

In the Matter of the Contest of General Election
held on November 4, 2008, for the purpose of
electing a United States Senator for the State of
Minnesota

District Court File No. 62-CV-09-56

Cullen Sheehan and Norm Coleman,

ORDER FOLLOWING HEARING

Contestants,

vs.

Al Franken,

Contestees,

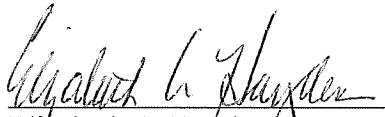
This matter came before the Court on arguments on February 12, 2009. After consideration of the arguments of counsel, the written submission of the parties, and the pleadings in the case, IT IS HEREBY ORDERED:

1. The Court shall not order the opening and counting of ballots that fall into the following categories because such ballots are not legally cast under relevant law:

1. An absentee ballot submitted by a voter in an absentee ballot return envelope on which the voter's address is not the same as on the absentee ballot application. (Court's Order of February 10, 2009 at § A.2.)
2. An absentee ballot submitted by a voter in an absentee ballot return envelope in which the witness certification on the absentee ballot return envelope is signed by a person identified as a notary public but no notarial seal or stamp is affixed to the absentee ballot return envelope. (*Id.* at § A.3.)
3. An absentee ballot submitted by a non-registered voter. (*Id.* at §§ A.4, A.10 & A.18.)
4. An absentee ballot submitted by a voter in an absentee ballot return envelope in which the voter failed to sign the absentee ballot return envelope. (*Id.* at § A.7.)
5. An absentee ballot submitted by a voter whose absentee ballot application does not contain the voter's signature. (*Id.* at § A.8.)

6. An absentee ballot submitted by a voter whose absentee ballot application was signed by another unless the absentee ballot application was signed by another individual in accordance with Minnesota Statute § 645.44, subd. 14. (*Id.* at § A.11.)
 7. A UOCAVA ballot received by election officials after the deadline for receipt of absentee ballots. (*Id.* at § A.13.)
 8. An absentee ballot dropped off in-person by the voter on Election Day. (*Id.* at § A. 14.)
 9. An absentee ballot dropped off by a proper agent on Election Day but after the statutory deadline for delivery. (*Id.* at § A.15.)
 10. A ballot submitted by a voter who was not registered to vote within the precinct in which he or she resides. (*Id.* at § A.19.)
2. The attached Memorandum is incorporated as if fully set forth herein.

Dated: Feb. 13, 2009


Elizabeth A. Hayden
Judge, District Court


Kurt J. Marben
Judge, District Court


Denise D. Reilly
Judge, District Court

MEMORANDUM

I. Introduction

In the three weeks since this trial began, the Court has heard testimony from election officials and voters that gives the Court confidence in Minnesota's election system. The government officials responsible for preparing for the general election and the election judges on Election Day worked diligently and did their utmost to ensure that every legally cast vote was counted. Citizens of Minnesota should be proud of their election system, a system which has one of the highest voter-participation rates in the country. Against this backdrop, the Court notes that the dispute in this contest revolves largely around a small proportion of the high number of absentee ballots cast in the election.

The facts presented thus far do not show a wholesale disenfranchisement of absentee voters in the 2008 general election. Of the approximately 286,000 absentee ballots cast by voters, roughly 4,800¹ are at issue in this contest and remain unopened and uncounted. This is less than 2% of the absentee ballots cast in the general election. Further, the Court notes that many of the voters whose absentee ballots remain unopened may have cast ballots that have already been counted either because they voted in person on Election Day or they submitted a subsequent absentee ballot that was opened and counted. (*See, e.g.*, Testimony of Kevin Corbid, February 4, 2009 & Ex. 325 at 118-19 & 197-98 (referencing voter Simonson); Testimony of Sandra Engdahl, February 12, 2009 & February 13, 2009 (referencing voters Berg, Ellison, Hansen, Lieser, Milligan, Micks, Vickman, and Wagner).) These voters were not disenfranchised by the rejection of their absentee ballots. In addition, 933 voters who cast

¹ There are roughly 11,500 absentee ballots that remain unopened and counted. By way of pleading and motion practice, Contestants limited the scope of their claims in this election contest to roughly 4,800 ballots. (*See* Order on Contestee's Motion in Limine to Limit Absentee-Ballot Evidence to Ballots Pleaded in the Notice of Contest at 5.)

