Case No. A10-2022

STATE OF MINNESOTA

IN THE SUPREME COURT

OFFICE OF
APPELLATE COURTS

NOV 19 2010

FILED

In *re* Petition regarding 2010 Gubernatorial Election

RESPONSE OF RAMSEY COUNTY TO PETITION TO CORRECT ERRORS AND OMISSIONS REGARDING PROPER NUMBER OF BALLOTS COUNTED

INTRODUCTION

Ramsey County urges this Court to dismiss the Petition in this matter because officials in Ramsey County and throughout the State of Minnesota have taken appropriate action to reconcile the number of votes counted and certified through local canvassing boards with the number of individuals who voted on Election Day. The petitioner's argument is fundamentally flawed because they rely on a statute that uses obsolete language that is inconsistent with modern day election practices. If the statute is interpreted in the context of contemporary terminology, there is little question that the procedures used by Ramsey County and other jurisdictions are in accord with the law. As a result, there is no error or omission that needs to be corrected.

ARGUMENT

Ramsey County does not dispute the general facts set out by Petitioner. Election judges in Ramsey County are trained to reconcile the number of voters with the number of ballots counted by counting either the voter receipts or the signatures in the polling place roster. *See* Affidavit of Mansky at ¶ 4; Petitioner's Exhibit 3 at 65-67. If the ballots counted are inconsistent with the number of receipts or signatures in the polling place roster, election judges in Ramsey County are instructed to go through a number of steps to attempt to determine the reason for the discrepancy. *See* Petitioner's Exhibit 3 at 65-67. If the numbers remain in conflict, the difference in the count is recorded and forwarded to the Ramsey County Elections Department. *See* Mansky Affidavit at ¶6-7.

Petitioner argues that this method of reconciliation is not in accord with state law and cites Minn. Stat. 204C.20. Based on this statute, the Petitioner argues that election judges can count only the signed "voter certificates" or signatures on the "election register". Minn. Stat. 204C, however, uses language that is obsolete. The terms "voter's certificates" and "election register" used in Minn. Stat, 204C.20, Subd. 1 refer to documents that have not existed in the Minnesota election law for 20 years. *See* Mansky Affidavit at ¶11. The contemporary terminology for the equivalent documents are "voter receipt" and "polling place roster", respectively. *See* Mansky Affidavit at ¶12-13. Because these are the documents election judges in Ramsey County use to reconcile the number of voters with the number of ballots counted, the procedure is in accord with a contemporary interpretation of the statute. The procedure is also condoned by current rules of the Secretary of State. *See* Minnesota Administrative Rules 8200.9300, subp. 10.

Petitioner also claims that ballots should have been removed and set aside at the precinct level in order to rectify any imbalance in the count. In making this argument, the Petitioner cites the wrong statute. In precincts where an electronic voting system is used Minn. Stat. 206.86, Subd 1 applies. That section requires the election judges to send the sealed ballot box to the County Auditor for processing. This is what is done in Ramsey County. *See* Mansky Affidavit at ¶7.

Ramsey County acknowledges that no ballots have been set aside and not counted. All of the votes recorded on the election tapes have been reported to the Ramsey County Canvassing Board. However, Ramsey County officials have determined that the ballots counted can be reconciled with voter receipts or polling place roster signatures or that a reasonable explanation exists for any discrepancy in all but 3 precincts. In those precincts, there is a total of only 5 ballots in excess of the voter receipts or polling place roster signatures. *See* Mansky Affidavit at ¶10. There is no reason to believe those ballots were not cast by a legal voter. The discrepancy in the count is more likely due to a human or mechanical error.

CONCLUSION

The Petitioner seeks to disenfranchise Minnesota voters in precincts where the votes tabulated do not exactly correspond to the number of voter receipts or polling place roster signatures. The argument in support of their effort is flawed in its reliance on outdated terminology. The evidence presented does not support a claim of any "error" or "omission". As a result the Petition should be dismissed.

