

Election Law for the
Non-Elections Lawyer

2024

Standard Disclaimer

- The views expressed are our own and are not necessarily the views of the Office of the Secretary of State or Secretary of State Steve Simon.

Roadmap

- Who does what in Minnesota's Election Processes?
- How do you register to vote in Minnesota?
- How do you vote in Minnesota?
- How are ineligible voters prevented from voting?
- Relevant Litigation

Who does what?

Office of the Secretary of State

- Chief state election official
- Train and certify county election administrators
- Administer the Statewide Voter Registration System (SVRS)
- Online Voter Registration/Online Absentee Ballot Application tools
- Online lookups by Voters for Voter Registration and Absentee Ballot Status

OSS Duties

- Administer database of candidates and election results
- Certify that election equipment meets state standards
- Conduct data matches and provide data to County Auditors
- US Postal Service National Change of Address data integration
- Department of Corrections data distribution
- Department of Public Safety data distribution
- Courts data
- Electronic Registration Information Center

County Auditor Duties

- Responsible for all aspects of voter registration in their county
- Verify voter data with DVS or SSA database
- Review data in SVRS on deaths, felony convictions, guardianships, non-citizen status, and apply/remove a “challenge”
- Forward information to county attorney about potential violations as appropriate
- Ballot layout, programming and printing for state elections

County Auditor Duties (cont'd)

- Purchase and maintain supplies and election equipment, including accessible voting equipment
- Program and test all voting equipment
- Issue absentee ballots
- Train and certify city, township, and school district local election officials
- Train and certify election judges
- Compile election results and transmit to OSS website
- Conduct post-election audits

Municipal Duties

- Determine precinct boundaries & polling locations
- Hire election judges & assign to precincts
- Train and certify election judges if duty delegated by county
- Administer health care facility absentee voting
- Administer absentee balloting, if delegated by county
- Operate polling places on election day

How do you register to vote in Minnesota?

Who is eligible to vote?

- Must be:
 - 18 years or older
 - A U.S. Citizen
 - Have maintained residence in Minnesota for 20 days immediately before the election
- Must not:
 - Have been convicted of treason or currently incarcerated for a felony
 - Under a guardianship in which the Court revoked your right to vote
 - Have been found to be legally incompetent

Registration

- Minnesota is one of the most voter-friendly states in the United States for eligible voter registration.
- Why?
 - Election-Day Registration
 - Online Voter Registration
 - Registration via Absentee Ballot
 - Automatic Voter Registration
 - Preregistration for youth

Election Day Registration

- Bring any of the following to your polling place:
 - Valid Minnesota's driver's license, learner's permit, or ID, or receipt for any of those documents that shows your current name and address
 - Tribal ID with name, address, photo, and signature
 - An approved photo ID plus a document with your current name and address.
 - College students: a student housing list was provided your precinct may be provided with a list of students housed at a Minnesota postsecondary educational institution. If so, a student named on that list can register by showing a current, valid student ID card from that same institution. The ID must have their photo.
- See <https://www.sos.state.mn.us/media/5622/election-day-registration.pdf>

Online Voter Registration

- Visit <https://mnvotes.sos.mn.gov/VoterRegistration/index>
- Have your driver's license, state ID card, or last four digits of your social security number and an email address

Registration via Absentee Ballot

- Submit a completed voter registration application with the absentee ballot
- Must present proof of residence to the individual who witnesses the marking of the absentee ballot
- The proof of residence is identical to what is required to register on election day

Automatic Voter Registration

- New this year!
- Individuals are registered to vote if they:
 - Are eligible;
 - Apply for a Minnesota driver's license or identification card; and
 - The application shows proof of citizenship (unless proof provided previously)
- Individuals receive notice of their registration and have 20 days to decline it.
- <https://www.sos.state.mn.us/media/5845/automatic-voter-registration-flowchart.pdf>

Preregistration for youth

- Beginning at age 16, any person who meets all the other requirements to vote may submit a voter registration application.
- Persons who do so will automatically be registered to vote upon their 18th birthday

How do you vote in Minnesota?

