

**The Board on Judicial Standards  
270 Northland Drive, Suite 160  
Mendota Heights, MN 55120**

# **Complaint About Judicial Misconduct**

**Judge's Name: Margaret Chutich**

- I. Breached Minnesota Constitution, Article VII, Section 8. Election returns to secretary of state; board of canvassers while serving on the MN State Canvassing Board as a member of the Supreme Court called to assist the secretary of state.**
- II. Failed as an officer of the court to properly respond to matters raised in Petition to Correct Errors and Omissions**
  - Court file number: A20-1486**

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## **Overview of Allegations**

**Judge Margaret Chutich was one of four judges chosen to serve the People of Minnesota on the board of canvassers, as established in Article VII, Section 8 of the Constitution of Minnesota. As a member of the judiciary, Judge Chutich had a duty to ensure the canvass of the 2020 Minnesota statewide elections was accurate. Judge Chutich was properly served a Petition to Correct Errors and Omissions on November 24, 2020 via email, through the Office of the Minnesota Attorney General, as directed by the Attorney General’s Office.<sup>1</sup> The service of this Petition set in motion a process Judge Chutich was REQUIRED to follow under Article VII Elective Franchise, Section 8, Election returns to secretary of state; board of canvassers.**

**Through this petition, Judge Chutich was made aware of many serious concerns of voters across Minnesota. This Petition included affidavits signed by Minnesota voters who alleged violations of Minnesota law and documents that proved Minnesota statutes were violated across the state by many elected and appointed officials.**

**After becoming aware of these well-supported concerns, Judge Chutich had a constitutional duty to investigate these allegations before agreeing to certify the Minnesota statewide elections.**

**Judge Chutich had a profound duty to properly canvass the statewide elections.**

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<sup>1</sup> Attachment 1: Email dated November 24, 2020 that included the Petition to Correct Errors and Omissions and was served upon Judge Margaret Chutich.

**Judge Chutich had a duty to ensure the data presented to the Statewide Canvassing Board through the Office of the Minnesota Secretary of State and Minnesota Secretary of State Steve Simon, was properly reported and verified.**

**The disposition of the Petition at the Minnesota Supreme Court was, and is, IRRELEVANT to the duty of Judge Chutich to both canvass the election and certify an accurate, lawfully determined just result.**

**If Judge Chutich did not read the Petition served upon him he must be swiftly and publicly disciplined because such a breach of duty would violate many Rules of the Code of Judicial Conduct. Disciplinary measures should create a certainty no judge will ever again shirk this profound constitutional duty to the people of Minnesota.**

**If Judge Chutich did not read the Petition until after the elections were wrongly certified, then Judge Chutich should have asked the canvassing board to reconvene for reconsideration of the certification until a thorough investigation into the allegations was complete.**

**If Judge Chutich read the petition and ignored the affidavits and other data provided, he should be disciplined for failing to comply with the constitutional duty to canvass the statewide elections and certify a correct result.**

**Since the certification of the 2020 Minnesota elections, the election-related data discovered has overwhelmingly proven the certified election results were inaccurate due to the misconduct and failure of election officials at every level across the state.**

**In addition to attaching the Petition with affidavits and exhibits, as served, there is also additional evidence of corruption and illegality included within and attached to this complaint. This information has been discovered since November 24, 2020 and demonstrates the seriousness of the Minnesota State Canvassing Board's failure to verify the reported election results were accurate PRIOR to certification. The data is included with this complaint to prove the seriousness of the matter at hand and to force the Board on Judicial Standards to do its job: hold biased, derelict and irresponsible judges accountable for their failures so as to prevent any further erosion of trust in the judiciary and to encourage other judges to comply with the constitution and law in the future.**

**The statewide canvass of the elections is not a process identified in the Constitution to create an obligatory rubber stamp of approval. The constitutional requirement makes clear this duty is a serious responsibility.**

**The members of the State Canvassing Board are required to assess the information provided to it, evaluate concerns made known to it and then to make a determination whether or not those election results should be certified.**

**The Petition was correct about every issue raised: the 2020 elections should not have been certified. No election should be certified until the work to verify the results is completed.**

**The facts available to the people of Minnesota, the canvassing board and the Judicial Board are limited by the Minnesota Secretary of State. As those facts were revealed, they proved the problems in 2020 were MUCH more serious than realized in the weeks immediately following the election on November 3, 2020.**

**Judge Chutich took an oath to follow the law and uphold the constitution.**

**Judge Chutich failed to comply with the requirements of the canvass.**

**Judge Chutich failed to perform the duties clearly spelled out in the Code of Judicial Conduct.**

**Judge Chutich failed the people of Minnesota and has caused irreparable harm to the judicial department.**

**Judge Chutich must be disciplined by the Board of Judicial Misconduct.**

## History of Events

- 1) Article VII, Section 8 of The Constitution of the State of Minnesota establishes a board of canvassers to canvass all statewide elections and verify the correctness of those results through certification.
  - a) The Minnesota Secretary of State calls to his assistance two or more of the judges of the Minnesota Supreme Court and two disinterested judges of the district court.
    - i) While serving on the Canvassing Board, the judges are NOT hearing a case or controversy, but rather engaging in a profoundly important duty to the people of Minnesota: These judges are responsible to first verify the accuracy of the reported votes in Minnesota's statewide elections and then to certify those results as a true and correct reflection of the votes legally cast in Minnesota.
      - (1) The State Canvassing Board serves a critical role in assuring the Minnesota people that statewide election results have been properly verified. Each member of the canvassing board has a duty to both take personal responsibility for ensuring the election results are accurate and to ensure the board fulfills its duty.
        - (a) The requirement that four judges perform the canvass should provide legitimacy of the result. As former secretary of state Mark Ritchie explained in 2010, **the state canvassing board involvement in a recount process creates a level of transparency that allows every citizen of the state to see that state and local election officials conducted a fair process.**<sup>2</sup>
        - (b) The judges on the Board must understand the importance of their duty to every citizen of the state and to ensure the canvass is thorough and accurate.
      - ii) The Minnesota Code of Judicial Conduct applies to every judge in Minnesota. The Code of Conduct governs a judge's personal and professional conduct. While judges have discretion in "making judicial decisions" the "black letter of the rules" is binding upon them. Violations of the code should be enforced based upon the "seriousness of the transgression, the facts and circumstances at the time, the extent of any past violations and **"the effect of the improper activity upon the judicial system or others."** While many rules were violated by the judges who were selected to serve the people of Minnesota on the State Canvassing Board (and all will be

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<sup>2</sup><https://web.archive.org/web/20220407012254/https://electls.blogs.wm.edu/2010/02/24/intervie-w-with-minnesota-secretary-of-state-mark-ritchie/> Last accessed April 20, 2022.

identified in this complaint) there are five rules that must be stated immediately to frame the seriousness of the failures of each of these judges.

- (1) Every judge is REQUIRED to **comply with the law**. This is the **Rule 1.1**, the very first rule.
- (2) The second rule in the Code, Rule 1.2, requires every judge to promote confidence in the Judiciary. The need to promote public confidence requires the judge to **know, understand and apply the law relevant to the circumstances**.
- (3) Rule 2.3 (A) requires a judge to **fulfill the duties of judicial office, including administrative duties, without bias**. ANY appearance of bias undermines public trust in the judicial department.
- (4) Rule 2.4 requires a judge to **never allow public clamor or fear of criticism to influence judicial conduct**.
- (5) Rule 2.5 requires a judge be competent and diligent when performing judicial and administrative duties. A judge must **know and understand the law so as to properly apply that law when performing judicial duties**. The judge has a duty to seek resources and time needed to acquire the knowledge of the law necessary to perform the required duty.

iii) The following four judges were selected to serve on the Statewide Canvassing Board for the canvass of the November 2020 general election:

- (1) Margaret H. Chutich, Associate Justice, Minnesota Supreme Court
- (2) Gordon L. Moore III, Associate Justice, Minnesota Supreme Court
- (3) Christian Sande, District Court Judge, Hennepin County
- (4) Regina Chu, District Court Judge, Hennepin County

**2) The Petition to Correct Errors and Omissions, filed on November 24, 2020 and served upon each of the members of the State Canvassing Board, alerted each member of the constitutionally mandated statewide canvassing board to the serious, documented violations of Minnesota Statute and other issues with the 2020 Minnesota elections.**

- a) This Petition was **not** a highly partisan attack on the claimed Democrat victories but rather a plea to the only group of people truly able to address the growing crisis in Minnesota. This petition presented page after page of evidence of a broken system and declared:

*“The American people have become increasingly polarized along political lines and are now are more visibly and vocally divided than has been apparent in generations. The vitriol and distrust between the people and elected officials of opposing parties has continued to grow for many*

*reasons, which in isolation may not be relevant, but taken in totality create a singular truth: The importance of election integrity and security has never been more important to the stability of our Republic than it is in this moment.”<sup>3</sup>*

Every member of the State Canvassing Board was required to read that Petition and respond to the facts presented accordingly.

- b) The knowledge of the facts that proved the illegalities that occurred in the Minnesota elections also created a duty of every member of that board to engage in a process to ensure the reported results of the 2020 elections accurately reflected the votes cast by the legal Minnesota voters. **None of the judges entrusted with the statewide canvass should have certified as true the election results that were proven to be unverified.**
- c) Each member of the State Canvassing Board was notified of many legal issues surrounding the 2020 elections and every member of that board had the duty, and more importantly, the opportunity to address those issues immediately. **Each of these judges failed to take immediate action to investigate the documented and supported concerns of Minnesotans.** Each of the judges could have minimized, and possibly prevented, the anger and division that continues to fester across Minnesota because of the 2020 elections.
- d) **The following legal issues were identified in the Petition to Correct Errors and Omissions:**
  - i) The consent decrees signed by Judge Sara Grewing undermined trust in the 2020 elections and the trust in the ability of the judiciary to fairly resolve election matters.
    - (1) **Judge Sara Grewing failed to recuse herself from the consent decree cases, as was required by the Code of Judicial Conduct, Rule 2.11.** Judge Grewing has a long history as a very successful political operative for Senator Amy Klobuchar and former St. Paul Mayor Chris Coleman. She was not a low-level volunteer but rather a highly influential actor for the Minnesota DFL.
    - (2) While the parties to the matter (all known to be either self-proclaimed Democrat elected officials or members of Democrat leaning advocacy groups) were in agreement with the proposed settlement to obliterate the laws that protected the security and ensured the validity of absentee ballots, there were millions of Minnesotans who had no idea what was happening in Ramsey County Court. **Judge Grewing had a responsibility to ensure the manufactured agreement between the non-oppositional parties was limited in scope to the specific parties at the bar. Judge Grewing was responsible to ensure the agreement was not overly broad. She failed.**

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<sup>3</sup> Attachment 2: Kistner v. Simon, Petition to Correct Errors and Omissions, p. 5.

- (a) Those millions of people affected by the consent decrees included ALL the people of Minnesota. The clear majority of the people affected by the consent decrees had NO idea there was litigation about the matters until the cases were resolved. These individuals had a right to be informed of the totality of the circumstances related to the stipulated settlement agreements. Minnesota voters were denied the ability to intervene and oppose the result.
- (3) **The consent decrees violated the separation of powers required by Article III of Minnesota's constitution.** In April and May 2020, the MN legislature rejected the proposal of the secretary of state to transfer irrevocable powers to the office. As soon as the legislature adjourned, Democrat activist groups initiated litigation against the State seeking the election law changes already denied by the Minnesota Legislature. The Democrat MN Secretary of State, represented by Democrat Attorney General Keith Ellison, was more than happy to comply with the demands of his supporters.
- (4) **The alteration of Minnesota election law**, to eliminate the witness requirement for all absentee ballots, opened the door to the absentee ballot process being abused by nefarious actors who were empowered to submit absentee ballots in the name of unsuspecting voters. It also **seriously limited the ability of ballot board members to verify who actually cast each absentee ballot.**
- (5) **The extension of the deadline to receive absentee ballots allowed thousands of ballots to be counted that would have never-before been accepted.**
- ii) Minnesota state officials intentionally created a campaign to drastically increase early absentee voting, knowing this process was altered in a way that a large percentage of Minnesota residents believed was compromised. In 2016, there were 674,566 reported absentee & mail in ballots. In 2020, there were more than 1,909,000 absentee/mail in ballots reported by the MN Secretary of State. **This tremendous increase in absentee ballots**, in a year when the protections to verify the voter named on the inner envelope is the person who cast the absentee ballot were eliminated, **raised serious concerns about the validity and the accuracy of the reported results.**
- (1) There is a clear process required to accept, store, count and tabulate and secure submitted ballots under MN Stat §203B.121. Because of the way ballot boards were administered in 2020, many Minnesotans rightfully questioned the results reported by the secretary of state.
- (a) **The absentee ballot boards across the state saw a decrease in the use of election judges** due to an increase in the number of counties choosing to hire staff to perform the duties required by the ballot boards. Because there is NO party balance required for the staff appointed as members of the ballot boards, the ballot boards lost the appearance of credibility to a very large percentage of Minnesota voters.