absentee ballots that were rejected by election judges on Election Day had their votes counted by way of the review process mandated by the Minnesota Supreme Court. All rejected absentee ballots were reviewed both on Election Day and through the Supreme Court review process. The Court is confident that although it may discover certain additional ballots that were legally cast under relevant law, there is no systemic problem of disenfranchisement in the state's election system, including in its absentee-balloting procedures.²

II. The Scope of Review in this Election Contest

On February 9, 2009, Contestants argued that trial in this matter could be streamlined if the Court were to accept the introduction of absentee ballot return envelopes and supporting materials en masse in accordance with the categories identified by Contestants in their motion for summary judgment. Trial in this matter cannot be streamlined by simply accepting Contestants' categories as determinative of the scope of the dispute in this case. Contestants' argument that categorization according to reason for rejection will expedite the trial is based upon the faulty premise that they can meet their burden in this election contest by proving that the reason for which the absentee ballot was rejected was not proper. Proving that the reason given by election officials for rejecting a ballot was invalid is not tantamount to proving that it was legally cast. As explained above, this Court has heard testimony and received evidence that voters whose absentee ballots were rejected went to vote in person on Election Day or submitted subsequent absentee ballots. (*See, e.g.*, Testimony of Sandra Engdahl, February 13, 2009 referencing voters Hansen, Lieser, Milligan, Micks, Vickman, and Wagner.) Regardless of the reason for rejection, these voters' ballots should not be opened or counted because doing so would result in

² This conclusion is further buttressed by the fact that absentee voting in Minnesota is a privilege and not a right. *See Bell v. Gamaway*, 227 N.W.2d 797, 802 (Minn. 1975) ("The opportunity of an absentee voter to cast his vote at a public election by mail has the characteristics of a privilege rather than of a right."). In-person voting on Election Day is the legislatively preferred method of voting. *See* Minn. Stat. § 203B.02, subd. 1 (detailing the limited circumstances in which a voter can cast an absentee ballot).

permitting a single voter to cast two ballots in the same election. This serves to illustrate that merely showing that an absentee ballot should not have been rejected for the reason identified by an election judge or an absentee ballot board does not prove that it should be opened and counted. Contestants' and Contestee's burden in this election contest is to show that ballots they want counted were legally cast; they cannot meet this burden simply by showing that ballots were wrongfully rejected.

Although the Court rejects the categories initially proposed by Contestants, it nonetheless believes that trial in this matter can be streamlined by ruling that certain categories of ballots are not legally cast as a matter of law. To this end, the Court ordered the parties to submit written briefs on whether ballots in 19 categories identified by the Court are legally cast under relevant law. The sole question presented to this Court in this election contest is "which party to the contest received the highest number of votes legally cast at the election and is therefore entitled to receive the certificate of election." Minn. Stat. § 209.12. Thus, by excluding ballots in categories that are not legally cast under relevant law, the Court can narrow the scope and focus of this contest. The parties, the Court and the public are not served by needlessly delaying the proceedings in this election contest through the presentation of evidence regarding ballots that, as a matter of law, should not be opened and counted. Accordingly, the Court now holds that ballots in the categories identified below are not legally cast under relevant law and shall not be ordered opened and counted.

III. Votes Submitted by Non-Registered Voters Are Not Legally Cast³

Minnesota law provides that in order for citizens to exercise their constitutional right to vote, they must be duly registered. Minnesota Statute § 201.018 provides in relevant part: "An

³ This includes all ballots that fall within the categories identified by §§ A.4, A.10 and A.18 of the Court's Order of February 10, 2009.

eligible voter must register in a manner specified by section 201.054, in order to vote in any primary, special primary, school district or special election held in the county.” Minn. Stat. § 201.018, subd. 2 (emphasis added). This is a mandatory requirement. Minn. Stat. § 645.44, subd. 15a (“Must is mandatory.”).

