### **Web Link For Reporting Results**

We have established a Web Link for reporting the results of your sort to our Office. We ask that you complete the Web Survey and also mail or fax us a signed hard copy so we have it for our records. The Web Link for reporting your results also includes an area for comments in case there are specific circumstances that created confusion as to which category a rejected absentee ballot should be placed. The Web Link is as follows:

[http://www.sos.state.mn.us/survey/user\\_survey.asp?nSurvey=156](http://www.sos.state.mn.us/survey/user_survey.asp?nSurvey=156)

I have also attached a Word Document that contains a worksheet that may help you complete the survey.

#### **Clarifications To Detailed Instructions**

Based on feedback from county and city election officials the following clarifications may assist you in understanding the process.

---

The Heading on Section I of the process currently reads:

**I. Previously-rejected non-UOCAVA absentee ballot envelopes not processed for acceptance or rejection by an absentee ballot board (accepted and rejected in the precinct)**

A more precise heading should read:

**I. Previously-rejected non-UOCAVA absentee ballot envelopes either (1) rejected by an absentee ballot board or (2) not processed by an absentee ballot board and rejected in the precinct**

---

**Another legitimate reason for rejecting a UOCAVA absentee ballot** is that the voter did not submit an application (the Federal Post Card Application) -- this is a possibility in cases in which the voter only submits the Federal Write-in Absentee Ballot. Please allocate any appropriately rejected

UOCAVA ballots that were rejected for lack of an FPCA to Category 1.

---

If an absentee ballot was rejected by an election judge or an Absentee Ballot Board due to a signature mismatch and the signatures do look different, place the ballot in category five **if the transaction was actually handled at your in-person counter and was witnessed by a county or city official.**

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If an absentee ballot was rejected because there was no voter signature on the application, the ballot should be placed in category 2 **unless the transaction was once again handled at your in-person counter and was witnessed by a county or city official.**

---

When checking the registration status of an Absentee Ballot that was rejected for lack of an SVRS Card in the envelope, you should check either the roster and/or the SVRS system to make sure the person was definitely not registered before assigning the ballot to category 3. The person may have been accidentally sent a non-registered Absentee Ballot package even though he or she was registered.

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#### CONTRACT FOR PAYMENT

I have attached a Joint Powers Contract that you can begin processing so you are able to be reimbursed for a portion of your costs. I have also attached the most up-to-date list of counties and cities that have thus far agreed to assist us with this task. If you are still considering my request, please agree to help us one more time with the Canvass of the U.S. Senate Race.

**PLEASE FORWARD THIS TO ANYONE WHO SHOULD BE ON THIS DISTRIBUTION LIST WHO IS NOT CURRENTLY FOUND ON IT!**

My best regards.

Sincerely,

Jim Gelbmann  
Deputy Secretary of State  
(651) 201-1344 (office)  
(651) 334-4077 (cell)  
(651) 739-5575 (home)  
(651) 215-0682 (fax)

NOTICE: E-mail correspondence to and from the Office of the Secretary of State of Minnesota may be public data subject to the Minnesota Data Practices Act and/or may be disclosed to third parties

## County 2008 Rejected Absentee Ballot Survey Worksheet

This survey requests statistics on rejected absentee ballots for the November 4, 2008 General Election and includes both regular (non-UOCAVA) and UOCAVA absentee ballots.

1. ☆County or Municipality Name
  
2. ☆Name of Primary Election Official
  
3. ☆Names of election judges and/or professional election staff who assisted with the sorting process.

### **NUMBERS OF REJECTED ABSENTEE BALLOTS**

Enter the number of rejected regular (non-UOCAVA) and UOCAVA absentee ballots for each of the categories listed below. If there are no rejected absentee ballots for a particular category enter 0.

Absentee ballots received after election-day need not be included in this sorting process and shall not be reported as part of any of the five categories.

#### **Regular (non-UOCAVA) Absentee Ballots Rejected**

4. Category 1: Voter's name / address did not match.
  
5. Category 2: Voter's signature did not match or certification was not filled out correctly.
  
6. Category 3: Voter was not registered at this address or has not included a properly completed voter registration application Or Voter died before Election Day.
  
7. Category 3a: Voter was not registered. VRA appears to be in secrecy envelope.

8. Category 4: Voter had already voted at the election.

9. Category 5: Enter the number for improperly rejected envelope (including non-UOCAVA ballots, UOCAVA ballots rejected in the precinct, and mail ballots).

### **UOCAVA Ballots Rejected by Absentee Ballot Board**

10. Category 1: Voter's name did not match.

11. Category 2: Voter did not sign oath.

12. Category 3: Voter's ID number did not match, and the Election Judges could not otherwise satisfy themselves that the ballot was filled out by the voter to whom it was transmitted.

13. Category 4: The voter already voted at that election OR voter died prior to November 4.

14. Category 5: Improperly rejected absentee ballot envelopes.

### **Optional: Mail Ballots**

15. Number of properly rejected ballots from mail balloting precincts.

16. Number of mistakenly rejected ballots from mail balloting precincts. (Add this number to the number in Category five for non-UOCAVA ballots.)

**STATE OF MINNESOTA  
JOINT POWERS AGREEMENT**

This agreement is between the State of Minnesota, acting through its Office of the Secretary of State ("State") and the County Auditor of each of the Counties, or the City Clerk of each of the cities, listed in Appendix A. ("Contractor").

**Recitals**

Under Minn. Stat. § 471.59, subd. 10, the State is empowered to engage such assistance as deemed necessary. The State is in need of absentee ballot review services for previously-rejected absentee ballot envelopes returned by voters pursuant to Minnesota Statutes, chapter 203B, for the general election for United States Senate. The Contractor represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of the State.

**Agreement**

**1 Term of Agreement**

- 1.1 **Effective date:** *December 8, 2008*, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration date:** *January 1, 2009*, or until all obligations have been satisfactorily fulfilled, whichever occurs later.

**2 Agreement between the Parties**

The Contractor is a local election official as designated in Appendix A, and will conduct a review of the previously rejected absentee ballot envelopes submitted in the jurisdiction in which the Contractor is the County Auditor or City Clerk and in any additional jurisdiction mutually agreed upon by Contractor and State. The review will begin on or about December 8, 2008 and will continue until all previously rejected absentee ballot envelopes in the jurisdiction(s) both those at any absentee ballot board as well as those retained with precinct materials, are reviewed. In the event that an election contest is filed in any of these elections and the court takes jurisdiction, the State may cancel this contract immediately and without any further cause. The State and Contractor agree that this process should be completed on or before December 18, 2008, unless civil litigation delays completion. The results of the review, along with all explanatory notes shall be electronically transmitted to the State as well as mailed to the State on or before December 18, 2008 pursuant to instructions to be provided to Contractor by State.

Previously-rejected ballot envelopes must be reviewed either by two election judges of different major parties or be reviewed by two non-partisan professional election administration staff.

If the person making the review has made copies of the envelopes, they may use the copies to conduct the review instead of the original previously-rejected absentee ballot envelopes

If there are more than twenty previously-rejected absentee ballot envelopes in the jurisdiction, the review will be conducted in a public setting where the public and representatives of the two campaigns would be allowed to observe, but not participate in the review nor question the election judges' decision into which category each previously-rejected absentee ballot envelope is placed. Specifically, candidates do not have the right to challenge the decisions relative to the category into which each previously-rejected absentee ballot envelope is placed.

The review will be conducted as further set forth in Appendix B.

**3. Payment**

3.1 **Compensation** The Contractor will be paid twenty five cents for each ballot handled in the course of this review, plus the actual cost of hiring at least two election judges at the rate paid on November 4, 2008, with a minimum payment of \$25. The Contractor will submit an invoice to State enumerating the number of previously rejected absentee ballots handled in each precinct and county, as well as specifying the time devoted by each election judge hired and paid to conduct this review, to verify the total. No invoice shall include the name of any voter who submitted an absentee ballot.

3.2 **Travel** No travel expenses will be paid.

The total obligation of the State under this agreement will not exceed an aggregate of \$10,000 for all Contractors.

**4 Authorized Representatives** The State's Authorized Representative is Gary Poser, Director of Elections, 180 State Office Building, Saint Paul MN 55155 651-556-0612, or his/her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Governmental Unit's Authorized Representative is the County Auditor or municipal clerk who has signed the contract

**5 Assignment, Amendments, Waiver, and Contract Complete**

- 5.1 **Assignment.** The Governmental Unit may neither assign nor transfer any rights or obligations under this agreement without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this agreement, or their successors in office.
- 5.2 **Amendments.** Any amendment to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.
- 5.3 **Waiver.** If the State fails to enforce any provision of this agreement, that failure does not waive the provision or its right to enforce it.
- 5.4 **Contract Complete.** This agreement contains all negotiations and agreements between the State and the Governmental Unit. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.

Signatures for this agreement are being obtained by the signing of counterparts. Each Contractor will sign signature block #2 and return this page to Jenny Kurz, Office of the Secretary of State, 60 Empire Drive, Suite 100, Saint Paul MN 55103-2141.

**1. STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.*

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

CFMS Contract No. A- \_\_\_\_\_

**2. GOVERNMENTAL UNIT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**3. STATE AGENCY**

By: \_\_\_\_\_  
(with delegated authority)  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

**4. COMMISSIONER OF ADMINISTRATION**  
delegated to Materials Management Division

By: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution:  
Agency  
Governmental Unit  
State's Authorized Representative - Photo Copy

Location and Dates for Rejected Absentee Ballot Counting

County	City if Designated	Name of Deputy Recount Official	Title of Deputy Recount Official	Start Date	Start Time	Recount Address	Room Name or Number
Anoka		Rachel Smith	Elections Manager	December 8, 2008	8:30 AM	Elections Office 2100 3rd Ave, Anoka	Room 310
Beltrami		Kay Mack	Auditor	December 9, 2008	2:00 PM	Administration Building, 701 Minnesota Ave NW, Bemidji	2nd Flr Conference Room
Benton		Joan Neyssen		December 15, 2008	9:00 AM		Benton County Commissioners Room
Blue Earth		Patty O'Connor	Director Taxpayer Services	December 17, 2008	8:00 AM	410 South Fifth Str, Mankato MN	TBD
Brown		Mandy Helget		December 11, 2008	2:00 PM	Brown County Courthouse	2nd floor Auditor- Treasurer's Room 207
Cass		Shari Splichal	Deputy Auditor- Treasurer	December 11, 2008	9:00 AM	Courthouse, 303 Minnesota Ave. W, Walker MN	1st Flr Meeting Room
Chisago		Dennis Freed		December 10, 2008	8:00 AM	Chisago County Government Center 313 North Main Street Center City, MN 55012	Room 133 (this is a small room and will only hold about 10 people)
Clay		Lori J Johnson	Auditor-Treasurer	December 9, 2008	10:00 AM	807 N 11th St, Moorhead MN	Clay County Board Room
Cottonwood County		Jan Johnson		December 8, 2008	8:00 AM	900 3rd Avenue Windom	Auditor- Treasurer's Office
Cook		Braidy Powers	Auditor-Treasurer	December 8, 2008	10:00 AM	Courthouse, 411 West 2nd Street Grand Marais, MN	Courthouse Board Room
Dakota		Kevin Boyle		December 9, 2008	10:00 AM	Dakota County Administration Center, 1590 Highway 55 – Hastings MN 55033	Conference Room 1A

Location and Dates for Rejected Absentee Ballot Counting

County	City if Designated	Name of Deputy Recount Official	Title of Deputy Recount Official	Start Date	Start Time	Recount Address	Room Name or Number
Dodge		Sara Marquardt		TBD			
Douglas		Vicki L. Doehling	Elections Administrator	December 9, 2008	9:00 AM	Courthouse, 305 8th Avenue W., Alexandria	Conference Room E
Fillmore		Shirl L. Boelter		December 11, 2008	1:00 PM	Fillmore County Courthouse	Room U102
Goodhue		Carolyn Holmsten	Finance Director	December 10, 2008	9:00 AM	Government Center, 509 W 5th Str, Red Wing	2nd Floor
Hennepin	Brooklyn Center	Sharon Knutson		December 8, 2008	9:00 AM	Brooklyn Center City Hall	Council Chambers
Hennepin	Brooklyn Park	Devin Montero	City Clerk	December 12, 2008	9:00 AM	City Hall, 5200 85th Avenue N	Council Chambers
Hennepin	Champlin	Roberta Colotti		December 10, 2008	9:30	Champlin City Hall	
Hennepin	Crystal	Janet Lewis	City Clerk	December 10, 2008	10:00 AM	City Hall, 4141 Douglas Drive North	Conference Room A
Hennepin	Deephaven and Woodland	Dana H. Young		December 8, 2008	11:00 AM	Deephaven City Hall, 20225 Cottagewood Road, Deephaven, MN	
Hennepin	Eden Prairie			TBD			
Hennepin	Golden Valley	Sue Virnig		December 8, 2008	9:00 AM	City Hall	
Hennepin	Hopkins	Terry Obermaier	City Clerk	December 11, 2008	10:00 AM	City Hall, 1010 1st Str S	Raspberry Room
Hennepin	Maple Grove	Stevie Koll Anderson	Deputy Clerk	December 8, 2008	11:00 AM	Government Center 12800 Arbor Lakes Parkway	Admin Conf. Rm.
Hennepin	Medina	?		December 8, 2008	3:30 PM	2052 County Rd 24, Medina MN	Council Chambers
Hennepin	Minnetrista	Terri Haarstad	City Clerk	December 12, 2008	10:00 AM	City Hall, 7701 County Rd 110W	Council Chambers
Hennepin	Saint Louis Park	Nancy Stroth		December 9, 2008	2:30 PM	St. Louis Park City Hall 5005 Minnetonka Blvd.	Council Chambers
Hennepin	Robbinsdale	Tom Marshall	City Clerk	December 11, 2008	10:30 AM	City Hall, 4100 Lakeview Ave N., Robbinsdale	Council Chambers
Houston		Char Meiners	Auditor	December 5, 2008	8:00 AM	Courthouse, 304 S Marshall Str	Commissioners Room