- (i) Election judges, whether at a precinct or ballot board location, are required to comply with party balance requirements under 204B.10, Subdivision 5. The party balance requirements do not apply to deputy county auditors and deputy clerks. The decision made by many counties to hire staff so as to avoid the use of election judges, undermined confidence in the 2020 elections.
  - (b) The historic use of election judges to perform the duties required of the ballot boards assured the local residents, who know the neighborhoods and community, were involved throughout the election process at the ballot boards. There is no requirement that hired staff be local. The use of people from outside a ballot board's community resulted in many voters having questions about the accuracy of the counts reported by the ballot boards.
- (2) **How does the State Canvassing Board certify an election when there is no way for that Board, or the public, to access the rosters or SVRS data needed to verify the total number of voters who cast a ballot?** While the State Canvassing Board was required to meet to determine if the election results could accurately be certified on November 24, 2020, the Minnesota Secretary of State was unable, or unwilling, to make publicly available the Minnesota voter histories to verify the reported absentee ballot totals.
- (a) **MN Stat §203B.121 requires the ballot board officials to immediately record the acceptance of a voter's absentee ballot in the SVRS. The language is clear in statute: This is not a debatable point.**
  - (b) The first known Statewide Voter Registration System data list made available by the MN Secretary of State regarding the 2020 elections was released on November 29, 2020: 5 days after the certification.
    - (i) **The SOS Reported Absentee Ballots Cast in 11/03/2020 election: 1.9 million.**
    - (ii) **The number of voters whose Voter History in the SVRS indicated a vote was cast in 11/03/2020 election: 1.2 million.**
    - (iii) **5 days AFTER the State Canvassing Board quickly rubber-stamped the most contested Minnesota elections in history, there were 700,000 FEWER voter histories indicating an absentee ballot was cast by the voter in the SVRS than there were reported ballots cast.**
  - iii) The PER requires Minnesotans be allowed to meaningfully observe the process used to verify the election results in each county. While ALWAYS legally required, it was critically important the PER process in every county be run according to MN Stat §206.89. Unfortunately, the PER process was violated in multiple counties. These violations undermined confidence in the reported results. **Each judge on the State Canvassing Board was made aware of the following information, through the affidavits of Minnesota registered voters submitted with the Petition to Correct**

**Errors and Omissions. These affidavits informed each of the judges on the statewide canvassing board that counties representing at least 47% of the ballots cast in Minnesota did NOT complete a legal Post Election Review process.**

- (1) Many counties refused to allow the legally required public observation of the PER.
  - (a) Hennepin County, the largest MN county with 23% of the reported 2020 votes, closed its building to the public and had a single live stream video, with no sound, covering the entire PER process. It was reported that, eventually, a second similar feed was added. This feed added almost nothing to the observation process.
    - (i) **There was NO possible way the public had any sort of meaningful ability to observe Hennepin County's PER.**
    - (ii) **Minnesota voters who attempted to legally observe the PER process were threatened with security after being told they were harassing an employee of the county who wouldn't provide them with information about the PER. Security was in fact called.**
  - (b) Ramsey County, reporting 9% of Minnesota's total votes, placed a sign on the door of building in which the count was expected to occur stating the PER was cancelled.
    - (i) **The many public observers were turned away.**
  - (c) Dakota County reported 8% of Minnesota's vote total.
    - (i) **Dakota county refused to allow the 20 public observers to be closer than 6 feet and prevented those observers from seeing any ballots.**
  - (d) Scott County reported 3% of Minnesota's total vote.
    - (i) **While 17 observers were present to observe the PER, only 2 observers were allowed in the PER at a time. Observers were kept far enough away from the ballots to ensure they could not see the votes by race.**
  - (e) Olmstead County reported 3% of Minnesota's total vote.
    - (i) **The observers were required to stand, behind Plexiglas, 8 feet or more away from the counting so none of the observers were able to see the ballots as they were being counted.**
  - (f) Rice County reported 1% of Minnesota's total vote.



- (i) **None of the 8 observers were permitted to observe the ballots: observers were required to sit behind a blue line and the view of the counting was obstructed.**
- iv) The affidavits submitted by Minnesota voters included very detailed facts and observations about the many statutory election processes that were violated in counties across the state. The following statutes were violated, according to the affidavits served upon Judge Chutich with the Petition to Correct Errors and Omissions:
  - (1) MN Stat §206.89 Post-Election Review of Voting Systems was not followed in counties across the state. The following provisions of the statute were violated according to submitted affidavits:
    - (a) The MN SOS webpage MUST include the date, time and location of every PER in the state and list the precincts to be hand-counted at each PER.
      - (i) **The Ramsey County PER was not held at the date and time required.**
        - 1. The MN SOS page was never updated to provide the public notice of any other date upon which the PER would be held.
      - (ii) **The precincts to be reviewed at the 87 counties were not included with the corresponding county PER.**
    - (b) The postelection review official MUST conduct the review and MAY be assisted by election judges to assist. The statute does not allow the PER official to use any people other than election judges in the PER.
      - (i) **The observers were informed the PER did not require election judges to be ballot counters.**
    - (c) The party balance requirement under MN Stat §204B.19 DOES APPLY to the election judges used in the PER.
      - (i) **Observers were told repeatedly the party balance rule did not apply to the PER.**
    - (d) The PER results in every precinct must meet the “standard of acceptable performance by voting system” to avoid the counting of additional precincts
      - (i) **Based upon the affidavits of voters and the report of the Dakota County election official it is clear there were serious issues of disagreement in the Dakota County PER.**
      - (ii) **There were counties across MN whose PER counts were questioned.** Those counties included, but were not limited to, Hennepin, Olmstead, Ramsey, Rice and Scott.

- (iii) **The refusal to allow the public to meaningfully observe the counting eliminates the trust in the process completely.**
- (iv) Additional review of three precincts is required within 2 days if the standard of acceptable performance is not met in any one precinct. Based upon the affidavits and documents submitted by Dakota County, it seems clear that 3 additional precincts should have been reviewed. They were not.
  - 1. **There are affidavits that indicate counting forms appeared to have been altered.**
  - 2. **The document provided by an election official from Dakota County the day AFTER the PER was completed clearly creates doubt about the PER work product.**
- (v) Election judges counting votes at the PER are required to use the PER worksheets described in the Post-Election Review Guide.
  - 1. **The affidavits report these record sheets were not filled out properly, and were not consistently preserved as election materials.**
  - 2. **Failure to comply with the laws related to record-keeping**
- (2) The process outlined in MN Stat §204C.21 must be used to count the ballots. The election judges shall take all ballots of the same kind and count them, one office at a time. The statute also requires ballots be counted using the “Stacking method”
  - (a) The affidavits indicate this statute was not consistently followed. **Observers had no way of knowing if the election judges were performing the count properly.**
    - (i) **There were reports and photos of staff not using the stacking method to count ballots.**
    - (ii) **There was no possibility that observers at various PERs would be able to see the stacking process.**
    - (iii) **The precinct and absentee ballots were not necessarily segregated.**
- (3) MN Stat §204C.361 requires the secretary of state to adopt rules according to the Administrative Procedure Act so as to establish uniform counting procedures. There may be rules in a guidebook but the affidavits proved those rules were not applied uniformly across the state.
  - (a) **There are affidavits from multiple Minnesota Voters who reported there were not consistent standards, as required.**

- (b) **The rules for public observation, precinct by precinct, were drastically different.**
  - (c) **Because ballots MUST be counted by precinct, ballots must be segregated by precinct. There was no way for the observers to know which precinct was being counted or whether the ballots were from the same precinct because no meaningful observation opportunities were provided. There was no way for observers to confirm the ballots were segregated by precinct.**
- (4) The MN Statutes, Chapter 14, Administrative Procedure is referred to as the Administrative Procedure Act. This Act is meant to both address and protect procedural rights and improve the government processes that are connected to those rights.
- (a) **The following purposes of the act were not fulfilled because there was no meaningful ability for the public to observe the PERs across the state:**
    - (i) increasing public accountability of government actors;
    - (ii) insuring a uniform minimum procedure;
    - (iii) increasing public access to government information;
    - (iv) simplifying the process of judicial review; and to
    - (v) “strike a balance” between the purposes listed above and the need for efficient, economical and effective government administration.”
- (5) MN Stat §8235.0800 addresses counting and challenging ballots
- (a) “Recount officials SHALL open the SEALED container of ballots...”
    - (i) **There was report after report of the failure of counties to properly secure the ballots.**
- (6) MN Stat §204B.40 and §204C.28 require ballots and election materials to be secured and sealed in containers with the signatures of the election judges who placed them in the container. Sealed envelopes containing voted ballots must be retained unopened. If an envelope is opened for any reason, it must be resealed and signed by the individuals who observed the ballots. **The election officials involved in these counties who failed to secure the ballots made a mockery of ballot security.**
- (a) **The failure of counties to preserve the chain of custody was documented repeatedly.**

- (b) **Ballots were observed in UNSEALED boxes, bins and even a purse, being carried by hand.**
  - (c) **Ballots were brought into a PER in an open envelope.**
  - (d) **Ballots were reported to have been brought to the home of an election judge.**
  - (e) **Workers were seen rifling through boxes and large envelopes outside the election office of a large county.**
- (7) The violations of provisions of MN Stat § 206.89 in PERs across Minnesota included:
- (a) **The failure to post the date and time of each county PER on the MN secretary of state webpage;**
  - (b) **The failure to change the information about scheduled PERs published on the MN secretary of state website**
  - (c) **The failure to post the names of precincts each county is required to count in the postelection review;**
  - (d) **The failure to allow the public to observe the postelection review in the manner required under MN statute;**
  - (e) **The failure to follow the postelection review procedures as detailed in the statute;**
    - (i) **The failure to count both absentee and precinct ballots as required in the PER statute**
      - 1. **Documents appeared to have been altered after the PER to hide failure**
  - (f) **The failure of a county to identify and count 3 additional precincts after one of the required precincts failed the review; and**
  - (g) **The failure to retain all election materials as required.**
- v) The Petition identified several additional allegations voters asserted across Minnesota. These voters personally understood the following were serious threats to the election process:
- (1) The violation of Minnesota Constitution Article III, Separation of Powers caused voters to question the integrity of the process and system and to believe there were strictly partisan motives behind the election changes that occurred in 2020.

- (a) The SOS usurped the legislative power regarding elections despite the fact the legislature specifically denied the SOS effort to grab power in April 2020.
  - (b) The Governor had, and ignored his ability to call a special session if he believed the laws needed to be changed. He did call many special sessions in 2020. None included the need to address election law concerns.
- (2) The statewide voter registration system was not properly updated with regards to address changes, deceased voters, verification of eligibility and same-day registrations.
  - (3) Persons casting more than one ballot in an election or casting a ballot without the legal right to do so had disenfranchised legal voters. This was and is just as serious as voter suppression.
    - (a) Not only did Minnesota strip the protections from the absentee voting process, the state failed to implement any security measures to prevent fraud, including false voter registrations, illegal voting and aiding and abetting false registrations and voting.
  - (4) The use of electronic voting systems that connect to the internet, intranet or both, create a risk to election security: Whenever any machine can connect to the internet, it can be hacked. These connections make it possible for nefarious actors to gather data about who has voted and would enable election operatives to coordinate ballot drives.
  - (5) The modernization of Minnesota’s cybersecurity related to elections and the “Investing in Democracy” campaign created red flags for voters who do not trust technology to be free from corruption. Since the 2020 election we have learned that the Secretary of State was, in fact, not PCI compliant- an inexcusable breach of duty to Minnesotans.
  - (6) The Minnesota Secretary of State reported 87% of eligible Minnesotans were registered to vote in the 2020 election and 90% of registered voters voted in the November 3, 2020 election. Minnesotans recognize the likelihood of the extraordinarily high voting percentages, particularly in areas where we are regularly reminded people are suppressed, are false statistics achieved through vote insertions.
  - (7) Voters across Minnesota reported ballots being mailed to addresses despite the fact the voter did not live at the address.
  - (8) There were clearly identified concerns related to electronic communications being compromised during the counting of ballots cast in the general election.

## **Applicable Provisions of**

# The Constitutions of the United States and Minnesota, Minnesota Statutes and the Code of Judicial Conduct

1. **The United States Constitution** is the supreme law of the United States. Laws may be passed to support and enhance the constitutional framework and provisions but they may neither undermine or alter the intent of the Constitution.

a. **The United States Constitution, Article 1, Section 4, Clause 1** of the US

Constitution states,

*“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.”*

This clause grants each state’s legislature the sole power to regulate the time, place and manner of federal elections within their specific state. The United States Supreme Court has determined this clause relates to the procedures related to an election. The procedures put in place by any state legislature, including Minnesota, may not violate the federal rights of their residents.

While it has been the practice of the legislature to seek approval of the governor when passing election laws related to federal offices, this clause does NOT state the legislature must get affirmation from the executive department of the state. The plain language of the clause should be read to mean the legislature alone prescribes the times, places and manner of federal elections.

3) **The Constitution of the State of Minnesota** is the supreme law of Minnesota and no state law, executive order or other action taken by any one of the three departments of Minnesota, or a combination of those departments, may usurp the Minnesota Constitution.

a) **The Constitution of the State of Minnesota, Article I, Bill of Rights** includes 17 sections, each protecting a fundamental right of Minnesotans. These rights may not be violated by any action or reason other than as is stated in the constitution.

i) **Section 1. Object of government** provides for the establishment and purpose of the government:

*“Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform government whenever required by the public good.”*

The plain language of this section is clear: **Only the People have the inherent political power to alter, modify or reform that government “whenever required by the public good.”** The government, in whole or part, has no authority to ignore any of the requirements of the constitution. When the constitution requires an officer or group of officers to act, they **MUST** act. Only the people, through the process provided within the constitution itself, may alter, modify or reform the government as it was created by the original constitution and subsequent amendments.

The final responsibilities dictated and assigned within the constitution may not be delegated by statute, executive or court order to any other body or person. The persons or entity required to perform an action under the Constitution may receive

assistance in the performance of that duty but may not delegate the final authority or responsibility to an alternative person or entity. Any statute or order related to a constitutional directive must function only to support the enforcement or application of that directive.

ii) **Section 2. Rights and privileges** states,

*“No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the state otherwise than as punishment for a crime of which the party has been convicted.”*

Neither the rights nor privileges secured to Minnesotans through and by the constitution may be limited. Political pressure does not excuse failure to act.

Disenfranchisement of a voter can occur by either the prevention of a voter from voting or from the allowance of an illegal vote to negate the value of legally cast vote.