Respectfully submitted,

Dated 11/19/10

SUSAN GAERTNER
Ramsey County Attorney

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Case No. A10-2022

STATE OF MINNESOTA

IN THE SUPREME COURT

In *re* Petition regarding 2010 Gubernatorial Election

Affidavit of Joseph Mansky

Your affiant, Joseph Mansky, being first duly sworn, states as follows:

1. I am the Elections Manager for Ramsey County, Minnesota. I have held this position since 2002. Prior to coming to Ramsey County, I served for more than 15 years on the staff of the Election Division of the secretary of state's office and was state election director from 1988 to 1999.

2. In my position as Elections Manager, I supervise the training for election judges throughout Ramsey County.

3. As part of their training, election judges are instructed on procedures for reconciling ballots counted with persons who were pre-registered to vote and signed the polling place roster as well as those who registered to vote on Election Day and signed a new voter registration card.

4. In order to perform the reconciliation, election judges are trained to either count the voter receipts or the signatures on the polling place roster. Typically, election judges initially count the receipts as that method is more efficient. This method should result in the same number as a count of the signatures because a person is not given a receipt until they have signed the roster. The receipt is then exchanged for a ballot.

5. The number of pre-registered voters who voted and the number of newly registered voters is recorded on a document titled "Voter Statistics". A true and correct copy of this form is attached as Exhibit A.

6. The total recorded on the Voter Statistics form is then visually compared to the total number of ballots recorded on the tape from the ballot counter. If there is a discrepancy, the election judges will then count the signatures on the roster to verify that the number of receipts is the same as the number of signatures. If a discrepancy still remains, the judges will attempt to determine the reason for the discrepancy and make note of that on the bottom of the Voter Statistics form.

7. The Voter Statistics form and the sealed ballot boxes are then sent to the Ramsey County Elections office. Ramsey County elections staff perform an audit of the forms and prepare materials for the Ramsey County Canvassing Board. During that audit, information from the forms is recorded on a document titled "Election Day Audit Form". A true and correct copy of that form is attached as Exhibit B.

8. During the course of the audit, our elections staff determined that there were 11 precincts in which there were more ballots counted than the total voting reported.

These instances affected a total of 18 ballots. The election judges' reports to us from election day provide some insight into these situations.

9. For example, two precincts reported a problem with ballots jamming in the ballot counter. This results in the possibility that one ballot could have been counted twice. If that is the case, the recount will correct the error because there will be only be one physical ballot. Another over count occurred because a voting location had two precincts. The voter signed the roster for one of the precincts, but the ballot was mistakenly counted in the other precinct. This does not create a problem because the other precinct had one less ballot than signatures. As a result, the total count for the municipality is not affected as far as the governor's race is concerned.

10. Based on the information I have reviewed, it appears that there may be only 5 ballots in excess of the number of signatures recorded that have been counted by the ballot counters and included in the Ramsey County Canvassing Report. Considering that 192,046 ballots were cast in the Governor's race in Ramsey County, this is amazing accuracy. As a result, we have not attempted to randomly remove ballots from the relevant precincts in order to make the signatures and ballot numbers match. To do so would disenfranchise a legitimate voter simply because human or mechanical error resulted in a minor discrepancy between ballots counted and the signatures recorded on Election Day.

11. The statute that petitioners have cited for the proposition that Minnesota counties are not following the law with respect the process for reconciling votes uses terminology that has not been updated to reflect modern election procedures. The terms

"voter's certificates" and "election register" in Minn. Stat, 204C.20, Subd. 1 are obsolete and refer to documents that have not existed in the Minnesota election law for 20 years. The "election register" was a document used by jurisdictions without a permanent voter registration system. The register was essentially a loose sheet document on which the election judges wrote the names and addresses of voters who checked in and were orally administered the oath of eligibility. The election registers were not signed. The act of taking the oath qualified the voter to then receive a ballot and vote.

The "voter's certificate" was used in jurisdictions with a permanent registration system. The certificate included the oath of eligibility, which the voter acknowledged by signing it. The voter then presented the certificate to the election judges in order to obtain a ballot. You can see this at Minn. Stat. (1980) § 204A.29.