The obligatory nature of the registration requirement in Minnesota Election Law is further shown by Minnesota Statute § 201.061, which governs voter registration in the state, and provides that “[n]o election judge in any precinct in which registration is required may receive the vote at any election of any individual whose name is not registered in a manner specified in section 201.054, subdivision 1” Minn. Stat. § 201.061, subd. 5. Accordingly, the Court rules, as it must, that a vote by an unregistered voter who has failed to register in accordance with Minnesota § 201.054 is not legally cast.

Similarly, the Court rules that a vote submitted by a voter who submitted a voter registration application that does not contain all of the information required by Minnesota Statute § 201.071 is not legally cast. Section 201.071 provides:

No voter registration application is deficient if it contains the voter’s name, address, date of birth, current and valid Minnesota driver’s license number or Minnesota state identification number, or if the voter has no current and valid Minnesota driver’s license or Minnesota state identification number, the last four digits of the voter’s Social Security number, if the voter has been issued a Social Security number, prior registration, if any, and signature.

Minn. Stat. § 201.071, subd. 3 (emphasis added). This Court shall not order the counting of any ballot submitted by a non-registered voter who submitted a deficient voter registration application.

Minnesota’s voter-registration requirements are an important anti-fraud measure within the state’s election laws. Minnesota courts have long recognized the importance of registration “as a check on possible duplicate voting.” *Eastwood v. Donovan*, 105 N.W.2d 686, 688 (Minn.

1960). “Laws relating to the registration of voters . . . are designed to give the fullest expression to the will of the electorate at the polls and at the same time prevent illegal voting, frauds, dishonesty in elections which frequently have defeated the will of the voters.” *Wichelmann v. City of Glencoe*, 273 N.W. 638, 639 (Minn. 1937). The statutory scheme requiring registration before voting is designed to give strength to these anti-fraud measures, which may not be ignored by the Court.

Even if a voter’s failure to register to vote is the result of official errors or omissions, his or her vote cannot be counted.⁴ The Court is not insensitive to the dilemma faced by citizens who believed they were registered to vote based upon the voting materials they received from election officials. The Court recognizes that citizens often rely on the validity of information provided to them by state and county officials. Further, the Court takes seriously an individual’s right to vote. However, based upon the clear language of the statute and the anti-fraud concerns underlying that statute, the Court is compelled to conclude that a ballot submitted by a voter who has failed to register to vote is not legally cast. The Court emphasizes that this is not a decision the Court makes casually or without due regard for a citizen’s right to vote. However, the Minnesota Legislature has mandated that voters be registered when they vote; this Court may not set aside this requirement.

⁴ In the course of this election contest, Contestants have argued that the Court should order the opening and counting of certain absentee ballots cast by non-registered voters who were provided registered-voter materials by local election officials. They argue that such a remedy is necessary to avoid disenfranchising voters as a result of an official error rather than an error on the part of the voter. The Court cannot countenance fashioning a remedy for such an official error by permitting non-registered voters to cast ballots in contravention of the statutory requirement that voters must be registered in order to lawfully cast a ballot. Minn. Stat. § 201.018. An individual who chooses to exercise the privilege of casting an absentee ballot must ensure that he or she complies with all the applicable requirements. A non-registered voter could not cast a ballot in-person at the polls on Election Day; similarly, a non-registered voter cannot cast a valid absentee ballot.

IV. Absentee Ballots Submitted By Voters Who Failed to Meet the Requirements of the Laws Governing Absentee Ballots Are Not Legally Cast⁵

Similar to the voter-registration requirements, the requirements imposed upon absentee voting in Minnesota are anti-fraud measures designed to ensure honesty in elections. As this Court previously noted, the absentee-balloting statute was enacted “to cut down on instances of fraud in our electoral process while allowing individuals who are legally entitled to cast an absentee ballot to do so.” (Order on Contestants’ Motion for Summary Judgment at 5 (emphasis added).) The Minnesota Supreme Court has long recognized that the requirements imposed by the legislature on absentee balloting were enacted to permit qualified voters to cast absentee ballots if they satisfy the safeguards imposed upon the process to protect against voter fraud or illegal voting. *Wichelmann*, 273 N.W. at 639 (“The lawmaking power, being fully cognizant of the possibilities of illegal voting, frauds and dishonesty in elections, prescribed many safeguards in the Absent Voters Law to prevent such abuses.”). Indeed, “[t]he preservation of the enfranchisement of qualified voters and of the secrecy of the ballot, the prevention of fraud, and the achievement of a reasonably prompt determination of the results of the election have been the vital considerations in the development of absentee voting legislation.” *Bell v. Gannaway*, 227 N.W.2d 797, 802 (Minn. 1975).