Clamoring special interest groups must not lead to the disenfranchisement or deprivation of the right and privileges guaranteed to any Minnesotan.

iii) **Section 8. Redress of injuries or wrongs.**

*“Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.”*

The right of each member (citizen) of Minnesota to vote in Minnesota elections is inherent. Disenfranchisement is an injury and a wrong to a voter.

Disenfranchisement occurs when a legal voter is prevented from voting.

No person who is qualified to vote in MN may be disenfranchised of the right to vote by either the government or another person. Disenfranchisement of a



voter also occurs when the government allows an illegal ballot to be cast and counted because every illegal vote cancels out an opposing legal vote. The government has a duty to ensure the individual right of each voter is protected.

Those entrusted with the power to legislate must use the powers delineated within the constitution to establish laws that protect every legal voter from disenfranchisement by any illegal voter or person who may usurp the election process for partisan gains. The balance of interests between securing and protecting the rights of a legal voter and simplifying the process so much that illegal voting becomes possible requires equality between those interests. Reasonable laws working toward that end are required.

An individual voter who brings forth a legitimate cause of action may be entitled to a remedy. **Any remedy granted to a specific voter is required to conform to the laws of Minnesota.** It appears necessary to state the obvious: **A remedy may not be granted that is NOT in conformity with the laws of Minnesota unless a court determines that a provision of a law violates the rights of a protected class of people.**

A court may not throw out a statute that protects the rights of all voters from disenfranchisement because a narrow subset of voters alleges potential harm.

A law is not unconstitutional on its face then or if an even smaller subset of those voters assert they are within a protected class of voters. If a court chooses to order a remedy, the court may not throw out the entire law but

must narrowly tailor a remedy specific to the alleged violation of rights and to the protected class of people to protect their right to vote.

The court can never legitimately act to disenfranchise one group of voters to appease another.

**Any remedy granted for a specific protected class of voters must be limited to that protected class of voters. An overly broad application of any remedy violates the rights of the remaining voters.**

b) **The Constitution of the State of Minnesota, Article III, Distribution of the Powers of Government** provides for the irrevocable separation of powers between the three departments of the government:

i) **Section 1. Division of powers.**

*“The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.”*

These three departments exist to protect the rights of the people of Minnesota. No person who is either elected or hired to serve in one of these departments may assume the duty of another department or person. No two departments may join forces to remove the constitutional authority of the third department. The three departments, together, may neither collude to violate the plain language requirements of any constitutional directive nor act in any manner to undermine the Constitution or the rights of the people in Minnesota.

c) **The Constitution of the State of Minnesota, Article IV, Legislative Department**

dictates the constitutional duties and limitations of the legislature.

i) **Section 6. Qualification of legislators; judging election returns** states:

*“Senators and representatives shall be qualified voters of the state, and shall have resided one year in the state and six months immediately preceding the election in the district from which elected. Each house shall be the judge of the election returns and eligibility of its own members. The legislature shall prescribe by law the manner for taking evidence in cases of contested seats in either house.”*

While each house of the legislative department is responsible for judging the returns of its own members, both houses of the legislative department are charged with prescribing, by law, the requirements for gathering evidence and resolving election contests in either of the houses. The elections described in Article IV are not federal or statewide races. The state legislature has the constitutional authority to determine the process for judging election returns and overseeing election contests specifically limited to the seats in the Minnesota House and the Minnesota Senate.

The federal constitution specifically grants the state legislature the unilateral right to set the times, places and manner of holding elections.

Neither the federal or state constitutions grant the legislature the right to judge the returns of the statewide or local elections.

d) **The Constitution of the State of Minnesota, Article IV, Legislative Department**

i) **Section 8. Oath of office** states:

*“Each member and officer of the legislature before entering upon his duties shall take an oath or affirmation to support the Constitution of the United States, the constitution of this state, and*

*to discharge faithfully the duties of his office to the best of his judgment and ability.”*

Every member of the Minnesota legislature swears an oath both to support the Constitutions of the United States and Minnesota and to discharge the duties of their elected office to “the best of his judgement and ability. This oath obliges the members to conform their actions to the dictates of those documents. No member of the legislature may knowingly violate either of these constitutions.

e) **The Constitution of the State of Minnesota, Article V, Executive Department**

i) **Section 1. Executive officers** establishes the composition of the executive department, which includes the governor, lieutenant governor, secretary of state, auditor and attorney general. Before assuming the duties of their respective offices of the Constitution, each officer, including the attorney general and the secretary of state, must take an oath or affirmation to support the Constitutions of the country and state.

ii) **Section 3. Powers and duties of governor** requires the governor to “take care that the laws be faithfully executed.”

iii) **Section 6. Oath of office of state officers** states:

*“Each officer created by this article before entering upon his duties shall take an oath or affirmation to support the constitution of the United States and of this state and to discharge faithfully the duties of his office to the best of his judgment and ability.”*

When acting in official capacity, the secretary of state represents the executive department and all Minnesotans. The executive department, including the attorney general, must support the Minnesota Constitution and perform all administrative

duties of the office represented. Executive officers may seek to change the laws of Minnesota through the constitutionally required process but may never usurp the constitution.

When an officer of the executive department is bound by the Constitution to perform a specific function, the responsibility to perform that duty may not be delegated to another entity by any one department or by any combination of the three departments. While statutes or orders that facilitate the completion of a task or the fulfillment of a duty may be permissible, those statutes or orders cannot alter the responsibility of the persons or departments assigned a constitutional duty.

f) **The Constitution of the State of Minnesota, Article VI, Judiciary,**

i) **Section 1. Judicial power** establishes the Judiciary Department, including the supreme court and district courts. It allows for the legislature to establish a court of appeals.

ii) **Section 2. Supreme Court** states:

*“The supreme court consists of one chief judge and not less than six nor more than eight associate judges as the legislature may establish. It shall have original jurisdiction in such remedial cases as are prescribed by law, and appellate jurisdiction in all cases, but there shall be no trial by jury in the supreme court.”*

iii) **Section 5. Qualifications; compensation** states:

*“Judges of the supreme court, the court of appeals and the district court and other established courts to be learned in the law.”*

Without question, being learned in the law assumes each judge will have at least the most basic understanding of their profound duty to uphold the federal and state Constitutions. The requirement also assumes that every judge must have knowledge

of the limitations of statutes as they relate to the federal and state constitutions. Judges who are learned in the law should also understand the requirement to use plain-language interpretation of statutes when applying law to the facts of a case. Certainly, judges must be aware of and follow the Judicial Code of Conduct.

iv) **Section 9. Retirement, removal and discipline** states:

*“The legislature may provide by law for retirement of all judges and for the extension of the term of any judge who becomes eligible for retirement within three years after expiration of the term for which he is selected. The legislature may also provide for the retirement, removal or other discipline of any judge who is disabled, incompetent or guilty of conduct prejudicial to the administration of justice.”*

Judges who ignore the law, whether by intent or ignorance, should be disciplined or removed, depending upon the seriousness of the judicial conduct. Any judge who acts in a way that is prejudicial to the administration of justice should be removed because of the abuse of power. The taint of bias cannot be removed from the robe. Neither nonfeasance nor malfeasance by a judicial officer should be tolerated by the legislature, the judicial board or the people of Minnesota. Unfortunately, the people rarely learn of judicial misconduct because both the political system and the press now regularly fail to expose circumstances in which judges fail in their duty to the court and the people.

g) **The Constitution of the State of Minnesota, Article VII Elective Franchise**

establishes both the constitutional right to vote, and the limitations to those rights.

i) **Section 1. Eligibility; place of voting; ineligible persons** states:

*“Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct. The place of voting by one otherwise qualified who has changed his residence within 30 days preceding the election shall be prescribed by law. The following persons shall not be entitled or permitted to vote at any election in this state: A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; a person under guardianship, or a person who is insane or not mentally competent.”*

The Minnesota legislature has passed, and the governor has signed. Legislation that violates this provision of the constitution. Persons under guardianship are placed under guardianship because a court has determined that person to be incapable of making decisions independently and is incapable of caring for themselves without supervision. This law has been supported by the courts despite its clear violation of the constitution. Conservatorship is not mentioned in this section so a person under conservatorship would be entitled to vote. Allowing people who have been adjudicated mentally incompetent to decide where to live or work or spend money to vote violates the constitution. This legislation has opened the door to illegal voting by group home staff, friends and relatives who vote twice by deciding how “help” a vulnerable adult cast that vote. Any person who votes twice by using the voting right of a vulnerable adult should be charged with abuse of that vulnerable adult.

ii) **Section 2. Residence** states:

*“For the purpose of voting no person loses residence solely by reason of his absence while employed in the service of the United States; nor while engaged upon the waters of this state or of the United States; nor while a student in any institution of learning; nor*

*while kept at any almshouse or asylum; nor while confined in any public prison. No soldier, seaman or marine in the army or navy of the United States is a resident of this state solely in consequence of being stationed within the state.”*

A person who maintains a permanent residence with their family while temporarily away from home in the military, on the waters, attending school, in a hospital or in prison does not lose their residency status. For the purpose of voting, a person’s residence is the person’s permanent address.

iii) **Section 8. Election returns to secretary of state; board of canvassers** clearly

states the constitutional provisions for the canvass of Minnesota statewide elections:

*“The returns of every election for officeholders elected statewide shall be made to the secretary of state who shall call to his assistance two or more of the judges of the supreme court and two disinterested judges of the district courts. They shall constitute a board of canvassers to canvass the returns and declare the result within three days after the canvass.”*

When an election is local, the people who live in that community, often know each other and can provide trusted oversight of the process of the election and the canvassing of the returns. Statewide elections span vast geographical areas thereby limiting the people’s oversight of the election returns to a very small segment of the vote. When an election is statewide, there is often a natural tension between the interests of voters in one area of the state as opposed to voters in other areas of the state: rural and urban voters often have different priorities. With no trusted oversight, the ability of any group of voters to inherently trust other voters, whose interests may be adverse, will diminish.



The constitution, as originally ratified, did not include the board of canvassers provision. Article V, Section 2 of the constitution was amended on November 6, 1877 to establish the process, timeline and specific people responsible to canvass the statewide election returns and ensure the integrity of statewide elections.

The statewide canvass is not an optional process: The State Canvassing Board has a specific and clear duty to perform the statewide canvass and to verify the reported results of the election are accurate.

It bears repeating: The secretary of state, generally responsible to be the gatherer and keeper of the election records, must call to his assistance two or more judges of the supreme court and two disinterested judges of the district courts to canvass the statewide elections.

There can be no misunderstanding of the importance of this duty: ***The establishment of the board of canvassers is one of very few circumstances in which the Constitution of Minnesota requires a limited and specific group of individuals to perform a specific task.*** This is a serious responsibility, required to confirm the statewide elections held in Minnesota were properly administered and declared. ***Five people, and ONLY those five people, have a non-transferrable constitutional duty to canvass the returns of the state and certify the veracity of the reported returns.***

**(1) In Minnesota, the board of canvassers is constitutionally required to review the county canvassing information provided to it by each of the counties and certify the results within three days of the canvass.**

(a) The certification is part of the process established in 1877 when Minnesota voters passed an amendment to the constitution creating a board of canvassers.

(i) The 1876 presidential election resulted in 4 states presenting dueling elector slates to congress- resulting in an inability of congress to declare a winner of the election. There was no constitutional mechanism for congress to determine which slate of electors from each state reflected the results of the state. In January 1877 Congress passed the Act for an Electoral Commission, responsible to decide which slate of electors would be accepted.

(ii) Prior to the 1877 national conflict, many states already had a board of canvassers to certify their statewide elections. Minnesota amended its constitution to include the board of canvassers in 1877. The certification of the statewide results is meant to send a clear message to the voters that the data submitted was accurate.

(iii) In 2008, Minnesota was confronted with a highly controversial recount in the US Senate race. The statewide board of canvassers oversaw the final process to determine the results.

1. In 2010, then Secretary of State Mark Ritchie was interviewed about that process and stated:

*“The basis structure of the recount process is built upon the idea of a State Canvassing Board. This board, approved by Minnesota voters as a constitutional amendment in 1877, is chaired by the Secretary of State who “calls to his assistance” two state Supreme Court Justices and two district court judges. Many of the key procedures for conducting the hand recount were developed in the late 1800s and early 1900s, when all elections were hand-counted. Every election year we have lots of recounts at the local level, sometimes as many as two dozen, so the process has been perfected over the years. What was the most important was the fact that Minnesota never abandoned paper ballots. This meant that every citizen of the state could follow the recount and see that the local and state officials were conducting a fair process. This level of transparency is the key to our success. I have inherited a very strong system that I would recommend to other states.”<sup>4</sup>*

2. As former SOS Ritchie indicated, **the active engagement of the State Canvassing Board was integral to proving the legitimacy of the results** of the 2008 senate election to Minnesotans.

h) **The Constitution of the State of Minnesota, Article VIII, Impeachment and Removal From Office**, delineates the impeachment process.

- i) **Section 1. Impeachment powers** vests the power of impeachment with the MN House of Representatives, requiring a simple majority of its members. If the House votes to impeach an officer or elected official, the Minnesota Senate then has the delineated power to hold a trial and remove that person. The Senate must convict the impeached individual by a two-thirds vote of the senators present. A judge who chooses to ignore partisan attacks on the election process should be removed from the bench. A judge who ignores affidavits and physical proof that Minnesota Statutes were violated should be removed from the bench.

