

Minnesota's 2010 Gubernatorial Recount Report and Recommendations

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Integrity Minnesota



Verifiable, Transparent and Accurate Elections

www.ceimn.org

Table of Contents

Executive Summary	page 3
Background	page 4
Verification of Minnesota’s Election Outcomes	page 5
Overview of Non-Partisan Observation	page 5
Summary of Observer Report Form	page 6
CEIMN Recommendations	pages 7 - 9
Conclusion	page 10
Appendices	pages 11 - 27

Executive Summary

Who we are

Citizens for Election Integrity Minnesota (CEIMN) is a statewide, non-partisan organization, formed in 2004, that advocates for accurate, transparent and verifiable elections in Minnesota and nationally.

Non-partisan Observations

CEIMN has organized six statewide non-partisan observations in Minnesota -- three post-election audit observations and three recount observations from 2006 -- 2010. CEIMN has partnered with the League of Women Voters on all six observations and with Common Cause Minnesota on the last two recount observations. The non-partisan observation of the U. S. Senate race recount in 2008 was the first of its kind in the country.

Highlights of Report Findings, Recommendations and Conclusion

- The recount was conducted in an efficient, transparent and accurate manner. The close scrutiny confirmed that Minnesota's election officials are conscientious and that our voting system is solid.
- The vast majority of the observers expressed confidence in the integrity and the accuracy of the counting process.
- Hennepin County and local election officials established a centralized recount location and implemented rigorous and transparent procedures to ensure secure chain of custody.
- CEIMN recommends that the recount trigger be lowered from 0.5% to 0.25% for all federal and statewide races.

CEIMN would like to acknowledge our coalition partners, the League of Women Voters Minnesota and Common Cause Minnesota and the following individuals for their assistance in writing the recount report: Victor Addona, Kathy Bonnifield, Catherine Dorr, Linda Goodspeed, Max Hailperin, Stan Hilliard, Analiese Miller, Ken Paddock, Dan Paderson. We would also like to thank the 75 volunteer non-partisan recount observers from across Minnesota for their participation and for helping to make our elections transparent, accurate and verifiable.

Background

Minnesota statute 204C.35¹ stipulates that a recount is automatically conducted in federal, statewide and state legislative races when the margin of victory is below 0.5%. The margin of victory between gubernatorial candidates Tom Emmer and Mark Dayton was 0.42%.

The 2010 gubernatorial recount was the third statewide recount in Minnesota in two years. The other two were the 2008 Supreme Court Associate Justice primary and the 2008 U.S. Senate recounts.

Over two million ballots were cast in the 2010 governor's race. All counties completed their counting within five days. The majority of counties completed their counting within two days.

Hennepin County, with the support of all of the City Clerks in Hennepin County, decided to establish a centralized recount location in the Hennepin County Government Center. Ballots that were stored in secure locations at cities throughout the county were delivered to the Government Center under police escort. Security procedures included a barcode labeling, recording and photograph taken of every box and package. These procedures were performed in the presence of election officials, the police escort, county attorney staff, sheriff staff, counsel from both campaigns, the media, and a security camera. Boxes and packages were secured in a storage room under 24 hour surveillance by the Hennepin County Sheriff's Office. Detailed procedures were established for the retrieval and return of all materials (see Appendices A and B).

In addition, a number of cities sent staff to the government center to assist with the counting. Edina City Clerk, Debra Mangen said, "I truly appreciated the fact that all of the election materials were brought to one central location. It was more efficient than if we had counted at the cities."

We applaud Hennepin County and local election officials for their rigorous and transparent procedures to ensure secure chain of custody.

¹ <https://www.revisor.leg.state.mn.us/statutes/?id=204C.35>

Verification of Minnesota's Election Outcomes

Key components of current Minnesota law that support robust and independent verification of Minnesota's election outcomes include:

- Voter-marked paper ballots.
- Manual counting of ballots for all audits and recounts. A hand recount is recognized as superior for determining voter intent compared to a machine count. Minnesota is one of only 5 states to require a manual count as shown by CEIMN's state recount laws searchable database².
- A percentage of post-election audits must be conducted for all state-wide races.
- Statutes that allow for citizen observation of post-election audits and recounts.
- Recount law applies to all election contests. Sixty contests were eligible to be recounted in 2008³.

Overview of non-partisan observation

Citizens for Election Integrity Minnesota (CEIMN) and the League of Women Voters Minnesota partnered with Common Cause Minnesota to organize a statewide non-partisan citizen observation of the recount. This was the sixth CEIMN organized statewide citizen observation of post-election manual counts in Minnesota.

