

# *Minnesota's Elections — Transparent, Verifiable, and Accurate.*

A Response to the Center of the  
American Experiment's Report:

*No Longer a National Model. Fifteen  
Recommendations for Fixing Minnesota  
Election Law and Practice.*

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## Introduction

This document is the response of Citizens for Election Integrity Minnesota (CEIMN) and Common Cause Minnesota (CCMN), to the Center of the American Experiment (CAE) report: *No Longer a National Model. Fifteen Recommendations for Fixing Minnesota Election Law and Practice*.<sup>1</sup> The report, written by Mr. Kent Kaiser, contains a large number of inaccuracies and unsubstantiated claims. As nonpartisan election integrity organizations, we feel a responsibility to Minnesota voters and election officials to provide a written response, based on data available to the public.

CEIMN organized a state-wide nonpartisan observation of the 2008 U.S. Senate recount [with the help of CCMN and the League of Women Voters Minnesota (LWVMN)], the first of its kind in the country. This effort involved 77 trained and experienced volunteers who carefully documented their observations. CAE's findings and conclusions differ widely from those publicized in *Eyes on the Vote Count: Non-partisan Observer Reports of Minnesota's 2008 Post-Election Audit and Recount*,<sup>2</sup> a report based on volunteer observations by CEIMN, facts reported by the Office of the Secretary of State, and reports in the media.

CAE choose not to include sources for input “because we wanted this report to be not about the esteem or celebrity of its contributors but rather about the substance and merits of its recommendations.” But as we prepared our response to the CAE report, we choose another route — to cite our sources. This allows the reader to confirm the substance and the merits of our response. This is especially important because we found information that was provided by CAE through anonymous sources and the basis for some of its recommendations was wrong. For example

1. Within the CAE report, it inaccurately states the rejection rate of military absentee voters three times and it uses this incorrect information as the basis of some of its recommendations. In reference to this “fact”, it uses the word “shameful” and notes “that local election officials were 16 times more likely to reject military absentee ballots than they were to reject other absentee ballots, and most of these ballots were rejected because they were received after Election Day.”<sup>3</sup> The fact is that in 2008 the **rejection rate of military absentee voters was two times higher than the average of all absentee voters**. Furthermore, the processing of absentee military ballots has greatly improved in recent years. In fact, **the rejection rate of military absentee ballots was cut in half while, at the same time, well over two times more absentee military ballots were accepted in 2008 when compared to 2006.**<sup>4</sup>

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<sup>1</sup> For the full report go to <http://www.americanexperiment.org/>

<sup>2</sup> *Eyes on the Vote Count: Non-partisan Observer Reports of Minnesota's 2008 Post-Election Audit and Recount*, Citizens for Election Integrity Minnesota (Mark Halvorson and Sarah Martyn Crowell) May 26, 2009. [http://www.ceimn.org/files/ceimn.report\\_color.pdf](http://www.ceimn.org/files/ceimn.report_color.pdf)

<sup>3</sup> *No Longer a National Model Fifteen Recommendations for Fixing Minnesota Election Law and Practice*, Center of the American Experiment (Kent Kaiser) October 2009. <http://www.americanexperiment.org/>

<sup>4</sup> See pages 3-6 in our response for further details.

The shame in this is twofold — it is now posted in newspapers through opinion pieces written primarily by Mr. Kaiser throughout Minnesota including the Star Tribune,<sup>5</sup> St. Cloud Times,<sup>6</sup> and Bluff Country Reader.<sup>7,8</sup> Since this incorrect information is the basis of some of CAE’s recommendations, some policymakers may seriously consider them without learning CAE used flawed data.

2. In recommendation 12, the CAE report discusses rejected absentee ballots. It notes that

Election officials in the City of Minneapolis...did not check the registration of absentee ballot witnesses for the absentee ballots cast there; Carver County officials...checked every single one of them and rejected the ballots of people whose witnesses were not registered. To give some concreteness to the problem: In total, election officials in **Saint Louis County, Ramsey County, and the City of Minneapolis rejected an aggregate total of only seven absentee ballots; by contrast, election officials in Carver County....rejected 188 absentee ballots.**<sup>9</sup> [emphasis ours]

In conducting our research, we contacted election officials in all four locations named in the CAE report and learned that only one — Carver County — tracked how many absentee ballots were rejected because the witness was not registered to vote. We also learned **that Saint Louis County, Ramsey County, and the City of Minneapolis rejected an aggregate total of 2,744 absentee ballots, while election officials in Carver County rejected 527 absentee ballots.** Thus, CAE’s example is far from “concrete.”

