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December 18, 2009

The Honorable Judge Manuel J. Cervantes
Office of Administrative Hearings
600 North Robert Street
Saint Paul, Minnesota 55164-0620

RE: Proposed Permanent Rules Relating to Elections

Dear Judge Cervantes:

Citizens for Election Integrity Minnesota (CEIMN), a nonpartisan, nonprofit organization is dedicated to ensuring accurate, transparent, and verifiable elections in Minnesota and nationwide. Since its founding in 2004, CEIMN has organized four non-partisan observations of state-wide counts (two post-election audits and two recounts) in Minnesota. For the 2008 post-election audit, 155 volunteers served as non-partisan observers and covered 75% of counties. For the 2008 U.S. Senate recount, 77 volunteers served as non-partisan observers and covered 36% of all recount locations. All volunteers were required to sign a code of conduct, which includes maintaining strict impartiality. Volunteers must complete observation forms, which we then review and publish our findings and recommendations for the public. It is with this background that we feel qualified to submit our comments.

Over the past three weeks, key CEIMN volunteers, including election judges and recount and audit observers, as well as staff have carefully reviewed the proposed rules. We have found them to be sensible and provide greater clarity regarding absentee balloting. We believe that the proposed changes will improve voters' understanding of the absentee balloting, thus increasing the likelihood of voters accurately completing the documents required to vote absentee. Furthermore, we strongly approve the process which ballots are rejected by absentee ballot board (39.3-39.11) because the Secretary of State "must provide election officials with a sample notice with a list of the possible reasons that a ballot could be rejected for use by absentee ballot boards." This will provide consistency with the review of absentee ballots. Also 39.3-39.11 gives absentee voters an opportunity to learn of their mistakes and receive a replacement ballot before elections. This greatly alleviates our concerns regarding the ability of absentee voters the right to have their votes count.

We respectfully recommend six minor amendments that we believe will provide additional guidance and clarity for Minnesota's absentee voters:

1. Text from 15.5-15.6:...or an original utility bill with a due date 30 days before or after the election, or a rent statement showing utility expenses. Eligible utility bills are gas, electric, solid....
 - a. **Issue:** Unregistered Signature Envelope does not include a box for rent and instructions does not provide details regarding which box to check if the rent bill with itemized utilities is used.
 - b. **Recommendation:**
 - i. **Envelope:** add box for rent statements/utilities or within current box Utility bill, bill with utilities with current address.... or
 - ii. **Instructions: Eligible documents with your current address:** a current student fee statement, or an original utility bill with a due date 30 days before or after the election, or a rent statement showing utility expenses. Eligible utility bills are gas, electric, solid waste, water, sewer, phone, television, or internet provider services. If a rent statement with utilities is used, check the box with utility bill on envelope.
2. 9.1 and 14.1: If your witness is an official, they must print their title instead of an address.
 - a. **Issue:** There is a lack of clarity regarding what kind of official should print their title. (Police Officer? Military Commanding Officer?)
 - b. **Recommendation:**
 - i. If your witness is an election official, they must print their title instead of an address.
3. Signature Envelope for Military and Overseas Voters: I swear or affirm, under penalty of perjury, that I am; a member of the uniformed services or merchant marine on active duty or an eligible spouse or dependent of such a member; a United States citizen temporarily residing outside the United States; other United States citizen residing outside the United States, and....
 - a. **Issue:** Without "check one" or "check at least one" and without adding "or" it could be assumed that all three must be checked. An additional reason for this request is that the unregistered voter envelope has "check one"— by adding check one to the UCOVA envelope, there is greater consistency regarding requirement.

