



July 1, 2024

VIA EMAIL ONLY

Kathleen Heaney
Sherburne County Attorney
attorney@co.sherburne.mn.us

Re: Sherburne County Absentee Ballot Board Resolution of February 6, 2024.

Dear County Attorney Heaney:

We represent Minnesota Voters Alliance (“MVA”) and their volunteers and members who are voters within Sherburne County, Minnesota (the “County”). We have reviewed a copy of the County’s 2024 RESOLUTION ESTABLISHING ABSENTEE BALLOT BOARD AND UOCAVA (UNIFORMED AND OVERSEAS CITIZENS VOTING ACT) ABSENTEE BALLOT BOARD (02624-AD-3128) (“Resolution”) adopted at the February 6, 2024 Board of Commissioners Meeting to establish an absentee ballot board. The Resolution’s language does not align with Minnesota law.

In short, the County’s Resolution does not track the Minnesota Supreme Court’s major decisions on Absentee Ballot Board (“ABB”) staffing from the last few years. We thus write in the hopes of avoiding possible litigation related to the County’s improper staffing of the ABB. **Please respond by July 9 to ensure that MVA does not need to obtain mandamus relief enforcing the County’s clear legal duties.**

First, the Resolution does not conform with the Minnesota Secretary of State’s (“SOS”) update to the 2022 Absentee Voting Administration Guide, which includes a sample absentee ballot board resolution (“Sample ABB Resolution”). See the attached 2022 Absentee Voting Administration Guide, p. 57.

Below is a side-by-side comparison of the relevant parts of the County’s Resolution and the SOS’s Sample ABB Resolution with the significant differences bolded:

<u>Sherburne County Resolution</u>	<u>SOS Sample ABB Resolution</u>
WHEREAS, the Absentee Ballot Board would consist of a sufficient number of election judges as provided in sections 204B.19 to 204B.22 or deputy county	WHEREAS, the Absentee Ballot Board must consist of a sufficient number of election judges appointed as provided in sections 204B.19 to 204B.22; and

<p>auditors trained in the processing and counting of absentee ballots.</p>	<p>WHEREAS, the Absentee Ballot Board may include deputy county auditors trained in the processing and counting of absentee ballots;</p>
<p>THEREFORE, BE IT RESOLVED THAT, the Sherburne Board of Commissioners establishes an Absentee Ballot Board that would consist of a sufficient number of election judges as provided in sections 204B.19 to 204B.22 or deputy auditors to perform the task.</p>	<p>THEREFORE, BE IT RESOLVED THAT, the [insert county name] Board of Commissioners hereby establishes an Absentee Ballot Board effective [month day year] to perform the required tasks.</p>

Second, the SOS’s updated Sample ABB Resolution complies with the Minnesota Supreme Court’s decisions in *Minnesota Voters Alliance v. County of Ramsey*, 971 N.W.2d 269 (Minn. 2022) (“*MVA I*”) and *Minn. Voters All. v. Office of the Minn. Sec’y of State*, 990 N.W.2d 710 (Minn. 2023) (“*MVA II*”). Sherburne County’s resolution does not.

In *MVA I*, the Supreme Court held that counties must include a sufficient number of election judges, who must be party-balanced by statute, on their absentee ballot boards to conduct signature matching between absentee ballot applications and signature envelopes where voters’ provided identification numbers do not match. Minn. Stat. § 203B.121, Subd. 2(b)(3); *MVA I*, 971 N.W.2d at 280 (“If the number does not match, *the election judges* must compare the signature provided by the applicant to determine whether the ballots were returned by the same person to whom they were transmitted.”) (emphasis in original) (internal quotation marks omitted). “This task is committed to election judges alone, and the absentee ballot board must therefore include a sufficient number of election judges to handle this duty.” *Id.*¹ *MVA II*, 990 N.W.2d at 717 (reiterating that Minn. Stat. § 203B.121, subd. 2(b)(3) assigns the task of “review[ing] signatures in the event of an identification number mismatch” exclusively to “election judges.”).

