



U P P E R M I D W E S T
L A W C E N T E R

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FOR IMMEDIATE RELEASE

Amended Advisory on Election-Judge Requirements for Early Voting

The Upper Midwest Law Center is a non-partisan, non-profit public interest law firm that litigates for liberty and the rule of law. In recent years, UMLC has represented the Minnesota Voters Alliance at the Minnesota Supreme Court on important issues of Minnesota election law. Given our familiarity with Minnesota election law and desire to ensure that election officials properly implement that law, we are issuing this advisory.

UMLC has fielded some concerns from members of the public that election judges are not being included in some Minnesota early voting polling places. We write this advisory to provide our understanding of the law related to election judges' involvement in Minnesota early voting.

We have amended our initial advisory issued on September 3, 2024 to clarify current law based on the fact that the Secretary of State has not yet certified the provisions of Minn. Stat. § 203B.30, so the provisions of section 203B.081, subdivision 3 (those stated in Minn. Laws 2023, Chapter 62, article 4, § 44) continue to apply to “early voting” beginning 18 days before the election. The identity of those responsible for implementing both procedures is the same, as discussed below.

The Minnesota legislature expanded in-person early voting from 7 to 18 days in 2023. [Minn. Laws 2023, chapter 62, art. 4, §§ 43, 44](#). That procedure allows a person to vote in-person, up to 18 days before an election, using a ballot box. These duties “must be performed by an election judge, the county auditor, municipal clerk, or a deputy of the auditor or clerk.”

The Minnesota legislature also created a replacement for the early voting law which, at a future date, will apply “during the 18 days before” election day. Minn. Stat. § 203B.081, subd. 1a (2023). Section 203B.30, which will take effect after the Secretary certifies it, describes modified procedures for early voting and assigns some duties associated with early voting to “early voting officials,” who “[f]or purposes of [the early voting procedure statute]” may be “the county auditor, city clerk, a deputy of the auditor or clerk, or an election judge.” Minn. Stat. § 203B.30, subd. 1 (2023). Thus, the procedures explicitly discussed in and limited to section 203B.30, subd. 2 may be performed by election officials who are not election judges.

But, regardless of whether section 203B.081, subd. 3 or 203B.30 is in effect, the Minnesota legislature left untouched **other procedures which occur during early voting that must still be performed only by party-balanced election judges**. That these procedures were not amended shows they maintain the meaning they had prior to the 2023-2024 legislative session. These procedures include the following.

Procedures at the polling place:

Neither Minn. Stat. § 203B.081 nor new Minn. Stat. § 203B.30 eliminates longstanding requirements for physical assistance to voters.

Physical assistance in marking ballots. Two election judges who are members of different major political parties must be available to assist voters who cannot read English or who are physically unable to mark a ballot. Minn. Stat. § 204C.15, subd. 1. While “[a] voter in need of assistance may alternatively obtain the assistance of any individual the voter chooses,” voters must still be given the option of choosing party-balanced election judges for this assistance. *Id.*

Curbside voting. Only election judges who are members of different major political parties may assist voters who are unable to enter a polling place. Minn. Stat. § 204C.15, subd. 2. No other election officials may perform this duty.

Because the statutory requirements for the above procedures apply during early voting, **at least two election judges who are members of different major political parties must be present at all polling places during early voting.**

Challenges and re-registrations upon changed addresses. While not yet in effect, Minn. Stat. § 203B.30 will require that any challenges to voter eligibility at the polling place may be resolved “as provided in section 204C.12.” Section 204C.12 only provides for election judges to administer oaths to challenged voters, subd. 2, or determine a voter’s residence, subd. 3, to resolve a challenge. Section 203B.30 will also provide that an individual who has not registered or who has had a change of address “must register in the manner provided in section 201.061, subdivision 3.”

But “[r]egistration at the polling place on election day shall be conducted by the election judges.” Minn. Stat. § 201.061, subd. 4. Election judges must take the in-person oath from voters themselves or any residential-facility employee vouching for a resident of such a facility. *Id.* subd. 3(a)(4).

Thus, during in-person early voting (online registration is governed by other law), only **election judges** can register new voters or re-register voters who have changed addresses.

Absentee ballot board procedures:

As has been the case since 2010, Minnesota’s absentee ballot boards must have sufficient party-balanced election judges to conduct duties such as signature matching for the processing of absentee ballots. *Minnesota Voters Alliance v. County of Ramsey*, 971 N.W.2d 269, 280 (Minn. 2022) (“*MVA P*”); *Minnesota Voters Alliance v. Office of the Minnesota Secretary of State*, 990 N.W.2d 710, 717 (Minn. 2023) (“*MVA IP*”).

Further, only party-balanced election judges can replace spoiled ballots. Minn. Stat. § 203B.121, subd. 4; Minn. Stat. § 206.86, subd. 5.

The legislature's recent amendment also added reference to the applicability of absentee ballot board duties to some aspects of early voting. Minn. Stat. § 203B.121, subd. 1(a).

In turn, the new section 203B.30 will, in the future, require "early voting officials" to "remove and secure ballots cast during the early voting period" but refers to the procedure of section 203B.121, and also requires "[t]he absentee ballot board" to count early votes according to the procedures of subdivision 5 of that statute.

As a reminder, election judges appointed to the absentee ballot board must be appointed "as provided in sections 204B.19 to 204B.22." This means that they must be appointed by exhaustion of party lists as indicated by section 204B.21, subd. 2. The party lists have been provided to every county auditor by the Secretary of State as of May 15, 2024.

For counties, "the county board" is responsible for these appointments, and because an absentee ballot board spans an entire county or municipality, election judges appointed to a county ballot board can come from any precinct within a county, and for a municipality they may come from any precinct within the municipality.

Procedures away from the polling place:

Additionally, the early-voting procedures do not affect the absentee-ballot voting procedures for hospital patients and residents of health care facilities. *See* Minn. Stat. § 203B.11. Only election judges who are members of different major political parties may perform these duties. *Id.* subd. 1.

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While we have endeavored to provide a clear statement of the law's requirements as we understand them, **this advisory should not be considered legal advice, and if you have questions or concerns about your county or city's early voting process, you should contact an attorney or us at legal@umlc.org**

The Upper Midwest Law Center is a non-profit public interest law firm committed to upholding constitutional rights and the rule of law. UMLC advocates for protecting individual liberties and preserving constitutional principles through strategic litigation and advocacy efforts.

cc: Minnesota Secretary of State