Location and Dates for Rejected Absentee Ballot Counting

County	City if Designated	Name of Deputy Recount Official	Title of Deputy Recount Official	Start Date	Start Time	Recount Address	Room Name or Number
Isanti		Terry Treichel		December 10, 2008	9:30 AM	Isanti County Government Center, 555 18th Ave SW, Cambridge, MN 55008	Isanti County Board Room,
Itasca		Marsha Goslovich		December 11, 2008	10:00 AM	Auditor's Office	
Kandiyohi		Sam Modderman	Auditor Treasurer	December 11, 2008	9:30 AM	County Office Building - 400 Benson Ave SW . Willmar. MN	TBD
Kittson		Marilyn Gustafson	Auditor-Treasurer	December 15, 2008	10:00 AM	Courthouse, 410 5th St South, Hallock	only 9 rejected AB's
Lake		Steve McMahon		December 15, 2008	10:00 AM	Lake County Law Enforcement Center	
Lake of the Woods County		John Hoscheid		December 11, 2008	3:30 PM	206 8th Ave SE Suite 260 Baudette	Courtroom
Lyon		Paula Van Overbeke	Auditor Treasurer	December 9, 2008	9:00 AM	Lyon County Government Center, 607 W Main Str, Marshall	Commissioners Room 3
Mahnomen		Frank Thompson		December 8, 2008	9:00 AM	Mahnomen County Auditor's Office	
Marshall		Domita Taus	Election Adminstrator	December 11, 2008	10:00 AM	Courthouse, 208 E Colvin Ave, Warren	Meeting Room #1
Martin		James Forshee		December 12, 2008	8:30 AM	Courthouse, 201 Lake Ave, Fairmont Mn. 56031	first floor conference room
Meeker		Barbara Loch		December 15, 2008	8:00 AM	Courthouse	county board meeting room
Mille Lacs		Phil Thompson		December 12, 2008	8:00 AM	Mille Lacs County Courthouse, 635 2nd St SE, Milaca MN 56353	Mille Lacs County Board Room
Morrison		Russ Nygren		December 11, 2008	9:00 AM	Government Center	
Mower		Doug Groh		December 10, 2008	8:30 AM	Government center, Austin MN 55912	Auditors Office, main floor
Murray		Heidi Winter	Auditor Treasurer	December 11, 2008	10:30 AM	2500 28th Str, Slayton	Commissioners Board Room

Location and Dates for Rejected Absentee Ballot Counting

County	City if Designated	Name of Deputy Recount Official	Title of Deputy Recount Official	Start Date	Start Time	Recount Address	Room Name or Number
Nicollet		Bridgette Kennedy		December 15, 2008	9:00 AM	Nicollet County Government Center	County Board Room
Norman		Richard D Munter	Auditor Treasurer	December 8, 2008	9:00 AM	Courthouse, 16 East 3rd Avenue, Ada	Commissioners Room
Olmsted		Mark Krupski	Director of Property Records and Licensing	December 11, 2008	1:00 PM	Government Center 151 4th Street SE	Conference Rm 320
Otter Tail		Wayne Stein	County Auditor	December 9, 2008	9:00 AM	Government Services Center, 510 Fir Ave W, Fergus Falls	Auditors Conference Room
Pennington		Kenneth Olson	Auditor	December 16, 2008	10:00 AM	Courthouse, 101 Main Ave N, Thief River Falls	TBD
Pine		Cathy Clemmer	County Auditor	December 10, 2008	9:00 AM	635 Northridge Dr NW, Pine City	Coordinators Office Conf Room
Pipestone		Joyce Steinhoff		December 9, 2008	2:00 PM	Pipestone County Auditor's Office, 416 Hiawatha Ave. S, Pipestone, MN 56164	
Polk		Gerald J. Amiot		December 17, 2008	10:00 AM	Polk County Government Center, 612 North Broadway, Crookston,	Courtroom 2
Ramsey		Joseph Mansky	Elections Director	December 9, 2008	9:00 AM	90 West Plato Blvd Saint Paul	Election's Office
Redwood		Jean Price	Auditor Treasurer	December 10, 2008	1:00 PM	Courthouse, 250 S Jefferson Str, Redwood Falls	Board Room
Renville		Larry Jacobs		December 16, 2008	10:00 AM	Renville County Courthouse 202 Depue Ave	Suite 202
Roseau		Anne K. Granitz	Auditor	December 16, 2008	2:30 PM	Roseau County Courthouse, 606 5th Avenue SW, Roseau	Board Room
Scott		Mary Kay Kess		December 12, 2008	8:30 AM	Scott County Gov't Center 200 4th Ave. W Shakopee	Room 166

Location and Dates for Rejected Absentee Ballot Counting

County	City if Designated	Name of Deputy Recount Official	Title of Deputy Recount Official	Start Date	Start Time	Recount Address	Room Name or Number
Steele		Laura Ihrke		December 12, 2008	9:00 AM	Admin Bldg 630 Florence Ave Owatonna	Boardroom
Swift		Byron Giese	Auditor	December 10, 2008	9:00 AM	Courthouse, 301 14th Str N, Benson	Commissioners Room
Todd			Auditor	December 9, 2008	10:00 AM	347 Central Ave, Long Prairie	County Board Room
Traverse		Kit Johnson		TBD			
Wabasha		Denise Anderson	Deputy Auditor Treasurer	December 8, 2008	2:00 PM	Courthouse, 625 Jefferson Avenue, Wabasha	Old Commissioners Room
Washington		Carol Peterson	Elections Supervisor	December 9, 2008	9:00 AM	Government Center, 14949 62nd Street North, Stillwater	Board Room 100A and 100B
Watonwan		Donald Kuhlman	Auditor	December 17, 2008	2:00 PM	710 2nd Ave S, St. James	TBD
Winona		Sherri Kuchel	Auditor	December 10, 2008	10:00 AM	Winona Co. Gov't Center 177 Main Street Winona	
Yellow Medicine		Lois Bonde	Auditor	December 18, 2008	8:30 AM	415 9th Avenue Granite Falls	County Board Room

## **Exhibit 6**

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**From:** Terri Haarstad [mailto:thaarstad@ci.minnetrista.mn.us]  
**Sent:** Friday, December 12, 2008 4:21 PM  
**To:** Jim Gelbmann  
**Cc:** Tony Trimble; Lillehaug, David  
**Subject:** RE: Updated Information on Sorting of Rejected Absentee Ballots

Hello.

On the on-line survey requested by the Canvassing Board, Minnetrista left Category 5 blank as Categories 1 -4 do not address all legal and valid reasons why an absentee ballot may be properly rejected. As such, Minnetrista created their own categories for ballots rejected under MS§ 203B.08 subd. 4, MS§ 203B.08 subd. 1, MS§ 203B.07 subd. 3, MN Rules 8210.2200 and MN Rules 8210.2500. A summary of the results of our review are attached for your convenience. Please feel free to contact me with any questions you may have.

Have a good weekend.

*Terri Haarstad*  
*City Clerk*

City of Minnetrista (Population est. 6,234)  
7701 County Road 110 W  
Minnetrista, MN 55364  
952.446.1660 phone  
952.446.1311 fax

*All government data is available for viewing at City Hall during normal business hours, Monday through Friday 8:00am to 4:30pm. Copies of non-copyrighted public data are available in the format in which the data is maintained. In compliance with the 2008 fee schedule, there is a charge of \$0.25 per single-sided 8.5" x 11" black and white page in addition to shipping/ mailing costs. Data requests for more than 100 pages may result in charges for staff time. If the data you request is maintained electronically, is less than 5MB, and takes less than one (1) hour to compile, that data will be released free of charge. Please visit our website at [www.ci.minnetrista.mn.us](http://www.ci.minnetrista.mn.us) to view our complete data practices policy and/or to download data request forms.*

Information is the currency of democracy - Thomas Jefferson

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**From:** Jim Gelbmann [mailto:Jim.Gelbmann@state.mn.us]  
**Sent:** Sunday, December 07, 2008 12:29 AM  
**To:** Jim Gelbmann; 'phil thompson'; 'Jim Gelbmann'; 'Dennis Distad'; 'Tony P. Trimble'; 'allen.paulson@co.clearwater.mn.us'; 'anne.granitz@co.roseau.mn.us'; 'barb.loch@co.meeker.mn.us'; 'becky.murphy@co.beltrami.mn.us'; 'ben.pribyl@co.jackson.mn.us'; 'elections@co.cook.mn.us';

12/14/2008

'election@co.nicollet.mn.us'; 'byron.giese@co.swift.mn.us'; 'carolyn.holmsten@co.goodhue.mn.us';  
 'auditor@co.grant.mn.us'; 'char.meiners@co.houston.mn.us'; 'charleen.west@co.wadena.mn.us';  
 'cmaclennan@co.winona.mn.us'; 'cindy.schultz@co.mcLeod.mn.us'; 'cwcauditor@co.crow-wing.mn.us';  
 'denise.cooper@co.kanabec.mn.us'; 'djfreed@co.chisago.mn.us'; 'auditor@co.sherburne.mn.us'; 'dicklichd@co.st-louis.mn.us';  
 'auditor@co.watonwan.mn.us'; 'donna.quandt@co.pope.mn.us'; 'doug@co.mower.mn.us';  
 'rcelections@co.rice.mn.us'; 'frank.thompson@co.mahnomen.mn.us'; 'gerald.amiot@co.polk.mn.us';  
 'gloria.rolfs@co.rock.mn.us'; 'hwinter@co.murray.mn.us'; 'jake.sieg@lqpc.com';  
 'james.forshee@co.martin.mn.us'; 'jan.h.johnson@co.cottonwood.mn.us'; 'jleisen@co.wabasha.mn.us';  
 'joan.manthe@co.waseca.mn.us'; 'jneysen@co.benton.mn.us'; 'elections@CO.DAKOTA.MN.US';  
 'john\_h@co.lake-of-the-woods.mn.us'; 'john.thompson@co.faribault.mn.us'; 'jclauson@co.chippewa.mn.us';  
 'elections@co.ramsey.mn.us'; 'joyce.steinhoff@co.pipestone.mn.us'; 'karen.busch@co.todd.mn.us';  
 'kschreurs@co.lincoln.mn.us'; 'ktolson@co.pennington.mn.us'; 'elections@co.washington.mn.us';  
 'kpeysar@co.aitkin.mn.us'; 'kit.johnson@co.traverse.mn.us'; 'larry\_b@CO.REDWOOD.MN.US';  
 'larry\_j@co.renville.mn.us'; 'laura.ihrke@CO.STEELE.MN.US'; 'lengelen@co.carver.mn.us';  
 'pfarrl@co.sibley.mn.us'; 'lois.bonde@co.yellow-medicine.mn.us'; 'lori.johnson@co.clay.mn.us';  
 'mgustafson@co.kittson.mn.us'; 'marlin.helget@co.brown.mn.us'; 'marsha.goslovich@co.itasca.mn.us';  
 'mkes@co.scott.mn.us'; 'Vote@co.hennepin.mn.us'; 'michelle\_k@co.big-stone.mn.us';  
 'neilwiese@co.stevens.mn.us'; 'fuller.pamela@co.olmsted.mn.us'; 'pheeren@co.hubbard.mn.us';  
 'patty.oconnor@co.blue-earth.mn.us'; 'paul.gassert@co.carlton.mn.us'; 'paulavanoverbeke@co.lyon.mn.us';  
 'elections@co.anoka.mn.us'; 'elections@co.stearns.mn.us'; 'rick.munter@co.norman.mn.us';  
 'bob.hiivala@co.wright.mn.us'; 'bob.peterson@co.koochiching.mn.us'; 'raschmitz@co.red-lake.mn.us';  
 'cblaschko@co.le-sueur.mn.us'; 'russn@co.morrison.mn.us'; 'rltange@co.becker.mn.us';  
 'sam\_m@co.kandiyohi.mn.us'; 'sara.marquardt@co.dodge.mn.us'; 'scott.peters@co.marshall.mn.us';  
 'cass.voter@co.cass.mn.us'; 'sbalster@co.nobles.mn.us'; 'sboelter@co.fillmore.mn.us';  
 'steve.mcmahon@co.lake.mn.us'; 'terry.treichel@co.isanti.mn.us'; 't.reddick@mail.co.douglas.mn.us';  
 'wbezenek@co.wilkin.mn.us'; 'wstein@co.ottertail.mn.us'; 'kay.mack@co.beltrami.mn';  
 'CCJohnso@co.pine.mn.us'; 'tferber@ci.bloomington.mn.us'; 'kengberg@ci.bloomington.mn.us';  
 'tmarshall@ci.robbednsdale.mn.us'; 'tgerhardt@ci.chanhassen.mn.us'; 'doboszanski@ci.rogers.mn.us';  
 'sjenkins@townofhassan.com'; 'sknutson@ci.brooklyn-center.mn.us'; 'sengdahl@ci.plymouth.mn.us';  
 'sborders@cityofdayton.mn.com'; 'rcolotti@ci.champlin.mn.us'; 'greenwood@visi.com';  
 'ngibbs@cityofrichfield.org'; 'nacyc@cityofrockford.org'; 'llarson@ci.osseo.mn.us';  
 'kbachmeier@ci.corcoran.mn.us'; 'kporta@edenprairie.org'; 'janet.lewis@ci.crystal.mn.us';  
 'devin.montero@brooklynpark.org'; 'daniel-hanover@comcast.net'; 'danay@cityofdeephaven.org';  
 'cheri@ci.excelsior.mn.us'; 'johnson@ci.greenfield.mn.us'; 'terry@hopkinsmn.com';  
 'thirsch@ci.independence.mn.us'; 'jmoeller@ci.long-lake.mn.us'; 'cpatnode@ci.loretto.mn.us';  
 'skollanderson@ci.maple-grove.mn.us'; 'cityhall@mapleplain.com'; 'chad.adams@ci.medina.mn.us';  
 'dmaeda@eminnetonka.com'; 'mregnier@ci.minnetonka-beach.mn.us'; Terri Haarstad;  
 'bonnieritter@cityofmound.com'; 'vleone@ci.new-hope.mn.us'; 'lv@ci.orono.mn.us'; 'stboni@visi.com';  
 'jpanchyshyn@ci.shorewood.mn.us'; 'wlewin@mchsi.com'; 'clink@cityoftonkabay.net'; 'sandy@wayzata.org';  
 'shelley@cityofwoodlandmn.org'; 'Michelle.DesJardin@co.hennepin.mn.us'; 'NSTROTH@stlouispark.org'  
**Cc:** 'fknaak@klaw.us'; 'Lillehaug, David'; 'Tony P. Trimble'; Marc Elias  
**Subject:** Updated Information on Sorting of Rejected Absentee Ballots

Good Morning Everyone:

After the flurry of e-mails Thursday morning about the sorting of rejected absentee ballots into five categories, I want to extend my most heartfelt thanks to everyone who has agreed to help us with this task. The State Canvassing Board has requested this information, and without your assistance, the Office of the Secretary of State would not be able to provide adequate information to the Board. I do understand how overworked everyone is and I do feel very guilty asking for you to complete yet another task that many felt you have already done. I hope the Detailed Instructions sent out Thursday help explain the reason for, and the parameters of, this task. Houston County had a public sort on Friday, and while they did not have many rejected absentee ballots, they did identify two of fifteen that were mistakenly rejected and placed in category five.

