STATE OF MINNESOTA

IN SUPREME COURT

A10-2022

OFFICE OF
APPELLATE COURTS

NOV 19 2010

FILED

In *re* Petition regarding 2010 Gubernatorial Election

RESPONDENT HENNEPIN COUNTY AUDITOR JILL ALVERSON'S RESPONSE TO PETITION

INTRODUCTION

Respondent Jill Alverson, the Hennepin County Auditor submits this response to Petitioner Tom Emmer's Petition to Correct Errors and Omissions Regarding Determination of Proper Number of Ballots Counted. The Petition should be denied for several reasons. First, election judges and officials complied with Minnesota state law and performed reconciliations in each precinct. Contrary to Petitioner's legal analysis, for more than twenty-five years (since 1982), it has been the law in Minnesota that election judges can use voter receipts (rather than counting signatures on the polling rosters) to determine the number of ballots to be counted. Thus, it is not surprising that Petitioner was able to locate election judges who witnessed the reconciliation process using voter receipts. This process is uniformly preferred and used because it is more accurate than having election judges counting signatures in printed rosters late on election night.

Second, this Court should not direct election officials to undertake an additional and separate reconciliation at this time. An additional reconciliation lacks any factual or legal support and would serve only to add confusion, delay, and uncertainty in the service

of an exceedingly suspect goal of randomly removing properly cast ballots of fully eligible voters. Randomly disenfranchising eligible voters after the fact is a statutory remedy that should be used only in the narrowest of circumstances and then only after careful, transparent and deliberate study. It should not be done based on one-sided affidavits hastily submitted under this appellate court's limited jurisdiction.

FACTUAL BACKGROUND

I. Allegations in Petition.

The Petition generally claims that election officials throughout the state failed to determine if there were more ballots cast at a precinct than there were voters. Specifically, Petitioner seeks a statewide and extraordinary remedy on the basis of the affidavits of eleven election judges who claim "that in actually preparing or observing the preparation of a precinct summary statement they did not witness the critical counting of the polling place roster signatures and election-day registrations. Rather, the only vote count verification they attest to was counting the unsigned voting receipts handed to voters on election day." Pet. at 4.

In other words, Petitioner argues that by using voter's receipts, rather than actually counting the polling place roster and election-day registrations at the end of the night, election officials violated state law. Pet. at 7-8, 11-12. As discussed in detail below, voter receipts are specifically authorized by state law and use of receipts as part of the reconciliation process has been authorized for use since 1982. Petitioner argues that this alleged error (using voter receipts) in the reconciliation process requires election officials to "perform a state-wide determination of the proper number of ballots to be counted,

and, if necessary, reconciliation, in accordance with section 204C.20 before the State Canvassing Board prepares its report of persons voting on election day in the state and in each county, the number of votes received by each candidate for governor, or certifies the 'correctness' of the 2010 election results." Pet. at 20.

II. Voting Procedure in Hennepin County with Optical Scan Voting System.

In order for the Court to understand the factual and legal allegations made in the Petition and Respondent Alverson's response, it is necessary to briefly outline the voting process and reconciliation process in precincts within Hennepin County. On Election Day, voters arrive at their polling place; if they are pre-registered, they sign the polling place roster and if they are not pre-registered, they register to vote and then sign the same-day registration roster. Affidavit of Rachel Smith ¶ 3. ("Smith Aff."). In compliance with state law, election officials in Hennepin County use voter receipts to track the number of voters. *Id.* ¶¶ 3-4 and Minn. Stat. § 204C.10(c).[1] Thus, after a voter signs the polling place roster or the same day registration roster, an election judge gives the voter a numbered voter receipt. *Id.* ¶ 3 and Minn. Stat. § 204C.10(c). The voter takes this receipt to the ballot judge who takes the receipt, gives the voter a ballot, and explains the voting procedure. *Id.* ¶ 3 and Minn. Stat. § 204C.10(c). This voter receipt is retained. *Id.* ¶ 3 and Minn. Stat. § 204C.10(c). The voter then makes selections on the ballot and marks the ballot accordingly. The voter then brings this ballot to the Model 100 Precinct

[1] Minn. Stat. §204C.10(c) ("After the applicant signs the roster, the judge shall give the applicant a voter's receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The voters' receipts must be maintained during the time for notice of filing an election contest.").

Ballot Counter ("M100").[2] *Id.* ¶ 3. The M100 tabulates the number of ballots entered and the number of votes for each candidate on the ballot. *Id.*

When voting is over on Election Day, there are certain procedures that election judges follow. Hennepin County follows the procedures outlined in the 2010 Election Judge Guide. *See* Smith Aff. ¶ 4, Ex. 1, 2010 Election Judge Guide p. 42. After the last voter in the precinct has completed voting, the election judges secure the voting system against further voting. *Id.* and Minn. Stat. § 206.86, subd. 1. The election judges then run a vote total tape. *Id.* and Minn. Stat. § 206.86, subd. 1. This tape is called a summary statement. Minn. R. 8230.4380; *see also* 2010 Election Judge Guide p. 42. The election judges then perform reconciliation. *See* Smith Aff. ¶ 4.

The reconciliation process involves comparing two numbers. The first is the number of ballots submitted for tabulation. *See* Minn. R. Part 8230.4390 and Smith Aff. ¶ 4, Ex. 1, 2010 Election Judge Guide, Sec. 14.1 n.5 ("check the totals on the tape; a. compare the total number of ballots and the total number of voters. . . ."). The second number is the number of voters. Consistent with Minnesota law, in Hennepin County election judges are instructed first to determine the number of ballots that should have been cast by counting the number of voter receipts issued pursuant to Minn. Stat. § 204C.10, subd. 2. *See* Minn. R. 8200.9300, subd. 10 (clarifying that to determine the number of ballots to be counted (i.e. number of voters), election judges may use "the number of voter's receipts issued pursuant to Minnesota Statutes, section 204C.10, subdivision 2 ***or*** to the number of names signed on the polling place roster.") (emphasis

[2] In Hennepin County, all precincts use a Model 100 Precinct Ballot Counter ("M100").

added).[3] This practice of counting voters by counting voter's receipts is a common practice throughout Minnesota and has been used in Hennepin County for numerous elections. *See* Smith Aff. ¶ 4. This process is uniformly preferred and used because it is more accurate than having election judges counting signatures in printed rosters late on election night. *Id.*.