CAE’s findings, based on poor research, have received broad exposure. Furthermore, the findings are misleading and may cause divisions and mistrust between election administrators and voters in Minnesota. Finally, it uses its findings to make recommendations to change Minnesota’s election law and practices. Thus, we are concerned with the implications of such absurdly incorrect information. Any analysis of our voting system must be done with the utmost care and extensively documented, which was not done by CAE.

While we agree with CAE that the recount exposed problems with the absentee ballot process, we believe that the people, procedures, and technology comprising Minnesota’s election system are of a high standard and a model for other states. Minnesota has a proven record of electoral integrity — the orderly resolution of the 2008 Senate recount stands in sharp relief to the more chaotic results of contests in Florida (2000) and Ohio (2004).

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<sup>5</sup> *Absentee voters deserve more time*, Star Tribune (Kent Kaiser) November 3, 2009. <http://www.startribune.com/opinion/commentary/68754032.html?page=1&c=y>

<sup>6</sup> *Absentee Voting Law Needs Your Help*, St. Cloud Times. November 18, 2009. [www.sctimes.com/article/.../Your-turn--Absentee-voting-law-needs-help](http://www.sctimes.com/article/.../Your-turn--Absentee-voting-law-needs-help)

<sup>7</sup> *Absentee voters deserve more time*, Bluff Country Reader (unsigned opinion) November 17, 2009.

<http://bluffcountryreader.com/main.asp?SectionID=26&SubSectionID=186&ArticleID=28628&TM=79577.98>

<sup>8</sup> Information about the report was also published in the Annandale Advocate, Bemidji Pioneer, Dakota County Business Tribune Weekly, Little Falls Radio, Minnesota Legislative Reference Library, Monticello Times, Politics in Minnesota, Saint Paul Pioneer Press, State Policy Network, and Winona Daily News. Often these publications provided a link to the report.

<sup>9</sup> *No Longer a National Model Fifteen Recommendations for Fixing Minnesota Election Law and Practice*, Center of the American Experiment (Kent Kaiser) October 2009. <http://www.americanexperiment.org/>

**Update: June 2010**

## **The Heritage Foundation updated its data.**

**Now matches Citizens for Election Integrity Minnesota & Common Cause Minnesota**

Citizens for Election Integrity Minnesota (CEIMN) and Common Cause Minnesota (CCMN) hope that the Center of the American Experiment (CAE) will follow the Heritage Foundation's example.

On pages 3-4, in the fact-checking section of Minnesota's Elections — Transparent, Verifiable, and Accurate. A Response to the Center of the American Experiment's Report: No Longer a National Model. Fifteen Recommendations for Fixing Minnesota Election Law and Practice, a report produced by CEIMN and CCMN, it stated that:

The information from the CAE report was also found in *America's Military Voters: Re-enfranchising the Disenfranchised*,<sup>10</sup> a report published by the Heritage Foundation in July 2009. On page two of the Heritage report it states "to make matters worse, even if the military voter in Minnesota cast his or her absentee ballot, that ballot **was nearly sixteen times more**<sup>11</sup> likely to be rejected by local election officials, as compared to other absentee voters statewide."

Because the Heritage Foundation report came out before the CAE report and contains the same information as the CAE report, we believe that the Heritage Foundation is the source for this section of the report.

We recently learned that in March the Heritage Foundation updated its report as follows:

To make matters worse, even if the military voter in Minnesota cast his or her absentee ballot, that ballot **was nearly two times** more likely to be rejected by local election officials, as compared to other absentee voters statewide. [bold inserted]

It is unfortunate that the Heritage Foundation initially incorrectly stated the rejected rate for military absentee voters was 16 times greater than other absentee voters when it was only two times greater. But, we are pleased that the Heritage Foundation's report has been updated with accurate data.

Citizens for Election Integrity Minnesota and Common Cause Minnesota continue to be concerned with CAE's inaccurate information. We firmly believe that misleading voters is an election integrity issue and are extremely concerned that CAE has not reviewed and responded to our report or the Heritage Foundation's updated data. Therefore, we respectfully request that the CAE update its report and send corrections to all the newspapers that published incorrect information through editorials written by Kent Kaiser on behalf of the CAE.

<sup>10</sup> The complete Heritage Foundation report can be found at <http://www.heritage.org/Research/LegalIssues/lm0045.cfm>.

<sup>11</sup> Bold inserted in this update but it was not bold in CEIMN and CCMN original report.

## Fact Checking

Throughout our response we will discuss a number of discrepancies found in the CAE report. Within that report, it mentions the same fact a number of times. For that reason, we are spending additional time highlighting the incorrect information and the logic and resources we have used to come to our conclusion.

### Statements from the CAE report:

- **From the CAE forward:**

Here's just one of Kent's findings, though I admit it's the most remarkable and disturbing. Angering, too, it's fair to say.