#### ADDITIONAL CLARIFICATIONS AND INSTRUCTIONS

#### **Web Link For Reporting Results**

We have established a Web Link for reporting the results of your sort to our Office. We ask that you complete the Web Survey and also mail or fax us a signed hard copy so we have it for our records. The Web Link for reporting your results also includes an area for comments in case there are specific circumstances that created confusion as to which category a rejected absentee ballot should be placed. The Web Link is as follows:

[http://www.sos.state.mn.us/survey/user\\_survey.asp?nSurvey=156](http://www.sos.state.mn.us/survey/user_survey.asp?nSurvey=156)

I have also attached a Word Document that contains a worksheet that may help you complete the survey.

### Clarifications To Detailed Instructions

Based on feedback from county and city election officials the following clarifications may assist you in understanding the process.

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The Heading on Section I of the process currently reads:

**I. Previously-rejected non-UOCAVA absentee ballot envelopes not processed for acceptance or rejection by an absentee ballot board (accepted and rejected in the precinct)**

A more precise heading should read:

**I. Previously-rejected non-UOCAVA absentee ballot envelopes either (1) rejected by an absentee ballot board or (2) not processed by an absentee ballot board and rejected in the precinct**

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**Another legitimate reason for rejecting a UOCAVA absentee ballot** is that the voter did not submit an application (the Federal Post Card Application) -- this is a possibility in cases in which the voter only submits the Federal Write-in Absentee Ballot. Please allocate any appropriately rejected UOCAVA ballots that were rejected for lack of an FPCA to Category 1.

---

If an absentee ballot was rejected by an election judge or an Absentee Ballot Board due to a signature mismatch and the signatures do look different, place the ballot in category five **if the transaction was actually handled at your in-person counter and was witnessed by a county or city official.**

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If an absentee ballot was rejected because there was no voter signature on the application, the ballot should be placed in category 2 **unless the transaction was once again handled at your in-person counter and was witnessed by a county or city official.**

---

When checking the registration status of an Absentee Ballot that was rejected for lack of an SVRS Card in the envelope, you should check either the roster and/or the SVRS system to make sure the person was definitely not registered before assigning the ballot to category 3. The person may have been accidentally sent a non-registered Absentee Ballot package even though he or she was registered.

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**CONTRACT FOR PAYMENT**

I have attached a Joint Powers Contract that you can begin processing so you are able to be reimbursed for a portion of your costs. I have also attached the most up-to-date list of counties and cities that have thus far agreed to assist us with this task. If you are still considering my request, please agree to help us one more time with the Canvass of the U.S. Senate Race.

**PLEASE FORWARD THIS TO ANYONE WHO SHOULD BE ON THIS DISTRIBUTION LIST WHO IS NOT CURRENTLY FOUND ON IT!**

My best regards.

Sincerely,

Jim Gelbmann  
Deputy Secretary of State  
(651) 201-1344 (office)  
(651) 334-4077 (cell)  
(651) 739-5575 (home)  
(651) 215-0682 (fax)

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NOTICE: E-mail correspondence to and from the Office of the Secretary of State of Minnesota may be public data subject to the Minnesota Data Practices Act and/or may be disclosed to third parties

## County 2008 Rejected Absentee Ballot Survey Worksheet

This survey requests statistics on rejected absentee ballots for the November 4, 2008 General Election and includes both regular (non-UOCAVA) and UOCAVA absentee ballots.

1. ☆County or Municipality Name

City of Minnetrista

2. ☆Name of Primary Election Official

Terri Haarstad, City Clerk

3. ☆Names of election judges and/or professional election staff who assisted with the sorting process.

Judy Lewman  
Char Schmuck

### NUMBERS OF REJECTED ABSENTEE BALLOTS

Enter the number of rejected regular (non-UOCAVA) and UOCAVA absentee ballots for each of the categories listed below. If there are no rejected absentee ballots for a particular category enter 0.

Absentee ballots received after election-day need not be included in this sorting process and shall not be reported as part of any of the five categories.

#### **Regular (non-UOCAVA) Absentee Ballots Rejected**

4. Category 1: Voter's name / address did not match.

0

5. Category 2: Voter's signature did not match or certification was not filled out correctly.

9

6. Category 3: Voter was not registered at this address or has not included a properly completed voter registration application Or Voter died before Election Day.

4

7. Category 3a: Voter was not registered. VRA appears to be in secrecy envelope.

0

8. Category 4: Voter had already voted at the election.

2

9. Category 5: Enter the number for improperly rejected envelope (including non-UOCAVA ballots, UOCAVA ballots rejected in the precinct, and mail ballots).

The Election Judges did not agree on whether these should have been rejected but agreed they could be placed in this pile to be considered. There were three in this category.

With the first, the mother admitted to completing the application for the child. She brought in personal papers with the voter signature but as there was no proof the voter was the signer of personal papers and the signature on the application did not match the ballot envelope signature, the ballot was rejected on election day. Today's Election Judges decided to place it in pile 5 as the OSS directions for this review process indicated that alternative signatures/proof of voter identity may be acceptable.

With the second, the voter used neat, loopy penmanship to sign the application and used a nearly illegible scrawl to sign the ballot envelope. As such, the signature on the application was determined to not match the signature on the ballot and it was rejected election day. Today's election judges thought that perhaps the neat, loopy signature was an electronic signature and, as the legality of using an electronic signature on election materials was unclear, they decided to place the ballot in this pile.

With the third, there was no application found for the voter. There was an application for the husband for which a ballot was issued and not returned. However, it is not clear if the voter used the husband's ballot or if an election official erred and issued the ballot without an application originally. As there was no application in existence to compare signatures, the ballot was rejected election day. However, today's election judges agreed that it may not be the fault of the voter that there is no application and decided to place it in this pile.

#### **UOCAVA Ballots Rejected by Absentee Ballot Board**

10. Category 1: Voter's name did not match.

0

11. Category 2: Voter did not sign oath.

0

12. Category 3: Voter's ID number did not match, and the Election Judges could not otherwise satisfy themselves that the ballot was filled out by the voter to whom it was transmitted.

0

13. Category 4: The voter already voted at that election OR voter died prior to November 4.

0

14. Category 5: Improperly rejected absentee ballot envelopes.

0

**Optional: Mail Ballots**

15. Number of properly rejected ballots from mail balloting precincts.

Not Applicable

16. Number of mistakenly rejected ballots from mail balloting precincts. (Add this number to the number in Category five for non-UOCAVA ballots.)

Not Applicable

17. **Category 6:** Number of ballots rejected for not meeting MS § 203B.08 Subd. 4 deferring to the rules set by the OSS in regards to the timeliness of the return of absentee ballots and MR 8210.2200 Subp. 1 (Absentee ballot return envelopes that are delivered in person by an absent voter must be received by the county auditor or municipal clerk by 5:00pm on the day before election day); for not meeting MS § 203B.08 Subd. 1 (If delivered in person by an agent, the return envelope must be submitted to the county auditor or municipal clerk by 3:00pm on election day) and MR 8210.2200 Subp. 1 (Absentee ballot return envelopes that are delivered in person by an agent must be received by the county auditor or municipal clerk by 3:00pm on election day); or for not meeting MS § 203B.08 Subd. 4 deferring to the rules set by the OSS in regards to the timeliness of the return of absentee ballots and MR 8210.2500 (The municipal clerk shall take all reasonable steps to ensure that all return envelopes received by the post office before 4:00pm on election day are delivered before the closing of the polls to the election judges in the precinct where the absent voter resides.)

3

18. **Category 7:** Ballots received after Election Day

1

19. **Category 8:** Ballots rejected because of issues with witnesses (Witness missing, improper witness or out-of-state witness) in accordance with MS§ 203B.07 subd. 3.

3

## **Exhibit 7**

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**From:** Jim Gelbmann [mailto:Jim.Gelbmann@state.mn.us]  
**Sent:** Thursday, December 04, 2008 11:28 AM  
**To:** 'Tony P. Trimble'  
**Cc:** Lillehaug, David; Mark Ritchie  
**Subject:** RE: Absentee Ballot Envelope Sorting

Hi Tony:

I will be happy to provide you with the detailed instructions for the sorting of rejected absentee ballots when they become available. They are in the final editing process as we speak. As was made clear by the Canvassing Board, this sorting is not part of the recount process. It was requested by the Canvassing Board to give the Board information on the reasons why absentee ballots were rejected and to make an assessment as to whether the ballots were appropriately rejected. This is part of the Canvassing process, not part of the recount process.

This is an administrative process to give the Canvassing Board information that it has requested. The candidates' representatives will have a chance to observe the process - but not participate in the process. The Canvassing Board directed us to implement a process to retrieve this information. Having spoken with Mark, we do not believe the Canvassing Board is interested in micro-managing the details as to how this information will be compiled.

Since the first sorting process takes place tomorrow morning, we do not have time to allow for a dialogue with the candidates on this administrative process, nor do we believe a dialogue is necessary or appropriate. I will be pleased to discuss the process with you, but I have promised local officials that I will have this information to them by noon today, and I very much want to honor that commitment.

Thank you for your input and your concern. I hope you will find the detailed procedures acceptable.

My best regards.

Sincerely,

Jim

Jim Gelbmann  
Deputy Secretary of State  
180 State Office Building  
Saint Paul, Minnesota 55155  
(651) 201-1344 (office)  
(651) 334-4077 (cell)

---

**From:** Tony P. Trimble [mailto:trimblelegals@earthlink.net]

12/15/2008

**Sent:** Thursday, December 04, 2008 9:56 AM  
**To:** 'Jim Gelbmann'  
**Cc:** Mark.Ritchie@state.mn.us; Gary.Poser@state.mn.us; fknaak@klaw.us; 'Lillehaug, David'  
**Subject:** RE: Absentee Ballot Envelope Sorting

Jim:

From our review of the emails from county auditors (see extended email chain below), it appears that this process is expanding beyond a mere "sorting" exercise to encompass activities that are not within the jurisdictional boundaries of a recount. As some county auditors have indicated, these activities have never been undertaken by any county auditors in an administrative recount in Minnesota history. Moreover, it appears that you intend to request election officials to utilize "nonpartisan staff" rather than election judges, to participate in this process, even though election judges have been specifically trained to review these envelopes and such nonpartisan staff may not necessarily have received such training.

Due to the apparently ever-expanding scope of this seemingly simply sorting process, before any further "detailed instructions" are released by the Secretary of State's Office, we request that the instructions be provided to both campaigns for review. Additionally, these instructions should also be reviewed by Mr. Ritchie and the other members of the Minnesota State Canvassing Board, as well as the Minnesota Attorney General. Again, the tasks you are requesting appear well beyond the tasks assigned by the State Canvassing Board at its meeting and seem to constitute initial discovery work for an election contest that a campaign itself should undertake at its own cost and expense (with county work reimbursed pursuant to a bond procured by a candidate requesting an election contest pursuant to Minn. Stat. Section 209.06, subd. 2), not at taxpayer expense.

This matter needs to be addressed immediately so that the role of the State Canvassing Board and Secretary of State is not compromised. Need we also address this correspondence to the members of the State Canvassing Board and all local election officials directly?

Tony Trimble

=====  
 Trimble & Associates, Ltd.  
 10201 Wayzata Blvd., Suite 130  
 Minneapolis, Minnesota 55305  
 Tel: (952) 797-7477  
 Fax: (952) 797-5858

Circular 230 Notice: In accordance with Treasury Regulations which became applicable to all tax practitioners as of June 20, 2005, please note that the advice given herein (including any attachments) is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding tax penalties.