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<sup>4</sup><https://web.archive.org/web/20220407012254/https://electls.blogs.wm.edu/2010/02/24/intervie-w-with-minnesota-secretary-of-state-mark-ritchie/> Last accessed April 20, 2022.

ii) **Section 2. Officers subject to impeachment; grounds; judgment** states:

*“The governor, secretary of state, auditor, attorney general and the judges of the supreme court, court of appeals and district courts may be impeached for corrupt conduct in office or for crimes and misdemeanors; but judgment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit in this state. The party convicted shall also be subject to indictment, trial, judgment and punishment according to law.”*

Impeachment and trial in the legislature are not criminal proceedings. These proceedings serve to address malfeasance and nonfeasance of officers and elected officials, including judges. A judge who fails to follow the law should be disciplined for such corrupt conduct. If it is determined that any judge colluded with other judges to ignore serious violations of election law, all should be disciplined accordingly.

i) **The Constitution of the State of Minnesota, Article IX, Amendments to the Constitution**

i) **Section 1. Amendments; ratification** states:

*“A majority of the members elected to each house of the legislature may propose amendments to this constitution. Proposed amendments shall be published with the laws passed at the same session and submitted to the people for their approval or rejection at a general election. If a majority of all the electors voting at the election vote to ratify an amendment, it becomes a part of this constitution. If two or more amendments are submitted at the same time, voters shall vote for or against each separately.”*

The people of Minnesota are vested with the sole power to alter the Constitution by a simple majority, at a general election, if presented with proposals initiated in the legislature.

ii) **Section 2. Constitutional convention** allows two-thirds of each house of the legislature to submit a question to approve the calling of a convention to amend

the constitution to the electors via the general election. The people must agree to allow the legislature to hold a constitutional convention. There is a very high bar, procedurally to amend the constitution and it may NOT be done without the consent of the governed. If a majority of the voting electors agree to allow the convention, the legislature must schedule it. Delegates are chosen in same manner as members of the House. The convention must be held within three months of the election of delegates.

iii) **Section 3. Submission to people of constitution drafted at convention.**

*“A convention called to revise this constitution shall submit any revision to the people for approval or rejection at the next general election held not less than 90 days after submission of the revision. If three-fifths of all the electors voting on the question vote to ratify the revision, it becomes a new constitution of the state of Minnesota.”*

If the delegates to a constitutional convention agree to propose revisions to the constitution, it MUST be submitted to the people for approval with 90 days. If fewer than 60% of the voters vote to approve the revisions, the constitution will not be amended.

The process for altering the rules of Minnesota’s constitution is, intentionally, a weighty matter. Any member of the legislative, executive or judicial departments that seeks to alter the constitution for political gain, outside of the clearly delineated process in Article IX, would be in violation of their oath of office and their duties to the people of Minnesota.

**3. Minnesota State Statutes.** There is a very large body of election law that governs the administration of elections and the delivery of information about those elections to the secretary of state. These laws were established by the legislature, many of them decades ago, to protect the rights of all Minnesotans. Compliance with these laws is necessary through every step of the election process from voter registrations and voter registration purging to the appointment of election judges to the verification of all election equipment to the security and chain of custody of the ballots to the allowance of public participation in and observation of the election process to the reporting of all election data and results to the protection of all election materials to ensuring the involvement of the people in the canvass and post-election reviews to hearing election contests and allegations of election law violation. ANY violation of Minnesota’s election laws casts a shadow on the results and should never be tolerated. Due to issues raised in the 2016 and 2018 elections, conservatives began to pay more attention to the risks of election tampering in Minnesota in 2020.

a. **MN Stat §203B.001 Election Law Applicability** states:

*“The Minnesota Election Law is applicable to voting by absentee ballot unless otherwise provided in this chapter.”*

All Minnesota election laws apply to the ballot boards unless a Minnesota statute specifically alters the processes or duties of the ballot boards.

b. **MN Stat §203B.121 Ballot Boards** governs the establishment and the duties of the Board. It also governs the processes and timelines that **MUST** be used when the ballot board members receive, accept, open, store, count, tabulate and report on Absentee ballots. The statute reads:

**203B.121 BALLOT BOARDS.**

**Subdivision 1.** Establishment; applicable laws.

(a) The governing body of each county, municipality, and school district with responsibility to accept and reject absentee ballots must, by ordinance or resolution, establish a ballot board. The board must consist of a sufficient number of election judges appointed as provided in sections 204B.19 to 204B.22. The board may include deputy county auditors or deputy city clerks who have received training in the processing and counting of absentee ballots. Each member of the ballot board must be provided adequate training on the processing and counting of absentee ballots, including but not limited to instruction on accepting and rejecting absentee ballots, storage of absentee ballots, timelines and deadlines, the role of the ballot board, procedures for opening absentee ballot envelopes, procedures for counting absentee ballots, and procedures for reporting absentee ballot totals.

(b) Each jurisdiction must pay a reasonable compensation to each member of that jurisdiction's ballot board for services rendered during an election.

(c) Except as otherwise provided by this section, all provisions of the Minnesota Election Law apply to a ballot board.

**Subd. 2.**Duties of ballot board; absentee ballots.

(a) The members of the ballot board shall take possession of all signature envelopes delivered to them in accordance with section 203B.08. Upon receipt from the county auditor, municipal clerk, or school district clerk, two or more members of the ballot board shall examine each signature envelope and shall mark it accepted or rejected in the manner provided in this subdivision. Election judges performing the duties in this section must be of different major political parties, unless they are exempt from that requirement under section 205.075, subdivision 4, or section 205A.10, subdivision 2.

(b) The members of the ballot board shall mark the signature envelope "Accepted" and initial or sign the signature envelope below the word "Accepted" if a majority of the members of the ballot board examining the envelope are satisfied that:

(1) the voter's name and address on the signature envelope are the same as the information provided on the absentee ballot application;

(2) the voter signed the certification on the envelope;

(3) the voter's Minnesota driver's license, state identification number, or the last four digits of the voter's Social Security number are the same as a number on the voter's absentee ballot application or voter record. If the number does not match, the election judges must compare the signature provided by the applicant to determine whether the ballots were returned by the same person to whom they were transmitted;

(4) the voter is registered and eligible to vote in the precinct or has included a properly completed voter registration application in the signature envelope;

(5) the certificate has been completed as prescribed in the directions for casting an absentee ballot; and

(6) the voter has not already voted at that election, either in person or, if it is after the close of business on the seventh day before the election, by absentee ballot.

The signature envelope from accepted ballots must be preserved and returned to the county auditor.

(c)(1) If a majority of the members of the ballot board examining a signature envelope find that an absentee voter has failed to meet one of the requirements provided in paragraph (b), they shall mark the signature envelope "Rejected," initial or sign it below the word "Rejected," list the reason for the rejection on the envelope, and return it to the county auditor. There is no other reason for rejecting an absentee ballot beyond those permitted by this section. Failure to place the ballot within the secrecy envelope before placing it in the outer white envelope is not a reason to reject an absentee ballot.

(2) If an envelope has been rejected at least five days before the election, the envelope must remain sealed and the official in charge of the ballot board shall provide the voter with a replacement absentee ballot and signature envelope in place of the rejected ballot.

(3) If an envelope is rejected within five days of the election, the envelope must remain sealed and the official in charge of the ballot board must attempt to contact the voter by telephone or e-mail to notify the voter that the voter's ballot has been rejected. The official must document the attempts made to contact the voter.

(d) The official in charge of the absentee ballot board must mail the voter a written notice of absentee ballot rejection between six and ten weeks following the election. If the official determines that the voter has otherwise cast a ballot in the election, no notice is required. If an absentee ballot arrives after the deadline for submission provided by this chapter, the notice must be provided between six to ten weeks after receipt of the ballot. A notice of absentee ballot rejection must contain the following information:

(1) the date on which the absentee ballot was rejected or, if the ballot was received after the required deadline for submission, the date on which the ballot was received;

(2) the reason for rejection; and

(3) the name of the appropriate election official to whom the voter may direct further questions, along with appropriate contact information.

(e) An absentee ballot signature envelope marked "Rejected" may not be opened or subject to further review except in an election contest filed pursuant to chapter 209.

**Subd. 3.**Record of voting.

(a) When applicable, the county auditor or municipal clerk must immediately record that a voter's absentee ballot has been accepted. After the close of business on the seventh day before the election, a voter whose record indicates that an absentee ballot has been accepted must not be permitted to cast another ballot at that election. In a state primary, general, or state special election



for federal or state office, the auditor or clerk must also record this information in the statewide voter registration system.

(b) The roster must be marked, and a supplemental report of absentee voters who submitted a voter registration application with their ballot must be created, no later than the start of voting on election day to indicate the voters that have already cast a ballot at the election. The roster may be marked either:

- (1) by the county auditor or municipal clerk before election day;
- (2) by the ballot board before election day; or
- (3) by the election judges at the polling place on election day.

The record of a voter whose absentee ballot was received after the close of business on the seventh day before the election is not required to be marked on the roster or contained in a supplemental report as required by this paragraph.

**Subd. 4.**Opening of envelopes.

After the close of business on the seventh day before the election, the ballots from secrecy envelopes within the signature envelopes marked "Accepted" may be opened, duplicated as needed in the manner provided in section 206.86, subdivision 5, initialed by the members of the ballot board, and deposited in the appropriate ballot box. If more than one voted ballot is enclosed in the ballot envelope, the ballots must be returned in the manner provided by section 204C.25 for return of spoiled ballots, and may not be counted.

**Subd. 5.**Storage and counting of absentee ballots.

(a) On a day on which absentee ballots are inserted into a ballot box, two members of the ballot board must:

- (1) remove the ballots from the ballot box at the end of the day;
- (2) without inspecting the ballots, ensure that the number of ballots removed from the ballot box is equal to the number of voters whose absentee ballots were accepted that day; and
- (3) seal and secure all voted and unvoted ballots present in that location at the end of the day.

(b) After the polls have closed on election day, two members of the ballot board must count the ballots, tabulating the vote in a manner that indicates each vote of the voter and the total votes cast for each candidate or question. In state primary and state general elections, the results must indicate the total votes cast for each candidate or question in each precinct and report the vote totals tabulated for each precinct. The count must be recorded on a summary statement in substantially the same format as provided in section 204C.26. The ballot board shall submit at least one completed summary statement to the county auditor or municipal clerk. The county auditor or municipal clerk may require the ballot board to submit a sufficient number of completed summary statements to comply with the provisions of section 204C.27, or the county auditor or municipal clerk may certify reports containing the details of the ballot board summary statement to the recipients of the summary statements designated in section 204C.27.

In state primary and state general elections, these vote totals shall be added to the vote totals on the summary statements of the returns for the appropriate precinct. In other elections, these vote totals may be added to the vote totals on the summary statement of returns for the appropriate precinct or may be reported as a separate total.

The count shall be public. No vote totals from ballots may be made public before the close of voting on election day.

(c) In addition to the requirements of paragraphs (a) and (b), if the task has not been completed previously, the members of the ballot board must verify as soon as possible, but no later than 24 hours after the end of the hours for voting, that voters whose absentee ballots arrived after the rosters were marked or supplemental reports were generated and whose ballots were accepted did not vote in person on election day. An absentee ballot submitted by a voter who has voted in person on election day must be rejected. All other accepted absentee ballots must be opened, duplicated if necessary, and counted by members of the ballot board. The vote totals from these ballots must be incorporated into the totals with the other absentee ballots and handled according to paragraph (b).

- c. **MN Stat §204B.47 Alternative Election Procedures; duties of secretary of state** is an exceedingly clear statute that governs the ability of the secretary of state to adopt alternative procedures to administer an election when a current law CANNOT be implemented. The statute is written as follows:

**204B.47 ALTERNATIVE ELECTION PROCEDURES; DUTIES OF SECRETARY OF STATE.**

When a provision of the Minnesota Election Law cannot be implemented as a result of an order of a state or federal court, the secretary of state shall adopt alternative election procedures to permit the administration of any election affected by the order. The procedures may include the voting and handling of ballots cast after 8:00 p.m. as a result of a state or federal court order or any other order extending the time established by law for closing the polls. The alternative election procedures remain in effect until the first day of July following the next succeeding final adjournment of the legislature, unless otherwise provided by law or by court order.

A plain language interpretation of this statute dictates the secretary of state may NOT adopt alternative procedures when the current law can be implemented.

- d. **MN Stat § 206.89 Postelection review of voting systems** governs the review of the election results across Minnesota. This is NOT a permissive statute as to certification of any election in Minnesota. No canvass in Minnesota is complete, and no time for a notice

of contest begins, until all reviews required under this section have been completed. The statute reads as follows:

**206.89 POSTELECTION REVIEW OF VOTING SYSTEMS.**

**Subdivision 1. Definition.** For purposes of this section "postelection review official" means the county auditor, unless the county auditor designates the municipal clerk as the "postelection review official" within 24 hours after the canvass of the state general election.

**Subd. 2. Selection for review; notice.** At the canvass of the state primary, the county canvassing board in each county must set the date, time, and place for the postelection review of the state general election to be held under this section. The postelection review must not begin before the 11th day after the state general election and must be complete no later than the 18th day after the state general election.

At the canvass of the state general election, the county canvassing boards must select the precincts to be reviewed by lot. The ballots to be reviewed for a precinct include both the ballots counted at the polling place for that precinct and the absentee ballots counted centrally by a ballot board for that precinct. The county canvassing board of a county with fewer than 50,000 registered voters must conduct a postelection review of a total of at least two precincts. The county canvassing board of a county with between 50,000 and 100,000 registered voters must conduct a review of a total of at least three precincts. The county canvassing board of a county with over 100,000 registered voters must conduct a review of a total of at least four precincts, or three percent of the total number of precincts in the county, whichever is greater. At least one precinct selected in each county must have had more than 150 votes cast at the general election.

The county auditor must notify the secretary of state of the precincts that have been chosen for review and the time and place the postelection review for that county will be conducted, as soon as the decisions are made. If the selection of precincts has not resulted in the selection of at least four precincts in each congressional district, the secretary of state may require counties to select by lot additional precincts to meet the congressional district requirement. The secretary of state must post this information on the office website.