About 75 Minnesotans volunteered to be recount observers in 2010. The observers covered 33 counties which represented 38% of all counties. These observers viewed over 50% of the ballots recounted (Hennepin and Ramsey Counties alone accounted for roughly 30% of the ballots counted). Most of the volunteers had prior experience observing past audits or observing the 2008 US Senate recount.

Observers recorded their observations on a pre-printed report form (Appendix C). The detailed report form contained 24 questions covering: overall transparency of the recount, the counting process, and chain of custody. Observers submitted 62 reports.

² <http://ceimn.org/ceimn-state-recount-laws-searchable-database/search>

³ See pages 39 – 40, Eyes on the Vote Count: Non-partisan Observer Reports of Minnesota's 2008 Post-Election Audit and Recount, http://ceimn.org/files/ceimn.report_color_0.pdf

Recount observers wore ID badges to identify both their name and designate their non-partisan observer role. Observers were required to attend a training that included guidelines for non-partisan observation.

All recount observers signed a Code of Conduct (Appendix D). By signing the Code of Conduct, observers pledged that they would not serve as challengers for either candidate during the recount; to refrain from wearing any partisan material; to maintain strict impartiality; and to not publicly express or exhibit any bias or preference in relation to parties, candidates, or with reference to any issues in contention in the election process during their observations. Observers were instructed to report only what they observed and not what they heard second-hand.

Observers were encouraged to work in teams of at least two individuals. (They were the only trained, non-partisan observers present during the recount.) One report was to be submitted for each observer team.

To enhance the transparency of the recount process, CEIMN created a blog⁴. The December 1st entry for example provides a detailed account of the extra time it took to address challenged ballots in one precinct in Hennepin County where over 1,000 ballots were cast.

Summary of responses from the observer report

Here are highlights from the observer reports. See Appendix E for a more detailed description and Appendix F for a comparison of 2010 responses with 2008 responses.

- Four observers witnessed an incident where an individual caused a disturbance and was asked to leave.
- Over 80% of the time, observers were within 10 feet of the recount table.
- The average number of counting teams was 7 per location. Large counties had up to 25 teams per location (Hennepin & Ramsey)
- 48 of the 56 observers who reported on the counting protocols reported that challenged ballots were *always* removed and placed in a separate envelope, two observers noted that they *sometimes* were and one observer noted that they *never* were. Five people stated that they didn't observe this process.
- Several observers expressed concerns about not being close enough to observe all the procedures, e.g. how ballots were marked or to hear the supervisors' rulings on challenged ballots.

⁴ <http://www.mnrecount.org/>

CEIMN Recommendations

1. Changes to current recount laws.

1.1. Reduce the threshold that will trigger a publicly funded recount for all statewide and federal races from 0.5% to 0.25%.

1.2. Keep the threshold for state legislative, county, school board and municipal races at 0.5% for races with up to 50,000 votes cast and then decrease the threshold to 0.25% for races above 50,000 votes.

Background

A recount is important to confirm the accuracy of the preliminary result in the case of a close race. In Minnesota a recount is automatically triggered in federal, statewide, judicial and state legislative races when the margin is below 0.5%. For county, school board and municipal races candidates need to request a recount when the threshold is below 0.5%. In the 2008 US Senate race a 0.5% margin was about 15,000 votes and in the 2010 governor's race it was about 10,500 votes. Given the accuracy of the voting machines and the very small change in vote totals that occur during a hand recount, a trigger of 0.5% is unnecessarily high for these races.

After each federal election, audits⁵ are conducted in about 200 randomly selected precincts statewide. Ballots are counted by hand to double-check the accuracy of the optical scan voting machines. CEIMN has monitored this process since it began in 2006. CEIMN has consistently found Minnesota's voting machines to be extremely accurate.

Vote totals typically rise whenever there is a hand recount of a machine tally as occurred in the past three statewide recounts. This is because a small number of voters mis-mark their ballots -- for example, by circling an oval instead of filling it in -- in such a way that optical scanners cannot detect voter intent, thus tabulating that as an undervote and not a vote for specific candidate. When the ballot is hand counted, election judges are then able to determine voter intent and change the undervote to the intended vote. This underscores the importance of hand counting ballots for recounts. While the change in the vote totals caused by a manual count is very small, it can ultimately change the outcome in a very close election.