If these two numbers (voter's receipts and number of ballots as indicated on the summary statement) match, reconciliation is complete and election judges sign the summary statement. *See* Smith Aff. ¶ 5, Ex.1, 2010 Election Judge Guide p. 42.

If these two numbers do not match, election judges are instructed to determine why the numbers do not match. *See* Smith Aff. ¶ 5. There are numerous reasons that these numbers may not match. In the 2010 General Election for example, ballot jams in the machine resulted in a ballot being counted twice on a number of M100s; voters left after signing in, but without submitting a ballot; a voter was provided two ballots that were stuck together and voted on the front of one and the back of the other; and a voter was not given a voter's receipt. *Id.* Thus, there are a number of reasons that the number of ballots submitted for tabulation as indicated on the summary statement might not actually reflect the true number of ballots voted. These minor incidents occur in every election. In the limited number of precincts where they occur, and in the vast majority of cases, the totals are only off by one or two. Moreover, in every election, including in

[3] This rule has authorized the use of voter's receipts, in addition to the polling place roster, since 1982. *See* 7 Minn. Reg. 207 (August 16, 1982) and 6 Minn. Reg. 1740 (April 19, 1982).

2010, there are precincts in which the number of voters exceeds the number of ballots and vice versa.

If the numbers do not match, election judges are instructed to review the incident log to determine if there is an explanation for the discrepancy.[4] *See* Smith Aff. ¶ 6. If they cannot find an explanation in the incident log, they are instructed to verify that the number of voter's receipts equals the number of individuals on the polling place and new registrant rosters. *See* Smith Aff. ¶ 6. In addition, if the numbers still do not reconcile, election judges are instructed that they can run the ballots through the M100 again to get an accurate number. *Id.* ¶ 6. This occurred in Plymouth Precinct 4-22 this year. *Id.* ¶ 6. Initially, at this precinct, the count was off by six votes. After re-running the ballots, the numbers matched. *Id.* ¶ 6, Exs. 2 and 3.

After this process of discerning the basis for any discrepancies between the ballot total on the summary statement and the number of voters, then the summary statements and a precinct tracking form, which describes any discrepancy, are provided to Hennepin County. *See* Minn R. 8230.4390 (listing items in certification signed by election judges including "D. that the ballots have been counted and agree with the number of names as shown on the summary statement *or that any discrepancy has been noted on the incident report.*") (emphasis added). Attached as Exhibit 2 to the Smith Affidavit are examples of

[4] In precincts using optical scan ballot counters, Minn. R. 8230.4370 states that "The election judges shall open the ballot box and any overflow containers, remove the ballots, and determine the number of ballots. If the election judges determine that the total number of ballots is greater than the number of persons voting *and that it is impossible to reconcile the numbers*, the judges shall follow the procedures in Minnesota Statutes, section 206.86." (Emphasis added).

precinct tracking forms used in Hennepin County for election judges to report any discrepancies between the number of ballots and the number of voters. The Hennepin County Elections Manager analyzes the statements and the tracking forms during the period between Election Day and the County Canvass to make sure there are not any significant differences between the number of voters and the number of ballots in any precinct. *See* Smith Aff. ¶ 6.

ARGUMENT

I. The Court Should Deny the Petition.

A. Minn. Stat. § 204B.44 Should Only be Used to Correct Errors Pertaining to Clear Procedural or Mechanical Duties related to an Election.

Minnesota Statute § 204B.44 provides an extraordinary remedial process to quickly provide relief for certain errors, omissions or wrongful acts related to a specific election contest. The statute states, in relevant part:

> Any individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions or wrongful acts which have occurred or are about to occur:
>
> (a) an error or omission in the placement or printing of the name or description of any candidate or any question on any official ballot;
>
> (b) any other error in preparing or printing any official ballot;
>
> (c) failure of the chair or secretary of the proper committee of a major political party to execute or file a certificate of nomination;
>
> (d) any wrongful act, omission, or error of any election judge, municipal clerk, county auditor, canvassing board or any of its members, the secretary of state, or any other individual charged with any duty concerning an election.

> The petition shall describe the error, omission or wrongful act and the correction sought by the petitioner. The petition shall be filed with any judge of the Supreme Court in the case of an election for state or federal office or any judge of the district court in that county in the case of an election for county, municipal, or school district office. The petitioner shall serve a copy of the petition on the officer, board or individual charged with the error, omission or wrongful act, and on any other party as required by the court. Upon receipt of the petition the court shall immediately set a time for a hearing on the matter and order the officer, board or individual charged with the error, omission or wrongful act to correct the error or wrongful act or perform the duty or show cause for not doing so. The court shall issue its findings and a final order for appropriate relief as soon as possible after the hearing. Failure to obey the order is contempt of court.

Minn. Stat. § 204B.44.

This Court has previously construed this statute to only include "procedural and mechanical duties attendant to the election process." *Schroeder v. Johnson*, 252 N.W.2d 851, 852 (Minn. 1976) (holding that error by a candidate is not within scope of statute). It is designed to provide expeditious review of alleged errors that will fundamentally impact a specific election contest. *See Coleman v. Ritchie*, 762 N.W.2d 218, 231 n.13 (Minn. 2009) ("Section 204B.44's principal purpose is to provide a mechanism for correcting errors alleged to have occurred before the election . . ."); *Clark v. Pawlenty*, 755 N.W.2d 293, 299 (Minn. 2008) ("[Statute] provides a remedial process only for correction of the ballot and directly related election procedures."); *Page v. Carlson*, 488 N.W.2d 274, 275 (Minn. 1992) (statute used to challenge Secretary of State's refusal to place candidate's name on ballot); *Clifford v. Hoppe*, 357 N.W.2d 98, 100 (Minn. 1984) (statute used to challenge the name of a candidate on primary ballot); *Schroeder v. Johnson*, 252 N.W.2d 851, 852 (Minn. 1976) (statute not designed to fix candidate's

errors regarding name on ballot); *McDonough v. Hickey*, 180 N.W.2d 415, 415-16 (Minn. 1970) (statute used to challenge ineligible candidate on ballot).