The County’s Resolution does not comply with these Supreme Court’s decisions because the use of the disjunction “or” suggests that in lieu of “a sufficient number of election judges” balanced by political party, the County’s absentee ballot board *could* be filled with all “deputy county auditors.” But an absentee ballot board could *not* be filled with *only* deputy auditors because only election judges are statutorily permitted to perform certain

¹ Important as well, the Court also noted that “[i]t may well be, as the Alliance argues, that some or all of the specific duties of the ballot board would be best performed by election judges balanced by political party rather than deputy county auditors.” *Id.* at 280.

tasks, such as compare signature mismatches. *See, e.g.*, Minn. Stat. 206.86; *MVA II*, 990 N.W.2d at 713 (“Ballot boards ‘*must* consist of a sufficient number of election judges’ and ‘*may* include deputy county auditors or deputy city clerks.’ In other words, there are members of ballot boards who are election judges and there *might* be other members who are not election judges.” (citing Minn. Stat. § 203B.121, subd. 1 and *MVA I*, 971 N.W.2d at 278) (emphasis added)). Rather, an absentee ballot board must contain at least two election judges. *See MVA I*, 971 N.W.2d at 280 (“At least two ‘members of the ballot board’ must inspect the signature envelope of each ballot.” (quoting Minn. Stat. § 203B.121, subd. 2(a))).

Further, the Supreme Court’s decision in *MVA I* strongly suggested that election judges must be party balanced: “Because chapter 204B governs in-person voting, and section 203B.121, subdivision 1(a) requires the same procedure for appointing election judges to absentee ballot boards, it could be argued that election judges serving on absentee ballot boards are also subject to this partisan affiliation balance requirement.” *MVA I*, 971 N.W.2d at 277 n.7. Minnesota Voters Alliance takes the position that this *is* required, and will definitively establish that it is required through litigation if needed. *But see, e.g.*, Minn. Stat. 206.86, subd. 5 (“If a ballot card is damaged or defective so that it cannot be counted properly by the automatic tabulating equipment, the ballot card must be tallied at the counting center **by two judges not of the same major political party** and the totals for all these ballot cards must be added to the totals for the respective precincts.”) (emphasis added).

In short, the County must have at least 2 election judges on its absentee ballot board, balanced by party, who can perform the signature-matching duty and other duties only committed to election judges.

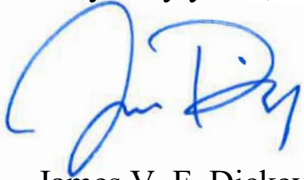
While the County’s resolution improperly leaves open the possibility that no party-balanced election judges will be on its ABB staff, we recognize that the County may have nonetheless staffed its ABB with party-balanced election judges to perform the tasks only election judges can perform on an ABB, such as signature matches. **If so, please inform us no later than July 9 that the County has done so and identify the number of election judges from each major political party appointed to the ABB.**

If not, please inform us by the same date that the County intends to adopt a new resolution to ensure party-balance among the election judges appointed to its ABB and will be staffing the ABB accordingly.

If you would like to discuss further, you can contact me by email or by phone at my direct dial below.

July 1, 2024
Page 4 of 4

Very truly yours,



James V. F. Dickey
Attorney for Minnesota Voters Alliance

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cc: Douglas P. Seaton, Esq.
Client

2022

Minnesota

Absentee Voting Administration Guide



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APPENDIX A - SAMPLE FORMS

ABSENTEE BALLOT BOARD RESOLUTION

BOARD OF COUNTY COMMISSIONERS

[insert county name], MINNESOTA

Date:

Resolution Number:

Motion by Commissioner:

Seconded by Commissioner:

RESOLUTION NO. [insert resolution number]; ESTABLISHING AN ABSENTEE BALLOT BOARD

WHEREAS, [insert county name] is required by Minnesota Statutes 203B.121, Subd. 1 to establish an Absentee Ballot Board; and

WHEREAS, this board will bring uniformity in the processing of accepting or rejecting returned absentee ballots in [insert county name]; and

WHEREAS, the Absentee Ballot Board must consist of a sufficient number of election judges appointed as provided in sections 204B.19 to 204B.22; and

WHEREAS, the Absentee Ballot Board may include deputy county auditors trained in the processing and counting of absentee ballots;

THEREFORE, BE IT RESOLVED THAT, the [insert county name] Board of Commissioners hereby establishes an Absentee Ballot Board effective [month day year] to perform the required tasks.

COMMISSIONERS	VOTE			
	Yes___	No___	Absent___	Abstain___
	Yes___	No___	Absent___	Abstain___
	Yes___	No___	Absent___	Abstain___
	Yes___	No___	Absent___	Abstain___
	Yes___	No___	Absent___	Abstain___

STATE OF MINNESOTA

[insert county name]

I, [insert county administrator name], duly appointed qualified and County Administrator for the [insert county name], State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, [insert county name], Minnesota at their session held on the ___ day of ___, 2016 now on file in my office, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal at [insert city name], Minnesota, this ___ day of ___, [year].

_____ County Administrator

_____ Administrator's Designee