Errors uncovered in a recount can come from a variety of causes that scale in differing ways. One would expect mis-marked ballots to scale approximately

⁵ <https://www.revisor.leg.state.mn.us/statutes/?id=206.89>

proportional to the total number of votes cast. But it is also conceivable that under the intensified scrutiny of a recount, some other error would come to light that had been overlooked, such as an improperly reset⁶ machine or a misplaced envelope of ballots. These other errors are of much lower probability, but still have the potential to impact the vote totals. Such errors could have a more dramatic impact on the margin for small races because the errors do not necessarily scale proportionately to the total vote count. The size of the error (assuming it occurs) may be relatively fixed, since it in all likelihood involves a single machine or single ballot envelope, no matter how large the election. For this reason a 0.25% margin is too small for county, municipal, school board and state legislative races with up to 50,000 votes cast.

Given the accuracy of the voting machines and the very small change in vote totals that occurs from a hand recount, lowering the recount trigger for federal, statewide and judicial races is a reasonable change that would save taxpayer dollars and reduce the workload upon election officials. At the same time it ensures the accuracy of our elections and voter confidence in the election outcomes.

1.3 Address the "discontinuity" found in recount laws.

Currently, under 204C.36⁷ (county, municipal and school district races) a candidate can request a recount and under 204C.35⁸ (federal, statewide, judicial and state legislative races) a recount will automatically be triggered if the difference between the top two candidates is less than 0.5% or is "ten votes or less, and the total number of votes cast for the nomination or election of all candidates is no more than 400."

This however introduces a discontinuity when the number of votes cast in an election grows from 400 to 401. At 400, the recount threshold is 10 votes. At 401, it switches to 0.5%, which is to say two votes. This means the threshold drops by 8 votes for that tiny increase in the total number. Only once the total vote grows as large as 2000 does the threshold once again reach 10. CEIMN recommends this discontinuity be addressed.

Note that if the 50,000 vote threshold discussed above were adopted it would introduce a discontinuity when the number of votes cast in an election grows from 50,000 to 50,001. At 50,000, the recount threshold is 250 votes. At 50,001, it drops to 0.25%, or 125 votes. CEIMN recommends that this discontinuity be addressed.

⁶ If a voting machine breaks down and needed to be replaced the counter on the new machine would need to be reset to reflect the number of ballots that had been cast on the broken down machine.

⁷ <https://www.revisor.leg.state.mn.us/statutes/?id=204C.36>

⁸ <https://www.revisor.leg.state.mn.us/statutes/?id=204C.35>

2. Count ballots at the county level and provide a mechanism for timely reimbursement.

CEIMN supports counting ballots in statewide recounts at the county level. Compared to conducting a recount in a centralized location, conducting the counting at the county level minimizes potential problems with chain of custody and ensures public transparency of the process. In the 2008 and 2010 recounts the nonpartisan observation teams found the chain of custody to be quite solid overall. Centralized counting introduces unnecessary risks, multiplying the potential chain of custody issues by requiring the need to transport and store ballots from 87 counties, (2.9 million in 2008 and 2.1 million in 2010). Margaret Martin with the Minnesota Free Market Institute echoes the increased concern about chain of custody in a centralized count⁹.

Conducting the recount at the county level allowed party challengers access to view the ballots at all of the locations in 2008 and 2010. This would have been much more difficult with one location.

Currently, the Secretary of State's Office (SOS) must submit a request to the state legislature for funding to be able to reimburse the counties for their recount expenses. The SOS reimbursed the counties for their 2010 recount costs at the rate of 3 cents a ballot from the SOS budget. Since this amount did not cover all of the county expenses, the SOS also made a request to the legislature for the counties to be reimbursed for their full expenses. Although the legislature did authorize the funding the process took several months and they were not required to appropriate the funds.

CEIMN recommends that the legislature authorize funding, through the open appropriations process, for counties to be fully reimbursed for their costs to conduct statewide recounts. This means that the "expenditure authority is ongoing and not dependent on the passage of an appropriates bill each biennium."¹⁰

⁹ Election Reform: Is the Cure Worse Than the Disease? October 29th, 2009, <http://mnfmi.org/2009/10/29/3672/>

¹⁰ Statutory Appropriations Guidelines, page 1, <http://tinyurl.com/43gbva8>

Conclusion

Minnesota's recount laws are arguably among the best in the nation but could use some fine tuning as discussed in the recommendation section. Recounts are conducted by hand which is possible because our votes are cast on voter marked paper ballots. Hand recounts have been shown to be the most accurate manner to determine voter intent and therefore an accurate vote count. Minnesota's recount law is available to every candidate as it applies to every primary or general election contest that falls below the recount threshold.

The 2010 gubernatorial recount was conducted in an efficient, accurate and transparent manner. The close scrutiny of another high-profile statewide recount demonstrated that our election officials are conscientious and that our voting system is solid.