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**From:** Jim Gelbmann [mailto:Jim.Gelbmann@state.mn.us]  
**Sent:** Thursday, December 04, 2008 8:53 AM

12/15/2008

**To:** 'Pam Heeren'; phil thompson; Jim Gelbmann; Dennis Distad; Tony P. Trimble; allen.paulson@co.clearwater.mn.us; anne.granitz@co.roseau.mn.us; barb.loch@co.meeker.mn.us; becky.murphy@co.beltrami.mn.us; ben.pribyl@co.jackson.mn.us; elections@co.cook.mn.us; election@co.nicollet.mn.us; byron.giese@co.swift.mn.us; carolyn.holmsten@co.goodhue.mn.us; auditor@co.grant.mn.us; char.meiners@co.houston.mn.us; charleen.west@co.wadena.mn.us; cmaclennan@co.winona.mn.us; cindy.schultz@co.mcleod.mn.us; cwcauditor@co.crow-wing.mn.us; denise.cooper@co.kanabec.mn.us; djfreed@co.chisago.mn.us; auditor@co.sherburne.mn.us; dicklichd@co.st-louis.mn.us; auditor@co.watonwan.mn.us; donna.quandt@co.pope.mn.us; dougg@co.mower.mn.us; rcelections@co.rice.mn.us; frank.thompson@co.mahnomen.mn.us; gerald.amiot@co.polk.mn.us; gloria.rolfs@co.rock.mn.us; hwinter@co.murray.mn.us; jake.sieg@lqpc.com; james.forshee@co.martin.mn.us; jan.h.johnson@co.cottonwood.mn.us; jleisen@co.wabasha.mn.us; joan.manthe@co.waseca.mn.us; jneyssen@co.benton.mn.us; elections@CO.DAKOTA.MN.US; john\_h@co.lake-of-the-woods.mn.us; john.thompson@co.faribault.mn.us; jclauson@co.chippewa.mn.us; elections@co.ramsey.mn.us; joyce.steinhoff@co.pipestone.mn.us; karen.busch@co.todd.mn.us; kschreurs@co.lincoln.mn.us; ktolson@co.pennington.mn.us; elections@co.washington.mn.us; kpeysar@co.aitkin.mn.us; kit.johnson@co.traverse.mn.us; larry\_b@CO.REDWOOD.MN.US; larry\_j@co.renville.mn.us; laura.ihrke@CO.STEELE.MN.US; lengelen@co.carver.mn.us; pfarrl@co.sibley.mn.us; lois.bonde@co.yellow-medicine.mn.us; lori.johnson@co.clay.mn.us; mgustafson@co.kittson.mn.us; marlin.helget@co.brown.mn.us; marsha.goslovich@co.itasca.mn.us; mkes@co.scott.mn.us; Vote@co.hennepin.mn.us; michelle\_k@co.big-stone.mn.us; neilwiese@co.stevens.mn.us; fuller.pamela@co.olmsted.mn.us; patty.oconnor@co.blue-earth.mn.us; paul.gassert@co.carlton.mn.us; paulavanoverbeke@co.lyon.mn.us; elections@co.anoka.mn.us; elections@co.stearns.mn.us; rick.munter@co.norman.mn.us; bob.hiivala@co.wright.mn.us; bob.peterson@co.koochiching.mn.us; raschmitz@co.red-lake.mn.us; cblaschko@co.le-sueur.mn.us; russn@co.morrison.mn.us; rltange@co.becker.mn.us; sam\_m@co.kandiyohi.mn.us; sara.marquardt@co.dodge.mn.us; scott.peters@co.marshall.mn.us; cass.voter@co.cass.mn.us; sbalster@co.nobles.mn.us; sboelter@co.fillmore.mn.us; steve.mcmahon@co.lake.mn.us; terry.treichel@co.isanti.mn.us; t.reddick@mail.co.douglas.mn.us; wbezenek@co.wilkin.mn.us; wstein@co.ottertail.mn.us; kay.mack@co.beltrami.mn; CCJohnso@co.pine.mn.us; tferber@ci.bloomington.mn.us; kengberg@ci.bloomington.mn.us; tmarshall@ci.robbinsdale.mn.us; tgerhardt@ci.chanhassen.mn.us; doboszenski@ci.rogers.mn.us; sjenkins@townofhassan.com; sknutson@ci.brooklyn-center.mn.us; sengdahl@ci.plymouth.mn.us; sborders@cityofdayton.mn.com; rcolotti@ci.champlin.mn.us; greenwood@visi.com; ngibbs@cityofrichfield.org; nacyc@cityofrockford.org; llarson@ci.osseo.mn.us; kbachmeier@ci.corcoran.mn.us; kporta@edenprairie.org; janet.lewis@ci.crystal.mn.us; devin.montero@brooklynpark.org; daniel-hanover@comcast.net; danay@cityofdeephaven.org; cheri@ci.excelsior.mn.us; johnson@ci.greenfield.mn.us; terryo@hopkinsmn.com; thirsch@ci.independence.mn.us; jmoeller@ci.long-lake.mn.us; cpatnode@ci.loretto.mn.us; skollanderson@ci.maple-grove.mn.us; cityhall@mapleplain.com; chad.adams@ci.medina.mn.us; dmaeda@eminnetonka.com; mregnier@ci.minnetonka-beach.mn.us; thaarstad@ci.minnetrista.mn.us; bonnieritter@cityofmound.com; vleone@ci.new-hope.mn.us; lv@ci.oroño.mn.us; stboni@visi.com; jpanchyshyn@ci.shorewood.mn.us; wlewin@mchsi.com; clink@cityoftonkabay.net; sandy@wayzata.org; shelley@cityofwoodlandmn.org

**Cc:** fknaak@klaw.us; Lillehaug, David

**Subject:** RE: Absentee Ballot Envelope Sorting

Pam:

Our initial proposal offered to pay the costs of the election judges. Our revised proposal (which you will receive today) continues to offer to pay the cost of the judges or also allows you to use non-partisan staff as your assistants. This was recommended by two county auditors who contacted me directly with their concerns and I incorporated their recommendations into my final instructions.

Everyone, please wait until you receive the detailed instructions before you make a final decision on whether or not to participate in this process. It is not me or Secretary Ritchie asking for this information, it is the State Canvassing Board that has the statutory responsibility to certify the accuracy of the final numbers.

Jim

Jim Gelbmann  
 Deputy Secretary of State  
 180 State Office Building  
 Saint Paul, Minnesota 55155  
 (651) 201-1344 (office)  
 (651) 334-4077 (cell)

**From:** Pam Heeren [mailto:pheeren@co.hubbard.mn.us]

**Sent:** Thursday, December 04, 2008 8:33 AM

**To:** phil thompson; Jim Gelbmann; Dennis Distad; Tony P. Trimble; allen.paulson@co.clearwater.mn.us; anne.granitz@co.roseau.mn.us; barb.loch@co.meecker.mn.us; becky.murphy@co.beltrami.mn.us; ben.pribyl@co.jackson.mn.us; elections@co.cook.mn.us; election@co.nicollet.mn.us; byron.giese@co.swift.mn.us; carolyn.holmsten@co.goodhue.mn.us; auditor@co.grant.mn.us; char.meiners@co.houston.mn.us; charleen.west@co.wadena.mn.us; cmaclennan@co.winona.mn.us; cindy.schultz@co.mcleod.mn.us; cwcauditor@co.crow-wing.mn.us; denise.cooper@co.kanabec.mn.us; djfreed@co.chisago.mn.us; auditor@co.sherburne.mn.us; dicklichd@co.st-louis.mn.us; auditor@co.watonwan.mn.us; donna.quandt@co.pope.mn.us; dougg@co.mower.mn.us; rcelections@co.rice.mn.us; frank.thompson@co.mahnomen.mn.us; gerald.amiot@co.polk.mn.us; gloria.rolfs@co.rock.mn.us; hwinter@co.murray.mn.us; jake.sieg@lqpc.com; james.forshee@co.martin.mn.us; jan.h.johnson@co.cottonwood.mn.us; jleisen@co.wabasha.mn.us; joan.manthe@co.waseca.mn.us; jneyssen@co.benton.mn.us; elections@CO.DAKOTA.MN.US; john\_h@co.lake-of-the-woods.mn.us; john.thompson@co.faribault.mn.us; jclauson@co.chippewa.mn.us; elections@co.ramsey.mn.us; joyce.steinhoff@co.pipestone.mn.us; karen.busch@co.todd.mn.us; kschreurs@co.lincoln.mn.us; ktolson@co.pennington.mn.us; elections@co.washington.mn.us; kpeysar@co.aitkin.mn.us; kit.johnson@co.traverse.mn.us; larry\_b@CO.REDWOOD.MN.US; larry\_j@co.renville.mn.us; laura.ihrke@CO.STEELE.MN.US; lengelen@co.carver.mn.us; pfarrl@co.sibley.mn.us; lois.bonde@co.yellow-medicine.mn.us; lori.johnson@co.clay.mn.us; mgustafson@co.kittson.mn.us; marlin.helget@co.brown.mn.us; marsha.goslovich@co.itasca.mn.us; mkes@co.scott.mn.us; Vote@co.hennepin.mn.us; michelle\_k@co.big-stone.mn.us; neilwiese@co.stevens.mn.us; fuller.pamela@co.olmsted.mn.us; patty.oconnor@co.blue-earth.mn.us; paul.gassert@co.carlton.mn.us; paulavanoverbeke@co.lyon.mn.us; elections@co.anoka.mn.us; elections@co.stearns.mn.us; rick.munter@co.norman.mn.us; bob.hiivala@co.wright.mn.us; bob.peterson@co.koochiching.mn.us; raschmitz@co.red-lake.mn.us; cblaschko@co.le-sueur.mn.us; russn@co.morrison.mn.us; rltange@co.becker.mn.us; sam\_m@co.kandiyohi.mn.us; sara.marquardt@co.dodge.mn.us; scott.peters@co.marshall.mn.us; cass.voter@co.cass.mn.us; sbalster@co.nobles.mn.us; sboelter@co.fillmore.mn.us; steve.mcmahon@co.lake.mn.us; terry.treichel@co.isanti.mn.us; t.reddick@mail.co.douglas.mn.us; wbezenek@co.wilkin.mn.us; wstein@co.ottertail.mn.us; kay.mack@co.beltrami.mn; CCJohnso@co.pine.mn.us; tferber@ci.bloomington.mn.us; kengberg@ci.bloomington.mn.us; tmarshall@ci.robbinsdale.mn.us; tgerhardt@ci.chanhassen.mn.us; doboszanski@ci.rogers.mn.us; sjenkins@townofhassan.com; sknutson@ci.brooklyn-center.mn.us; sengdahl@ci.plymouth.mn.us; sborders@cityofdayton.mn.com; rcolotti@ci.champlin.mn.us; greenwood@visi.com; ngibbs@cityofrichfield.org; nacyc@cityofrockford.org; llarson@ci.osseo.mn.us; kbachmeier@ci.corcoran.mn.us; kporta@edenprairie.org; janet.lewis@ci.crystal.mn.us; devin.montero@brooklynpark.org; daniel-hanover@comcast.net; danay@cityofdeephaven.org; cheri@ci.excelsior.mn.us; johnson@ci.greenfield.mn.us; terryo@hopkinsmn.com; thirsch@ci.independence.mn.us; jmoeller@ci.long-lake.mn.us; cpatnode@ci.loretto.mn.us; skollanderson@ci.maple-grove.mn.us; cityhall@mapleplain.com; chad.adams@ci.medina.mn.us; dmaeda@eminnetonka.com; mregnier@ci.minnetonka-beach.mn.us; thaarstad@ci.minnetrista.mn.us; bonnieritter@cityofmound.com; vleone@ci.new-hope.mn.us; lv@ci.orono.mn.us; stboni@visi.com; jpanchyshyn@ci.shorewood.mn.us; wlewin@mchsi.com; clink@cityoftonkabay.net; sandy@wayzata.org; shelley@cityofwoodlandmn.org

**Cc:** fknaak@klaw.us; Lillehaug, David  
**Subject:** Re: Absentee Ballot Envelope Sorting

Either that or somebody has to start paying Hubbard County to do all this extra work. If I have to bring election judges in, somebody is going to have to reimb. them for their time and mileage. My feelings, not theirs!

At a time when counties are trying to reduce their costs we end up spending hours upon hours with this recount....much of it duplication. My county attorney has also spent considerable time helping us weed thru all the requests.

----- Original Message -----

**From:** phil thompson

**To:** Jim Gelbmann; Dennis Distad; Tony P. Trimble; allen.paulson@co.clearwater.mn.us; anne.granitz@co.roseau.mn.us; barb.loch@co.meecker.mn.us; becky.murphy@co.beltrami.mn.us; ben.pribyl@co.jackson.mn.us; elections@co.cook.mn.us; election@co.nicollet.mn.us; byron.giese@co.swift.mn.us; carolyn.holmsten@co.goodhue.mn.us; auditor@co.grant.mn.us; char.meiners@co.houston.mn.us; charleen.west@co.wadena.mn.us; cmaclennan@co.winona.mn.us; cindy.schultz@co.mcleod.mn.us; cwcauditor@co.crow-wing.mn.us; denise.cooper@co.kanabec.mn.us; djfreed@co.chisago.mn.us; auditor@co.sherburne.mn.us; dicklichd@co.st-louis.mn.us; auditor@co.watonwan.mn.us; donna.quandt@co.pope.mn.us; dougg@co.mower.mn.us; rcelections@co.rice.mn.us; frank.thompson@co.mahnomen.mn.us; gerald.amiot@co.polk.mn.us; gloria.rolfs@co.rock.mn.us; hwinter@co.murray.mn.us; jake.sieg@lqpc.com; james.forshee@co.martin.mn.us; jan.h.johnson@co.cottonwood.mn.us; jleisen@co.wabasha.mn.us; joan.manthe@co.waseca.mn.us; jneyssen@co.benton.mn.us; elections@CO.DAKOTA.MN.US; john\_h@co.lake-of-the-woods.mn.us; john.thompson@co.faribault.mn.us; jclauson@co.chippewa.mn.us; elections@co.ramsey.mn.us; joyce.steinhoff@co.pipestone.mn.us; karen.busch@co.todd.mn.us; kschreurs@co.lincoln.mn.us; ktolson@co.pennington.mn.us; elections@co.washington.mn.us; kpeysar@co.aitkin.mn.us; kit.johnson@co.traverse.mn.us; larry\_b@CO.REDWOOD.MN.US; larry\_j@co.renville.mn.us; laura.ihrke@CO.STEELE.MN.US; lengelen@co.carver.mn.us; pfarri@co.sibley.mn.us; lois.bonde@co.yellow-medicine.mn.us; lori.johnson@co.clay.mn.us; mgustafson@co.kittson.mn.us; marlin.helget@co.brown.mn.us; marsha.goslovich@co.itasca.mn.us; mkes@co.scott.mn.us; Vote@co.hennepin.mn.us; michelle\_k@co.big-stone.mn.us; neilwiese@co.stevens.mn.us; fuller.pamela@co.olmsted.mn.us; pheeren@co.hubbard.mn.us; patty.oconnor@co.blue-earth.mn.us; paul.gassert@co.carlton.mn.us; paulavanoverbeke@co.lyon.mn.us; elections@co.anoka.mn.us; elections@co.stearns.mn.us; rick.munter@co.norman.mn.us; bob.hiivala@co.wright.mn.us; bob.peterson@co.koochiching.mn.us; raschmitz@co.red-lake.mn.us; cblaschko@co.le-sueur.mn.us; russn@co.morrison.mn.us; rltange@co.becker.mn.us; sam\_m@co.kandiyohi.mn.us; sara.marquardt@co.dodge.mn.us; scott.peters@co.marshall.mn.us; cass.voter@co.cass.mn.us; sbalster@co.nobles.mn.us; sboelter@co.fillmore.mn.us; steve.mcmahon@co.lake.mn.us; terry.treichel@co.isanti.mn.us; t.reddick@mail.co.douglas.mn.us; wbezenek@co.wilkin.mn.us; wstein@co.ottertail.mn.us; kay.mack@co.beltrami.mn; CCJohnso@co.pine.mn.us; tferber@ci.bloomington.mn.us; kengberg@ci.bloomington.mn.us; tmarshall@ci.robbinssdale.mn.us; tgerhardt@ci.chanhassen.mn.us; doboszanski@ci.rogers.mn.us; sjenkins@townofhassan.com; sknutson@ci.brooklyn-center.mn.us; sengdahl@ci.plymouth.mn.us; sborders@cityofdayton.mn.com; rcolotti@ci.champlin.mn.us; greenwood@visi.com; ngibbs@cityofrichfield.org; nacyc@cityofrockford.org; llarson@ci.osseo.mn.us; kbachmeier@ci.corcoran.mn.us; kporta@edenprairie.org; janet.lewis@ci.crystal.mn.us; devin.montero@brooklynpark.org; daniel-hanover@comcast.net; danay@cityofdeephaven.org; cheri@ci.excelsior.mn.us; johnson@ci.greenfield.mn.us; terryo@hopkinsmn.com; thirsch@ci.independence.mn.us; jmoeller@ci.long-lake.mn.us; cpatnode@ci.loretto.mn.us; skollanderson@ci.maple-grove.mn.us; cityhall@mapleplain.com; chad.adams@ci.medina.mn.us; dmaeda@eminnetonka.com; mregnier@ci.minnetonka-beach.mn.us; thaarstad@ci.minnetrista.mn.us; bonnieritter@cityofmound.com; vleone@ci.new-hope.mn.us; lv@ci.orono.mn.us; stboni@visi.com; jpanchyshyn@ci.shorewood.mn.us; wlewin@mchsi.com; clink@cityoftonkabay.net; sandy@wayzata.org; shelley@cityofwoodlandmn.org