In *Coleman v. Ritchie*, this Court did order "that any absentee ballot envelope that local election officials and the candidates agree was rejected in error should be opened and its ballot counted, subject to challenge by either candidate." 759 N.W.2d 47, 49 (Minn. 2008). In the subsequent opinion explaining this order the Court stated "we conclude that in the specific and limited circumstance where all parties—the two candidates and the relevant local election officials—agree that an absentee ballot return envelope was erroneously rejected, section 204B.44 authorizes us to allow correction of that error to reflect 'the true vote of the people,' and the correction need not await an election contest under chapter 209." 762 N.W.2d 218, 233 (Minn. 2009). Unlike in *Coleman v. Ritchie*, where there was agreement that certain ballots were improperly rejected, here there is no such agreement and as discussed below there is no basis to conclude that election judges committed a wrongful act that needs to be corrected.

B. Election Judges May Use Voter's Receipts to Determine the Number of Voters.

The Court should not grant the relief requested by Petitioner. Petitioner alleges that the "error, omission, or wrongful act" that is about to occur is the State Canvassing Board's certification of the General Election result. Minn. Stat. § 204B.44. Petitioner alleges that this "error" that is about to occur is the result of inaccurate precinct totals in some precincts because election officials did not comply with Minn. Stat. § 204C.20, based solely on Petitioner's contention that election officials did not compare the

summary statement total for ballots with the number of voters, by counting the signatures on the polling place roster. Pet. at 7-8, 11-12.

This argument is legally without merit. First, there is no requirement to compare the ballot total from the summary statement to a count of the number of signatures on the polling place rosters. In 1982, a Minnesota Rule was added that authorized election officials to use either the number of names on the polling place roster or the number of voter's receipts when determining the number of ballots to be counted. *See* Minn. Rule 8200.9300, subd. 10 (in determining the number of ballots to be counted (i.e. number of voters), election judges may use "the number of voter's receipts issued pursuant to Minnesota Statutes, section 204C.10, subdivision 2, ***or*** to the number of names signed on the polling place roster.") (emphasis added); *see also* 7 Minn. Reg. 207 (August 16, 1982) and 6 Minn. Reg. 1740 (April 19, 1982). Using voter's receipts to keep track of the number of voters on Election Day is not only legal, it makes sense. Voter's receipts are a more accurate method for counting the number of voters than having election judges counting thousands of signatures from polling place rosters and the Election Day registration rosters at the end of election night. *See* Smith Aff. ¶ 4. In fact, some precincts use these receipts to balance totals throughout the day. *Id.*

In sum, counting voter's receipts is an authorized method for determining the number of voters in a precinct. Thus, Petitioner's evidence that election judges only observed election judges comparing the ballot totals from the summary statements with the voter's receipts is not surprising. This practice is authorized by law and is a more accurate way of counting voters. Accordingly, it is not evidence that election officials

did not comply with state law regarding reconciling the number of voters in a precinct with the number of ballots. The Court need go no further to deny the Petition.

C. The Drastic Remedy of Removing a Ballot From Count Is Only Required if It is Impossible to Reconcile Any Difference Between the Number of Ballots Counted by the Precinct Counter with the Number of Voters.

In addition to failing to identify the law that authorizes the use of voter's receipts, Petitioner cites to the wrong statute and procedure for determining how ballots are counted in counties that use precinct count optical scan systems. The statute cited by Petitioner is Minn. Stat. § 204C.20. This law relates primarily to precincts using paper ballots that are placed in boxes by voters and then hand counted at the end of the night. This law regarding how to count these ballots and how to treat "excess ballots" has been in existence in virtually the same form since at least 1939. *See* Minn. Laws 1939, c. 345, pt. 6 c. 10 §§ 4-6.

The law and procedures for counting ballots in precincts using precinct count optical scan voting systems is found at Minn. Stat. § 206.86 and Minn. R. 8230.4370. A "[p]recinct count voting system" means "an electronic voting system designed to store ballot configurations and vote totals on a removable memory unit and to tabulate ballots at the precinct polling place as voters deposit the ballots into the ballot box." Minn. R. 8220.0250, subp. 22b. Hennepin County uses a precinct count voting system. *See* Smith Aff. ¶ 2.

The law regarding discrepancies between the number of ballots tallied by a precinct counter and the number of voters is different from Minn. Stat. § 204C.20,

governing paper ballots, in two crucial ways. First, as discussed above, summary statements are printed directly from the M100. This statement is "[o]ne unbroken tape that includes the zero report at the opening of the polls, messages printed during the hours of voting, and the first printout of results [which] must be certified to the official conducting the election." Minn. R. 8230.4380. Thus, the number of tabulated ballots that is reported is the number from the M100; it is not a hand count of ballots. It is critical that the summary statement be printed right after all ballots have been put through the M100 and that this summary statement show that the tabulation that occurred throughout the day has been completed and that all ballots submitted were counted. This is basic election integrity.