Appendix A: Hennepin County Ballot Drop Off Procedures

<p style="text-align: center;">HENNEPIN COUNTY ATTORNEY'S OFFICE Civil Division M E M O R A N D U M</p>
--

TO: Pat Diamond and Dan Rogan

FROM: Chris Tolbert

RE: Ballot Drop-off Process

DATE: November 4, 2010

The process that ballots will be brought to Hennepin County by each individual city is as follows:

- 1) The city election official and police escort will drive to the loading dock entrance located at the government center. This entrance has a security guard who will have to lift the gate to allow entrance.
- 2) Inside the loading area, the third stall and the Sheriff's reserved spot will be available for parking by the police escort with the ballots.
- 3) The police escort will have carts available to wheel the ballots from the loading dock through the hallway to the check-in station. Signs will be posted in the hallway for the escort to stop and wait, until the check-in is ready to process their delivery.
- 4) Once the city election official and police escort is at the check-in, an inventory will be recorded by Sheriff and County Attorney Staff. This inventory will include barcode labeling and recording of every box and package, a sealing by a deputy if needed, and a photograph taken by a deputy of every box and package with the barcode visible in the photograph. This will all be done openly in front of the city election official, the police escort, the county attorney staff, the sheriff staff, counsel from Senator Dayton's and Representative Emmer's campaigns, the media, and a security camera.
- 5) Once a city's entire drop-off is processed, a detailed receipt will be printed and given to the city election official. Additionally the city election official will sign a copy of the receipt as proof that the receipt accurately reflects what the city brought to the county. An additional copy of this receipt will be kept by the county as a master copy—in addition to the electronic record that will be kept.
- 6) Upon receipt the boxes and packages will be placed in the secure storage room by sheriff and county attorney staff.
- 7) The boxes and packages will be kept in this secure storage room under the 24-hour watch by the Hennepin County Sheriff's Office. The only key to the room will be in the possession of Jill Alverson, Director, County Auditor and County Treasurer.

Appendix B Hennepin County Election Materials Check-out Procedures

**HENNEPIN COUNTY ATTORNEY'S OFFICE
Civil Division
M E M O R A N D U M**

TO: Rachel Smith, Elections Manager

FROM: Chris Tolbert, Assistant Hennepin County Attorney

RE: Election Materials Check-out Procedures

DATE: November 12, 2010

- 1) The following people will be the only people who can remove elections materials from room A-0710 ("the secure room"):
 - Rachel Smith, Elections
 - Jennifer Thompson, Elections
 - Meredith McGowan, Elections
 - Kristin Reid, Elections
 - Kirstin Knutson, Elections
 - Andrew LaValle, Elections
 - Samia Adam, Elections
 - Terri Garner, Elections
 - Thomas Sinas, Hennepin County Attorneys Office
 - Dan Rogan, Hennepin County Attorneys Office
 - Jackie Johnson, Hennepin County Attorneys Office
 - Jodie Wierimaa, Hennepin County Attorneys Office
 - Chris Tolbert, Hennepin County Attorneys Office
- 2) All persons who enter the secure room must have another authorized person with them at all times. These two people must stay within site of each other the entire time that they are in the secure room or have any election materials in their possession.
- 3) Materials taken from the secure room may only go to room A-0723, room A-240 (the Elections Office), or to the Hennepin County Government Centers Auditorium.
- 4) When materials are taken from the secure room, those materials must have their barcode scanned. Even if the entire package is not taken from the secure room, the barcode on the package that materials are being taken from must be scanned and checked out.
- 5) Multiple packages may be checked out simultaneously.

- 6) Each barcode scanned must have the following information entered into the record:
- The two authorized persons checking-out the election materials.
 - Where the materials will be taken to.
 - Why the materials are being taken out of the secure room (e.g. “to be scanned,” “to be recounted”).
 - The time and date the materials are checked out.
 - Whether or not unsealing was done to get to the materials being removed.
 - Any other relevant information.

The checkout-computer is programmed to record most of this information. Any additional information should be added to the “notes” section of the record.