In ruling that this Court shall not order the opening and counting of absentee ballots that fail to comply with all requirements imposed by law, the Court is mindful of the anti-fraud purpose of the statutory and regulatory framework governing absentee balloting in Minnesota. The legislature adopted this framework, and vested the Secretary of State with the authority to implement it, in order to protect the absentee-balloting process from fraud or illegal voting. It is

⁵ This includes the categories of ballots identified by the Court in §§ A.2, A.3, A.7, A.8, A.11, and A.19 of the Court’s Order of February 10, 2009.

not for this Court to ignore the unambiguous requirements imposed upon voters attempting to cast an absentee ballot in Minnesota.

Voters who exercised their right to vote by casting their ballot in-person on Election Day were not free to ignore the requirements of Minnesota law. Similarly, voters who exercised the privilege of voting by absentee ballot may not avoid the requirements of Minnesota law:

[T]he absentee voter statutes, so far as the acts and duties of the voter are concerned, must be held to be mandatory in all their substantial requirements. These laws are not designed to insure a vote, but rather to permit a vote in a manner not provided by common law. As a result, voters who seek to vote under these provisions must be held to a strict compliance therewith.

Bell, 227 N.W.2d at 803 (emphasis added). The privilege of voting by absentee ballot is bestowed by the legislature, which “may mandate the conditions and procedures for such voting.” *Id.* at 802.

The Court’s conclusion that it must enforce all requirements imposed by law upon voting by absentee ballot is buttressed by two considerations: first, that the Minnesota Legislature has made voting in person relatively straightforward by permitting same-day voter registration, and second, that requiring compliance with the voting laws ultimately minimizes the risks of fraud and illegal voting that acts as a detriment to a fair electoral process. Minnesota is one of a small minority of states that permits voters to register to vote at the polls on Election Day. *See* Minn. Stat. § 201.061, subd. 3; *cf. A View from the Trenches: Telling it to the Judge on Election Day*, N.J. LAW, 44, 46 n.2 (2008) (listing the 8 states with same-day voter-registration). In addition, Minnesota only permits absentee voting for certain categories of voters. Minn. Stat. § 203B.02, subd. 1(a) (permitting absentee voting by “eligible voter[s] who reasonably expect[] to be unable to go to the polling place on election day in the precinct where the individual maintains residence because of absence from the precinct; illness ... disability; religious discipline; observance of a religious holiday; or service as an election judge in another precinct”). The legislature has made

a policy decision whereby voters are encouraged to vote in person at the polls on Election Day. Against this backdrop, the Court concludes that it must enforce the comprehensive statutory scheme governing absentee balloting in accordance with its unambiguous terms.

A. An Absentee Ballot Submitted by a Voter in an Absentee Ballot Return Envelope on which the Voter’s Address Differs from the Address Provided in the Absentee Ballot Application is Not Legally Cast

Minnesota law provides that an absentee ballot return envelope is properly accepted only upon a showing that “the voter’s name and address on the absentee ballot return envelope are the same as the information provided on the absentee ballot application.” Minn. Stat. § 203B.12, subd. 2(1). The “touchstone” for statutory interpretation is the plain meaning of a statute’s language. Minn. Stat. § 645.16 (“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.”); *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005); *City of Wyoming v. Minnesota Office of Administrative Hearings*, 735 N.W.2d 746, 749 (Minn. Ct. App. 2007). Words and phrases should be construed according to their common and approved usage. Minn. Stat. § 645.08, subd. 1. When the words used are “clear, explicit, unambiguous, and free from obscurity, courts are bound to expound the language according to the common sense and ordinary meaning of the words.” *State ex rel. Gardner v. Holm*, 62 N.W.2d 52, 55 (Minn. 1954). Thus, “[w]hen a statute’s meaning is plain from its language as applied to the facts of the particular case, a judicial construction is not necessary.” *ILHC of Eagan, LLC*, 693 N.W.2d at 419.