Second, and more importantly, because a precinct counter is used to tabulate ballots, Minnesota law provides authority for election judges to submit the results even when the number of ballots as counted by the M100 does not exactly match the number of voters. Specifically, pursuant to Minn. R. 8230.4370, after voting hours have ended, "[t]he election judges shall open the ballot box and any overflow containers, remove the ballots, and determine the total number of ballots. If the election judges determine that the total number of ballots is greater than the number of persons voting *and that it is impossible to reconcile the numbers*, the judges shall follow procedures in Minnesota Statutes, section 206.86." (Emphasis added). Thus, the Rule recognizes that because a precinct counter is being used to tabulate the ballots, there may be reasons the ballot count and the voter count do not match exactly. More importantly, the Rule recognizes that in many circumstances that discrepancy can be reconciled by election judges. If the

numbers can be reconciled by election judges, the discrepancy between the numbers is simply noted in the incident report. *See* Minn. R. 8230.4390 (listing items in certification signed by election judges which includes "D. that the ballots have been counted and agree with the number of names as shown on the summary statement *or that any discrepancy has been noted on the incident report.*") (emphasis added). Only if the numbers cannot be reconciled does the drastic remedy of removing a ballot and not counting that ballot come into play. *See* Minn. R. 8230.4370.

There is no standard in state law for determining when "it is impossible to reconcile the numbers[.]" Minn. R. 8230.4370. As discussed above, in Hennepin County, election judges are instructed in methods to reconcile these numbers. However, it is often difficult to get the numbers to match exactly. Experience has shown that this is most likely due to mechanical or human error in the election administration process. In Hennepin County, however, it is not a significant issue. As part of the County Canvass, all of the precincts in Hennepin County were reviewed to determine if the reported number of ballots on the summary statements could be reconciled with the number of voters.

Petitioner has alleged that the over vote could be as high as 40,000 votes. Pet. at 14. This allegation is based on a quote in a StarTribune article relating to information in the Statewide Voter Registration System. Hennepin County believes that the total number of possible excess ballots in the State is dramatically less.

In the 2010 General Election in Hennepin County there were 477,477 individuals who voted. *See* Smith Aff. ¶ 8. There are 425 precincts in Hennepin County. There are

15 precincts where the number of ballots on the summary statement was higher than the number of voters and there was not an adequate explanation for the discrepancy. The total number of ballots in excess of the voter total in these precincts is 22 ballots. *Id.*

These 15 precincts are the only precincts in Hennepin County where the ballot tally is higher than the vote total and the election judges did not have a specific explanation to explain the discrepancy. In general, Hennepin County has instructed election officials to attempt to find an explanation for any differences between these two numbers. *Id.* ¶ 9. In some cases, however, it is simply not possible to determine why the numbers do not match. The most likely explanation is that there was a ballot jam that was not reported in the incident log. *Id.* It also could be that a voter forgot to obtain a voter receipt or forgot to sign the polling roster. *Id.*

If an explanation is not forthcoming, and the discrepancy is de minimis, Hennepin County will accept a precinct totals and considers the precinct reconciled. *Id.* Experience has show that this small discrepancy between the tally of ballots by the M100 and the number of voters in these precincts is most likely due to mechanical or human error. Moreover, experience has shown that the issues related to ballot jams are eliminated during a hand recount. Accordingly, Hennepin County does not instruct election judges to employ the drastic remedy of removing one or more ballots when the discrepancy is de minimus. To do otherwise is to risk inserting far greater inaccuracy and confusion into the election night process. Only when there is a significant difference between these numbers will Hennepin County refuse to accept a precinct's reconciled

totals. *Id.* As discussed above, this occurred in one precinct in Hennepin County in the 2010 General Election and this precinct reran all the ballots and the totals matched

In sum, because precinct counters are used in Hennepin County, election judges have authority to report results when the number of ballots does not match the number of voters as long as these totals can be reconciled. During the 2010 General Election, all precincts within Hennepin County reconciled. Therefore, the Court should not grant the relief requested.

CONCLUSION

For the foregoing reasons, Respondent Alverson believes the Petition should be dismissed.

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Hennepin County Attorney

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Date: November 19, 2010

STATE OF MINNESOTA

IN SUPREME COURT

A10-2022

In *re* Petition regarding 2010 Gubernatorial Election

AFFIDAVIT OF RACHEL SMITH

Rachel M. Smith, being first duly sworn, deposes and states as follows:

1. I am the Elections Manager for the County of Hennepin. I was Elections Manager in Anoka County from 2005 to 2009.

2. Hennepin County instructs election officials within Hennepin County regarding election procedures, including procedures regarding Election Day activities. Hennepin County uses Model 100 Precinct Ballot Counters ("M100") in all of its precincts. M100s tabulate ballots and store the results. The results are printed on a summary statement at the end of voting. These results are transmitted electronically to Hennepin County at the end of election night and the printed and signed summary statements are sent to Hennepin County as well.

3. Precincts in Hennepin County are all trained to use ballot receipts to track the number of voters. The voting receipts have been used for many elections in Hennepin County for counting voters. They are used as follows: On Election Day, voters arrive at their polling place and if they are pre-registered they sign the polling place roster and if they are not pre-registered, they register to vote and then sign the same-day registration roster. After a voter signs the polling place roster or the same day registration roster, an

election judge gives them a numbered voter receipt. The voter takes this receipt to the ballot judge who takes the receipt and gives the voter a ballot and explains the voting procedure. This voter receipt is retained. The voter then makes their selections on the ballot and marks the ballot accordingly. The voter then brings this ballot to the M100. The M100 tabulates the number of ballots entered and the number of votes for each candidate on the ballot. In addition, Election Judges frequently use these voter receipts to track and balance in the precinct throughout the day by matching the total number of ballots on the M100 LCD Panel with the last receipt provided to a voter.

4. When voting is over on Election Day, there are certain procedures that election judges follow. Hennepin County follows the procedures outlined in the 2010 election Judge Guide. Attached as Exhibit 1 is a copy of pages 41 to 44 of 2010 Election Judge Guide issued by the Office of the Minnesota Secretary of State. In accord with this guide, after the last voter in the precinct has completed voting, the election judges secure the voting system against further voting. After all ballots are tabulated by the M100, the election judges run the vote total tape. This tape is called a summary statement. The election judges then perform reconciliation. The process involves comparing two numbers. The first is the number of ballots submitted for tabulation in the M100, which is printed on the summary statement. The second number is the number of voters. Consistent with Minnesota law, in Hennepin County election judges are instructed to determine the number of ballots that should have been cast by counting the number of voter receipts issued pursuant to Minn. Stat. § 204C.10, subd. 2. This practice of counting voters by counting voting receipts is a common practice throughout Minnesota

and has been used in Hennepin County for many years. This process is uniformly preferred and used because it is more accurate than having election judges counting signatures in printed rosters late on election night.