- 7) Once materials are checked-out, they should immediately be taken by the two authorized persons to room A-0723, room A-240, or to the Auditorium.
- 8) The two authorized persons who checked-out the materials must stay with the materials at all times.
- 9) Upon completion of scanning the elections materials or recounting the elections materials should promptly be returned to the secure room.
- 10) Upon returning the elections materials, the two authorized persons must check-in the materials by rescanning the barcode. The following information must be entered into the record when the materials are checked-in:
- The two authorized persons checking-in the election materials (this must be the same two people who checked these materials out).
 - Where the materials were taken to.
 - The time and date the materials are checked-in.
 - Whether or not any unsealing or resealing was done.
 - If any election materials have been altered in any way, it must be entered with specific detail what was altered and why the alteration occurred.
 - Any other relevant information.
- 11) Check-out and Check-in can only occur between the hours of 7:00 A.M. and 7:00 P.M.
- 12) At 7:00 P.M. all materials must be checked back into the secure room, and the secure room must be locked by Rachel Smith, Hennepin County Elections Manager.
- 13) This statement of the rules governing the removal and returning of election materials from the secure room can only be changed or amended by a memorandum from the Hennepin County Attorneys Office.

Appendix C Observer Report Form

2010 Recount

1. Identification, Location, Start time, People on-site,

1. Observer(s) name, e-mail, phone

1)

2)

3)

4)

2. Location Identification

Observation date:

County observed:

3. On-Site Supervisor Identification

Name & Title:

Phone & E-mail:

4. Start Time

	HH	MM	AM/PM
Scheduled start of today's procedure	<input style="width: 20px; height: 15px;" type="text"/>	:	<input style="width: 20px; height: 15px;" type="text"/> <input style="width: 40px; height: 15px;" type="text"/>
Time first observer arrived	<input style="width: 20px; height: 15px;" type="text"/>	:	<input style="width: 20px; height: 15px;" type="text"/> <input style="width: 40px; height: 15px;" type="text"/>
Actual start of today's session	<input style="width: 20px; height: 15px;" type="text"/>	:	<input style="width: 20px; height: 15px;" type="text"/> <input style="width: 40px; height: 15px;" type="text"/>

5. Total number of people on-site:

Election staff

DFL/Dayton challengers

GOP/Emmer challengers

Media

Other

6. Identifying people on-site. Did the following people wear ID:

	Always	Sometimes	Never	Not on site
a) elections staff?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) DFL/Dayton challengers?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) GOP/Emmer challengers?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) other (ie.media)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If other people wore identification, who were they ? Please describe any concerns you might have had with identifying people on-site.

2010 Recount

7. Additional information about people present...

	Yes	No	Unobserved
Was anyone turned away?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Was anyone asked to leave?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain a "yes" answer.

2. Transparency, Counting Teams, Chain of Custody

8. Transparency - Part I. How far away from the counting table were...

	At counting table	Less than 5 ft.	5 ft. - 10 ft.	More than 10 ft.
a) you?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) challengers?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) other observers?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) the media?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comments or notes:

9. Election Officials and Counting Teams

A. Number of counting teams

B. Total number of people counting

C. Total number of supervisors

D. How many people were on the smallest counting team?

10. Chain of Custody & Ballot Transport

	Yes	No	Unobserved	NA
a) Were the ballots delivered to the recount location/room by at least 2 individuals?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) Were the ballots under the observation of at least 2 elections staff during the recount?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) Were the ballot envelope/container seals intact? (if "no" call Mark or Kathy B. at 612-724-1736).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain any "no" answers.

3. Observing, Challenged Ballots, Counting, Transparency

2010 Recount

11. Training and Orientation

	Yes	No	Unobserved
Did the supervisor clarify procedures for everyone before beginning to count ballots?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Use this space if further explanation is needed.

12. Challenged Ballots

	Yes	No	Unobserved
a) Were challenged ballots removed and placed into a separate envelope?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) Was the reason they were challenged written on the back of the ballot?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) At the end of the day, did the elections supervisor review the challenged ballots with the challengers?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) If "Yes" to (c), did anything change?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please keep a tally of the number of ballots that were challenged below.

13. Conduct & Behavior

Were the following quiet & respectful during the counting process:

	Always	Sometimes	Never	Unobserved
a) challengers?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) non-partisan observers?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) the public?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) the media?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) Also, did election officials maintain good order & prevent interference during the recount process?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain any "never" answers or unique observations.

2010 Recount

14. Counting Team Procedure. Did elections officials follow a 2-person protocol to...

	ALways	Sometimes	Never	Unobserved
a) ...sort ballots?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) ...count ballots?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) ...record counts on tally forms?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) Also, you able to confirm that the number of the ballots in each pile was counted accurately?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If there was a discrepancy, please explain the discrepancy, what was done to resolve it, and if it was resolved.

4. Chain of Custody, Security, Official Tally Forms, Completion Time

15. Chain of Custody, end of day

	Yes	No	Unobserved
a) Could you confirm that ballots were returned to their envelopes/containers?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) Were the ballot envelopes/containers resealed?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain any "No" answers.