**Subd. 2a. Exception.** No review is required under this section if the election for the office will be subject to a recount as provided in section 204C.35, subdivision 1.

**Subd. 3. Scope and conduct of review.** The county canvassing board shall appoint the postelection review official as defined in subdivision 1. The postelection review must be conducted of the votes cast for president or governor; United States senator; and United States representative. The postelection review official may conduct postelection review of the votes cast for additional offices.

The postelection review must be conducted in public at the location where the voted ballots have been securely stored after the state general election or at another location chosen by the county canvassing board. The postelection review official for each precinct selected must conduct the postelection review and may

be assisted by election judges designated by the postelection review official for this purpose. The party balance requirement of section 204B.19 applies to election judges designated for the review. The postelection review must consist of a manual count of the ballots used in the precincts selected and must be performed in the manner provided by section 204C.21. The postelection review must be conducted in the manner provided for recounts under section 204C.361 to the extent practicable. The review must be completed no later than two days before the meeting of the state canvassing board to certify the results of the state general election.

**Subd. 4. Standard of acceptable performance by voting system.** A comparison of the results compiled by the voting system with the postelection review described in this section must show that the results of the electronic voting system differed from the manual count of the offices reviewed by no more than two votes in a precinct where fewer than 1,200 voters cast ballots, three votes in a precinct where between 1,200 and 1,599 voters cast ballots, four votes in a precinct where between 1,600 and 1,999 voters cast ballots, or five votes in a precinct where 2,000 or more voters cast ballots. Valid votes that have been marked by the voter outside the vote targets or using a manual marking device that cannot be read by the voting system must not be included in making the determination whether the voting system has met the standard of acceptable performance for any precinct.

**Subd. 5. Additional review.** (a) If the postelection review in one of the reviewed precincts reveals a difference greater than the thresholds specified in subdivision 4, the postelection review official must, within two days, conduct an additional review of the races indicated in subdivision 3 in at least three precincts in the same jurisdiction where the discrepancy was discovered. If all precincts in that jurisdiction have been reviewed, the county auditor must immediately publicly select by lot at least three additional precincts for review. The postelection review official must complete the additional review within two days after the precincts are selected and report the results immediately to the county auditor. If the second review in any of the reviewed precincts also indicates a difference in the vote totals compiled by the voting system that is greater than the thresholds specified in subdivision 4, the county auditor must conduct a review of the ballots from all the remaining precincts in the county for the races indicated in subdivision 3. This review must be completed and the results must be reported to the secretary of state within one week after the second review was completed.

(b) If the results from the countywide reviews from one or more counties comprising in the aggregate more than ten percent of the total number of persons voting in the election clearly indicate that an error in vote counting has occurred, the secretary of state must notify the postelection review official of each county in the district that they must conduct manual recounts of all the ballots in the district for the affected office using the procedure outlined in section 204C.35. The recount must be completed and the results reported to the appropriate canvassing board within two weeks after the postelection review official received notice from the secretary of state.

**Subd. 6. Report of results.** Upon completion of the postelection review, the postelection review official must immediately report the results to the county auditor. The county auditor must then immediately submit the results of the postelection review electronically or in writing to the secretary of state not later than two days before the State Canvassing Board meets to canvass the state general election. The secretary of state shall report the results of the postelection review at the meeting of the State Canvassing Board to canvass the state general election.

**Subd. 7. Update of vote totals.** If the postelection review under this section results in a change in the number of votes counted for any candidate, the revised vote totals must be incorporated in the official result from those precincts.

**Subd. 8. Effect on voting systems.** If a voting system is found to have failed to record votes accurately and in the manner provided by the Minnesota Election Law, the voting system must not be used at another election until it has been examined and recertified by the secretary of state. If the voting system failure is attributable to either its design or to actions of the vendor, the vendor must forfeit the vendor bond required by section 206.57 and the performance bond required by section 206.66.

**Subd. 9. Costs of review.** The costs of the postelection review required by this section must be allocated as follows:

(1) the governing body responsible for each precinct selected for review must pay the costs incurred for the review conducted under subdivision 2 or 5, paragraph (a);

(2) the vendor of the voting system must pay any costs incurred by the secretary of state to examine and recertify the voting system; and

(3) the secretary of state must reimburse local units of government for the costs of any recount required under subdivision 5, paragraph (b).

**Subd. 10. Time for filing election contest.** The appropriate canvass is not completed and the time for notice of a contest of election does not begin to run until all reviews under this section have been completed.

In order for the PER to be performed properly, there are several other statutes which

MUST be followed. The relevant portions of those statutes are as follows:

**204B.19 ELECTION JUDGES; QUALIFICATIONS.**

**Subdivision 1. Individuals qualified to be election judges.** Except as provided in subdivision 6, any individual who is eligible to vote in this state is qualified to be appointed as an election judge.

**Subd. 2. Individuals not qualified to be election judges.** (a) Except as provided in paragraph (b), no individual shall be appointed as an election judge for any precinct if that individual:

(1) is unable to read, write, or speak the English language;

(2) is the spouse; parent, including a stepparent; child, including a stepchild; or sibling, including a stepsibling; of any election judge serving in the same precinct or of any candidate at that election;

(3) is domiciled, either permanently or temporarily, with any candidate on the ballot at that election; or

(4) is a candidate at that election.

(b) Individuals who are related to each other as provided in paragraph (a), clause (2), may serve as election judges in the same precinct, provided that they serve on separate shifts that do not run concurrently.

**Subd. 4. Additional qualifications permitted; examination.** The appointing authority may establish additional qualifications which are not inconsistent with the provisions of this section and which relate to the ability of an individual to perform the duties of an election judge. The appointing authority may examine any individual who seeks appointment as an election judge to determine whether the individual meets any qualification established under this section.

**Subd. 5. Party balance requirement.** No more than half of the election judges in a precinct may be members of the same major political party unless the election board consists of an odd number of election judges, in which case the number of election judges who are members of the same major political party may be one more than half the number of election judges in that precinct.

#### **204C.21 COUNTING BALLOTS; PILING SYSTEM.**

**Subdivision 1. Method.** The election judges shall take all the ballots of the same kind and count the votes cast for each office or question, beginning with the first office or question on the ballot. They shall make one pile of the ballots for each candidate who received votes for that office, or one pile for the "Yes" votes and one pile for the "No" votes on a question. They shall make a pile of totally defective ballots and a pile of totally blank ballots. They shall make a pile of ballots that are not totally defective but are defective with respect to the office or question being counted and a pile of ballots that are not totally blank but are blank with respect to the office or question being counted. After the separation into piles, the election judges shall examine each pile and remove and place in the proper pile any ballots that are found in the wrong pile. The election judges shall count the totally blank and totally defective ballots and set them aside until the counting is over for that ballot. In conducting the count of blank ballots, election judges may presume that the total count provided for sealed prepackaged ballots is correct. The election judges may pile ballots crosswise in groups of 25 in the same pile to facilitate counting. When their counts agree, the election judges shall announce the number of ballots in each pile, and shall write the number in the proper place on the summary statements.

The election judges shall then return all the counted ballots, and all the partially defective or partially blank ballots, to the original pile to be separated and counted in the same manner for the next office or question.

**Subd. 2. More than one candidate to be elected; piling.** Where more than one candidate is to be elected to an office, the votes for that office shall be counted and canvassed in the manner provided in subdivision 1 as far as practicable.

**Subd. 3. Primary.** At a primary the election judges shall first separate the partisan ballots by major political party and then count the votes for each office as provided in subdivision 1. The nonpartisan primary ballots shall be counted separately after the partisan primary ballots have been counted.

#### **204C.361 RULES FOR RECOUNTS.**

(a) The secretary of state shall adopt rules according to the Administrative Procedure Act establishing uniform recount procedures. All recounts provided for by sections 204C.35, 204C.36, and 206.88, shall be conducted in accordance with these rules.

(b) Notwithstanding Minnesota Rules, part 8235.0800, 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.

#### **8235.0800 COUNTING AND CHALLENGING BALLOTS.**

**Subpart 1. Breaks in counting process.** Recount officials may not take a break for a meal or for the day prior to the completion of the sorting, counting, review, and labeling of challenges, and secure storage of the ballots for any precinct. All challenged ballots must be stored securely during breaks in the counting process.

**Subp. 2. Sorting ballots.** Ballots must be recounted by precinct. The recount official shall open the sealed container of ballots and recount them in accordance with Minnesota Statutes, section 204C.22. The recount official must review each ballot and sort the ballots into piles based upon the recount official's determination as to which candidate, if any, the voter intended to vote for: one pile for each candidate that is the subject of the recount and one pile for all other ballots (those for other candidates, overvotes, undervotes, etc.). During the sorting, a candidate or candidate's representative may challenge the ballot if he or she disagrees with the recount official's determination of for whom the ballot should be counted and whether there are identifying marks on the ballot. 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. Challenges may not be automatic or frivolous and the challenger must state the basis for the challenge pursuant to Minnesota Statutes, section 204C.22. Challenged ballots must be placed into separate piles, one for ballots challenged by each candidate. A challenge is frivolous if it is based upon an alleged identifying mark other than a signature or an identification number written anywhere on the ballot or a name written on the ballot completely outside of the space for the name of a write-in candidate.

**Subp. 3. Counting ballots.** Once ballots have been sorted, the recount officials must count the piles using the stacking method described in Minnesota Statutes, section 204C.21. A candidate or candidate's representative may immediately request to have a pile of 25 counted a second time if there is not agreement as to the number of votes in the pile.

**Subp. 4. Reviewing and labeling challenged ballots.** After the ballots from a precinct have been counted, the recount official may review the challenged ballots with the candidate or the candidate representative. The candidate representative may choose to withdraw any challenges previously made. The precinct name, the reason for the challenge, and the name of the person challenging the ballot (or the candidate that person represents), and a sequential number must be marked on the back of each remaining challenged ballot before it is placed in an envelope marked "Challenged Ballots." 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. The recount official may make copies of the challenged ballots. After the count of votes for all precincts has been determined during that day of counting, the challenged ballot envelope must be sealed and kept secure for presentation to the canvassing board.

### **204C.33 CANVASS OF STATE GENERAL ELECTIONS.**

**Subdivision 1. County canvass.** The county canvassing board shall meet at the county auditor's office between the third and tenth days following the state general election. After taking the oath of office, the board shall promptly and publicly canvass the general election returns delivered to the county auditor. Upon completion of the canvass, the board shall promptly prepare and file with the county auditor a report which states:

- (a) the number of individuals voting at the election in the county and in each precinct;
- (b) the number of individuals registering to vote on election day and the number of individuals registered before election day in each precinct;
- (c) the names of the candidates for each office and the number of votes received by each candidate in the county and in each precinct;
- (d) the number of votes counted for and against a proposed change of county lines or county seat; and
- (e) the number of votes counted for and against a constitutional amendment or other question in the county and in each precinct.

The result of write-in votes cast on the general election ballots must be compiled by the county auditor before the county canvass, except that write-in votes for a candidate for federal, state, or county office must not be counted unless the candidate has timely filed a request under section 204B.09, subdivision 3. The county auditor shall arrange for each municipality to provide an adequate number of election judges to perform this duty or the county auditor may appoint additional election judges for this purpose. The county auditor may open the envelopes or containers in which the voted ballots have been sealed in order to count and record the write-in votes and must reseat the voted ballots at the conclusion of this process. The county auditor must prepare a separate report



of votes received by precinct for write-in candidates for federal, state, and county offices who have requested under section 204B.09 that votes for those candidates be tallied.

Upon completion of the canvass, the county canvassing board shall declare the candidate duly elected who received the highest number of votes for each county and state office voted for only within the county. The county auditor shall transmit a certified copy of the county canvassing board report for state and federal offices to the secretary of state by messenger, express mail, or similar service immediately upon conclusion of the county canvass.

**Subd. 2. County canvassing board reports; public availability.** The county auditor of each county shall provide a certified copy of the county canvassing board report to anyone who requests it upon payment to the auditor of costs of reproduction actually incurred by the auditor's office. The auditor shall not take into account the general office expenses or other expenses.

**Subd. 3. State canvass.** The State Canvassing Board shall meet at a public meeting space located in the Capitol complex area on the third Tuesday following the state general election to canvass the certified copies of the county canvassing board reports received from the county auditors and shall prepare a report that states:

- (1) the number of individuals voting in the state and in each county;
- (2) the number of votes received by each of the candidates, specifying the counties in which they were cast; and
- (3) the number of votes counted for and against each constitutional amendment, specifying the counties in which they were cast.

All members of the State Canvassing Board shall sign the report and certify its correctness. The State Canvassing Board shall declare the result within three days after completing the canvass.

- e. **MN Stat §201.061 Registration on or Before Election Day** governs all voter registration in Minnesota. The statute, which is of tremendous concern to voters who recognize the ambiguous and unconstitutional provisions of this statute contributed the improper certification of the 2020 Minnesota statewide elections, is as follows:

**201.061 REGISTRATION ON OR BEFORE ELECTION DAY.**

**Subdivision 1. Prior to election day.** (a) At any time except during the 20 days immediately preceding any regularly scheduled election, an eligible voter or any individual who will be an eligible voter at the time of the next election may register to vote in the precinct in which the voter maintains residence by completing a voter registration application as described in section 201.071, subdivision 1. A completed application may be submitted:

- (1) in person or by mail to the county auditor of that county or to the Secretary of State's Office; or

(2) electronically through a secure website that shall be maintained by the secretary of state for this purpose, if the applicant has an e-mail address and provides the applicant's verifiable Minnesota driver's license number, Minnesota state identification card number, or the last four digits of the applicant's Social Security number.