- b. **Recommendation:** I swear or affirm, under penalty of perjury, that I am (check one): a member of the uniformed services or merchant marine on active duty or an eligible spouse or dependent of such a member; or a United States citizen temporarily residing outside the United States; or other United States citizen residing outside the United States, and...
4. 8.17; 13.24; 19.1; 23.4: "Do not write your name or ID number anywhere on the ballot"
- a. **Recommendation:** Do not write your name or ID number or put any other identifying markings anywhere on the ballot
- b. **Reason:** It is believed the intent is to prevent people from putting identifying marks on ballot. By adding the suggested text, it prevents people from adding other identifying marks, including return address, initials, contact information, etc.
5. Throughout the documents, there are instances that, "Minnesota ID card" is used while other instances just "ID card" is used. At times, it is connected to Minnesota driver's license (since there isn't a comma separating it) but other times, it is separated by a comma.
- a. **Examples:**
- i. *No comma between license and ID:* 18.23, U.S. passport number, Minnesota driver's license or ID card number, or the last....
 - ii. *Comma between license and ID:* 15.9-15.10: A yellow receipt for a valid Minnesota driver's license, ID card, or permit with your current address.
 - iii. *Comma between license and ID:* Text from Unregistered Voters Signature envelope: MN driver's license, ID card, permit, or receipt
 - iv. *"Minnesota" before ID:* Text from Instructions for Unregistered Voters: A valid Minnesota driver's license, Minnesota ID card, or permit with your current address
- b. **Recommendation:** Follow the last example (5.a.iv) – when the intended ID card is a "Minnesota ID" card, add MN or Minnesota before ID. By doing this, it will provide clarity to the voter since there are many kinds of ID cards.
6. Instruction form for Unregistered Voters current text: A photo ID that does not have your current address along with a document that does..... Eligible photo IDs: Minnesota driver's license or ID card, U.S. passport, U.S. military ID card, Minnesota college/university student ID card, or tribal ID card with your signature, from a tribe recognized by the Bureau of Indian Affairs (BIA).....

- a. **Recommendation:** A photo ID that does not have your current address along with a document that does have your current address..... Eligible photo IDs: Minnesota driver's license or Minnesota ID card, U.S. passport, U.S. military ID card, Minnesota college/university student ID card, or tribal ID card with your signature, from a tribe recognized by the Bureau of Indian Affairs (BIA).....
- b. **Reason for change:** By completing the sentence, it helps the voter better understand the requirements.

CONCLUSION

Citizens for Election Integrity Minnesota appreciates the opportunity to comment on the proposed changes. After reviewing them, we believe that this is a positive step towards creating more consistency and clarity in Minnesota's elections. If you have any questions concerning our comments, or if we may otherwise be of assistance, please do not hesitate to contact us.

Sincerely,



Mark Halvorson
Director



Kathy Bonifield
Associate Director



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Minneapolis, MN 55406
mdean@commoncause.org

December 18, 2009

The Honorable Judge Manuel J. Cervantes
Office of Administrative Hearings
600 North Robert Street
Saint Paul, Minnesota 55164-0620

RE: Proposed Permanent Rules Relating to Elections

Dear Judge Cervantes:

Minnesota's election system has long been considered a model throughout the country. The 2008 election and subsequent recount were no exception, despite the intense political pressure placed on local election officials, the Minnesota Secretary of State's office, and the judiciary. However, that election did uncover some election rules that need further clarification and refinement. Common Cause Minnesota, a non-partisan government watchdog group, urges the approval of the proposed rules changes offered by the Minnesota Secretary of State's office.

Specifically, the proposed rules will help clarify how voters should complete the absentee ballot form by removing unnecessary information, as determined by the Minnesota Supreme Court, and improving the layout so that individuals are less likely to make errors. These changes are necessary because of the large number of individuals who had their absentee ballots rejected during the 2008 election. The fourfold increase in the number of rejected absentee ballots over previous elections is a sign that the process needs to be simplified and clarified to protect each individual's right to vote. This change is critical because of the recent trends demonstrating that an ever increasing number of individuals use absentee balloting as a more convenient way to vote.

Common Cause Minnesota has spoken with many of the individuals whose absentee ballots were rejected during the 2008 election. Some commented that they looked over the instructions numerous times to make sure that they filled out everything correctly. Even highly educated voters had problems following the instructions. This demonstrates that the current absentee ballot process is simply too confusing.

The proposed changes advocated by the Secretary of State were developed in consultation with usability experts that monitored how individuals read absentee voting instructions and complete the form. These observations provided critical insight into the specific language and instructions that individuals did not understand and then worked with them to identify instructions that were less confusing. This real world evaluation is an important step that the Secretary of State's office took to ensure that the proposed changes would actually be an improvement over the current rules.



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Moreover, most of the individuals who we spoke with who had their absentee ballots rejected were frustrated that they never were informed that their absentee ballot was rejected or given an opportunity to remedy any mistakes. The proposed changes require such notice: "the auditor or clerk must send a replacement ballot to a voter whose absentee ballot is rejected more than five days before an election, along with an explanation of why the ballot was rejected." (Rule 8210.2600 Subp. 2.) This requirement of election officials will help restore the public trust in the absentee ballot process.

However, these reforms are just a first step that is necessary to improve Minnesota's election system. Those other changes are in the hands of the legislature and governor to make the necessary state statute amendments that address the key lessons learned from the 2008 senate election. Thank you for taking the time to review these important election rule changes.