Minnesota Statute § 203B.12, subd. 2(1) is unambiguous and compels the conclusion that an absentee ballot return envelope shall only be accepted where “the voter’s name and address on the absentee ballot return envelope [is] the same as the information provided on the absentee ballot application.” An absentee ballot return envelope which contains a different address than

that provided in the absentee ballot application is not legally cast under the clear language of the statute. Requiring matching between the information on the absentee ballot return envelope with the information provided on the absentee ballot application, is an anti-fraud measure designed to ensure that the voter submitting the absentee ballot return envelope

B. An Absentee Ballot Submitted by a Voter Whose Absentee Ballot Application Does Not Contain the Voter's Signature is Not Legally Cast

Minnesota law offers voters the opportunity to apply for an absentee ballot for any election. The law provides that “[a]n application shall be approved if it is timely received, signed and dated by the applicant, contains the applicant’s name and residence and mailing addresses, and states that the applicant is eligible to vote by absentee ballot” Minn. Stat. § 203B.04, subd. 1 (emphasis added.) This signature requirement exists, in part, to guard against fraud in our electoral process. *See Wichelmann*, 273 N.W. at 639. The applicant’s signature on the absentee ballot application is needed in order to provide election officials with a sample of a voter’s signature to compare with the signature on the absentee ballot return envelope. *See* Minn. Stat. § 203B.12, subd. 2(2). This is an important anti-fraud measure to ensure that the person voting by absentee ballot is actually the voter who requested to vote absentee. *In re Contest of Sch. Dist. Election Held on May 17, 1988*, 431 N.W.2d 911, 915 (Minn. 1989) (“The signatures required on the application and voter certificate are little different than the oath required of people voting in person, whose voting qualifications are in doubt.”) Without requiring a signature on the absentee ballot application election judges would have no way of comparing whether the signature on the absentee ballot return envelope is actually that of the voter seeking to cast the absentee ballot.

Contestants argue that absentee ballots cast by voters who did not sign their absentee ballot applications are legally cast and may be ordered opened on the grounds that the provision

of the ballot to the voter is an example of official error that should not disenfranchise the voter. Contestants reason that an election official who accepted an unsigned absentee ballot application should not have provided an absentee ballot to the voter or should have contacted the voter to correct the error. The *Wichelmann* Court rejected this line of reasoning and stated that:

The provisions of election laws requiring acts to be done and imposing obligations upon the elector which are personal to him, are mandatory. He is personally at fault if he violates them. If his vote is rejected for such violations, it is because of his own fault, not that of election officials. Such provisions prescribe mandatory conditions precedent to the right of voting.

Wichelmann, 273 N.W. at 640. “Being a condition precedent, it is the duty of the voter to comply therewith and hence the provisions of the statute are mandatory. Failure to comply is grounds for rejecting the ballot.” *Id.* The ultimate responsibility for completing a valid absentee ballot application lies squarely at the feet of the voter. Thus, an absentee ballot cast by a voter whose absentee ballot application does not contain the voter’s signature is not legally cast.

This Court has heard testimony that numerous absentee ballots were submitted by individuals who did not sign and submit their own absentee ballot applications. (*See, e.g.*, Testimony of voter Thompson, January 27, 2009 and Testimony of Sandra Engdahl, February 12, 2009 (regarding voter Rimmereid).) Such votes are not legally cast under Minnesota law. Section 203B.12 requires that the same individual who submitted and signed the absentee ballot application sign the absentee ballot return envelope. This requirement serves as an important anti-fraud provision on absentee-balloting procedures in Minnesota. Minn. Stat. § 203B.12, subd. 2(2) (requiring that for an absentee ballot to be accepted by election judges must be satisfied that “the voter’s signature on the return envelope is the genuine signature of the individual who made the application for ballots”). The Court may not ignore this requirement.