**Cc:** fknaak@klaw.us; Lillehaug, David

**Sent:** Thursday, December 04, 2008 8:26 AM

**Subject:** RE: Absentee Ballot Envelope Sorting

Jim, I think you are missing the point here. We do not disagree that there may have been a few mistakenly rejected absentee ballots for reasons you listed, we are simply saying that we think we are capable of determining that without scheduling special public meetings, hiring election judged, etc in order to supply this information. The majority of the rural counties could supply this information in minutes if we were trusted enough to do this sorting exercise ourselves. Phil Thompson

**From:** Jim Gelbmann [mailto:Jim.Gelbmann@state.mn.us]

**Sent:** Thursday, December 04, 2008 8:15 AM

**To:** 'Dennis Distad'; Tony P. Trimble; allen.paulson@co.clearwater.mn.us; anne.granitz@co.roseau.mn.us; barb.loch@co.meeker.mn.us; becky.murphy@co.beltrami.mn.us; ben.pribyl@co.jackson.mn.us; elections@co.cook.mn.us; election@co.nicollet.mn.us; byron.giese@co.swift.mn.us; carolyn.holmsten@co.goodhue.mn.us; auditor@co.grant.mn.us; char.meiners@co.houston.mn.us; charleen.west@co.wadena.mn.us; cmaclennan@co.winona.mn.us; cindy.schultz@co.mcleod.mn.us; cwcauditor@co.crow-wing.mn.us; denise.cooper@co.kanabec.mn.us; djfreed@co.chisago.mn.us; auditor@co.sherburne.mn.us; dicklichd@co.st-louis.mn.us; auditor@co.watonwan.mn.us; donna.quandt@co.pope.mn.us; dougg@co.mower.mn.us; rcelections@co.rice.mn.us; frank.thompson@co.mahnomen.mn.us; gerald.amiot@co.polk.mn.us; gloria.rolfs@co.rock.mn.us; hwinter@co.murray.mn.us; jake.sieg@lqpc.com; james.forshee@co.martin.mn.us; jan.h.johnson@co.cottonwood.mn.us; jleisen@co.wabasha.mn.us; joan.manthe@co.waseca.mn.us; jneyssen@co.benton.mn.us; elections@CO.DAKOTA.MN.US; john\_h@co.lake-of-the-woods.mn.us; john.thompson@co.faribault.mn.us; jclauson@co.chippewa.mn.us; elections@co.ramsey.mn.us; joyce.steinhoff@co.pipestone.mn.us; karen.busch@co.todd.mn.us; kschreurs@co.lincoln.mn.us; ktolson@co.pennington.mn.us; elections@co.washington.mn.us; kpeysar@co.aitkin.mn.us; kit.johnson@co.traverse.mn.us; larry\_b@CO.REDWOOD.MN.US; larry\_j@co.renville.mn.us; laura.ihrke@CO.STEELE.MN.US; lengelen@co.carver.mn.us; pfarrl@co.sibley.mn.us; lois.bonde@co.yellow-medicine.mn.us; lori.johnson@co.clay.mn.us; mgustafson@co.kittson.mn.us; marlin.helget@co.brown.mn.us; marsha.goslovich@co.itasca.mn.us; mkes@co.scott.mn.us; Vote@co.hennepin.mn.us; michelle\_k@co.big-stone.mn.us; neilwiese@co.stevens.mn.us; fuller.pamela@co.olmsted.mn.us; pheeren@co.hubbard.mn.us; patty.oconnor@co.blue-earth.mn.us; paul.gassert@co.carlton.mn.us; paulavanoverbeke@co.lyon.mn.us; phil thompson; elections@co.anoka.mn.us; elections@co.stearns.mn.us; rick.munter@co.norman.mn.us; bob.hiivala@co.wright.mn.us; bob.peterson@co.koochiching.mn.us; raschmiz@co.red-lake.mn.us; cblaschko@co.le-sueur.mn.us; russn@co.morrison.mn.us; rltange@co.becker.mn.us; sam\_m@co.kandiyohi.mn.us; sara.marquardt@co.dodge.mn.us; scott.peters@co.marshall.mn.us; cass.voter@co.cass.mn.us; sbalster@co.nobles.mn.us; sboelter@co.fillmore.mn.us; steve.mcmahon@co.lake.mn.us; terry.treichel@co.isanti.mn.us; t.reddick@mail.co.douglas.mn.us; wbezenek@co.wilkin.mn.us; wstein@co.ottertail.mn.us; kay.mack@co.beltrami.mn; CCJohnso@co.pine.mn.us; tferber@ci.bloomington.mn.us; kengberg@ci.bloomington.mn.us; tmarshall@ci.robbinsdale.mn.us; tgerhardt@ci.chanhassen.mn.us; doboszanski@ci.rogers.mn.us; sjenkins@townofhassan.com; sknutson@ci.brooklyn-center.mn.us; sengdahl@ci.plymouth.mn.us; sborders@cityofdayton.mn.com; rcolotti@ci.champlin.mn.us; greenwood@visi.com; ngibbs@cityofrichfield.org; nacyc@cityofrockford.org; llarson@ci.osseo.mn.us; kbachmeier@ci.corcoran.mn.us; kporta@edenprairie.org; janet.lewis@ci.crystal.mn.us; devin.montero@brooklynpark.org; daniel-hanover@comcast.net; danay@cityofdeephaven.org; cheri@ci.excelsior.mn.us; johnson@ci.greenfield.mn.us; terryo@hopkinsmn.com; thirsch@ci.independence.mn.us; jmoeller@ci.long-lake.mn.us; cpatnode@ci.loretto.mn.us; skollanderson@ci.maple-grove.mn.us; cityhall@mapleplain.com; chad.adams@ci.medina.mn.us; dmaeda@eminnetonka.com; mregnier@ci.minnetonka-beach.mn.us; thaarstad@ci.minnetrista.mn.us; bonnieritter@cityofmound.com; vleone@ci.new-hope.mn.us; lv@ci.orono.mn.us; stboni@visi.com; jpanchyshyn@ci.shorewood.mn.us; wlewin@mchsi.com; clink@cityoftonkabay.net; sandy@wayzata.org; shelley@cityofwoodlandmn.org

**Cc:** fknaak@klaw.us; Jim Gelbmann; Lillehaug, David

**Subject:** RE: Absentee Ballot Envelope Sorting

Dear Dennis:

I'm sorry to learn you are not willing to participate in a request made by the State Canvassing Board. The request we are making goes beyond simply asking you to repeat the process you used to compile the information already provided to the SOS, DFL and Republican Parties. The Board is aware that many absentee ballots were mistakenly rejected. Voters who were registered were not spotted on the Voter Rosters by election judges and determined to be non-registered or sent the wrong absentee ballot envelopes by election administrators, absentee ballots were sent to the wrong precincts, absentee ballots were rejected because signatures did not match exactly, voter registration cards were inadvertently inserted in the secrecy envelopes and determined not to have been submitted with the ballots, UOCAVA ballots that were approved at the county level were rejected by election judges at the precinct level due to a misunderstanding of the new state law, and many other errors through no fault of the voter were made that have disenfranchised hundreds of voters. To identify these errors is the purpose of this exercise.

The Board has requested an Attorney General's Opinion clarifying whether it has the right to order the mistakenly-rejected absentee ballots to be counted. At a minimum, the Board wants to be able to quantify the number of mistakenly-rejected absentee ballots when it certifies the final numbers for the Senate race.

I would hope you would reconsider your decision not to participate in this request by the State Canvassing Board. It is important that the state election officials recognize that mistakes were made when certain absentee ballots were rejected. The State Canvassing Board wants to quantify the number of mistakes that may have been made prior to certifying the results of the election.

My best regards.

Sincerely,

Jim

Jim Gelbmann  
Deputy Secretary of State  
180 State Office Building  
Saint Paul, Minnesota 55155  
(651) 201-1344 (office)  
(651) 334-4077 (cell)

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**From:** Dennis Distad [mailto:Dennis.Distad@co.freeborn.mn.us]

**Sent:** Thursday, December 04, 2008 7:51 AM

**To:** Tony P. Trimble; [allen.paulson@co.clearwater.mn.us](mailto:allen.paulson@co.clearwater.mn.us); [anne.granitz@co.roseau.mn.us](mailto:anne.granitz@co.roseau.mn.us); [barb.loch@co.meeker.mn.us](mailto:barb.loch@co.meeker.mn.us); [becky.murphy@co.beltrami.mn.us](mailto:becky.murphy@co.beltrami.mn.us); [ben.pribyl@co.jackson.mn.us](mailto:ben.pribyl@co.jackson.mn.us); [elections@co.cook.mn.us](mailto:elections@co.cook.mn.us); [election@co.nicollet.mn.us](mailto:election@co.nicollet.mn.us); [byron.giese@co.swift.mn.us](mailto:byron.giese@co.swift.mn.us); [carolyn.holmsten@co.goodhue.mn.us](mailto:carolyn.holmsten@co.goodhue.mn.us); [auditor@co.grant.mn.us](mailto:auditor@co.grant.mn.us); [char.meiners@co.houston.mn.us](mailto:char.meiners@co.houston.mn.us); [charleen.west@co.wadena.mn.us](mailto:charleen.west@co.wadena.mn.us); [cmaclennan@co.winona.mn.us](mailto:cmaclennan@co.winona.mn.us); [cindy.schultz@co.mcleod.mn.us](mailto:cindy.schultz@co.mcleod.mn.us); [cwcauditor@co.crow-wing.mn.us](mailto:cwcauditor@co.crow-wing.mn.us); [denise.cooper@co.kanabec.mn.us](mailto:denise.cooper@co.kanabec.mn.us); [djfreed@co.chisago.mn.us](mailto:djfreed@co.chisago.mn.us); [auditor@co.sherburne.mn.us](mailto:auditor@co.sherburne.mn.us); [dicklichd@co.st-louis.mn.us](mailto:dicklichd@co.st-louis.mn.us); [auditor@co.watonwan.mn.us](mailto:auditor@co.watonwan.mn.us); [donna.quandt@co.pope.mn.us](mailto:donna.quandt@co.pope.mn.us); [dougg@CO.MOWER.MN.US](mailto:dougg@CO.MOWER.MN.US); [rcelections@co.rice.mn.us](mailto:rcelections@co.rice.mn.us); [frank.thompson@co.mahnomen.mn.us](mailto:frank.thompson@co.mahnomen.mn.us); [gerald.amiot@co.polk.mn.us](mailto:gerald.amiot@co.polk.mn.us); [gloria.rolfs@co.rock.mn.us](mailto:gloria.rolfs@co.rock.mn.us); [hwinter@co.murray.mn.us](mailto:hwinter@co.murray.mn.us); [jake.sieg@lqpc.com](mailto:jake.sieg@lqpc.com); [james.forshee@co.martin.mn.us](mailto:james.forshee@co.martin.mn.us); [jan.h.johnson@co.cottonwood.mn.us](mailto:jan.h.johnson@co.cottonwood.mn.us); [jleisen@co.wabasha.mn.us](mailto:jleisen@co.wabasha.mn.us); [joan.manthe@co.waseca.mn.us](mailto:joan.manthe@co.waseca.mn.us); [jneyssen@co.benton.mn.us](mailto:jneyssen@co.benton.mn.us); [elections@co.dakota.mn.us](mailto:elections@co.dakota.mn.us); [john\\_h@co.lake-of-the-woods.mn.us](mailto:john_h@co.lake-of-the-woods.mn.us); [john.thompson@co.faribault.mn.us](mailto:john.thompson@co.faribault.mn.us); [jclauson@co.chippewa.mn.us](mailto:jclauson@co.chippewa.mn.us); [elections@co.ramsey.mn.us](mailto:elections@co.ramsey.mn.us); [joyce.steinhoff@co.pipestone.mn.us](mailto:joyce.steinhoff@co.pipestone.mn.us); [karen.busch@co.todd.mn.us](mailto:karen.busch@co.todd.mn.us); [kschreurs@co.lincoln.mn.us](mailto:kschreurs@co.lincoln.mn.us); [ktolson@co.pennington.mn.us](mailto:ktolson@co.pennington.mn.us); [elections@co.washington.mn.us](mailto:elections@co.washington.mn.us); [kpeysar@co.aitkin.mn.us](mailto:kpeysar@co.aitkin.mn.us); [kit.johnson@co.traverse.mn.us](mailto:kit.johnson@co.traverse.mn.us); [larry\\_b@co.redwood.mn.us](mailto:larry_b@co.redwood.mn.us); [larry\\_j@co.renville.mn.us](mailto:larry_j@co.renville.mn.us);