“[L]ocal officials were 16 times more likely to reject military absentee ballots than they were to reject other absentee ballots.” This was the case, in part, because of a too-short absentee voting window — as reflected by the fact that, “Many potential military absentee voters actually received their ballots *after* Election Day.”<sup>12</sup>

- **From CAE's recommendation five:**

To make matters worse, Minnesota state data indicate that **local election officials were 16 times more likely to reject military absentee ballots than they were to reject other absentee ballots, and most of these ballots were rejected because they were received after Election Day.** Many potential military absentee voters actually received their absentee ballots after Election Day. This is shameful.<sup>13</sup>

### Our conclusion:

- **The rejection rate of military absentee voters was two times higher than the average of all absentee voters.** Furthermore, the processing of absentee military ballots has greatly improved in recent years. In fact, the rejection rate of military absentee ballots was cut in half while, at the same time, well over two times more absentee military ballots were accepted in 2008 compared to 2006.

The information from the CAE report was also found in *America's Military Voters: Re-enfranchising the Disenfranchised*,<sup>14</sup> a report published by the Heritage Foundation in July 2009. On page two of the Heritage

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<sup>12</sup> *No Longer a National Model Fifteen Recommendations for Fixing Minnesota Election Law and Practice*, Center of the American Experiment (Kent Kaiser) October 2009. <http://www.americanexperiment.org/> (This entire quote is from the forward, written by Mitch Pearlstein, Ph.D., Founder and President of CAE. In his forward, he quotes from the report. The quotation marks are part of his text.)

<sup>13</sup> Ibid.

<sup>14</sup> The complete Heritage Foundation report can be found at <http://www.heritage.org/Research/LegalIssues/lm0045.cfm>. We have also informed the Heritage Foundation of this error.

report it states “to make matters worse, even if the military voter in Minnesota cast his or her absentee ballot, that ballot was nearly sixteen times more likely to be rejected by local election officials, as compared to other absentee voters statewide.” Attached to that statement, was the following footnote

Minnesota state data indicates that election officials rejected nearly 8.2 percent of cast military absentee ballots, whereas only 0.5 percent of all absentee ballots statewide were rejected. See *Sheehan v. Franken*, No. 62CV0956, Findings of Facts, Conclusions of Law, and Order for Judgment, at 9 (Minn. Dist. Ct. Apr. 13, 2009), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/MNfinalorder.pdf>.

Because the Heritage Foundation report came out before the CAE report and contains the same information as the CAE report, we believe that the Heritage Foundation is the source for this section of the report.

We went to the Heritage Foundation’s source, the Findings of Fact, and found the following information on page nine, point 47

...approximately 300,000 people voted by absentee ballot...fewer than 13,000 absentee ballots or less than .5% of all ballots cast in the election were rejected.<sup>15</sup>

One could misread that as .5% of *all absentee* ballots were rejected (but, it’s actually .5% of *all* ballots). Using the numbers from the Findings of Fact — 300,000 absentee voters and 13,000 rejected — we can determine that 4.33% of all absentee ballots cast were rejected. To confirm this number, we also reviewed news stories and learned that most sources reported that “about” or “around” 12,000 absentee ballots were rejected. Minnesota’s Blue Book (the legislative manual) indicates that 293,000 absentee ballots were accepted, so the total number of absentee ballots submitted would be around 305,000 (293,000+12,000). If one were to use 305,000 as total absentee ballots submitted and 12,000 as the number rejected, we would see that the rejection of absentee ballots would be 3.93%.

So far, we have used two possible overall rejection rates for all absentee ballots — either 4.33% (using the Findings of Fact) or 3.93% using Minnesota’s Blue Book and reports of a total of about 12,000 absentee ballots. **If the rate was 4.33% and military ballots were rejected 16 times more often as determined by CAE and the Heritage Foundation, the military ballot rejection rate would have to be an absurd 69.28%; if the rate was 3.93% than it would have to be 62.88%.**

**However, the Overseas Vote Foundation<sup>16</sup> reports that the rejection rate for military absentee ballots was 8.266%; while the Heritage Foundation indicates that the rejection rate for military absentee voters was 8.2%.** Finally, the Minnesota Secretary of State reported the same number to the United States

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<sup>15</sup> *Findings of Fact*. <http://moritzlaw.osu.edu/electionlaw/litigation/documents/MNfinalorder.pdf>

<sup>16</sup> *Case Study. Minnesota Takes the Lead in 2008. Webservices and Outreach for Overseas and Military Absentee Voters Helped Determine Election Results*, Overseas Vote Foundation. May 2009. <https://www.overseasvotefoundation.org/files/OVF-CS-MN09.pdf> page four: “During the 2008 General Election, Minnesota sent 5,745 absentee ballots to military personnel stationed overseas and their dependents; 3,702 of these were returned, of which 306 were rejected by election officials. This compares to 1,276 such ballots returned in 2006, 204 of which were rejected.” Using the numbers they provided, the 2008 rejected rate was 8.266%.