Election Day Voting

- Minnesota uses a mix of electronic rosters and paper rosters
- Pre-registered voters sign oath
- Non-registered voters complete election day registration process
- Election judges conduct challenged voter process when appropriate

Election Judges

- 30,000 election judges in nearly 4,000 precincts in over 3,000 locations.
- Minimum of 4 election judges for State General [3 in precincts with less than 500 registered voters]; some precincts use 15+
- 2 hours of training
- Additional training hour for head/chair election judge
- Election judges must be ‘balanced’ by major political parties in each polling place
- Volunteer!

When can I vote on election day?

- Polls open at 7 AM and close at 8 PM
- Non-metro towns with fewer than 500 voters may open as late as 10 AM
- Definition of metro includes Chisago, Isanti, Wright and Sherburne counties, as well as Hennepin, Ramsey, Anoka, Dakota, Washington, Scott and Carver.
- Employees may be absent from work to vote any time during the day, for regularly scheduled elections and certain vacancy elections.

Who Can Be In the Polling Place?

- Voters
- Persons assisting voters, including vouchers
- Election judges
- Election officials
- Challengers
- Sergeants-at-arms
- Student groups (with permission) and their teachers
- Media (with credential or acknowledgment by auditor of credential)
- Persons designated by Secretary of State
- Exit Pollsters may be at the door to the polling place, provided they have a credential from a news media organization

Challengers

- Can be appointed by major parties at elections for partisan offices
- Challenge must be based on **personal knowledge** that person is not an eligible voter
- Challengers may not make lists of voters, may not touch official materials, and may not talk to voters.
- Minnesota does not have “pollwatchers” as that term is commonly used in other states

What can't I do in the polling place?

- Cannot possess intoxicating liquor
- Cannot wear campaign buttons or material
- Cannot linger within 100 feet of entrance to polling place
- Cannot solicit voters within 100 feet of **building** in which polling place is located

Regular Absentee Voting

- Any eligible voter can vote by absentee ballot. No excuse required.
- Starts 46 days before the election
- Must have witness who must be Minnesota voter or notary public
- For voters voting absentee in-person at a government building, the witness is an election official.
- If permitted by county, voters may place their ballot directly into a tabulator when voting in person in the seven days before an election.
- Agents may deliver the ballots of three persons in any one election.

When can I vote absentee?

- 46 days before the election
- Extended election office hours for in-person absentee voting are provided by law
 - Two Saturdays before the election – 9 AM to 3 PM
 - Sunday immediately before the election – 9 AM to 3 PM
 - Monday before a Tuesday election – until 5 PM

How are regular absentee votes reviewed?

- County and city election officials establish an absentee ballot board
- The board reviews ballots within 3 to 5 days to ensure that the envelope contains all required information
- If it does, it is accepted
- If not, it must be rejected
- If rejected more than 5 days before the election, the board must send the voter a replacement ballot and explanation
- If less than 5 days of the election, the board must attempt to contact the voter

How are regular absentee votes processed?

- At the close of business seven days before the election, accepted absentee votes are considered “final.” County/cities may begin processing them by:
 - Marking rosters with “AB” for those voters who cast an absentee ballot
 - Removing ballots from envelopes and feeding into ballot counters
 - If ballots arrive after rosters have been printed, providing supplemental list to polling places or waiting for rosters to be returned after polls close before processing those ABs
 - Counting the absentee votes after the polls close and all absentee ballots for precinct have been processed.
- Absentee ballots returned in envelopes must not be counted if the person voted under the “alternative procedure” or at the polling place
- Absentee ballot boards have until 24 hours after the close of voting to complete their tasks.

Other ways to vote absentee

- Military and Overseas Voters have a specific process that allows for blank ballots to be emailed or faxed and to be returned with no witness
- Election judges are required to visit health care facilities and facilitate AB voting. They collect ballots and return them

What happens at 8:00 p.m.?