16. Have all the ballots been counted for this county?

- Yes
 No

17. Describe the procedures used to secure the ballots between days of counting (if the counting will take multiple days)?...If ballot security is poor, contact

Mark or Kathy at 612-724-1736.

18. Recording total numbers at end of day:

Total Dayton ballots:

Total Emmer ballots :

Total other candidate/write-in ballots :

Total contested/challenged ballots :

Total spoiled ballots :

Total number of ballots overall :

2010 Recount

19. Official Forms.....If you are present at the finish of the recount in a county, ask for a copy of the Official Tally Form that they will send to the Secretary of State.

	Yes	No	Not last day of recount at this location
a) Could you see and obtain a copy of the Official Tally Forms?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) Were copies of the Official Tally Forms made available to the public?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain any "No" answer.

20. Completion

Time today's session ended

HH	MM	AM/PM
<input type="text"/>	<input type="text"/>	<input type="text"/>

21. Please use this space to provide additional information, both positive and negative, about your observations.

5. Observer Concerns

22. Observer Concerns. Do you have any concerns about:

	Yes	No	Unobserved
a) the way the room was laid out?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) on how the recount was organized?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) with the integrity of the counting and totaling process?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) about the accuracy of the manual count?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) about the accuracy of the ballot tally/reporting?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) with the transparency/observability of the process?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
g) with the chain of custody?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain any "Yes" answers, or if there were concerns not addressed, please comment here.

23. I (we) support all items that is reported on this form, and believe it to be accurate and factual, to the best of my (our) knowledge and understanding.

Signatures of all observers

Appendix D Observer Code of Conduct



Code of Conduct

As a nonpartisan, volunteer observer of the Minnesota gubernatorial recount, I agree to:

- 1) Maintain strict impartiality at all times.** I will not publicly express or exhibit any bias or preference in relation to parties, candidates or with reference to any issue in contention in the election process. I will not wear or display any partisan or candidate symbols. I also agree not to serve as a recount challenger for either of the political parties.
- 2) Not obstruct the recount process.** I will undertake my duties in an unobtrusive manner, will not interfere with the counting process and will not give advice to election officials. *I will not touch the ballots.*
- 3) Maintain accuracy of observations.** I will base my responses for the reporting forms on my personal observations or on factual and verifiable evidence. I will not draw conclusions prematurely.
- 4) Refrain from making comments to the public or the media.** I understand that my observation may not be indicative of the observations of others throughout the state. Therefore, I will refrain from making any personal comments about my observations, predictions or conclusions to the news media, other observers or members of the public, unless specifically instructed otherwise by Citizens for Election Integrity Minnesota (CEIMN). I may explain the nature of the observation and its activities. I will refer the media or other interested persons to the leadership at CEIMN.
- 5) Maintain professional behavior.** I will exhibit the highest level of personal discretion. I will maintain professional behavior towards everyone in the recount location including other observers and elections staff.
- 6) Contact Citizens for Election Integrity Minnesota.** If I observe something I believe to be an issue, I will contact CEIMN immediately to determine the appropriate action.

Name: _____ Date _____

Signature: _____

Appendix E

Recount data summary from non-partisan observation reports

Section 1 – Recount transparency

As is the case any time a statewide recount is conducted there are minor issues that vary from location to location. It is virtually impossible to maintain a uniform process across the state. Despite that, our observers witnessed nothing that could fundamentally undermine the transparency and integrity of the recount.

Maintaining Good Order

Out of 62 respondents making up 93% of our observers, only 4 witnessed an incidence where an individual caused a disturbance and was asked to leave. Out of those 4, the only significant one involved a challenger from the one of the campaigns in Anoka County. The challenger did not comply when asked to calm down and was told to leave.

Supplementing the reports of order being kept is the fact that the overwhelming majority of observers and media personnel were allowed to be within 5-10 feet of the recount tables. Over 80% of the time, our observers were either at the recount table, within 10 feet of it.

Training Procedures

Our observers were asked to report if the site supervisors clarified the procedures prior to the recount beginning. In a number of instances, it was “unobserved” whether directions had been giving out or not because our volunteers arrived after the beginning of recounting that day. Out of 59 responses, only 4 state definitively that recount procedures had not been explained. At some locations, hard copy procedures were provided to the public.