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[paul.gassert@co.carlton.mn.us](mailto:paul.gassert@co.carlton.mn.us); [paulavanoverbeke@co.lyon.mn.us](mailto:paulavanoverbeke@co.lyon.mn.us); [phil.thompson@co.mille-lacs.mn.us](mailto:phil.thompson@co.mille-lacs.mn.us); [elections@co.anoka.mn.us](mailto:elections@co.anoka.mn.us); [elections@co.stearns.mn.us](mailto:elections@co.stearns.mn.us); [rick.munter@co.norman.mn.us](mailto:rick.munter@co.norman.mn.us); [bob.hiivala@co.wright.mn.us](mailto:bob.hiivala@co.wright.mn.us); [bob.peterson@co.koochiching.mn.us](mailto:bob.peterson@co.koochiching.mn.us); [raschmitz@co.red-lake.mn.us](mailto:raschmitz@co.red-lake.mn.us); [cblaschko@co.le-sueur.mn.us](mailto:cblaschko@co.le-sueur.mn.us); [russn@co.morrison.mn.us](mailto:russn@co.morrison.mn.us); [rltange@co.becker.mn.us](mailto:rltange@co.becker.mn.us); [sam\\_m@co.kandiyohi.mn.us](mailto:sam_m@co.kandiyohi.mn.us); [sara.marquardt@co.dodge.mn.us](mailto:sara.marquardt@co.dodge.mn.us); [scott.peters@co.marshall.mn.us](mailto:scott.peters@co.marshall.mn.us); [cass.voter@co.cass.mn.us](mailto:cass.voter@co.cass.mn.us); [sbalster@co.nobles.mn.us](mailto:sbalster@co.nobles.mn.us); [sboelter@co.fillmore.mn.us](mailto:sboelter@co.fillmore.mn.us); [steve.mcmahon@co.lake.mn.us](mailto:steve.mcmahon@co.lake.mn.us); [terry.treichel@co.isanti.mn.us](mailto:terry.treichel@co.isanti.mn.us); [t.reddick@mail.co.douglas.mn.us](mailto:t.reddick@mail.co.douglas.mn.us); [wbezenek@co.wilkin.mn.us](mailto:wbezenek@co.wilkin.mn.us); [wstein@co.ottertail.mn.us](mailto:wstein@co.ottertail.mn.us); [kay.mack@co.beltrami.mn.us](mailto:kay.mack@co.beltrami.mn.us); [CCJohnso@co.pine.mn.us](mailto:CCJohnso@co.pine.mn.us); [tferber@ci.bloomington.mn.us](mailto:tferber@ci.bloomington.mn.us); [kengberg@ci.bloomington.mn.us](mailto:kengberg@ci.bloomington.mn.us); [tmarshall@CI.ROBBINSDALE.MN.US](mailto:tmarshall@CI.ROBBINSDALE.MN.US); [tgerhardt@ci.chanhassen.mn.us](mailto:tgerhardt@ci.chanhassen.mn.us); [doboszenski@ci.rogers.mn.us](mailto:doboszenski@ci.rogers.mn.us); [sjenkins@townofhassan.com](mailto:sjenkins@townofhassan.com); [sknutson@ci.brooklyn-center.mn.us](mailto:sknutson@ci.brooklyn-center.mn.us); [sengdahl@ci.plymouth.mn.us](mailto:sengdahl@ci.plymouth.mn.us); [sborders@cityofdayton.mn.com](mailto:sborders@cityofdayton.mn.com); [rcolotti@ci.champlin.mn.us](mailto:rcolotti@ci.champlin.mn.us); [greenwood@visi.com](mailto:greenwood@visi.com); [ngibbs@cityofrichfield.org](mailto:ngibbs@cityofrichfield.org); [nacyc@cityofrockford.org](mailto:nacyc@cityofrockford.org); [llarson@ci.osseo.mn.us](mailto:llarson@ci.osseo.mn.us); [kbachmeier@ci.corcoran.mn.us](mailto:kbachmeier@ci.corcoran.mn.us); [kporta@edenprairie.org](mailto:kporta@edenprairie.org); [janet.lewis@ci.crystal.mn.us](mailto:janet.lewis@ci.crystal.mn.us); [devin.montero@brooklynpark.org](mailto:devin.montero@brooklynpark.org); [daniel-hanover@comcast.net](mailto:daniel-hanover@comcast.net); [danay@cityofdeephaven.org](mailto:danay@cityofdeephaven.org); [cheri@ci.excelsior.mn.us](mailto:cheri@ci.excelsior.mn.us); [johnson@ci.greenfield.mn.us](mailto:johnson@ci.greenfield.mn.us); [terryo@hopkinsmn.com](mailto:terryo@hopkinsmn.com); [thirsch@ci.independence.mn.us](mailto:thirsch@ci.independence.mn.us); [jmoeller@ci.long-lake.mn.us](mailto:jmoeller@ci.long-lake.mn.us); [cpatnode@ci.loretto.mn.us](mailto:cpatnode@ci.loretto.mn.us); [skollanderson@ci.maple-grove.mn.us](mailto:skollanderson@ci.maple-grove.mn.us); [cityhall@mapleplain.com](mailto:cityhall@mapleplain.com); [chad.adams@ci.medina.mn.us](mailto:chad.adams@ci.medina.mn.us); [dmaeda@eminnetonka.com](mailto:dmaeda@eminnetonka.com); [mregnier@ci.minnetonka-beach.mn.us](mailto:mregnier@ci.minnetonka-beach.mn.us); [thaarstad@ci.minnetrista.mn.us](mailto:thaarstad@ci.minnetrista.mn.us); [bonnieritter@cityofmound.com](mailto:bonnieritter@cityofmound.com); [vlone@ci.new-hope.mn.us](mailto:vlone@ci.new-hope.mn.us); [lv@ci.orono.mn.us](mailto:lv@ci.orono.mn.us); [stboni@visi.com](mailto:stboni@visi.com); [jpanchyshyn@ci.shorewood.mn.us](mailto:jpanchyshyn@ci.shorewood.mn.us); [wlewin@mchsi.com](mailto:wlewin@mchsi.com); [clink@cityoftonkabay.net](mailto:clink@cityoftonkabay.net); [sandy@wayzata.org](mailto:sandy@wayzata.org); [shelley@cityofwoodlandmn.org](mailto:shelley@cityofwoodlandmn.org)

**Cc:** [fknaak@klaw.us](mailto:fknaak@klaw.us); Jim Gelbmann; Lillehaug, David

**Subject:** RE: Absentee Ballot Envelope Sorting

Freeborn County is not going to hold a public review of the rejected absentee ballots. The SOS, DFL and Republican parties have requested the rejected absentee information prior to Mr. Gelbmann's request. We used three staff, including myself, to review them, list the name, address, precinct and reason for rejection. At this point, I feel that it is a waste of time to call a public meeting and redo what we have already done.

Dennis Distad

**From:** Tony P. Trimble [mailto:[trimblelegals@earthlink.net](mailto:trimblelegals@earthlink.net)]

**Sent:** Wednesday, December 03, 2008 5:23 PM

**To:** [allen.paulson@co.clearwater.mn.us](mailto:allen.paulson@co.clearwater.mn.us); [anne.granitz@co.roseau.mn.us](mailto:anne.granitz@co.roseau.mn.us); [barb.loch@co.meeker.mn.us](mailto:barb.loch@co.meeker.mn.us); [becky.murphy@co.beltrami.mn.us](mailto:becky.murphy@co.beltrami.mn.us); [ben.pribyl@co.jackson.mn.us](mailto:ben.pribyl@co.jackson.mn.us); [elections@co.cook.mn.us](mailto:elections@co.cook.mn.us); [election@co.nicollet.mn.us](mailto:election@co.nicollet.mn.us); [byron.giese@co.swift.mn.us](mailto:byron.giese@co.swift.mn.us); [carolyn.holmsten@co.goodhue.mn.us](mailto:carolyn.holmsten@co.goodhue.mn.us); [auditor@co.grant.mn.us](mailto:auditor@co.grant.mn.us); [char.meiners@co.houston.mn.us](mailto:char.meiners@co.houston.mn.us); [charleen.west@co.wadena.mn.us](mailto:charleen.west@co.wadena.mn.us); [cmaclennan@co.winona.mn.us](mailto:cmaclennan@co.winona.mn.us); [cindy.schultz@co.mcleod.mn.us](mailto:cindy.schultz@co.mcleod.mn.us); [cwcauditor@co.crow-wing.mn.us](mailto:cwcauditor@co.crow-wing.mn.us); [denise.cooper@co.kanabec.mn.us](mailto:denise.cooper@co.kanabec.mn.us); Dennis Distad; [djfreed@co.chisago.mn.us](mailto:djfreed@co.chisago.mn.us); [auditor@co.sherburne.mn.us](mailto:auditor@co.sherburne.mn.us); [dicklichd@co.st-louis.mn.us](mailto:dicklichd@co.st-louis.mn.us); [auditor@co.watonwan.mn.us](mailto:auditor@co.watonwan.mn.us); [donna.quandt@co.pope.mn.us](mailto:donna.quandt@co.pope.mn.us); [dougg@co.mower.mn.us](mailto:dougg@co.mower.mn.us); [rcelections@co.rice.mn.us](mailto:rcelections@co.rice.mn.us); [frank.thompson@co.mahnomen.mn.us](mailto:frank.thompson@co.mahnomen.mn.us); [gerald.amiot@co.polk.mn.us](mailto:gerald.amiot@co.polk.mn.us); [gloria.rolfs@co.rock.mn.us](mailto:gloria.rolfs@co.rock.mn.us); [hwinter@co.murray.mn.us](mailto:hwinter@co.murray.mn.us); [jake.sieg@lqpc.com](mailto:jake.sieg@lqpc.com); [james.forshee@co.martin.mn.us](mailto:james.forshee@co.martin.mn.us); [jan.h.johnson@co.cottonwood.mn.us](mailto:jan.h.johnson@co.cottonwood.mn.us); [jleisen@co.wabasha.mn.us](mailto:jleisen@co.wabasha.mn.us); [joan.manthe@co.waseca.mn.us](mailto:joan.manthe@co.waseca.mn.us); [jneyssen@co.benton.mn.us](mailto:jneyssen@co.benton.mn.us); [elections@co.dakota.mn.us](mailto:elections@co.dakota.mn.us); [john\\_h@co.lake-of-the-woods.mn.us](mailto:john_h@co.lake-of-the-woods.mn.us); [john.thompson@co.faribault.mn.us](mailto:john.thompson@co.faribault.mn.us); [jclauson@co.chippewa.mn.us](mailto:jclauson@co.chippewa.mn.us); [elections@co.ramsey.mn.us](mailto:elections@co.ramsey.mn.us); [joyce.steinhoff@co.pipetstone.mn.us](mailto:joyce.steinhoff@co.pipetstone.mn.us); [karen.busch@co.todd.mn.us](mailto:karen.busch@co.todd.mn.us); [kschreurs@co.lincoln.mn.us](mailto:kschreurs@co.lincoln.mn.us); [ktolson@co.pennington.mn.us](mailto:ktolson@co.pennington.mn.us); [elections@co.washington.mn.us](mailto:elections@co.washington.mn.us); [kpeysar@co.aitkin.mn.us](mailto:kpeysar@co.aitkin.mn.us); [kit.johnson@co.traverse.mn.us](mailto:kit.johnson@co.traverse.mn.us); [larry\\_b@co.redwood.mn.us](mailto:larry_b@co.redwood.mn.us); [larry\\_j@co.renville.mn.us](mailto:larry_j@co.renville.mn.us); [laura.ihrke@co.steele.mn.us](mailto:laura.ihrke@co.steele.mn.us); [lengelen@co.carver.mn.us](mailto:lengelen@co.carver.mn.us); [pfarrl@co.sibley.mn.us](mailto:pfarrl@co.sibley.mn.us); [lois.bonde@co.yellow-medicine.mn.us](mailto:lois.bonde@co.yellow-medicine.mn.us); [lori.johnson@co.clay.mn.us](mailto:lori.johnson@co.clay.mn.us); [mgustafson@co.kittson.mn.us](mailto:mgustafson@co.kittson.mn.us); [marlin.helget@co.brown.mn.us](mailto:marlin.helget@co.brown.mn.us); [marsha.goslovich@co.itasca.mn.us](mailto:marsha.goslovich@co.itasca.mn.us); [mkes@co.scott.mn.us](mailto:mkes@co.scott.mn.us);