- All voters still in line at 8 PM may vote
- Polling place becomes open to the public at end of voting
- Public can watch but not interfere with ballot counting
- Results are tabulated and can be accessed at the Secretary of State's website
- Results not official until certified by proper canvassing board
- Results can and do legitimately change

What happens post-election?

County Canvassing Board

- Consists of county auditor, court administrator of the district court, the mayor or chair of the most populous municipality in county, and two county commissioners
- Canvass conducted 2-3 days after State Primary and 3-8 days after State General Election
- Certifying the number of individuals voting in each precinct; number of registered voters at 7 a.m. on Election Day; number of election day registrants; vote totals for each candidate or ballot question/constitutional amendment
- Issues notice of nomination or certificate of election for candidates voted on only in that county

State Canvassing Board

- Board consists of Secretary of State, two Supreme Court Justices, two district court judges
- Canvass conducted 7 days after State Primary and 16 days after the State General Election
- Canvass the certified county canvassing board reports; certify the number of individuals voting in the state and in each county; the number of votes each candidate received by county; and the number of votes for a constitutional amendment
- Issues notices of nomination and certificates of election for candidates voted on in more than one county

Canvassing Boards – Error Correction Process

- Canvassing board may correct obvious errors
 - if candidates for an office unanimously agree in writing that election judges made an obvious error in counting or recording votes for that office; or
 - if candidate applies to district court for order determining whether obvious error has been made

Recounts

- Manual counting of vote.
- State-paid recounts
 - Margin must be less than one-quarter of one percent of the total number of votes counted for that office for races other than legislative races, and less than one-half of one percent for legislative races; or ten votes or less if the total number of votes cast for the office is 400 votes or less, and
 - Losing candidate must request the recount from the filing officer BY 5:00 pm on the second day following the canvass, except that requests for the recount of votes for presidential elector must be made by 5:00 p.m. on the day after the canvass is completed
- Non-State-paid recounts
 - Margin greater than that qualifying a candidate for a state-paid recount.
 - Losing candidate must request the recount, pay costs and post security
 - Partial recount of up to three precincts may be requested – less costly to candidate than paying for the full recount.

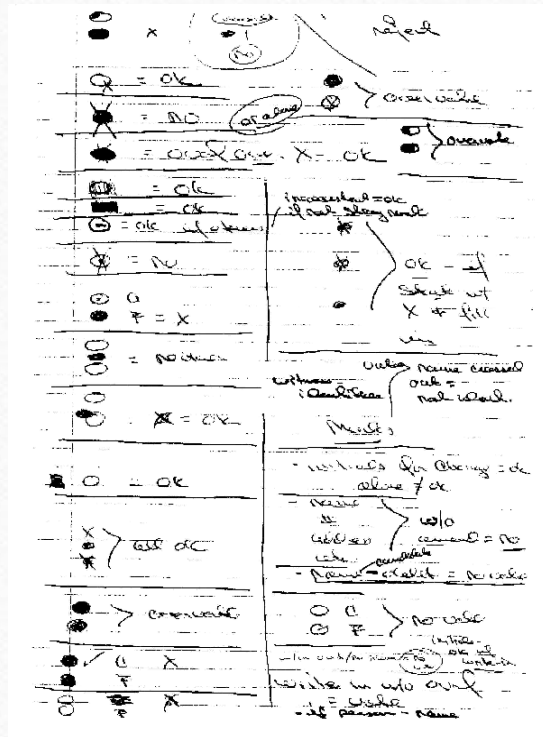
Recount Procedures

- Recount official will be secretary of state or designee, usually the county auditor
- Official in charge of recount sends notice of time and place of recount to candidates and county auditors of counties within the entire election district
- Recount open to public
- Count one precinct at a time, or count multiple precincts at one time but keep precinct records separated from each other during recount