Accordingly, the Court shall not order the opening and counting of any absentee ballot if the application for that ballot was signed by an individual other than the voter submitting the ballot.⁶

C. An Absentee Ballot Submitted in an Absentee Ballot Return Envelope That is Not Signed by the Voter is Not Legally Cast

Election judges may not accept an absentee ballot enclosed in an absentee ballot return envelope if they are not satisfied that “the voter’s signature on the return envelope is the genuine signature of the individual who made the application for ballots and the certificate has been completed as prescribed in the directions for casting an absentee ballot.” Minn. Stat. § 203B.12, subd. 2(2). Based upon a clear reading of Minnesota Statute and credible testimony from election officials, the signature requirement exists, in part, to cut down on instances of fraud in our electoral process. The instant action is noticeably devoid of any allegations of fraud on Election Day or during the recount process. Nonetheless, the legislative mandate requiring the voter’s signature on the absentee ballot return envelope is compulsory and serves as a fraud-prevention provision. *See Bell v. Gannaway*, 227 N.W.2d 797, 803 (Minn. 1975) (providing that a citizen who exercises the privilege of voting by absentee ballot may register and vote, by the terms of the law, “only by complying with the provisions thereof”).

The presence of a voter’s signature on the absentee ballot return envelope is mandatory, regardless of whether or not the certification or the signature line, or any part thereof, is covered by a sticker placed on the absentee ballot by an election official. The Court has received into evidence a copy of the standard absentee ballot return envelope issued to voters and instructions for absentee voters instructing the voter how to complete the absentee ballot return envelope. *See* Trial Exhibit F-1743. These instructions are given to every voter who seeks to submit an

⁶ The Court notes that a signature placed on an absentee ballot application or an absentee ballot return envelope at the direction of a voter who is physically unable to sign his or her name is the ‘genuine’ signature of such a voter as a matter of law. Minn. Stat. § 645.44, subd. 14.

absentee ballot application. Minn. R. 8210.0500, subp. 1 (“Instructions to the absent voter shall be enclosed with the absentee ballot materials mailed or delivered to the absent voter.”) (emphasis added). Step 6 of the instructions directs the voter to “Print your name and address on the back of the ballot return envelope unless a label with your name and address has already been affixed. Sign your name.” Minn. R. 8210.0500, subp. 2. The instructions include a clear order to sign the absentee ballot return envelope. Additionally, the Court heard testimony from absentee voters who testified they were aware they had to sign their absentee ballot return envelope, despite the presence of a sticker covering up the signature line and/or the certification. (See, e.g., Testimony of Laura Woods, February 9, 2009.) A sticker placed on an absentee ballot return envelope does not excuse the voter from complying with the law and signing the envelope. Absentee ballots submitted in absentee ballot return envelopes where the voter has failed to sign the return envelope, irrespective of whether or not a sticker placed by election officials obstructs the certification or signature block, are not legally cast.

D. Absentee Ballots Witnessed by a Notary Public Without Affixing a Stamp or Seal Are Not Legally Cast

An eligible voter who receives an absentee ballot must mark it in the manner specified in the directions for casting the absentee ballots. Minn. Stat. § 203B.08, subd. 1. Absentee voters are instructed that in order to vote by absentee ballot they must have a witness. Minnesota Rule 8210.0500, subps. 2 & 3 (“You must have a witness to vote by absentee ballot.”). The witness may be anyone who is registered to vote in Minnesota, or a notary public or person with the authority to administer oaths. Minn. Stat. § 203B.07, subd. 3. The witness is required to provide their name, address, and signature. Minn. R. 8210.0500, subp. 2 (“Step 6. . . The name, address, and signature of your witness are required as well.”) & subp. 3 (same at Step 8).

The purpose of requiring a witness is to prevent voter fraud. *See Bell*, 227 N.W.2d at 804. Requiring a witness' name and address provides a means by which to verify the witness' identity. Likewise, a notary seal or stamp serves as the means by which to ensure the witness is qualified and acting in an official capacity subject to the rules established for notary publics. Without a notary stamp or seal there is no way to verify whether the witness is in fact a notary public, and/or acting in that capacity. *See* Minn. Stat. § 359.03 (requiring a notarial seal for use in authenticating official acts); *see also Hartkopf v. First State Bank of Correll*, 256 N.W. 169, 170 (Minn. 1934) (“A notary’s certificate of acknowledgment without the seal is a nullity.”) Therefore, absentee ballots witnessed by a notary public who does not affix a stamp or seal do not comply with the witness requirements contained in Minnesota Statutes § 203B.07, subd. 3 and Minnesota Rule 8210.0500, and are not legally cast.