5. If these two numbers (voter receipts and number of ballots as indicated on the summary statement) match, reconciliation is complete and election judges sign the summary statement. If these numbers do not match, I have instructed election officials that election judges should engage in a deliberative process to determine why the numbers do not match. There are numerous reasons that these numbers may not match. In the 2010 General Election for example, ballot jams in the machine that resulted in a ballot being counted twice on the machine; voters left after signing in, but without submitting a ballot; a voter was provided two ballots that were stuck together and voting the front of one and the back of the other; and a voter was not given a voter receipt. This occurs in every election. In these precincts where it occurs, in the vast majority of cases, the totals are only off by one or two.

6. If the numbers do not match, election judges are instructed to review the incident log to determine if there is an explanation for the discrepancy. If they cannot find an explanation in the incident logs, they are instructed to verify that the number of voter receipts equals the number of individuals on the polling place and new registrant rosters. In addition, if the numbers still do not reconcile they are instructed that they can run the ballots through the M100 again to get an accurate number. This occurred in Plymouth Precinct 4-22 this year. Initially, this precinct the count was off by six votes. After re-running the ballots, the numbers matched.

7. After this process of discerning the basis for any discrepancies between the ballot total on the summary statement and the number of voters has been completed, the summary statements and a precinct tracking form is then provided to Hennepin County. Attached as Exhibit 2 are examples of precinct tracking forms used in Hennepin County for election judges to report any discrepancies between the number of ballots and the number of voters. I use the statements and the tracking forms during the period between Election Day and the County Canvass to make sure there are not any significant differences between the number of voters and the number of a ballots in any precinct.

8. In the 2010 General Election in Hennepin County there were 470,477 individuals who voted. There are 425 precincts in Hennepin County. There were 15 precincts where the number of ballots on the summary statement was higher than the number of voters that did not have an explanation with a total of 22 ballots. These fifteen precincts are the only ones in Hennepin County where the ballot tally was higher than the vote number and there was not an explanation provided to explain the reason for the discrepancy. However, the election judges in these precincts submitted these returns and concluded that the numbers had been reconciled.

9. I have instructed election officials in Hennepin County to work diligently to determine a basis for any discrepancy between the number of voters and the number of ballots as tallied by the M100. I have instructed election officials that if an explanation is not forthcoming, but the discrepancy is de minimus, Hennepin County will accept precinct results. This small discrepancy between the tally of ballots and the number of voters in these precincts are most likely due to ballot jams or other mechanical or human

error. Experience has show that this is the most likely case and not that more ballots were voted than voters. In fact, my experience in that during the 2008 Recount any precincts that were off by one or two (both more and less ballots than voters) were resolved through the hand recount. Therefore Hennepin County believes that these precincts are reconciled and the drastic remedy of removing one or more ballots is not required by Minn. R. Part 8230.4370. Only when there is a significant difference between these numbers will Hennepin County refuse to accept a precinct's reconciled totals. As discussed above, this occurred in one precinct in Hennepin County in the 2010 General Election and this precinct reran all the ballots and the totals reconciled.

10. Attached as Exhibit 3 is a redacted copy of two or 266 pages of the roster in Minneapolis Ward 7-Precinct 08.

Further affiant sayeth not.

Rachel M. Smith

Subscribed and sworn to before
me this 19th day of November, 2010.

Notary Public

LORIE BURSEY
Notary Public-Minnesota
My Commission Expires Jan 31, 2015

2010
ELECTION JUDGE GUIDE

Office of the Minnesota Secretary of State
180 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Phone: (651) 215-1440
Toll Free: 1-877-600-8683
Minnesota Relay Service: 1-800-627-3529

Email: elections.dept@state.mn.us
Website: www.sos.state.mn.us

EXHIBIT 1

13.0 CLOSING ACTIVITIES

13.1 CLOSE POLL AND FINISH VOTING

At 8 p.m. announce "The polls are closed". Everyone in line at 8 p.m. must be allowed to vote. This includes any people waiting to register to vote. Those who come after 8 p.m. cannot vote. Although not required, giving the last voter in line a "last voter" card or having an election judge stand at the end of the line is a good practice.

Once voting is finished the public is welcome to watch the closing activities and get the results if the ballots are counted in the precinct. Anyone may watch, but no one may interfere with the election judges' work. Members of the public who are watching closing activities after the polls have closed do not have to provide a written letter like the Challengers during voting hours are required to do.

Closing activities generally consist of the following:

1. ballot counting or preparing for delivery to the counting center;
2. completing the precinct summary statement and other reports;
3. taking down the U.S. flag;
4. taking down and saving the various posters;
5. packing up the voting stations, ballot counter, AutoMARK; and
6. packing up the supplies and unused ballots.

Depending on your county, city, township, or school district procedures, you may also need to count the write-in votes for each office.

13.2 COUNT TOTAL VOTERS

The summary statements or ballot counter tapes require noting the total number of people who voted. Determine the total number of voters by adding the signatures on the pre-registered roster and the signatures on the election day registration roster.

Pre-registered roster signatures + election day registration roster signatures

= Total persons voting

(M.S. 204C.24, subd. 1)

14.0 CLOSING WITH A PRECINCT BALLOT COUNTER

Election law requires that election judges complete three or more copies of the summary statements for state elections. At least two copies of the summary statement must be prepared for elections not held on the same day as the state elections.