12. In 1987, the legislature authorized the statewide registration system and brought all counties under permanent registration. (Laws of 1987, ch 361, s 2). At that point, all counties used a permanent registration file, which was now called a polling place roster, which contained both the oath of eligibility and a place for the voters to sign and acknowledge the oath. The voter's certificate then became the voter's receipt, which was the proof of eligibility needed for the voter to obtain a ballot and vote. (Laws of 1990, ch 585, s 27). Unfortunately, Minn. Stat. 204C.20 was never amended to bring its terminology into conformance with the changes in the voter registration system.

13. If contemporary terminology is inserted into Minn. Stat. 204C.20, then it is clear that the process used by Ramsey County and other Minnesota jurisdictions in fact complies with the law. The term "roster" can be substituted for the term "election

register" and the term "voter receipt" can be substituted for the term "voter's certificate". If this substitution of terms is made, Minn. Stat. 204C.20 would be read to allow the counting of either voter receipts or signatures on the roster. This is precisely the process used throughout the state.

Dated: November 19, 2010

Joseph Mansky

Joseph Mansky

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

Notary Public

DEBBIE XIONG
Notary Public-Minnesota
My Commission Expires Jan 31, 2013

Voter Statistics

(Place info tab here)

This form is part of your precinct's official polling place certification

Complete A thru C:

A. Number of new voter registration cards filled out today _____
(Equal to the # of yellow receipts)

B. Number of pre-registered voters signing the roster _____
(Equal to the # of blue receipts)

C. Total voting in polling place (**C = A+B**) _____

_____
Signature of Head Election Judge

Record discrepancies & incidents that affect the 'Total voting' number:

_____

_____

_____

_____

_____

_____

_____

RAMSEY COUNTY

Election Day Audit Form

LABEL

Polling Place Statistics

	ERS Form #s	Manual Count #s (if needed)
Tape quantity:		
Registered Roster Signatures:		
Non Registered Roster Signatures:		
TOTAL: (should match tape quantity)		

Absentee Statistics

	ERS Form #s	Manual Count #s (if needed)
Tape quantity:		
Registered Absentees:		
Non Registered Absentees:		
SAH:		
UOCAVA:		
UOCAVA FED:		
TOTAL: (should match AB tape quantity)		

Non Registered Stats

Polling Place EDR: _____

Absentee EDR: _____

Pended EDR: _____

TOTAL: _____

Additional follow-up for Election Day Registration:

Incomplete EDR in-person: _____

Incomplete EDR absentee: _____

Double Voting (county attorney): _____

Felony (county attorney): _____

Ramsey County

Registered Stats

GOAL # of reg roster changes	**Discrepancy Reason:** (if not the same)
Actual # of reg roster changes	

Signature of Data Entry Staff: _____

Signature of Sign-Off Staff: _____ Date: _____

Materials needed to audit:	**Notes/Discrepancies**
ERS reporting form Rosters: Reg, Non Reg, and UOCAVA Election Day Registration Applications (EDR) Tapes (summary statements) for polls and AB Election Day journal	

OFFICE OF THE RAMSEY COUNTY ATTORNEY
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Civil Division

November 19, 2010

OFFICE OF
APPELLATE COURTS

NOV 19 2010

FILED

Frederick K. Grittner
Clerk of Appellate Courts
Minnesota Court of Appeals
305 Minnesota Judicial Center
205 Rev. Dr. Martin Luther King, Jr. Blvd
St. Paul, MN 55155

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

Dear Mr. Grittner:

Enclosed for filing is the original and eight copies of Response of Ramsey County To Petition To Correct Errors and Omissions Regarding Proper Number of Ballots Counted and Affidavit of Joseph Mansky. Our Affidavit of Service on petitioners' counsel will be filed separately. If you have any questions, please feel free to contact us.

Very truly yours,

Darwin J. Lookingbill
Civil Division Director
Ph: 651-266-2755

DJL/dgb

cc: Diane B. Bratvold