E. Absentee Ballots Submitted by Voters Who Were Not Registered in the Precinct Are Not Legally Cast

Election judges may not accept an absentee ballot if they are not satisfied that the voter casting that ballot is “registered and eligible to vote in the precinct.” Minn. Stat. § 203B.12, subd. 2(3). Proper registration within the precinct encompassing the voter’s address on the absentee ballot application and absentee ballot return envelope is a prerequisite to a proper absentee ballot, and the Court may not ignore this requirement. Merely being a registered voter is not sufficient; the voter must be registered in the precinct in which they seek to cast an absentee ballot. As with the other requirements of § 203B.12, the precinct-level registration requirement is an anti-fraud provision. It also has the purpose of preventing a voter from casting

ballots in more than one precinct. Absentee ballots cast by voters who are not registered and eligible to vote in the precinct in which they seek to vote absentee are not legally cast.⁷

V. Absentee Ballots Received After the Relevant Statutory Deadlines Are Not Legally Cast⁸

Minnesota law provides for three ways for an absent voter to return his/her absentee ballot return envelope:

- 1) By mailing the absentee ballot to the return address contained on the absentee ballot return envelope,
- 2) By delivering the absentee ballot in person to the county auditor or municipal clerk from whom the ballot was received, or
- 3) By designating an agent who shall deliver in person the absentee ballot to the county auditor or municipal clerk from whom the ballot was received.

Minnesota R. 8210.2100, *see also* Minn. Stat. § 203B.08, subd. 1 (providing for the marking and return of absentee ballots). Minnesota Statutes § 203B.08, subd. 4 also directs the Secretary of State to adopt rules establishing procedures to assure accurate and timely return of absentee ballots. The Secretary of State has done so with Minnesota Rule 8210.0200, subpart 1, which states:

Absentee ballot return envelopes that are delivered in person by an absent voter *must* be received by the county auditor or municipal clerk by 5:00 p.m. on the day before election day. Absentee ballot return envelopes that are delivered in person by an agent must be received by the county auditor or municipal clerk by 3:00 p.m. on election day.

Minn. R. 8210.0200, subp. 1 (emphasis added); *see also* Minn. Stat. § 203B.08, subd. 1 (stating that if a ballot is delivered in person by an agent, “the return envelope must be submitted to the

⁷ The Court recognizes, however, that an absentee ballot for a different precinct than the one in which the voter was registered could be legally cast under § 203B.12, subd. 2(3) if election officials provided the voter with the ballot for another precinct to the voter in error. Such a ballot could be legally cast notwithstanding the precinct-registration issues if the voter had provided an address within the precinct on both the absentee ballot application and the absentee ballot return envelope and had complied with all other relevant requirements. In such a case the voter’s ballot in non-precinct specific races could still be counted because the defect in the absentee ballot would arise solely from official error and not through any fault of the voter.

⁸ This includes all ballots that fall within the categories identified by §§A.13, A.14 and A.15 of the Court’s Order of February 10, 2009.A.

county auditor or municipal clerk by 3:00 p.m. on election day.”) The instructions included with every absentee ballot direct the voter to ensure timely delivery. Minn. R. 8210.0500, subp. 2 & subp. 3 (“Return your ballot by mail or an express service to the address on the mailing envelope, allowing enough time to be delivered by election day. You may also deliver it in person by 5:00 p.m. on the day before election day or have another person return your ballot by 3:00 p.m. on election day . . .”). Therefore, any absentee ballots that are received by mail after Election Day, delivered to the county auditor or municipal clerk in person by the voter after 5:00 p.m. on the day before Election Day, or delivered to the county auditor or municipal clerk in person by a voter’s designated agent after 3:00 p.m. on Election Day are not legally cast.

Minnesota’s deadlines for delivery of absentee ballots apply with equal force to ballots submitted by military and overseas voters pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”). *See* 42 U.S.C. § 1973 ff. UOCAVA does not contain any provision supplanting the state’s statutory deadlines for the return of absentee ballots.

Accordingly, UOCAVA ballots received after the deadline are not legally cast.

VI. Conclusion

For the reasons set forth above, the Court concludes that the categories of ballots identified herein are not legally cast under relevant law. The Court shall not order the counting of any of ballots falling within these categories.