Section 2 – Counting Process

Observation of Counting Process

During the recount, the Secretary of State only required county supervisors to give direct counting-table access to party challengers. Supervisors are, however, given the discretion to allow access to observers, the public, or the media.¹¹

As was demonstrated by the accuracy, expeditiousness, and general lack of controversy of the 2010 recount, counting locations were well staffed and effectively supervised. The information our observers documented tends to support this claim. The only concern that was more consistently voiced was with regards to counting table access. Observers cited that counting table access was not consistent across the state. In some locations supervisors simply had to limit counting-table access to essential personnel in order to keep the process running smoothly. Taking that into

¹¹ Based on MR 8235.1000 and 8235.0700

consideration, only 11 of our 59 responding observers described their access being more than 10 feet from a table.

Examples of the variety of counting-table access:

- Ramsey County – 5 of 8 observers were allowed access *at* the counting table. The other 3 were within 5 feet or closer.
- Hennepin County – All of the observers listed being 5-10 feet from the counting tables, with the same being true for “other observers” and members of the media. Hennepin County being the largest in the state, they had the entire counting-table area roped off and officials at the entrances purportedly only allowing properly credentialed personnel in.¹²
- Carver County – Observers were close enough to see the marks on ballots during sorting.
- Anoka County – Dayton observer/challengers appeared to outnumber Emmer observer/challengers 2-to-1.¹³
- Nicollet and Stearns County – Observers could see the process of counting well, but were had difficulty seeing the challenged ballots as they were being reviewed

Counting Team Description

The average number of counting teams hovered around 7 per location however larger counties like Hennepin and Ramsey had up to 25 as a result of the recount being moved to a centralized location in each county. The number of counting teams is essentially representative of the number of ballots and counting tables setup. While we did not have any mentions of counties being necessarily understaffed, the number of people on a counting team varied across the state.

Counting teams in larger counties generally consisted of 3 recount judges (allowed to physically touch the ballots) and 1 party-appointed observer/challenger from each party respectively. Due in large part to the ambiguous nature of our question, the responses varied from 1-6 people on the smallest counting team.¹⁴ Does the counting team include just those who can touch the ballots? Does it include challengers as well as the roaming team leads?

Counting Procedure

Two questions on the reporting form addressed the process by which the sorted ballots get counted.

Two-Person Protocol: This protocol involves one election official (or judge) checking the accuracy of another election official’s (or judge’s) work. The protocol was reportedly used for sorting, counting, and recording the counts onto official forms at nearly 85% of all our observed recount

¹² See appendix for extended report of Hennepin County observation by the Bartows

¹³ Counting table S.O.P. across state was normally 3 recount judges and 1 challenger from each party

¹⁴ Question reads: “How many people were on the smallest counting team?”

locations. Of that number however, our observers were only able to corroborate that count accurately against their own observed count 31% of the time.

Handling of challenged ballots: The process for challenged ballots involves ensuring that the election officials remove challenged ballots from the counting pile. The officials must note the reason for the challenge, identify the precinct, and affix the challenger party's name on the ballot. Election officials then place the labeled, challenged ballot into one envelope that is separate from the other ballots. These envelopes are secured and stored in a secured location. The Canvassing Board will later rule on whether or not to accept the challenged ballot.

Of the 56 observers reporting, 48 noted that challenged ballots were *always* removed and placed in a separate envelope. Two observers noted that they *sometimes* were. One observer noted that they *never* were. Five observers stated that the process went unobserved. The other two sections of this question dealt with whether the challenged ballots were labeled appropriately and if the election supervisor reviewed the challenged ballots at the end of the day. Some comments about the challenged ballots:

- The written comments by the observers point out that in a few instances, the challenged ballots were reneged by the challenger.
- Cook County had *no* challenged ballots.
- Some recount locations had so many tables the process was deemed as being followed "Sometimes" or it was listed as "Unobserved."
- Due to the sheer number of challenges, especially in Hennepin and Ramsey counties, the supervisor was incapable of reviewing challenges at the end of the day so *several* city and county administrators were reviewing challenges after the completion of each individual precinct.

Section 3 – Chain of Custody

The chain of custody for the recount is subject to MR 8235.0400. To assess chain of custody, observers reported on the unsealing and resealing of ballots, the number of individuals that kept watch over the ballots during the process, and the number of individuals transporting the ballots from their secure location to the recount room. Only two of the 53 observers who responded noted that:

- They were not able to confirm that ballots were returned to their envelope/container
- The ballot envelope/container was resealed

Seven observers stated that the process was unobserved, but no observers stated definitively that the process was not followed.

The observer in Winona County made the following report.

- 4:30 pm: At the end of the day Utica Township was short 23 ballots. They called the local election judge on call. He checked the ballot machine and found 23 original ballots that got stuck in the machine. Officials were sent to get them. The parties followed to assure chain of custody. All 23 were brought to the Government Center, and the tally was accurate.