Sincerely,

A handwritten signature in cursive script that reads "Mike Dean".

Michael P. Dean
Executive Director, Common Cause Minnesota
2323 East Franklin Avenue
Minneapolis, MN 55406

**Suite 4000
200 South Sixth Street
Minneapolis, MN 55402**

December 18, 2009

Administrative Law Judge Manuel J. Cervantes
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, MN 55164-0620

Re: Proposed Permanent Rules Regarding Elections

Dear Judge Cervantes:

This letter constitutes public comment on the Secretary of State's proposed permanent rules regarding elections.

I am an attorney in private practice who has been active in Minnesota politics and election law. My firm represented Senator Al Franken during the recent United States Senate recount and election contest. The following comments, however, are personal, and are not intended to constitute statements of Senator Franken, the Al Franken for Senate Committee, my law firm, or any other clients.

1. The Secretary's efforts to present a simplified set of absentee ballot envelopes and instructions are commendable. I am especially pleased that the proposed rules will reduce the risk that ballots from persons with disabilities will be rejected. This important issue was identified in the U.S. Senate recount and in the election contest.

One aspect of these rules, though, should be clarified. Lines 13.15 through 13.17 are part of proposed instructions to the absentee voter. They require that the voter registration application be enclosed in the signature envelope. If it is not, the instructions advise, the vote will not be counted.

This instruction appears to be inconsistent with Minnesota law, which authorizes election officials to open a secrecy envelope to look for a voter registration application and then reseal the envelope. See *In re Contest of School Dist.*, 431 N.W.2d 911 (Minn. Ct. App. 1988). This authority is also recognized by lines 48.7 through 48.8 of the proposed rules.

During the U.S. Senate election contest, it became apparent that some absentee ballots were rejected because the new voters had enclosed their voter registration applications in the secrecy envelopes. This problem was caught in

some jurisdictions on election night. For the rest of the jurisdictions, the Election Contest Court ordered that the secrecy envelopes be opened, reviewed for voter registration applications, and then resealed. As a result, a number of voters were enfranchised.

The proposed rule should instruct the voter to submit the registration application in the signature envelope, but should not state that the vote will not be counted if the application is submitted in the secrecy envelope. The Secretary should also consider a rule that, before an absentee ballot is rejected for lack of registration, the secrecy envelope must be opened, reviewed for an application, and then resealed.

2. Three portions of the proposed changes to the recount rules should not be adopted.

A. Lines 61.4 through 61.8 provide that the recount may not include any ballots within the envelope labeled "Original ballots from which duplicates are to be or were made," and that that envelope may not be opened.

The rule should be to the contrary. Original ballots, which are the ballots actually filled out and cast by the voters, should be counted, not the duplicate ballots, which were filled out by election judges. Both the law and the experience of the U.S. Senate recount support this proposition.

First, the original ballot best reflects the intent of the voter, which is the goal of Minnesota election law. While the number of ballots with issues of intent is small as a percentage of all ballots cast, a ballot filled out by an election judge may not fairly and accurately reflect the voter's intent, or the voter's failure to convey intent. This is why the parties to the U.S. Senate recount agreed, and the State Canvassing Board (with the concurrence of the Attorney General) ordered, that original ballots be counted during the recount.

Second, counting original ballots enfranchises voters. As the Minnesota Supreme Court said in its decision of December 24, 2008: "There can be no dispute that unmatched original damaged ballots are valid ballots and the votes marked on those ballots should be counted in the election." See *Coleman v. Minnesota State Canvassing Board*, A08-2206 (Minn. Dec. 24, 2008).

It became apparent during the U.S. Senate recount that there were a number of instances in precincts around the state where election judges failed to fill out duplicate ballots but failed to count the original ballots. As a result, voters were disenfranchised on election night, but enfranchised during the recount. Similarly, in Minneapolis Precinct 8-7, election judges made duplicates of eleven original ballots, but failed to run them through the scanner. In the recount, when the original ballots were counted, those eleven voters were enfranchised.

B. Lines 62.9 through 62.10 restrict a candidate to only one representative to observe sorting as the recount proceeds. The rules of the U.S. Senate recount allowed two representatives. This did not create any significant problem for election officials. The candidates found it useful to have two representatives to analyze ballots, keep track of the table official's determinations, and make a clear record of challenges.


C. Lines 63.1 through 63.4 seek to impose a restrictive definition of a "frivolous" challenge as it relates to identifying marks. However, the definition is not necessarily correct as a matter of law. Highly distinctive marks other than a signature or an identification number may, indeed, be identifying marks.