Vote@co.hennepin.mn.us; michelle\_k@co.big-stone.mn.us; neilwiese@co.stevens.mn.us;  
 fuller.pamela@co.olmsted.mn.us; pheeren@co.hubbard.mn.us; patty.oconnor@co.blue-earth.mn.us;  
 paul.gassert@co.carlton.mn.us; paulavanoverbeke@co.lyon.mn.us; phil.thompson@co.mille-lacs.mn.us;  
 elections@co.anoka.mn.us; elections@co.stearns.mn.us; rick.munter@co.norman.mn.us;  
 bob.hiivala@co.wright.mn.us; bob.peterson@co.koochiching.mn.us; raschmitz@co.red-lake.mn.us;  
 cblaschko@co.le-sueur.mn.us; russn@co.morrison.mn.us; rltange@co.becker.mn.us;  
 sam\_m@co.kandiyohi.mn.us; sara.marquardt@co.dodge.mn.us; scott.peters@co.marshall.mn.us;  
 cass.voter@co.cass.mn.us; sbalster@co.nobles.mn.us; sboelter@co.fillmore.mn.us;  
 steve.mcmahon@co.lake.mn.us; terry.treichel@co.isanti.mn.us; t.reddick@mail.co.douglas.mn.us;  
 wbezenek@co.wilkin.mn.us; wstein@co.ottertail.mn.us; kay.mack@co.beltrami.mn; CCJohnso@co.pine.mn.us;  
 tferber@ci.bloomington.mn.us; kengberg@ci.bloomington.mn.us; tmarshall@ci.robinsdale.mn.us;  
 tgerhardt@ci.chanhassen.mn.us; doboszanski@ci.rogers.mn.us; sjenkins@townofhassan.com;  
 sknutson@ci.brooklyn-center.mn.us; sengdahl@ci.plymouth.mn.us; sborders@cityofdayton.mn.com;  
 rcolotti@ci.champlin.mn.us; greenwood@visi.com; ngibbs@cityofrichfield.org; nacyc@cityofrockford.org;  
 llarson@ci.osseo.mn.us; kbachmeier@ci.corcoran.mn.us; kporta@edenprairie.org; janet.lewis@ci.crystal.mn.us;  
 devin.montero@brooklynpark.org; daniel-hanover@comcast.net; danay@cityofdeephaven.org;  
 cheri@ci.excelsior.mn.us; johnson@ci.greenfield.mn.us; terryo@hopkinsmn.com;  
 thirsch@ci.independence.mn.us; jmoeller@ci.long-lake.mn.us; cpatnode@ci.loretto.mn.us;  
 skollanderson@ci.maple-grove.mn.us; cityhall@mapleplain.com; chad.adams@ci.medina.mn.us;  
 dmaeda@eminnetonka.com; mregnier@ci.minnetonka-beach.mn.us; thaarstad@ci.minnetrista.mn.us;  
 bonnieritter@cityofmound.com; vleone@ci.new-hope.mn.us; lv@ci.orono.mn.us; stboni@visi.com;  
 jpanchyshyn@ci.shorewood.mn.us; wlewin@mchsi.com; clink@cityoftonkabay.net; sandy@wayzata.org;  
 shelley@cityofwoodlandmn.org

**Cc:** fknaak@klaw.us; 'Jim Gelbmann'; 'Lillehaug, David'

**Subject:** Absentee Ballot Envelope Sorting

Dear Local Election Officials:

We understand that earlier this week you received correspondence from Jim Gelbmann at the Minnesota Secretary of State's Office regarding the sorting of absentee ballot envelopes (see email below).

We would appreciate it if you would please notify our office and Mr. David Lillehaug as to whether your county/municipality intends to engage in the sorting process and, if so, the date(s), time(s) and location(s) of the sorting.

We appreciate your response by the end of this week as the Secretary of State's Office has indicated that this sorting process is to start next Monday.

Thank you.

Tony P. Trimble

=====  
 Trimble & Associates, Ltd.  
 10201 Wayzata Blvd., Suite 130  
 Minneapolis, Minnesota 55305  
 Tel: (952) 797-7477  
 Fax: (952) 797-5858

Circular 230 Notice: In accordance with Treasury Regulations which became applicable to all tax practitioners as of June 20, 2005, please note that the advice given herein (including any attachments) is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding

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**From:** Jim Gelbmann [mailto:Jim.Gelbmann@state.mn.us]  
**Sent:** Tuesday, December 02, 2008 9:41 AM  
**To:** 'Lillehaug, David'; Jim Gelbmann  
**Cc:** Stephanie Schriock; Marc Elias; Hamilton, Kevin J. (Perkins Coie); Bill Pentelovitch; 'Tony Trimble'; fknaak@klaw.us  
**Subject:** RE: Data Practices Request

Dear Mr. Lillehaug:

The communication that was sent to all county and city election officials is copied below:

Dear County Auditors and County and City Election Officials:

Once again I would like to thank you for helping the Secretary of State's Office conduct a hand recount of the ballots cast in the U.S. Senate contest. I know this task has required much more work than anyone originally anticipated, and we are very grateful for your assistance. I have attached a transcript of comments made by Canvassing Board Member Chief Judge Kathleen Gearin (Second Judicial District) last week relative to the professional assistance you have provided for the state. Subsequent to those comments, the Board unanimously approved a motion thanking you. I've said it before, and I'll say it again, without your assistance, the professionalism under which this recount has been conducted would never have been possible.

At last week's meeting of the State Canvassing Board, the Board members expressed an interest in knowing the number of Absentee Ballots that may have been mistakenly rejected. In other words, the Board has heard anecdotal evidence of absentee ballots being rejected, even though the facts surrounding the ballot did not meet one of the four reasons stated in statute upon which an absentee ballot may be rejected. For example, if an absentee ballot was sent to the wrong precinct on election night and rejected by the election judges at that precinct, it could be argued that ballot does not meet one of the four statutory reasons.

The purpose of this e-mail is to once again ask for your assistance. We need your help in reviewing all previously-rejected absentee ballots and determining the number of ballots that were rejected for each of the following four statutory reasons:

The ballot was rejected because the voter's name and address on the return envelope are not the same as the information provided on the absentee ballot application.

2. The voter's signature on the return envelope is not the genuine signature of the individual who made the application for the ballot and the signature is required under applicable Minnesota law, or the certificate has not been completed as prescribed in the directions for casting an absentee ballot.

3. The voter was not registered and eligible to vote in the precinct or has not included a properly completed voter registration application. Elections personnel shall use available voter rosters to determine whether the voter was registered.

4. The voter had already voted at the election, either in person or by absentee ballot. Elections personnel shall use available voter rosters to determine whether the voter had already voted.

In addition, please create a fifth category of rejected absentee ballots as described below:

5. If the rejected absentee ballot does not meet one of these four reasons, or if the reason used to reject the absentee ballot is not based on factual information (e.g. the voter was initially determined not to be registered to vote at the address given, but a subsequent review determines the voter was registered at that address), that ballot should be counted as part of a fifth category of previously- rejected absentee ballots - absentee ballots that were mistakenly rejected on or before election day.

If the election judges do not agree into which of the first four categories the ballot should be placed (e.g. because it was appropriately rejected for more than one reason), simply assign the ballot to one of the appropriate categories at random. If the election judges disagree as to whether the ballot was appropriately or inappropriately rejected, please assign the ballot to the fifth category. Please note the disagreement on a sticky note and attach it onto white space on the envelope.

The State Canvassing Board is primarily interested in determining how many ballots throughout the state would be included in this fifth category of rejected absentee ballots. **At this time we are not asking you to open or count the votes contained in any of the five categories of rejected absentee ballots, nor are we asking you to compile a list of names and addresses of the absentee voters who have their ballots placed in any of these five categories.** We simply are looking for the number of rejected absentee ballots that were legitimately rejected for one of the four statutory reasons and the number of rejected absentee ballots that were mistakenly rejected by a County Absentee Ballot Board and/or election judges at the individual precincts.

We understand that this will require a significant amount of work on your part. This review should be done with the assistance of two election judges of different parties and you or a member of your staff. It must be done in a public setting where the public and representatives of the two campaigns would be allowed to observe, but not participate in the review nor question the election judges' decision into which category each previously-rejected absentee ballot is placed. In other words, candidates are not to be given the opportunity to challenge the decisions relative to the category into which each previously - rejected absentee ballot is placed.

Throughout the process, you should keep the previously-rejected absentee ballots with their precinct supply box. At the end of the process, you may keep the five categories of previously-rejected absentee ballots segregated using rubber bands or paper clips, but must store them securely in the appropriate precinct supply box.

If you are willing to assist us in this process, the State will reimburse you for the cost of hiring two election judges (or additional election judges if you intend to operate more than one table) plus an amount 0.25 for each rejected absentee ballot reviewed. Since many counties had a minimal number of rejected absentee ballots, every county that participates will receive a minimum of \$25.00 for their effort. We would ask that this task be completed no later than close of business on Thursday, December 18. Additional details about the specific process to be used will be forthcoming. **However, I would appreciate it if you would complete the following survey and return it to me as soon as possible.**

\_\_\_\_\_ Yes we would be willing to assist with this process

\_\_\_\_\_ No we are not willing to assist with this process, but would make our rejected absentee ballots available to representatives of the Secretary of State's Office or other County or City election officials

from neighboring jurisdictions so the task can be completed.

If you are willing to participate in this process, please identify a date, time and location when you would begin sorting the rejected absentee ballots. Please forward this email to any municipal clerks in your county if they maintain possession of the rejected absentee ballots.

Please do not begin any earlier than Monday, December 8 and plan to complete the review and submit

the numbers of rejected absentee ballots for each of the five categories forwarded to the Secretary of State's Office by 5:00 p.m., Thursday, December 18.

Date When We Will Begin Sorting Rejected Absentee Ballots: \_\_\_\_\_

Time When We Will Begin Sorting Rejected Absentee Ballots: \_\_\_\_\_

Location Where We Will Begin Sorting Rejected Absentee Ballots:  
\_\_\_\_\_

My best regards!!!

Sincerely,

Jim

Jim Gelbmann

Deputy Secretary of State

180 State Office Building

Saint Paul, Minnesota 55155

(651) 201-1344 (office)

(651) 334-4077 (cell)

Jim Gelbmann

Deputy Secretary of State

180 State Office Building

Saint Paul, Minnesota 55155

(651) 201-1344 (office)

(651) 334-4077 (cell)

---

**From:** Lillehaug, David [mailto:dlillehaug@fredlaw.com]

**Sent:** Tuesday, December 02, 2008 7:51 AM

**To:** Jim Gelbmann

**Cc:** Stephanie Schriock; Marc Elias; Hamilton, Kevin J. (Perkins Coie); Bill Pentelovitch

**Subject:** Data Practices Request

Dear Mr. Gelbmann -- I understand that, late yesterday, the Secretary of State's office sent a communication to county auditors and other local election officials regarding absentee ballots. Pursuant to the Minnesota Government Data Practices Act, I request a copy of that communication. As the Franken campaign considers this matter time-sensitive, I would appreciate your office's prompt response to this request.

David Lillehaug

Fredrikson & Byron, P.A.  
612-492-7321

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## **Exhibit 8**

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**From:** Jim Gelbmann [Jim.Gelbmann@state.mn.us]  
**Sent:** Friday, December 12, 2008 4:45 PM  
**To:** 'Tony P. Trimble'; 'Lillehaug, David'; Marc Elias; fknaak@klaw.us  
**Subject:** FW: State Canvassing Board motion on rejected absentee ballots  
**Attachments:** letter from AG.pdf; Errors Abstract.doc

Gentlemen:

Here is what was sent to the counties earlier this hour.

Have a great weekend.

Jim

Jim Gelbmann  
 Deputy Secretary of State  
 180 State Office Building  
 Saint Paul, Minnesota 55155  
 (651) 201-1344 (office)  
 (651) 334-4077 (cell)

---

**From:** Gary Poser  
**Sent:** Friday, December 12, 2008 4:09 PM  
**To:** Gary Poser  
**Subject:** State Canvassing Board motion on rejected absentee ballots

To: County Election Officials and City Recount Officials:

Fyi - In discussing the allegedly wrongly rejected absentee ballots, the State Canvassing Board today considered the Attorney General's opinion (attached) and the board passed the following motion:

*The State Canvassing Board recommends that county canvassing boards that have not already done so reconvene and sort rejected absentee ballots into five categories, the first four categories being the reasons for rejections set forth in Minnesota Statutes 203B.12 and 203B.24, the fifth category being those not included in any of the four categories for rejection.*

Any action taken would be by the county canvassing board under 204C.39 for the correction of any obvious errors. Any amended returns made by a county canvassing board for the correction of any obvious errors should be sent to the state canvassing board for their consideration.

If your county canvassing board amends any returns, attached is an example report which could be used to report changes for those precincts where obvious errors were corrected.

The board expressed a desire that amended returns be made by Friday, December 19th. If your county plans to reconvene its canvassing board to correct obvious errors, but you do not believe you will be able to meet the December 19th deadline, please let us know so we can inform the state canvassing board of your need for additional time.

Sincerely,  
Gary

<<letter from AG.pdf>> <<Errors Abstract.doc>>

**Gary Poser**

Director of Elections  
Office of the Minnesota Secretary of State  
180 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul MN 55155  
Phone: 651-556-0612  
Fax: 651-296-9073  
Email: [Gary.Poser@state.mn.us](mailto:Gary.Poser@state.mn.us)

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# STATE OF MINNESOTA

## OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON  
ATTORNEY GENERAL

December 10, 2008

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ST. PAUL, MN 55101-2128  
TELEPHONE: (651) 282-5700

### Attorney-Client Privileged

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State of Minnesota  
180 State Office Building  
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St. Paul, MN 55155

The Honorable Eric Magnuson  
Chief Justice  
Minnesota Supreme Court  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

The Honorable G. Barry Anderson  
Associate Justice  
Minnesota Supreme Court  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

The Honorable Kathleen Gearin  
Chief Judge  
Ramsey County District Court  
15 West Kellogg Blvd.  
St. Paul, MN 55102

The Honorable Edward Cleary  
Assistant Chief Judge  
Ramsey County District Court  
15 West Kellogg Blvd.  
St. Paul, MN 55102

Dear Secretary Ritchie, Chief Justice Magnuson, Justice Anderson, Chief Judge Gearin, and Assistant Chief Judge Cleary:

At the November 26, 2008 meeting, the State Canvassing Board discussed a proposal that local election personnel review all rejected absentee ballots in conjunction with the corresponding precinct rosters and sort them into separate piles based upon the reasons for their rejection.

Thereafter, on December 1, 2008 Secretary Ritchie's office requested all county and city election officials to place all rejected absentee ballot envelopes into one of five piles based on the following reasons for their rejection:

1. The voter's name and address on the return envelope are not the same as the information provided on the absentee ballot application (i.e., ballots rejected pursuant to clause (1) of Minn. Stat. § 203B.12, subd. 2).
2. The voter's signature on the return envelope is not the genuine signature of the individual who made the application for the ballot and a signature is required under applicable Minnesota law, or the certificate has not been

completed as prescribed in the directions for casting an absentee ballot (i.e., ballots rejected pursuant to clause (2) of section 203B.12, subd. 2).