A registration that is received in person or by mail no later than 5:00 p.m. on the 21st day preceding any election, or a registration received electronically through the secretary of state's secure website no later than 11:59 p.m. on the 21st day preceding any election, shall be accepted. An improperly addressed or delivered registration application shall be forwarded within two working days after receipt to the county auditor of the county where the voter maintains residence. A state or local agency or an individual that accepts completed voter registration applications from a voter must submit the completed applications to the secretary of state or the appropriate county auditor within ten calendar days after the applications are dated by the voter.

(b) An application submitted electronically under paragraph (a), clause (2), may only be transmitted to the county auditor for processing if the secretary of state has verified the application information matches the information in a government database associated with the applicant's driver's license number, state identification card number, or Social Security number. The secretary of state must review all unverifiable voter registration applications submitted electronically for evidence of suspicious activity and must forward any such application to an appropriate law enforcement agency for investigation.

An individual may not electronically submit a voter registration application on behalf of any other individual.

(c) For purposes of this section, mail registration is defined as a voter registration application delivered to the secretary of state, county auditor, or municipal clerk by the United States Postal Service or a commercial carrier.

**Subd. 1a. Incomplete registration by mail.** If the county auditor determines that a voter who has submitted a voter registration application by mail has not previously voted in this state for a federal office and has also not presented a document authorized for election day registration in section 201.061, subdivision 3, to the auditor, and the county auditor is unable to verify the voter's driver's license, state identification, or last four digits of the voter's Social Security number as provided by the voter on the voter registration application, then the county auditor must notify the voter that the registration is incomplete and to complete registration by using one of the following methods:

(1) presenting to the auditor more than 20 days before the election a document authorized for election day registration in section 201.061, subdivision 3;

(2) registering in person before or on election day;

(3) if voting by absentee ballot or by mail, following election day registration procedures for absentee voters as described in section 203B.04, subdivision 4; or

(4) providing proof of residence by any of the methods authorized for election day registration in section 201.061, subdivision 3.

**Subd. 2.**[Repealed, 1990 c 585 s 34]

**Subd. 3. Election day registration.** (a) An individual who is eligible to vote may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence, by completing a registration application, making an oath in the form prescribed by the secretary of state and providing proof of residence. An individual may prove residence for purposes of registering by:

(1) presenting a driver's license or Minnesota identification card issued pursuant to section 171.07;

(2) presenting any document approved by the secretary of state as proper identification;

(3) presenting one of the following:

(i) a current valid student identification card from a postsecondary educational institution in Minnesota, if a list of students from that institution has been prepared under section 135A.17 and certified to the county auditor in the manner provided in rules of the secretary of state; or

(ii) a current student fee statement that contains the student's valid address in the precinct together with a picture identification card; or

(4) having a voter who is registered to vote in the precinct, or an employee employed by and working in a residential facility in the precinct and vouching for a resident in the facility, sign an oath in the presence of the election judge vouching that the voter or employee personally knows that the individual is a resident of the precinct. A voter who has been vouched for on election day may not sign a proof of residence oath vouching for any other individual on that election day. A voter who is registered to vote in the precinct may sign up to eight proof-of-residence oaths on any election day. This limitation does not apply to an employee of a residential facility described in this clause. The secretary of state shall provide a form for election judges to use in recording the number of individuals for whom a voter signs proof-of-residence oaths on election day. The form must include space for the maximum number of individuals for whom a voter may sign proof-of-residence oaths. For each proof-of-residence oath, the form must include a statement that the individual: (i) is registered to vote in the precinct or is an employee of a residential facility in the precinct, (ii) personally knows that the voter is a resident of the precinct, and (iii) is making the statement on oath. The form must include a space for the voter's printed name, signature, telephone number, and address.

The oath required by this subdivision and Minnesota Rules, part 8200.9939, must be attached to the voter registration application.

(b) The operator of a residential facility shall prepare a list of the names of its employees currently working in the residential facility and the address of the residential facility. The operator shall certify the list and provide it to the appropriate county auditor no less than 20 days before each election for use in election day registration.

(c) "Residential facility" means transitional housing as defined in section 256E.33, subdivision 1; a supervised living facility licensed by the commissioner of health under section 144.50, subdivision 6; a nursing home as

defined in section 144A.01, subdivision 5; a residence registered with the commissioner of health as a housing with services establishment as defined in section 144D.01, subdivision 4; a veterans home operated by the board of directors of the Minnesota Veterans Homes under chapter 198; a residence licensed by the commissioner of human services to provide a residential program as defined in section 245A.02, subdivision 14; a residential facility for persons with a developmental disability licensed by the commissioner of human services under section 252.28; setting authorized to provide housing support as defined in section 256I.03, subdivision 3; a shelter for battered women as defined in section 611A.37, subdivision 4; or a supervised publicly or privately operated shelter or dwelling designed to provide temporary living accommodations for the homeless.

(d) For tribal band members, an individual may prove residence for purposes of registering by:

(1) presenting an identification card issued by the tribal government of a tribe recognized by the Bureau of Indian Affairs, United States Department of the Interior, that contains the name, address, signature, and picture of the individual; or

(2) presenting an identification card issued by the tribal government of a tribe recognized by the Bureau of Indian Affairs, United States Department of the Interior, that contains the name, signature, and picture of the individual and also presenting one of the documents listed in Minnesota Rules, part 8200.5100, subpart 2, item B.

(e) A county, school district, or municipality may require that an election judge responsible for election day registration initial each completed registration application.

**Subd. 4. Registration by election judges; procedures.** Registration at the polling place on election day shall be conducted by the election judges. Before registering an individual to vote at the polling place, the election judge must review any list of absentee election day registrants provided by the county auditor or municipal clerk to see if the person has already voted by absentee ballot. If the person's name appears on the list, the election judge must not allow the individual to register or to vote in the polling place. The election judge who registers an individual at the polling place on election day shall not handle that voter's ballots at any time prior to the opening of the ballot box after the voting ends. Registration applications and forms for oaths shall be available at each polling place. If an individual who registers on election day proves residence by oath of a registered voter, the form containing the oath shall be attached to the individual's registration application. Registration applications completed on election day shall be forwarded to the county auditor who shall add the name of each voter to the registration system unless the information forwarded is substantially deficient. A county auditor who finds an election day registration substantially deficient shall give written notice to the individual whose registration is found deficient. An election day registration shall not be found deficient solely because the individual who provided proof of residence was ineligible to do so.

**Subd. 5. Unregistered voters; penalty.** No election judge in any precinct in which registration is required may receive the vote at any election of any individual whose name is not registered in a manner specified in section 201.054, subdivision 1 or not recorded under section 203B.19. A violation of this subdivision is a felony.

**Subd. 6. Precinct map.** Except as otherwise provided by this subdivision, the county auditor shall provide each precinct with an accurate precinct map or precinct finder to assist the election judges in determining whether an address is located in that precinct. A county auditor may delegate this responsibility as provided in section 201.221, subdivision 4, to a municipal or school district clerk who prepares precinct maps as provided in section 204B.14, subdivision 5.

**Subd. 7. Record of attempted registrations.** The election judge responsible for election day registration shall attempt to keep a record of the number of individuals who attempt to register on election day but who cannot provide proof of residence as required by this section. The record shall be forwarded to the county auditor with the election returns for that precinct.

**Subd. 8. Website security.** (a) The secretary of state shall maintain a log of each Internet Protocol address used to submit a voter registration application electronically under subdivision 1, paragraph (a), clause (2), and must monitor the log, volume of website use, and other appropriate indicators for suspicious activity. Evidence of suspicious activity that cannot be resolved by the secretary of state must be forwarded to an appropriate law enforcement agency for investigation.

(b) The electronic registration system must be secure. The website shall maintain the confidentiality of all users and preserve the integrity of the data submitted. The secretary of state shall employ security measures to ensure the accuracy and integrity of voter registration applications submitted electronically pursuant to this section. All data sent and received through the website must be encrypted.

(c) The secretary of state must provide ongoing testing and monitoring to ensure continued security. The secretary of state must work with the chief information officer as defined in section 16E.01, subdivision 1, or another security expert to annually assess the security of the system. The security assessment must include a certification signed by the secretary of state that states that adequate security measures are in place. The certification must also be signed by the chief information officer or another security expert affirming that the assessment is accurate. The secretary of state must submit the security assessment to the legislative auditor and to the chairs and ranking minority members of the committees in the senate and house of representatives with primary jurisdiction over elections by January 1 of each year, except that the first annual security assessment must be submitted by September 30, 2014, and no report is required for January 1, 2015.

(d) In developing the electronic voter registration system, the secretary of state must consult with the chief information officer or the chief's designee to ensure the site is secure.

- f. **MN Stat §201.021 Permanent Registration System** establishes the single, official permanent system of voter registration in Minnesota. This statute requires there by ONE unique identifier for EACH legally registered voter in the state. The secretary of state is responsible to define, maintain and administer this system. The statute states as follows:

**201.021 PERMANENT REGISTRATION SYSTEM.**

A permanent system of voter registration by county is established, with a single, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level that contains the name and registration information of every legally registered voter in the state, and assigns a unique identifier to each legally registered voter in the state. The interactive computerized statewide voter registration list constitutes the official list of every legally registered voter in the state. The county auditor shall be chief registrar of voters and the chief custodian of the official registration records in each county. The secretary of state is responsible for defining, maintaining, and administering the centralized system.

- g. **MN Stat §201.022 Statewide Registration System** regulates the actions that must be taken, allowed and facilitated to ensure the permanent system is an accurate and current reflection of the registered voters in Minnesota. The statute states as follows:

**201.022 STATEWIDE REGISTRATION SYSTEM.**

**Subdivision 1. Establishment.** The secretary of state shall maintain a statewide voter registration system to facilitate voter registration and to provide a central database containing voter registration information from around the state. The system must be accessible to the county auditor of each county in the state. The system must also:

- (1) provide for voters to submit their voter registration applications to any county auditor, the secretary of state, or the Department of Public Safety;
- (2) provide for the definition, establishment, and maintenance of a central database for all voter registration information;
- (3) provide for entering data into the statewide registration system;
- (4) provide for electronic transfer of completed voter registration applications from the Department of Public Safety to the secretary of state or the county auditor;
- (5) assign a unique identifier to each legally registered voter in the state;
- (6) provide for the acceptance of the Minnesota driver's license number, Minnesota state identification number, and last four digits of the Social Security number for each voter record;
- (7) coordinate with other agency databases within the state;

(8) allow county auditors and the secretary of state to add or modify information in the system to provide for accurate and up-to-date records;

(9) allow county auditors, municipal and school district clerks, and the secretary of state to have electronic access to the statewide registration system for review and search capabilities;

(10) provide security and protection of all information in the statewide registration system and ensure that unauthorized access is not allowed;

(11) provide access to municipal clerks to use the system;

(12) provide a system for each county to identify the precinct to which a voter should be assigned for voting purposes;

(13) provide daily reports accessible by county auditors on the driver's license numbers, state identification numbers, or last four digits of the Social Security numbers submitted on voter registration applications that have been verified as accurate by the secretary of state; and

(14) provide reports on the number of absentee ballots transmitted to and returned and cast by voters under section 203B.16.

The appropriate state or local official shall provide security measures to prevent unauthorized access to the computerized list established under section 201.021.

**Subd. 2. Rules.** The secretary of state shall make permanent rules necessary to administer the system required in subdivision 1.

**Subd. 3. Consultation with local officials.** The secretary of state must consult with representatives of local election officials in the development of the statewide voter registration system.

- h. **MN Stat §13D.01** applies to the meetings of county and municipal boards when they are transacting public business. Using plain language as required under **MN Stat. §645.08** **Canons of Construction**, a meeting occurs when members of an assembly (in this case a ballot board) come together for a common purpose (in this case to accept or reject ballots). Quorum to conduct the business of accepting or rejecting any particular ballot is reached when a majority of the members participating in that meeting are present. There must be at least two members of a ballot board in every meeting to perform this task to ensure no bias or cheating influence the process to accept or reject that ballot. Absentee Ballot Boards are established by counties to perform statutory duties on behalf of the public. These duties are fundamental to our system of governance and there can be no

shortcuts when securing this system. The Boards meet on prescribed days and members of those boards are required to vote on every absentee ballot presented to them. The accepting of these ballots is public business. Ballot boards are created to transact public business. There is no way for the public to know if these boards are following the law if the public is excluded from observing the process. The statute states as follows:

13D.01 MEETINGS MUST BE OPEN TO THE PUBLIC; EXCEPTIONS.

**Subdivision 1. In executive branch, local government.** All meetings, including executive sessions, must be open to the public

(a) of a state

(2) board,

when required or permitted by law to transact public business in a meeting;

(b) of the governing body of a

(1) school district however organized,

(2) unorganized territory,

(3) county,

(4) statutory or home rule charter city,

(5) town, or

(6) other public body;

(c) of any

(1) committee,

(2) subcommittee,

(3) board,

(4) department, or

(5) commission,

of a public body; and

**Subd. 2. Exceptions.** This chapter does not apply

(1) to meetings of the commissioner of corrections;

(2) to a state agency, board, or commission when it is exercising quasi-judicial functions involving disciplinary proceedings; or

(3) as otherwise expressly provided by statute.



**Subd. 3. Subject of and grounds for closed meeting.** Before closing a meeting, a public body shall state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.

**Subd. 4. Votes to be kept in journal or minutes.** (a) The votes of the members of the state agency, board, commission, or department; or of the governing body, committee, subcommittee, board, department, or commission on an action taken in a meeting required by this section to be open to the public must be recorded in a journal or minutes.

(b) The vote of each member must be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute.

**Subd. 5. Public access to journal and minutes.** The journal or any minutes used to record votes of a meeting subject to this chapter must be open to the public during all normal business hours where records of the public body are kept.

**Subd. 6. Public copy of members' materials.** (a) In any meeting which under subdivisions 1, 2, 4, and 5, and section 13D.02 must be open to the public, at least one copy of any printed materials relating to the agenda items of the meeting prepared or distributed by or at the direction of the governing body or its employees and:

- (1) distributed at the meeting to all members of the governing body;
- (2) distributed before the meeting to all members; or
- (3) available in the meeting room to all members;

shall be available in the meeting room for inspection by the public while the governing body considers their subject matter.