14.1 POLLING PLACE PROCEDURE

After the last voter has completed voting:

1. insert any ballots that may be in the auxiliary (emergency) voting compartment;
   a. if there are voter ballot marking errors on any of these ballots (as in section 10.1), two judges of different parties should examine the ballots for voter intent (as in section 16.6), and duplicate as needed using the process in section 14.3 below;
   b. feed the ballots that did not need to be duplicated and any ballots that were duplicated into the ballot counter;
2. after all voted ballots are counted, run the vote totals tape; the first totals tape should be an unbroken continuation of the tape with the zero report from the morning and problem messages during the day;
3. if instructed by your local election official, transmit the totals to election headquarters;
4. run three additional tapes (or more if your local election official directs you to do so); post one of them for public viewing in the polling place;
5. check the totals on the tapes;
   a. compare the total number of ballots and the total number of voters;
   b. the total number of voters equals the number of signatures on the regular roster, including signatures on the election day registrant roster;
   c. if they match, sign the tapes; if they don't match, contact your local election official;
6. complete other statistics on the tape, see section 14.2 below;
7. as directed by your local election official, count write-in votes and record the names and vote totals on the write-in tally sheet; although the ballot counter can be set to sort out write-in ballots, voters often forget to make a vote mark for write-in votes; therefore, it's important to look through the ballots by hand for write-in votes;
8. seal the voted ballots in the appropriate envelope or box and sign across the seal;
9. pack up the ballot counter and return as directed by your local election official; and
10. because the ballots have been counted and sealed, one judge may deliver the returns. *(M.R. 8230.4365; 8230.4390)*

14.2 COMPLETING SUMMARY STATEMENT

In precincts with a precinct ballot counter, the summary statement statistics is printed at the end of the results tape. The zero report printed when the polls were opened must remain attached to any messages printed on Election Day, the first printout of the results, and the summary statement at the end of the tape. **The summary statement is used to record totals that are specific to your polling place on Election Day. These totals will not include absentee activity since absentee ballots are not processed in polling places on Election Day.**

Totals listed on the summary statement include:

- Total ballots delivered to your precinct as adjusted by the actual count (from any adjustments noted on the incident log);.
- The number of unofficial ballots made, if any;
- The number of spoiled ballots;
- The number of duplicate ballots made, if any;

- The number of unused ballots at the end of the day;
- The number of absentee ballots delivered, if requested on your form, should be reported as "0"
- The number of absentee ballots rejected, if requested on your form, should reported as "0"
- The number of persons registered to vote in your precinct at 7am on Election Day;
  - This number is listed in the back of the pre-registered roster.
- The number of persons who registered to vote at the polling place on Election Day;
  - This is the number of voter signatures on the election day registration roster (or the number of EDR voter registration applications).
- The number of signatures on the rosters (pre-registered roster plus the election day registration roster);
  - This is the number of voter signatures on both rosters.
  - Do not count "AB" notations printed, written, or stamped on the registered roster.
- The number of accepted absentees, if requested on your form, should be reported as "0" for your polling place since absentee ballots are counted by the absentee board, not in the polling place;
- The total number of voters that voted at the polling place on Election Day.
  - This is the total number of ballots counted and printed by the ballot counter on the tape. This number should match the number of signatures as calculated in section 14.1 above.

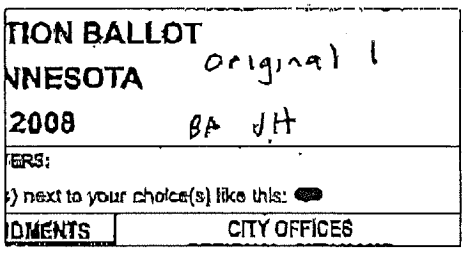
(M.S. 204C.24)

Note: For recording some of the information above, blank lines may be available on your tape or an additional summary sheet may be provided.

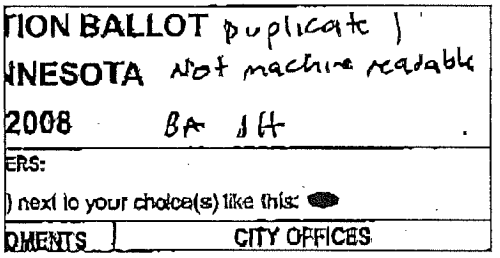
14.3 "DUPLICATING" BALLOTS FOR SCANNING

Occasionally, a ballot cannot be correctly scanned because it is damaged or the voter used the wrong pen or vote mark. The votes are still valid, so it's necessary to make a duplicate that can be scanned:

Original



Duplicate



1. two judges from different parties do the duplication;
2. both ballots are labeled and numbered, "original 1" and "duplicate 1," and all subsequent ballots requiring duplication will be numbered consecutively;
3. print the reason for duplication on the duplicate ballot;
4. one judge reads the votes to the other judge who marks the duplicate ballot accordingly;
5. both judges initial both the original and duplicate ballots;
6. follow the statute/rules in section 16.6 for determining voter's intent;
7. when finished, both judges compare the ballots to be sure the duplicate is correct;
8. insert the duplicate ballot into the ballot counter;
9. place the original ballot in the envelope labeled "Original ballots for which duplicates have been made"; and
10. when you are done, record the number of original ballots in the envelope and seal the envelope.

(M.S. 206.86, subd. 5; M.R. 8230.3850)

14.4 DELIVERING ELECTION RETURNS

As soon as possible, one or more judges deliver the required election materials to your local election official.

These materials include:

1. sets of ballot counter tapes or summary statements;
2. sealed envelopes or containers with all voted ballots;
3. sealed spoiled ballot envelope;
4. sealed original for which duplicates were made envelope;
5. polling place rosters;
6. completed voter registration applications, Election Day rosters; and
7. other election materials (as directed by your local election official). *(M.S. 204C.27)*

11/16/2010 16:01 FAX 6126466288 HENN. CO CIVIL 028/035

Voter Statistics Worksheet
State General - November 2, 2010

Municipality: RICHFIELD	Precinct: 2

Supervisor Judge Name: Jan Nyholm Supervisor Judge Signature: Jan Nyholm

A. Total number of voter receipts: 1763 1764

B. Total number of ballots counted on the tape: 1764

Is the zero tape attached to the first results tape? ☐ Yes ☐ No

Does the **total** in **'B' match** the **total** in **'A"**? ☐ Yes ☒ No

If you selected "No" above, call City Hall. Please provide further explanation:

One yellow voter receipt was lost by the voter between registering and getting his ballot.