3. The voter was not registered and eligible to vote in the precinct or has not included a properly completed voter registration application (i.e., ballots rejected pursuant to clause (3) of section 203B.12, subd. 2).
4. The voter had already voted at the election, either in person or by absentee ballot (i.e., ballots rejected pursuant to clause (4) of section 203B.12, subd. 2).
5. The election judge cannot determine any statutory basis for rejecting the absentee ballot, based on the available records, including the voter roster (i.e., the so-called "Fifth Pile").

Minnesota Statutes Section 203B.12, subdivision 2 (2008) provides four statutory bases upon which absentee ballots may be rejected.<sup>1</sup> The statute further provides that "[i]f all or a majority of the election judges examining return envelopes find that an absent voter has failed to meet one of the requirements prescribed in clauses (1) to (4), they shall mark the return envelope 'Rejected,' initial or sign it below the word 'Rejected,' and return it to the county auditor." *Id.* Section 203B.12, subd. 2, states that "[t]here is no other reason for rejecting an absentee ballot."

At the November 26th meeting, the State Canvassing Board unanimously denied a request to include absentee ballots rejected for one of the four reasons set forth in clauses (1)-(4) of section 203B.12, subd. 2 in connection with the recount. The Board then requested an opinion as to whether and by what means absentee ballots contained in the so-called Fifth Pile (i.e., absentee ballots that were not rejected for one of the four statutory reasons) may be tabulated in order that voters who complied in all respects with the statutes are not unfairly disenfranchised.

There is no doubt that voters who have complied with all legal requirements, but whose ballots were improperly rejected, should have their votes counted. Minnesota courts have long expressed the importance of the right of the citizen to vote and to have his or her vote counted. *See Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 729 (Minn. 2003) ("Our review must be informed by the recognition that '[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.'"); *In re Application of Andersen v. Donovan*, 119 N.W.2d 1, 8 (Minn. 1962) (election laws intended "to safeguard the right of the people to express their preference in a free election"); *Contest of Sch. Dist. Election Held on May 17, 1988 v. Gross*, 431 N.W.2d 911, 915 (Minn. Ct. App. 1988) (stating that

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<sup>1</sup> The procedures and forms for ballots submitted under the Uniform Overseas Citizens Absentee Voting Act ("UOCAVA") are slightly different, *see, e.g.* Minn. Stat. §§ 203B.16-203B.27 (2008), but the four statutory bases for rejection of UOCAVA ballots set forth in Minn. Stat. § 203B.24, subd. 4 (2008) are similar to those set forth in section 203B.12.

“purpose and intent behind absentee voting legislation is the preservation of the enfranchisement of qualified voters”); *Dougherty v. Holm*, 44 N.W.2d 83, 85 (Minn. 1950) (“Election laws should be liberally construed so as to secure to the people their right freely to express their choice.”).

The legislature has enacted a number of statutory procedures to remedy errors made by election judges or other officials in the election process so that voters are not unfairly disenfranchised.

First, Minn. Stat. ch. 204C contains provisions for the correction by county election officials of errors as part of the canvassing process.<sup>2</sup> Under Minn. Stat. § 204C.38 (2008), if the candidates for an office agree in writing that local election judges or the county canvassing board made an obvious error in the counting and recording of votes, the county canvassing board may be reconvened to correct that error. We note that attorneys for candidates Al Franken<sup>3</sup> and Norm Coleman<sup>4</sup> have publicly stated that they support the counting of any absentee ballots that were erroneously disqualified. Accordingly, we recommend that the Secretary and/or the State Canvassing Board determine whether the candidates will agree in writing that an error occurred to the extent absentee ballots in the so-called “Fifth Pile” (i.e., ones for which the election judge cannot determine any statutory basis for rejection under § 203B.12, subd. 2) were rejected. If the candidates are willing to so stipulate in writing, then the applicable county canvassing board may submit an amended report to the State Canvassing Board reflecting any additional votes received by each candidate when the improperly rejected absentee ballots are counted. The State Canvassing Board can then include the amended certificate(s) in finalizing the election results.

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<sup>2</sup> Any processes utilized should preserve the ballot secrecy that is central to the election system. See Minn. Const. art. VII, § 5 (“All elections shall be by ballot...”); *Elwell v. Comstock*, 109 N.W. 698, 699 (Minn. 1906) (stating that the Constitutional language is intended to secure the privilege of voting secrecy).

<sup>3</sup> The request of Mr. Franken that was the subject of the November 26th meeting of the State Canvassing Board was to approve the tabulation of rejected absentee ballots in the ongoing process. For example, the Memorandum of the Al Franken Committee submitted November 17, 2008 states at page 5: “[T]he Franken Campaign and Al Franken respectfully request that this Board consider and take into account improperly rejected absentee ballots....”

<sup>4</sup> The *Pioneer Press* has reported: “[Coleman counsel Fritz] Knaak said that the Coleman campaign was pleased with the [State Canvassing Board] ruling and supports the idea of counting votes from ballots that have no legal basis for being rejected. For example, Knaak said he supports the decision by Itasca County Auditor-Treasurer Jeff Walker to reopen his county’s recount to reconsider three ballots, including one rejected absentee ballot whose official reason for rejection begins, ‘We messed up.’ In essence, Knaak said, the Fifth Piles already are being created.” St. Paul Pioneer Press, “*Franken Loses A Round Over Absentee Ballots*,” Nov. 27, 2008. Similarly, Minnesota Public Radio reported on November 26, 2008: “Knaak said he won’t take issue with the counting of any absentee ballots that were wrongly disqualified or overlooked....”

Second, if the candidates are not in agreement, Minn. Stat. § 204C.39 (2008) provides an alternative manner for the correction of obvious errors at the county level. Subdivision 1 of that statute provides:

A county canvassing board may determine by majority vote that the election judges have made an obvious error in counting or recording the votes for an office. The county canvassing board shall then promptly notify all candidates for that office of the determination, including a description of the error. A candidate who receives notification pursuant to this subdivision or any candidate who believes that the election judges in a precinct have made an obvious error in the counting or recording of the votes for an office may apply without unreasonable delay to the district court of the county containing the precinct in which the alleged error was made for an order determining whether or not an obvious error has been made. The applicant shall describe the alleged error in the application and may submit additional evidence as directed by the court. The applicant shall notify the county canvassing board and all candidates for the affected office in the manner directed by the court. If the court finds that the election judges made an obvious error it shall issue an order specifying the error and directing the county canvassing board to inspect the ballots and returns of the precinct in order to correct the error and to proceed further in accordance with this section or otherwise as the court may direct.

Other than noting that there should be no unreasonable delay, neither section 204C.38 nor 204C.39 specifies any time period within which such corrections must be made. In *Andersen*, the Minnesota Supreme Court allowed county canvassing boards under a prior version of section 204C.39 to amend and resubmit their certified reports to the Secretary of State after the initial reports were submitted but before the results of the election were finalized. The court described the purpose of the prior version of section 204C.39 as “to permit correction at the county level of errors committed by the precinct judges in order to avoid the necessity of an election contest where possible.” *Andersen*, 119 N.W.2d at 5 (footnote omitted). *Andersen* supports a flexible reading of sections 204C.38 and 204C.39 to allow local canvassing officials to amend their election returns pursuant to those statutes before the election results are finalized in order to correct errors in the vote for the 2008 election for the United States Senate.

Third, another procedure which may be available for counting improperly rejected absentee ballots is set forth in Minn. Stat. § 204B.44 (2008). See *Andersen*, 119 N.W.2d at 10. In *Erlandson v. Kiffmeyer*, 659 N.W.2d 724 (Minn. 2003), a petition was filed in the Minnesota Supreme Court following the death of Senator Paul Wellstone to require the Secretary of State to mail replacement absentee ballots to voters to whom absentee ballots had previously been sent. Section 204B.44 allows an individual to file a petition with any Justice of the Minnesota Supreme Court for the correction of an omission or error of any election judge, county auditor, canvassing board, or other election official in connection with an election for state or federal office. The petition shall describe the error or omission and the correction sought by the petitioner. *Id.* The statute further provides that “[u]pon receipt of the petition the court shall

immediately set a time for a hearing on the matter and order the officer, board or individual charged with the error, omission or wrongful act to correct the error or wrongful act or perform the duty or show good cause for not doing so” and that “[t]he court shall issue its findings and a final order for appropriate relief as soon as possible after the hearing.” *Id.*

Fourth, another mechanism for correcting errors in the election process is contained in Minn. Stat. Ch. 209, which allows an eligible voter or candidate to commence a judicial election contest to challenge, among other things, “an irregularity in the conduct of an election or canvass of votes.” *See* Minn. Stat. § 209.02, subd. 1.

A common thread in the court cases discussed in this opinion is that every lawful vote should be counted. Another common denominator is that the courts grant substantial deference to the decisions of canvassing boards, so long as they act in good faith to ascertain the will of qualified voters. To that end, Minnesota courts have sustained canvassing boards that took action to include votes in a manner not necessarily contemplated under a strict reading of the statutes. *See Andersen* and *Contest of School District Election*. We assume the courts have done so out of a legitimate and abiding concern that, in a democracy, every lawful vote should count.

The *Andersen* case involved the 1962 gubernatorial election. Based on the initial election results certified by all Minnesota county canvassing boards, Karl F. Rolvaag led by 58 votes. Ten counties thereafter amended their election results to correct errors discovered by county election officials. In one county, 31 absentee ballots that were personally delivered to the election judges were originally not counted. The county board, upon reconvening, considered these ballots and counted them. The ten county canvassing boards then certified the results of their recanvasses to the secretary of state. The recanvassed vote resulted in a 142 vote margin for Elmer L. Andersen. Candidate Andersen filed a petition with the Minnesota Supreme Court seeking to compel the State Canvassing Board to accept the amended returns as part of their tabulations. The issue for the court was whether the ten counties could, under a predecessor to the current law now contained at section 204C.39, amend their certified results based on errors in their initial reports.

The Minnesota Supreme Court initially observed:

That there is difficulty in the proper construction of these statutory provisions is evident from the fact that the state canvassing board--composed of two district judges, two members of this court, and the secretary of state, four of whom are learned in the law--has been unable to agree upon their proper application.

*Andersen*, 119 N.W.2d at 6. The court then noted that the action by the counties in submitting amended reports “in all probability” was not timely under the applicable statutes and further indicated that a “better” course of action would have been for a court order to have been obtained to allow the counties to submit the amended returns. The Supreme Court nevertheless ordered that the amended tallies be accepted:

December 10, 2008

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It would have been better if the parties interested had proceeded under § 203.38 [predecessor statute to section 204B.44 authorizing court petition to correct errors], but, keeping in mind that the object of all elections ought to be to declare elected the candidate who receives the most legal votes, it should follow that the method of arriving at the correct result, *after it is in fact accomplished*, should not be permitted to control so as to declare the loser to have won the election. To do so would be to permit the outcome of an election to rest on admitted mistake rather than on known fact.

*Andersen*, 119 N.W.2d at 10-11 (emphasis in original).

Similarly, in *Contest of School District Election*, election judges set aside 29 absentee ballots as “questionable” in a school funding election because the voter’s certificate was not properly placed between the inner and outer envelopes, as required by the voting instructions. The school board, acting as a county canvassing board, approved a resolution that the “questionable” ballots be counted. The inclusion of the absentee ballots in the final results changed the outcome of the election, and a group of voters filed a contest challenging the validity of the disputed ballots. The Court of Appeals sustained the inclusion of the ballots by the county canvassing board, finding that “[a]n election that has resulted in a fair and free expression of the will of legal voters will not be invalidated because of a departure from the statutory regulations governing the conduct of the election.” *Contest of Sch. Dist. Election*, 431 N.W.2d at 915.

We note that the Minnesota Supreme Court in *Andersen* described the filing of a court petition as the “better” course to follow. *Andersen*, 119 N.W.2d at 10. However, it is our opinion based on *Andersen* and *Contest of School District Election* that a reviewing court would likely uphold a determination by the State Canvassing Board to accept amended reports from county canvassing boards that include absentee ballots of voters who complied with all legal requirements but whose votes were improperly rejected by election officials due to administrative errors.

We remind you that the State Canvassing Board operates under the constitution and the statutes as an official body and, accordingly, the Board should adopt a formal resolution concerning any decision it makes regarding the matters discussed in this opinion. We hope this opinion is of assistance to the Board in its deliberations on Friday.

Very truly yours,



ALAN I. GILBERT  
Solicitor General

Abstract of Votes Cast

In the County of \_\_\_\_\_, State of Minnesota,  
At the State General Election held in townships and cities of this county  
On Tuesday, November 4, 2008

As compiled on the \_\_\_ day of \_\_\_\_\_, 200\_\_  
from corrections of obvious errors in counting or recording votes  
for the office of U.S. Senator.





We, the legally constituted canvassing board, certify that we have herein specified the names of the persons receiving voters and the number of votes received by each from corrections of obvious errors in counting or recording votes within the county at the State General Election held on Tuesday, November 4, 2008.

Witness our official signature at \_\_\_\_\_ in \_\_\_\_\_ County this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Member of the County Board

\_\_\_\_\_  
Member of the County Board

\_\_\_\_\_  
County Auditor

\_\_\_\_\_  
District Court Administrator

\_\_\_\_\_  
Mayor, City of \_\_\_\_\_

\_\_\_\_\_  
Qualified voter (appointed to fill vacancy pursuant to law)

State of Minnesota

County of \_\_\_\_\_

I, \_\_\_\_\_, county auditor within and for this county do hereby certify the within and foregoing \_\_\_\_\_ pages to be a full and correct copy of abstract of votes cast for U.S. Senator as compiled from corrections of obvious errors in counting or recording votes held in this county on the 4<sup>th</sup> of November, 2008.

Witness my hand and official seal of office at the county seat in said county this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.