(b) This subdivision does not apply to materials classified by law as other than public as defined in chapter 13, or to materials relating to the agenda items of a closed meeting held in accordance with the procedures in section 13D.03 or other law permitting the closing of meetings.

There can be no dispute the public is permitted to observe the processing of all ballots, particularly when accepting ballots. While the votes are not allowed to be tabulated until after the polls close on election day, the number of ballots accepted or rejected are being counted. In addition to the requirement stated in MN Stat §203B.121, subd. 5, the following are the applicable sections of Minnesota statutes that support this requirement:

#### **204B.45 MAIL BALLOTING.**

**Subd. 2. Procedure.** Notice of the election and the special mail procedure must be given at least ten weeks prior to the election. Not more than 46 days nor later than 14 days before a regularly scheduled election and not more than 30 days nor later than 14 days before any other election, the auditor shall mail ballots by nonforwardable mail to all voters registered in the city, town, or unorganized territory. No later than 14 days before the election, the auditor must make a subsequent mailing of ballots to those voters who register to vote after the initial mailing but before the 20th day before the election. Eligible voters not registered at the time the ballots are mailed may apply for ballots as provided in chapter 203B. Ballot return envelopes, with return postage provided, must be preaddressed to the auditor or clerk and the voter may return the ballot by mail or in person to the office of the auditor or clerk. The auditor or clerk must appoint a ballot board to examine the mail and absentee ballot return envelopes and mark them "accepted" or "rejected" within three days of receipt if there are 14 or fewer days before election day, or within five days of receipt if there are more than 14 days before election day. The board may consist of deputy county auditors or deputy municipal clerks who have received training in the processing and counting of mail ballots, who need not be affiliated with a major political party. Election judges performing the duties in this section must be of different major political parties, unless they are exempt from that requirement under section 205.075, subdivision 4, or section 205A.10.

If the ballot is accepted, the county auditor or municipal clerk must mark the roster to indicate that the voter has already cast a ballot in that election. After the close of business on the seventh day before the election, the ballots from return envelopes marked "Accepted" may be opened, duplicated as needed in the manner provided by section 206.86, subdivision 5, initialed by the members of the ballot board, and deposited in the ballot box.

In all other respects, the provisions of the Minnesota Election Law governing deposit and counting of ballots apply.

The mail and absentee ballots for a precinct must be counted together and reported as one vote total. No vote totals from mail or absentee ballots may be made public before the close of voting on election day.

**Subd. 3. Election Law applied; rules.** The Minnesota Election Law is applicable to mail balloting except as provided by this section or by rules adopted by the secretary of state, but only paper ballots may be used. The secretary of state shall adopt rules for the conduct of mail balloting, including instructions to voters, procedures for challenge of voters, public observation of the counting of ballots, and procedures for proper handling and safeguarding of ballots to ensure the integrity of the election.

#### **206.85 OFFICIALS IN CHARGE OF COUNTING.**

**Subdivision 1. Duties of responsible official.** The official in charge of elections in a municipality where an electronic voting system is used at a counting center must:

(1) be present or personally represented throughout the counting center proceedings;

(2) be responsible for acquiring sufficient facilities and personnel to ensure timely and lawful processing of votes;

(3) be responsible for the proper training of all personnel participating in counting center proceedings and deputize all personnel who are not otherwise election judges;

(4) maintain actual control over all proceedings and be responsible for the lawful execution of all proceedings in the counting center whether or not by experts;

(5) be responsible for assuring the lawful retention and storage of ballots and readouts; and

(6) arrange for observation by the public and by candidates' representatives of counting center procedures by publishing the exact location of the counting center in a legal newspaper at least once during the week preceding the week of election and in the newspaper of widest circulation once on the day preceding the election, or once the week preceding the election if the newspaper is a weekly.

The official may make arrangements with news reporters which permit prompt reporting of election results but which do not interfere with the timely and lawful completion of counting procedures.

**Subd. 2. Counting center in more than one municipality.** If a counting center serves more than one municipality, the county auditor of the county where the center is located is in sole charge of overall administration of the center and must:

(1) establish procedures to implement the timely and lawful completion of the counting center proceedings;

(2) coordinate training of all counting center personnel and require additional training as needed;

(3) ask the county attorney, at least 30 days prior to an election, whether circumstances require that the municipalities sharing the use of a counting center resolve their respective duties and financial responsibilities by execution of a joint powers agreement pursuant to section 471.59;

(4) coordinate, and if necessary, exercise the duties imposed by this section on the official in charge of elections in a municipality where an electronic voting system is used;

(5) limit the number of ballots to be counted at a single counting center to no more than 100,000.

#### **206.86 COUNTING ELECTRONIC VOTING SYSTEM RESULTS.**

**Subd. 3. Counting centers open; security.** Proceedings at the counting center are open to the public. They are under the direction of the official in charge of elections in each municipality where an electronic voting system is used and must be under the observation of at least two election judges who are not of the same major political party. Only persons employed and authorized for the purpose may touch any ballot card, ballot container, or statement of absentee ballot results.

**Subd. 4. Preliminary tabulation.** When the ballot cards arrive at a counting center where votes are counted by a multiple use computer, they must be given to the counting center election judges. For purposes of this subdivision a multiple use computer is automatic tabulating equipment which can perform functions other than counting votes. If the election judges at the precinct have determined that any ballot cards are not defective by reason of improper write-in votes, those ballot cards may be counted by the automatic tabulating equipment before inspection by the counting center election judges. The results of this preliminary tabulation may be made available to the public if the tabulation is clearly identified as unofficial.

After any preliminary tabulation has been made, the ballot cards must be returned to the counting center election judges who shall examine them for physical defects and prepare replacements, if necessary, as provided in subdivision 5.

**Subd. 6. Final tabulation.** A final tabulation of ballots must be obtained from the automatic tabulating equipment after all damaged or defective cards have been replaced. The final tabulation, together with the returns of write-in and absentee votes and the precinct summary statements prepared in accordance with section 204C.24, constitute the official return of each precinct. Upon completion of the count the returns are open to the public. The automatic tabulating equipment must be programmed to provide a complete recapitulation of all ballots processed. It may be programmed to provide information in addition to that required in the official return of each precinct, if the officials in charge of elections deem that advisable in order to provide election statistics to evaluate the performance of the electronic voting system or other aspects of the election.

#### **204C.07 CHALLENGERS.**

**Subdivision 1. Partisan elections.** At an election to fill partisan offices, the chair of an authorized committee of each major political party may appoint by written certificate voters from that political party to act as challengers of voters at the polling place for each precinct. Only one challenger from each major political party for each precinct shall be allowed to remain in the polling place at one time.

- i. **MN Statutes Chapter 204C. Election day activities** applies to all elections in MN except as provided by law. MN Stat §204C.02 states: *“This chapter applies to all elections held in this state except as otherwise provided by law.”*
- j. **MN Stat §204C.19** governs all election day activities including counting votes and the penalty for violations of counting procedures. The count SHALL be held at the polling place AND SHALL be public. Election judges SHALL count the ballots and

party balance shall apply. The counting occurs AFTER all voting has concluded. The statute states as follows:

**204C.19 COUNTING VOTES; PENALTY.**

**Subdivision 1.** Procedure. When the hours for voting have ended and all voting has concluded, the election judges shall immediately count the votes cast at the election. The count shall be held at the polling place and shall be public. It shall be continued without intermission until it is completed and the results are declared, except that the election judges may recess for meals or other necessary purposes. During the count no one except the election judges shall handle the ballots. Any other individual who touches or interferes with ballots during the counting or any election judge who permits such touching or interference is guilty of a misdemeanor.

**Subd. 2.** Counting ballots. Except as otherwise provided in this subdivision, the ballot boxes shall be opened, the votes counted, and the total declared. The election judges on each counting team shall be evenly divided between the major political parties. The numbers entered on the summary sheet shall not be considered final until the ballots in all the boxes have been counted and corrections have been made if ballots have been deposited in the wrong boxes.

**Subd. 3.** Premature disclosure of count results. No count results from any precinct shall be disclosed by any election judge or other individual until all count results from that precinct are available, nor shall the public media disclose any count results from any precinct before the time when voting is scheduled to end in the state.

k. In addition to **MN Stat §203B121, Subd. 3(a)**, there are several statutes that require the members of the ballot board to immediately, or upon receipt, record the acceptance of an absentee ballot in the statewide voter registration system. These statutes include:

**i. MN State § 203B.065 Using the Registration System**

*“...Upon receipt of a returned absentee ballot for a state primary or state general election, the county auditor or municipal clerk shall record in the statewide voter registration system that the voter has returned the ballot.*

*Upon receipt of notice that the ballot board has accepted or rejected the absentee ballot for a state primary or state general election, the county auditor or municipal clerk shall record in the statewide voter registration system whether the ballot was accepted or rejected, and if rejected, the reason for rejection.”*

ii. **MN Stat §203B.081 Locations and methods for absentee voting in person. Subd.**

**3. Alternative procedure** requires:

*“(d) The election official must immediately record that the voter has voted in the manner provided in section 203B.121, subdivision 3.*

*“(e) The election duties required by this subdivision must be performed by the county auditor, municipal clerk, or a deputy of the auditor or clerk.”*

1. There are several statutes that govern the right of the public to seek and receive lists of registered voters. Access to these lists allows voters and candidates to consider whether the reported election results seem valid.

**MN Stat §201.091 Registered voter lists; registration places** governs the right of the public to receive these lists. The relevant portions of that statute state the following:

**201.091 REGISTERED VOTER LISTS; REPORTS; REGISTRATION PLACES.**

**Subd. 4. Public information lists.** The county auditor shall make available for inspection a public information list which must contain the name, address, year of birth, and voting history of each registered voter in the county. The list must not include the party choice of any voter who voted in a presidential nomination primary. The telephone number must be included on the list if provided by the voter. The public information list may also include information on voting districts. The county auditor may adopt reasonable rules governing access to the list. No individual inspecting the public information list shall tamper with or alter it in any manner. No individual who inspects the public information list or who acquires a list of registered voters prepared from the public information list may use any information contained in the list for purposes unrelated to elections, political activities, or law enforcement. The secretary of state may provide copies of the public information lists and other information from the statewide registration system for uses related to elections, political activities, or in response to a law enforcement inquiry from a public official concerning a failure to comply with any criminal statute or any state or local tax statute.

Before inspecting the public information list or obtaining a list of voters or other information from the list, the individual shall provide identification to the public official having custody of the public information list and shall state in writing that any information obtained from the list will not be used for purposes unrelated to elections, political activities, or law enforcement. Requests to examine or obtain information from the public information lists or the statewide registration system must be made and processed in the manner provided in the rules of the secretary of state.

Upon receipt of a statement signed by the voter that withholding the voter's name from the public information list is required for the safety of the voter or the

voter's family, the secretary of state and county auditor must withhold from the public information list the name of a registered voter.

**Subd. 5.** Copy of list to registered voter. The county auditors and the secretary of state shall provide copies of the public information lists in electronic or other media to any voter registered in Minnesota within ten days of receiving a written or electronic request accompanied by payment of the cost of reproduction. The county auditors and the secretary of state shall make a copy of the list available for public inspection without cost. An individual who inspects or acquires a copy of a public information list may not use any information contained in it for purposes unrelated to elections, political activities, or law enforcement.

**Subd. 9.** Restricted data. A list provided for public inspection or purchase, or in response to a law enforcement inquiry, must not include a voter's date of birth or any part of a voter's Social Security number, driver's license number, identification card number, military identification card number, or passport number.

**MN Stat §203B.12** Absentee voter names states:

**Subd. 7. Names of persons; rejected absentee ballots.** (a) The names of voters who have submitted an absentee ballot to the county auditor or municipal clerk that has not been accepted may not be made available for public inspection until the close of voting on election day.

(b) After the close of voting on election day, the lists must be available to the public in the same manner as public information lists in section 201.091, subdivisions 4, 5, and 9.

**Subd. 8. Names of persons; accepted absentee ballots.** For all elections where use of the statewide voter registration system is required, the secretary of state must maintain a list of voters who have submitted absentee ballots that have been accepted. For all other elections, the county auditor or municipal clerk must maintain a list of voters who have submitted absentee ballots that have been accepted. The lists must be available to the public in the same manner as public information lists in section 201.091, subdivisions 4, 5, and 9.

The plain language of this subdivision specifically identifies a timeline for the release of the names of voters whose ballots were rejected: The list of names of these voters may not be released to the public until the close of voting on election day and **MUST** be made available after the close of polls on election day.

It is nonsensical that the names of voters whose ballots were rejected would be made available to the public but the names of voters whose ballots were accepted would not be made available to the public in the same manner.

4. **Minnesota State judges are bound by the Code of Judicial Conduct and will be subject to disciplinary measures if they violate this code.**

- a. The Preamble to the Judicial Code of Conduct sets the bar for the judiciary very high, as it should. Every single sentence of the Preamble should be read, slowly, to allow contemplation about the incredible power the judiciary exerts through its existence. Every judge entrusted to wear the robe of justice must wade deeply into the court, deep enough to wash away the biases, both intrinsic and extrinsic, that seek to sway the judge from the path of justice. People have always wanted to believe in the integrity of the judicial department. Today, we NEED to believe in this integrity.

*“An independent, fair, and impartial judiciary is indispensable to our system of justice.”*

*“The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society.”*

*“Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law.”*

*“Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.”*

*“Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives.”*

*“They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.”*

*“The Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates.”*

*“It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and*



*personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.*

b. Scope of the Code of Judicial Conduct

i. Canons provide “overarching principles that all judges must observe.”