With regards to the actual security of ballots during the day and overnight, there were no real issues raised. Only one report actually lacked confidence in the procedure, but other reports from the same county, Ramsey, noted that the security of ballots overnight was of no concern. Every county seemed to have a locked and guarded room.

General Observer Concerns

At the end of each report form, observers were asked if they had any concerns in seven different areas:

1. Room layout
2. Recount organization
3. Integrity of counting and tallying process
4. Accuracy of manual count
5. Accuracy of the information reported to the Secretary of State
6. Transparency/observability of the process
7. Chain of Custody

- There was no single issue in which *a majority* of the observers expressed concern.
- The two concerns reported most by observers were about the layout of the room and the transparency/visibility of the process. Chain of custody was the third most reported observer concern. See Appendix F for an analysis of the responses.
- The concerns about the layout of the room or the transparency/observability of the process involved the table arrangements or restricted access to the counting tables. These issues limited the observers' ability to see all of the precincts being counted or made it difficult to appropriately confirm ballot-counting and transparency procedures.

Appendix F A comparison of the 2010 observer reports with 2008

Comparison of 2008 observers responses with 2010

- 1 Were the ballots under the observation of at least two individuals at all times during the recount process?

Year	Yes/Always	Sometimes*	No/Never	Not Observed	Total
2008	94%	NA	6%	0%	100%
2010	95%	3%	2%	0%	100%

- 2 Did election officials maintain good order and prevent interference with the recount process?

Year	Yes/Always	Sometimes*	No/Never	Not Observed	Total
2008	98%	NA	2%	0%	100%
2010	95%	5%	0%	0%	100%

- 3 Did election officials follow a two person protocol to sort ballots?

Year	Yes/Always	Sometimes*	No/Never	Not Observed	Total
2008	72%	NA	28%	0%	100%
2010	90%	2%	9%	0%	**101%

- 4 Did election officials follow a two person protocol to count ballots?

Year	Yes/Always	Sometimes*	No/Never	Not Observed	Total
2008	67%	NA	33%	0%	100%
2010	85%	10%	5%	0%	100%

- 5 Did election officials follow a two person protocol to record counts on tally forms?

Year	Yes/Always	Sometimes*	No/Never	Not Observed	Total
2008	91%	NA	9%	0%	100%
2010	85%	2%	3%	10%	100%

** Due to rounding numbers may exceed 100%

6 Were the ballots delivered to the recount location/room by at least two people?

Year	Yes/Always	Sometimes*	No/Never	Not Observed	Total
2008	73%	NA	28%	0%	**101%
2010	63%	7%	30%	0%	100%

7 Were the ballot envelope/container seals intact before counting began?

Year	Yes/Always	Sometimes*	No/Never	Not Observed	Total
2008	94%	NA	6%	0%	100%
2010	88%	0%	2%	10%	100%

8 Were the ballot envelope/containers resealed at the end of the day?

Year	Yes/Always	Sometimes*	No/Never	Not Observed	Total
2008	98%	NA	2%	0%	100%
2010	83%	4%	13%	0%	100%

9 Were the challenged ballots removed and placed in a separate envelope?

Year	Yes/Always	Sometimes*	No/Never	Not Observed	Total
2008	100%	NA	0%	0%	100%
2010	86%	4%	2%	9%	**101%

* Option not available in 2008

** Due to rounding numbers may exceed 100%

10 Did you have any concerns for any of the following?

Room layout

Year	Yes	No	Not Observed	Total
2008	23%	77%	0%	100%
2010	16%	84%	0%	100%

Recount organization

Year	Yes	No	Not Observed	Total
2008	5%	95%	0%	100%
2010	2%	98%	0%	100%

Integrity of counting or tallying process

Year	Yes	No	Not Observed	Total
2008	4%	96%	0%	100%
2010	5%	95%	0%	100%

Accuracy of manual count

Year	Yes	No	Not Observed	Total
2008	0%	100%	0%	100%
2010	2%	93%	5%	100%

Accuracy of info reported to Secretary of State

Year	Yes	No	Not Observed	Total
2008	0%	100%	0%	100%
2010	0%	91%	9%	100%

Transparency/observability of process

Year	Yes	No	Not Observed	Total
2008	25%	75%	0%	100%
2010	16%	84%	0%	100%

Chain of custody*

Year	Yes	No	Not Observed	Total
2008	17%	83%	0%	100%
2010	7%	91%	2%	100%

- This is what the 2008 CEIMN recount report had to say about the observer's chain of custody concerns:
"The chain of custody concerns involved not knowing where the ballots were being stored, and a general inability to observe chain of custody procedures."