Return in Results Tape Envelope "A"

EXHIBIT 2

Voter Statistics Worksheet
State General - November 2, 2010

Municipality: RICHFIELD	Precinct: 9

Supervisor Judge Name: Susan Supervisor Judge Signature: Pearl Weitbrecht

A. Total number of voter receipts: 1085 1086

B. Total number of ballots counted on the tape: 1086

Is the zero tape attached to the first results tape? ☒ Yes ☐ No

Does the **total** in **'B' match** the **total** in **'A"**? ☐ Yes ☒ No

If you selected "No" above, call City Hall: Please provide further explanation:

Jammed Ballot - pulled through - out back - think ballot may have been counted - however reinserted ballot

Return in Results Tape Envelope "A"

11/02/2010 STATE GENERAL ELECTION

MINNEAPOLIS W-7 P-08

I certify that I am at least 18 years of age and a citizen of the United States; that I reside at the address shown and have resided in Minnesota for 20 days immediately preceding this election; that I am not under guardianship of the person in which the court order revokes my right to vote; have not been found by a court to be legally incompetent to vote, and that I have the right to vote because, if convicted of a felony, my felony sentence has expired (been completed) or I have been discharged from my sentence; and that I am registered and will be voting only in this precinct. I understand that giving false information is a felony punishable by not more than five years imprisonment and a fine of not more than $10,000, or both.

Voter Name and Address	Voter Signature	District/Precinct	ID Number	DOB
1. SHAIRZAY, SABRINA 110 GRANT ST W APT 190		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0004554387	
2. SHAMARA, DAVID GABRIEL 15 GRANT ST E APT 1005		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0004485477	
3. SHANMUGAVEL, MANIVANNAN 1314 MARQUETTE AVE APT 1602		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0004628891	
4. SHAPIRO, EMMANUIL SEMENOVICH 1350 NICOLLET MALL APT 2010	X	0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0001514859	
5. SHAPIRO, IRVING 21 GREENWAY GABLES	A.B.	0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0001096345	
6. SHAPIRO, JANET REINSTEIN 21 GREENWAY GABLES	A.B.	0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0001096796	
7. SHAPIRO, NELLA LVOVNA 1350 NICOLLET MALL APT 2010	Nella Shapiro	0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0001515328	
8. SHARK, BRADLEY CURTIS 210 GRANT ST W APT 626	X	0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0001099571	
9. SHARP, LINDSEY NEY 110 GRANT ST W APT 9E		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0009209740	
10. SHARP, RYAN DOUGLAS 110 GRANT ST W APT 9E		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0004341012	
11. SHAVER, BEE BARTH 1200 NICOLLET MALL APT 618		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0001215255	
12. SHAW, KRISTEN EMMALEE 27 14TH ST W APT 102		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0001536097	
13. SHEA, GLYNIS CLARE 110 GRANT ST W APT 18K	X	0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0001454671	

EXHIBIT 3

R1

4

11/02/2010 STATE GENERAL ELECTION

MINNEAPOLIS W-7 P-08

I certify that I am at least 18 years of age and a citizen of the United States; that I reside at the address shown and have resided in Minnesota for 20 days immediately preceding this election; that I am not under guardianship of the person in which the court order revokes my right to vote; have not been found by a court to be legally incompetent to vote, and that I have the right to vote because, if convicted of a felony, my felony sentence has expired (been completed) or I have been discharged from my sentence; and that I am registered and will be voting only in this precinct. I understand that giving false information is a felony punishable by not more than five years imprisonment and a fine of not more than $10,000, or both.

Voter Name and Address	Voter Signature	District/Precinct	ID Number	DOB
1. RUMMEL, DARCIE M 1400 LAUREL AVE APT W1208		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0004297588	
2. RUNDORFF, ROBERT L 1235 YALE PL APT 1310	X Robert L. Rundorff	0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0001104556	
3. RUNDQUIST, MIRANDA JO 1357 WILLOW ST APT 407		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0003188580	
4. RUNGE, TROY 1200 NICOLLET MALL APT 812		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0004371701	
5. RUNKE, MAX WILLIAM 1300 YALE PL APT 325		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0004663880	
6. RUNYON, ELAINE HELEN 1200 NICOLLET MALL APT 601	X Elaine H Runyon	0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0001073918	
7. RUPP, ALLISON 1367 WILLOW ST APT 601		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0003844622	
8. RUPP, LINDSEY ANNE 1414 LAUREL AVE APT 211		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0004385733	
9. RUSINKO, ROCHELL ANN 1300 HENNEPIN AVE APT M316		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0001379282	
10. RUSTAD, TODD NICKLUS 110 GRANT ST W APT 27H		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0001343154	
11. RUTHERFORD, SHIRLEY M 1200 NICOLLET MALL APT 416		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0000894052	
12. RYABAYA, LARISA 1421 YALE PL APT 1004		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0001466270	
13. RYAN, BRENDON ARTHUR 1300 HENNEPIN AVE APT M208		0001-4 MINNEAPOLIS 1680 MINNEAPOLIS W-7 P-08	0004212879	

Court File No. A10-2022

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

CERTIFICATE OF SERVICE

Lorie Bursey, being first duly sworn on oath, deposes and says:

That on the 19th day of November, 2010, she served the annexed:

1. Respondent Hennepin County Auditor Jill Alverson's Response to Petition; and

2. Affidavit of Rachel Smith

on each of the following by e-mailing to each of them a copy thereof, directed to them at their last known e-mail address as follows:

DBratvold@Briggs.com
cnnauen@locklaw.com
christie.eller@state.mn.us
darwin.lookingbill@co.ramsey.mn.us
agrogalla@co.pennington.mn.us
amy.brosnahan@co.kanabec.mn.us
attorney@co.clay.mn.us
attorney@co.sherburne.mn.us
attorney@co.steele.mn.us
attorneys.office@co.itasca.mn.us
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county.attorney@co.olmsted.mn.us
county.attorney@co.stearns.mn.us
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jareite@co.chisago.mn.us
jeanine.brand@co.clearwater.mn.us
jeff.edblad@co.isanti.mn.us
jkcarlso@co.pine.mn.us
jkeeler@co.carver.mn.us
jnordstrom@co.wabasha.mn.us
jra@runestone.net
jratz@co.aitkin.mn.us
keith.helgeson@co.yellow-medicine.mn.us
kristenn@co.mower.mn.us
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OFFICE OF THE HENNEPIN COUNTY ATTORNEY
MICHAEL O. FREEMAN COUNTY ATTORNEY

November 19, 2010

VIA FAX and U.S. MAIL
Frederick K. Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul MN 55155-6102

Re: *In re Petition regarding 2010 Gubernatorial Election*
Supreme Court File No. A10-2022

Dear Mr. Grittner:

Enclosed for filing in the above referenced matter, please find the original and eight copies of:

1. Respondent Hennepin County Auditor Jill Alverson's Response to Petition; and
2. Affidavit of Rachel Smith.

Also enclosed is the original Certificate of Service. Pursuant to the Court's November 18, 2010 Order, I am serving a copy of these materials by e-mail on the Clerk of Appellate Courts, and all parties.

By copy of this letter, all parties are being served.

Sincerely,

Daniel Rogan

DANIEL ROGAN
Sr. Assistant Hennepin County Attorney
Telephone: (612) 348-5529
Fax: (612) 348-8299

DR:ljb
Enclosures
cc: Charles N. Nauen, Esq.
Diane B. Bratvold, Esq.
Other Parties

FAX COVER SHEET

Office of the Hennepin County Attorney
Civil Division
A-2000 Government Center
Minneapolis, MN 55487-0200

Date Transmitted: November 19, 2010

TO:

Clerk of Appellate Courts

Fax No. 651-297-4149

FROM:

Daniel Rogan

Hennepin County Attorney's Office
Civil Division

Fax No. (612) 348-8299

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(612) 348-5506

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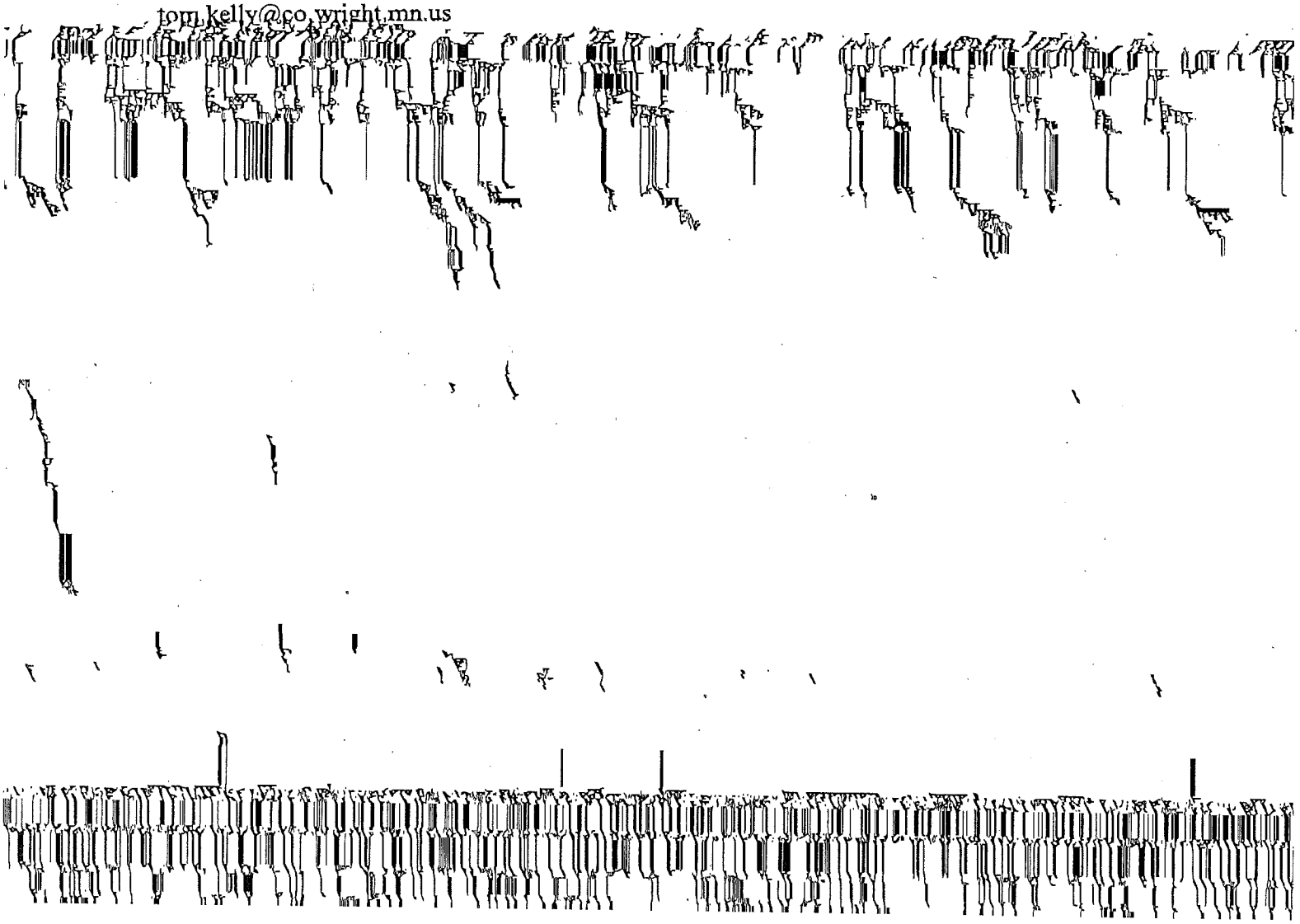

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