1. Canons are used for guidance in applying the Code.

ii. Rules apply to judges and any violation of a rule or rules serve as the basis for discipline.

1. The consideration of a rule violation must include an analysis of the constitutional requirements, statutes, other court rules, decisional law and regard for all relevant circumstances.

iii. Comments on the rules provide guidance on application of the rules.

1. Comments are aspirational.

iv. Terminology includes definitions to assist in the interpretation of the Code of Judicial Conduct.

c. Terminology

i. "Impartial," "impartiality," and "impartially" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

ii. "Impropriety" includes conduct that violates the law, court rules, or provisions of the Code, and conduct that undermines a judge's independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

- iii. "Independence" means a judge's freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.
- iv. "Integrity" means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.
- v. "Knowingly," "knowledge," "known," and "knows" mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Rules 2.11, 2.15, 2.16, 3.6, and 4.1.
- vi. "Law" encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 4.1, 4.2, 4.4, and 4.5.

d. **Canon 1** states:

*“A Judge Shall Uphold and Promote the Independence, Integrity, and Impartiality of the Judiciary, and Shall Avoid Impropriety and the Appearance of Impropriety”*

i. **Rule 1.1 Compliance with the Law** states:

*“A judge shall comply with the law, including the Code of Judicial Conduct.”*

ii. **Rule 1.2 Promoting Confidence in the Judiciary** states

*“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”*

e. **Canon 2** states:

*“A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently.”*

**i. Rule 2.1 Giving Precedence to the Duties of Judicial Office** states:

*“The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.”*

**ii. Rule 2.2 Impartiality and Fairness** states:

*“A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”*

**iii. Rule 2.3 Bias, Prejudice, and Harassment**

1. Paragraph (A) states: *“A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.”*
2. Paragraph (B) states: *“A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.”*
3. Paragraph (C) states: *“A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, against parties, witnesses, lawyers, or others based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.”*
4. Paragraph (D) states: *“The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.”*

**iv. Rule 2.4 External Influences on Judicial Conduct**

1. **Paragraph (A)** states: *“A judge shall not be swayed by public clamor or fear of criticism.”*

2. **Paragraph (B) states:** *“A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.”*
3. **Paragraph (C) states:** *“A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.”*

**v. Rule 2.5 Competence, Diligence, and Cooperation**

1. **Paragraph (A) states:** *“A judge shall perform judicial and administrative duties competently and diligently.”*

**vi. Rule 2.6 Ensuring the Right to Be Heard**

1. Paragraph (A) states: *“A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.”*
2. Paragraph (B) states: *“A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.”*

**vii. Rule 2.7 Responsibility to Decide**

*“A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.”*

**viii. Rule 2.15 Responding to Judicial and Lawyer Misconduct**

1. Paragraph (A) states: *“A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.”*
2. Paragraph (B) states: *“A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.”*

3. Paragraph (C) states: *“A judge who receives credible information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.”*
4. Paragraph (D) states: *“A judge who receives credible information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.”*

**ix. Rule 2.16 Cooperation with Disciplinary Authorities**

1. Paragraph (A) states: *“A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.”*
2. Paragraph (B) states: *“A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.”*

**f. Canon 4 states:**

*“A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.”*

**i. Rule 4.1 Political and Campaign Activities of Judges and Judicial Candidates in General**

1. Paragraph (A) (9) states, *“Except as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:*

*knowingly, or with reckless disregard for the truth, make any false or misleading statement”*

## **Discussion**

The State Canvassing Board has one constitutional duty: Canvass the returns of the state and ensure those election returns were accurate before they were certified.

This duty to canvass the election results rests SOLELY in the hands of the two Minnesota Supreme Court Justices and the two disinterested judges called to assist the secretary of state.

Each judge is required to be diligent in all actions related to this duty.

Each judge must perform the canvass in a manner that demonstrates an absence of bias.

Each judge, in what was the most questioned election of our lifetimes, was REQUIRED to do the job assigned to him/her in the Minnesota Constitution.

Each judge failed to be diligent.

Each judge failed to demonstrate an absence of bias.

Each judge failed to remain above the public clamor.

Each judge failed to ignore social and political pressure.

Each judge failed the court.

Each judge failed the people of Minnesota.

Each judge failed.

The Petition to Correct Errors and Omissions included numerous affidavits, submitted by Minnesotans who took the time to attend PERs, serve as election judges and run as candidates. These people believed in the Minnesota system and hoped their support of its integrity was justified. When these citizens exercised their civic duty to engage in the process created to ensure accountability of election officials, they were disappointed and angry. These citizens attended the PERs with the hope that all election results would be verified as legitimate. Instead they realized how broken our system has become. While some of the issues they observed may be misunderstandings or accidental, far too many issues in county after county were violations of the Constitution of Minnesota and Minnesota Statute.

There is a belief that not one member of the Minnesota State Canvassing Board attended a single Postelection Review. If true, these judges, on the face of the circumstances, failed to be diligent in their duty to ensure they were engaged in an honest process. They trusted other people (the county canvassing boards and the secretary of state) to do their job. In doing so each judge appeared to be under the influence of the secretary of state in a time when half of Minnesota believes him to be ignoring the law to aid Democrat candidates. It is as though the Secretary of State became each judge's clerk: he wrote the report and the judges simply signed off on it with no questions. **This is a violation of Rules 1.1, 1.2, 2.1, 2.4, 2.5, 2.6, 2.7 and 4.1.**

The Petition was served upon each of the members of the State Canvassing Board to ensure they each received the information about the many violations of Minnesota law that had occurred. Each judge had a duty to analyze the information they received, whether or not there was ongoing litigation.

At the time the Petition to Correct Errors and Omissions was filed, the fact that election officials across Minnesota had violated multiple states laws cannot be honestly disputed. Skilled lawyers, who spend their careers engaging in half-truth by omission and wordsmithing to crush justice, were called in and admitted pro hac vice so they could pull Minnesota's electors back into the group of states put to bed for the DNC. They filed their obligatory motions that ignored the entire point being made and all the evidence included in the petition.

The MN Supreme Court failed to follow the Constitution and pretended that county canvassing boards were responsible for the state canvass. A constitutional duty cannot be delegated via legislation to another entity. Until Minnesota's constitution is amended by the people of the state to delegate the duty to another person or entity, the responsibility to canvass

the statewide returns will ALWAYS fall on the shoulders of the canvassing board. **This conduct, by each judge, violated Rules 1.1, 1.2, 2.1, 2.2, 2.4 and 2.5.**

It is critical to understand the fact that the WRONGFUL dismissal of the Petition by the Minnesota Supreme Court did NOTHING to absolve each of the four judges of their duty to fulfill their constitutional duty to ensure the validity of the reported election results BEFORE agreeing to certify Minnesota's statewide elections. Once each judge was made aware of the facts surrounding the election and reporting of results, each was bound by their constitutional duty to the people of Minnesota. None of the judges had the right to ignore their individual duty to the people and rubber stamp a report pulled together by the one person who had the ability to twist the language of the law, manipulate the rules and provide inadequate instruction and oversight of the statutory processes implemented by local officials who trusted him.

The Petition was NOT about who would be the President of the United States, although that was certainly on the minds of the country and world. The Petition was about a JUST process, required by the Constitution of Minnesota, being followed to ensure ALL people in Minnesota could respect the results and move on.

This complaint clearly identifies the statutes violated by election officials. Affidavits ARE evidence. Photos are evidence. The numerical data necessary to prove the election results were invalid was not available to the public, even though it is required, by statute, to be available. This lack of confirmable data was, and remains a critical problem in Minnesota. If these judges understood the law, they would have asked for the verification of data using the SVRS. They did not seek that verification. Either each judge did not understand the law or each



judge ignored the law. **The aforementioned conduct violates Rule 1.1, 1.2, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.15 and 4.1.**

The first public dissemination of the Statewide Voter Registration System information list known to have been released to the public was dated November 29, 2020. This was five days after the canvassing board ignored the petition and certified the election results. The SVRS list, received by a Minnesota non-profit, was shared with other Minnesotans concerned about the elections on approximately December 6, 2020.

The data extrapolated from that list proved, beyond any doubt, that the election results certified on November 24, 2020 could NOT be verified with the data collected and reported by the secretary of state prior to the certification. Multiple Minnesota statutes require the voter history be updated as soon as a voter's ballot is accepted by the ballot board. This information is added to the voter history by a simple click on the computer. There is only one SVRS. As explained using the laws noted previously, the data must be created and it is public. The delay in providing this information and any failure to annotate the voter history when the ballot is accepted are BOTH violations of Minnesota statute. Those voters whose ballots are not accepted would not have a change to their voter history. Simply read the law.

The November 29<sup>th</sup> database provided by the MNSOS verified approximately 1.2 million Minnesota voters cast a legal absentee ballot on November 3<sup>rd</sup>. The MNSOS reported approximately 1.9 million absentee votes cast: 700,000 excess absentee votes were reported. Attached is a graphic of one area of the state showing, by county, the excess absentee votes.<sup>5</sup>

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<sup>5</sup> Graphic showing the excess absentee votes based upon the total reported on 11/03/2020 and the voter histories identified in data provided by the Minnesota Secretary of State on 11/29/2020.

Using this same November 29<sup>th</sup> database, there were approximately 800,000 voter histories showing a voter cast a ballot on election day. The MN Secretary of State reported more than 1.3 million ballots were cast on November 3, 2020. The discrepancy in reported precinct votes and voter histories indicating a ballot was cast in a precinct was greater than 500,000. **On November 29, 2020, the total discrepancy between voter histories and reported votes in Minnesota's election was more than 1.2 million votes.** This number represents 38% of Minnesota's reported vote and turns the Minnesota elections into a pretzel of disaster. This is especially true for Minnesotans whose experience living, working and possibly being a candidate in affected state and local elections tells them these results are nonsensical.

The secretary of state will do backflips to convince courts and this board that this is not true, that he had all the data but didn't have to release it or he didn't have the data because local election officials weren't required to provide the data for 6 weeks. The excuses and explanations would and will make the state dizzy. But that would all be a distraction from the facts. The facts are VERY simple: the election results could NOT be certified until the work verifying the results is complete. What happened in Minnesota's election would be equivalent to a college professor reporting final grades to the registrar BEFORE the students took their final exams.

The secretary of state twists the statutes. He redefines the words in the statute. He threatens and intimidates those who dare to question his actions and labels them as terrorists by stating they will be causing murder through their peaceful efforts to confirm election results. It is one thing for him to fool the people. It is another thing altogether for each judge on the canvassing board to be duped.

The most important fact in this matter, and the reason why each judge should be disciplined for multiple violations of the Minnesota Code of Judicial Conduct: each judge should have had enough knowledge about Minnesota's election laws to recognize the seriousness of the issues raised in the affidavits presented through the Petition. If these judges chose to place their blind trust in a highly partisan secretary of state, their trust was misplaced and harmed the voters of Minnesota. If the judges on the canvassing board were learned in election law, they would have seen both the half-truth by omission and the whole truth. Instead, each of the judges demonstrated a personal lack of knowledge of the law, which then established a lack of competence to fulfil their constitutional duty, accepted upon joining the state canvassing board. If these judges understood the law, their behavior then proves they ignored it. **Either way, each of the judges violated Rules 1.2, 1.2, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7 and 4.1.**

Each of those four judges, selected to serve the people of Minnesota by the secretary of state, had a sacrosanct duty to canvass the statewide election results with a keen eye for concerns. A quick certification is not the point of the constitutional provision creating a board of judges to certify the elections. As soon as even one of those judges were made aware of a violation of process or law, their duty was to protect the people of Minnesota from fraudulent election results. Each of the judges was made aware of the violations of Minnesota statutes through the properly-served Petition. Each judge had a duty to demand the documented concerns of the elections be properly investigated before the results were certified. The cumulative effect of each judge's failure to demand explanations from the secretary of state raises appropriate questions about these judges political and social leanings. To conservative voters, these judges will have a taint because of the failure to exercise reasoned judgment in the face of clear data collected by citizens.

Those who file this complaint against each of the four judges expect some very serious questions be asked of each of these judges by the Judicial Board. A few appropriate questions include:

- When did the Office of the Attorney General inform Judge Chutich of the service of the Petition?
- When did the office of the Attorney General forward the Petition to Judge Chutich?
- Did Judge Chutich read the Petition? If yes, when did Judge Chutich read the Petition?
- Was Judge Chutich made aware of the involvement of the DNC and the attorneys from Perkins Coie? If yes, when did he become aware of that involvement?
- Did Judge Chutich speak to any attorney about the Petition who was not employed by the Office of the Attorney General?
- Did Judge Chutich take ANY action to investigate the concerns raised in the Petition?

The Board must fully investigate the concerns listed in this complaint. In order to complete the required investigation, the Judicial Board has a duty to ask these questions, and any others raised by the facts as submitted. The people of Minnesota have the right to know the answers provided by Judge Chutich.

## **Conclusion**

Judge Chutich failed to fulfill his duty to the court and to the people of Minnesota. As a judge specifically selected to serve on the statewide canvassing board as established in the

Constitution of Minnesota, Judge Chutich was obligated to know the law, to be diligent in the application to the facts and information of which he became aware to the process of canvassing and certifying the election and to refuse to certify the 2020 statewide elections until the data had been properly investigated and the canvass was thoroughly completed.

Judge Chutich’s conduct clearly violated multiple rules of the Minnesota Code of Judicial Conduct. While he should be appropriately disciplined for his misconduct, it is also important to note the State Canvassing Board had, and will have again in a few months, a DUTY certify the 2022 statewide elections. The judges who will serve on the state canvassing board in the future must be made aware of their individual duty to the people of Minnesota and to the truth.

I thank each member of the Board in advance for enforcing the Judicial Code of Conduct.

Respectfully,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name:

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Street Address

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City                      State    Zip

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Phone Number

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