Recount Procedures

- Determine number of votes cast for each candidate by assessing voter's intent from face of ballot (See Section 204C.22 for the list of factors)
- Candidates may challenge the manner in which the ballot is counted
- Once completed, the canvassing board hears the report of recount officials; rules on challenged ballots; and certifies the results of the recount

Voter Intent



Election Contests

- Any eligible voter can contest election
- Contestant must strictly comply with statute to ensure that court has jurisdiction. *O'Loughlin v. Otis*, 276 N.W. 2d 38 (Minn. 1979)
- General time period for serving and filing contest
 - 5 days after canvass of primary
 - 7 days after canvass of general election (except for recounts for presidential electors)
- Notice of contest served on contestee and official authorized to issue certificate of election

Grounds for Election Contest

- An irregularity in conduct of an election or the canvass of votes
- A question about who received the largest number of votes legally cast; or
- Deliberate, serious and material violations of election law

Election Contest Procedures

- Contestee must file and serve an answer unless only ground for contest is number of votes cast
- Contest must be tried beginning within 20 days after filing of notice of contest (except for presidential electors)
- Contest proceeds in the manner provided in the Rules of Civil Procedure so far as practicable
- Remedy can be a new election
- Party losing the contest usually pays the costs

After Election

- Certificate of election issued after the latest of:
 - Completion of any recount
 - Expiration of the contest period
- Certificate issued by
 - Secretary of State for federal and state offices including ALL judicial offices
 - county auditor for other offices.

Pre-Election Litigation

- Errors and Omissions Process – Section 204B.44
- Both errors which have occurred or are about to occur may be litigated
- Generally filed before election, particularly prior to ballots being printed and distributed
- MN S. Ct. jurisdiction over disputes in races for judicial offices, federal offices and multi-county state offices.

New Legislation

Electoral College Reform Act

- Passed by Congress to modernize the counting of electoral votes and improve the presidential transition process
- Sets a firm deadline for when states must submit their “Certificates of Ascertainment” identifying their presidential electors

Minnesota's ECRA Reforms

- Post-election deadlines are expedited to ensure compliance with the certificate of ascertainment deadline
- County canvassing boards must now meet between 3rd and 8th day post election (previously 3rd and 10th day)
- State canvassing board must meet 16 days after the election (previously 21)
- Recount requests for presidential electors must be made by 5:00 p.m. the day after the canvass is complete
- Recounts must be complete six days after canvass is complete

Election Contests Under the ECRA

- Notice of contests for presidential elector must be served one day after the canvass or recount is completed.
- Notice must be filed with the Minnesota Supreme Court
- Response must be filed in two days
- All presidential elector contests heard by the Minnesota Supreme Court
- Contest must be resolved one day before the deadline to submit the certificate of ascertainment

Minnesota Voting Rights Act

- Introduced after Eighth Circuit ruled that private parties could not file suit under section 2 of the Voting Rights Act
- Permits the Attorney General, County Attorneys, and injured persons to sue any government official or entity responsible for election administration if they take any action that:
 - Denies a member of a protected class the right to vote
 - Has the effect of impairing protected class members' ability to nominate or elect candidates of their choice
- Similar, but not identical to, the federal Voting Rights Act
- Law also requires that litigants give notice of their claim to the government entity before filing suit and that the parties attempt to settle the matter before litigation

Information Available from the Secretary of State

- Voter lists, including the public information and accepted absentee ballots lists
- Precinct Table
- Precinct Finder
- Maps
- Voter's Guide
- Secretary of State web site: www.sos.mn.gov
- Some items have a nominal fee

How to Contact the Elections Division

- By Phone: (651) 215-1440
- By Fax: (651) 296-9073
- By e-mail: elections@sos.state.mn.us

How to Contact Justin Erickson

- Justin.Erickson@state.mn.us
- 651-201-6895
- General Counsel, Office of the Secretary of State, 20 West 12th Street, St. Paul, MN 55155

How to Contact Bibi Black

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- General Counsel Emerita, Office of the Secretary of State