Perhaps the desire for a more restrictive definition with respect to identifying marks relates to what election officials perceived as an unnecessary number of challenges during the 2008 recount. In truth, the number of challenges was far less than during the 1962 gubernatorial recount. I suspect even fewer challenges would have been made had the recount official's determination at the table been included in the daily candidate recount tallies posted on the Secretary of State's website.

Fortunately, the proposed rule, at lines 62.20 through 62.22, provides that the recount official will sort the ballots into piles based upon the recount official's determination as to which candidate the voter intended to vote for. This procedure should reduce the incentive for marginal challenges at the recount table, and thus makes Lines 63.1 through 63.4 unnecessary.

Thank you for this opportunity to comment, and for your careful consideration of these observations.

Respectfully submitted,



David L. Lillehaug

Minnesota Unitarian Universalist Social Justice Alliance/Voting Rights

3128 36th Avenue S, Minneapolis, MN 55406 612-998-6624

December 18, 2009

Judge Manuel J. Cervantes, Office of Administrative Hearings

600 North Robert Street, Saint Paul, Minnesota 55164-0620

Re: Proposed Permanent Rules Relating to Elections

Dear Judge Cervantes:

The Minnesota Unitarian Universalist Social Justice Alliance (MUUSJA)/Voting Rights Working Group is a nonpartisan, nonprofit organization dedicated to the principles of secure, accurate, verifiable and accessible elections.

The Voting Rights group was formed in 2005 because of election irregularities documented in many states and eroded confidence in the accuracy of our national election outcomes. Election integrity is a nonpartisan issue, foundational to achieving policies that serve the common good. The Minnesota Unitarian Universalist Social Justice Alliance/Voting Rights works to protect the right and access to voting for all citizens. We are dedicated to ensure that votes cast are counted and reported accurately. We have worked in coalition with the League of Women Voters Minnesota, Citizens for Election Integrity MN, the Voting Rights Coalition and the Election Day Community Coalition.

The Minnesota Unitarian Universalist Social Justice Alliance supports the improvements to absentee ballot voting envelopes proposed by the Secretary of State's Office. Improvements to the absentee ballot envelope will make the language and instructions more clear specifically for the voter but also for the benefit of the election judge. The improvements add a measure of assurance that the ballot cast will be counted and reported accurately.

The MUUSJA Board and the Voting Rights Working Group appreciates the opportunity to speak in support of making improvements on this important voting issue.

Sincerely,


Ralph Wymann

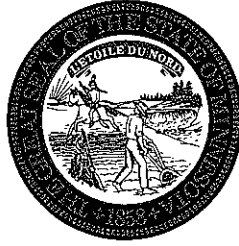
MUUSJA Director


Jennifer J. Thomas

Co-Director/Voting Rights


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12/16/2009

Administrative Law Judge Manuel J. Cervantes
Office of Administrative Hearings
600 North Robert Street, P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Dear Judge Cervantes,

As the lead minority members covering election issues in the Minnesota State Senate and the Minnesota House of Representatives, we are writing you to address our concerns and recommendations for changes with the proposed rulemaking language from the Secretary of State's Office.

The Secretary of State's Office in their Statement of Need and Reasonableness (SONAR) mentioned that "the instructions provided to absentee voters can be redesigned to help ensure that Minnesota voters make fewer mistakes that lead to their ballots being rejected." Their office further commented "that the proposed changes to the absentee ballot instructions and certificates will help voters understand the requirements that must be met to have their ballots accepted and counted." We, as legislators, are offering this feedback in the hopes of improving the proposed rules with the goal of helping absentee ballot voters ensure that their votes are properly accepted and counted. It is hoped that by incorporating our proposed changes this will lead to fewer mistakes by voters to ensure their ballots are counted.

We would like to address the following two issues involving the absentee ballot envelopes:

- Beginning at line 27.20, there are proposed rules dealing with voter providing proof of residence. Proposed law changes for this are found on lines 27.21 through 28.4 and do not require the voter to write down the ID number. Current absentee ballot envelopes require voters to not only choose a box of what type of proof is provided (whether a drivers license, passport, or tribal ID, etc.), but also requires that the number from this ID be printed on the following line of the absentee ballot envelope by the voter. Current language is detailed in the proposed rulemaking on lines 28.27 to lines 29.11. An ID number being printed on the envelope would help authenticate an absentee voter's identity, or resolve issues dealing with a potential challenge to a ballot.
- The other proposed revision is at lines 25.21 and 27.8 where the voter certifies that they meet all of the requirements to vote by absentee just prior to signing the ballot envelope. Current and proposed rules keep the language as "I certify that on Election Day I meet all the legal requirements to vote by absentee ballot." This forces a voter to cross reference another document as to whether they are eligible to vote absentee. We believe voting by



absentee ballot is a special exception granted to voters for narrowly defined reasons specifically listed in statute. The rising trend of voters using the absentee ballot process indicates that voters may be using it as a convenience rather than the narrowly defined exception it is intended to be. By stating clearly the statutory reasons for voting by absentee at the place where voters are required to affix their signature, we believe it will reinforce the intent and purpose of voting by absentee ballot. The goal of the Secretary of State to "help voters understand the requirements that must be met to have their ballots accepted and counted" would be better achieved by incorporating one of the following:

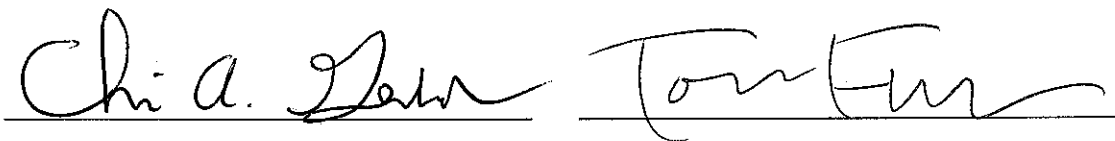
1. State the specific conditions required in M.S. 203B.02 for a voter to be eligible to vote absentee.
 - Provide an abbreviated list of reasons for absentee voter eligibility based on M.S. 203B.02. This could be done as follows:
"A voter is eligible to vote by absentee ballot for any one of the following reasons:
 - Absence from the precinct
 - Illness or disability
 - Religious discipline or observance of religious holiday
 - Eligible emergency declared by the governor or quarantine declared by federal or state government
 - Service as Election Judge in another precinct"

-Or-

2. On lines 25.22 and 27.9, between "ballot" and the period insert, "as set forth in M.S. 203B.02"

It our hope that these suggestions to the proposed rules will provide clarity and help voters understand the requirements that must be met to have their ballots accepted and counted. It is our goal to ensure that all properly executed ballots be counted, and giving voters more clarity will help reduce errors and potential rejected ballots.

Sincerely,



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MN State Representative Tom Emmer
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December 18, 2009

Judge Manuel J. Cervantes
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

Dear Judge Cervantes:

League of Women Voters Minnesota (LWVMN) supports the changes proposed by the Office of the Secretary of State to the Permanent Rules Relating to Elections. LWVMN believes that these rules are a necessary step in maintaining Minnesota's high caliber of election administration. As an organization born out of the movement to expand suffrage to women, we are particularly interested in the rules that have a significant impact on a citizen's ability to vote and to have that vote counted.

The 2008 U.S. Senate election recount showed that approximately 12,000 voters who submitted absentee ballots did not have their votes counted. This was not because they were ineligible to vote, but because they made mistakes in following directions that were unnecessarily complex and confusing. The large number of rejected absentee ballots is proof that changes are needed. Demographic shifts in our population give us every reason to believe that the already large number of people voting by absentee ballot will increase. It is critical to ensure that the fact a person is unable to vote in person does not increase the odds of being disenfranchised.

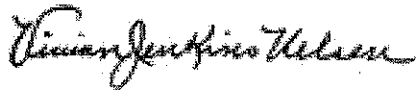
The proposed design changes to the absentee ballot envelopes and instructions will make it easier for voters to understand what is required of them and their witnesses. This will result in fewer mistakes on the part of voters. We also applaud establishing a procedure for notifying a voter if the ballot board has rejected their ballot and requiring that a replacement ballot be sent to the voter.

LWVMN believes that the 2008 US Senate election recount took place in a manner that was transparent and fair. We were, however, concerned about the role that partisan representatives played in challenging ballots cast by voters in good faith. The proposed rule changes around the conducting of recounts defines a frivolous challenge and creates guidelines for campaign

representatives who seek to challenge the determination of election officials. We support these proposed changes and believe that they will reduce the number of frivolous challenges in future recounts and protect the franchise of Minnesota voters.

LWVMN believes that the rule changes proposed by the Office of the Secretary of State are a major step in the right direction of protecting the right of all citizens to vote, whether they vote on Election Day or by absentee ballot. We urge the adoption of these rules.

Sincerely,



Vivian Jenkins Nelsen
LWVMN Co-Presidents



Judy Stuthman