Election Commission.<sup>17</sup> Thus, we can see that there is close agreement on the total rejection rate for military absentee voters. This number significantly differs from the two possible numbers mentioned in the previous paragraph.

To consider it inversely, **we can focus on the agreed fact — the rejection rate for military absentee voters was 8.2%**. If that military absentee ballot rejection rate was 16 times greater than the rejection rate for all absentee voters, the rejection rate for absentee voters would have to be .5%. (Which is the number used in the Findings of Fact, but as noted earlier, that was compared to all ballots—not just absentee ballots.) **If the rejection rate for all absentee voters was .5% and there were about 300,000 absentee voters, as indicated in the Findings of Fact, then only 1,500 absentee ballots would have been rejected. But, the Finding of Facts states that there were fewer 13,000 rejected, not 1,500. This confirms that the rejection rate for all absentee voters was about 4% not .5%.**

The facts we now have is that the rejection rate for all absentee voters was about 4% and that the rejection rate for military absentee voters was about 8.2%. **This means that the rejection rate of military absentee voters was two times higher than the average of all absentee voters — not 16 times greater.**

We continued our research and learned that the most common reason that military absentee voters were rejected was because their ballots came in too late.<sup>18</sup> Using information from the Overseas Vote Foundation, we learned that the rejection rate for military absentee ballots from 2006 was 15.99%. As noted earlier, the 2008 rejection rate for that same group was 8.2%. **This means that within two years the rejection rate was cut in half.** In 2008, 3,207 military absentee ballots were accepted; in 2006 the number was 1,276. This means that well over two times<sup>19</sup> as many were accepted in 2008 when compared to the number accepted in 2006.

The chart on the following page provides information about each category mentioned in this section for your review.

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<sup>17</sup> <http://www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/uniformed-and-overseas-citizen-absentee-voting-act-studies>.

<sup>18</sup> One important question not answered by the available official data is why late military absentee ballots were late. Did the conditions of war slow down the process? Without an answer to this question, any attribution of fault to the Minnesota system would be an unwarranted jumping to a conclusion.

<sup>19</sup> The exact number is 2.51.

## Ballot Rejection Rates in Minnesota

	Total Ballots Cast	Total Cast in Category	Rejected in Category	Rejected as% of Category	Rejected as % of Total Ballots Cast
<b>Total Ballots Cast</b>	2,921,498 <sup>20</sup>	2,921,498	0.0000	0.0000	0.0000
<b>All absentee ballots</b>		300,000 <sup>21</sup>	12,000 <sup>22</sup>	4.00	.4107 <sup>23</sup>
<b>UOCAVA<sup>24</sup> ballots 2008</b>		8,389	463	5.5191	.0158
<b>Military Absentee ballots 2008<sup>25</sup></b>		3,702	306	8.2658	.0105 <sup>26</sup>
<b>UOCAVA, non military 2008</b>		4,687	157	3.3497	.0054
<b>UOCAVA ballots 2006</b>		1,886	263	7.17	unknown
<b>Military Absentee ballots 2006</b>		1,276	204	15.99	unknown

This chart demonstrates the rejection rate for military absentee ballots was only two times that of all absentee ballots in 2008. It also shows that the 2008 rejection rate of military absentee ballots was half the rate of the 2006 rejection rate for military absentee ballots. This indicates that improvements have been made.

<sup>20</sup> Number from excel at <http://www.sos.state.mn.us/index.aspx?page=885>

<sup>21</sup> Number from *Finding of Fact*

<sup>22</sup> This number has been used in a number of reports. It is rounded. As noted on page four, some sources indicated that 12,000 ballots were rejected while the finding of fact noted about 13,000 were rejected. We provided a detailed review of each possibility on page four of our response.

<sup>23</sup> Rejected absentee ballots were 0.4107% of total ballots cast. This corresponds to the findings of fact by the judge of 0.5% of total ballots cast – apparently a rounded number.

<sup>24</sup> Uniformed and Overseas Citizens Absentee Voting Act

<sup>25</sup> According to the data above, military absentee ballots were rejected 2.02664 times more, not 16 times more. (8.2658%/4.0000%=2.02664)

<sup>26</sup> The corresponding percentage of rejected absentee ballots for military voters was 0.0105% of total ballots cast. In order for the rejected rate for military voters to be 16 times above the average rejected rate as they claim, the average would have to be 0.0255% of all ballots cast. (0.0105\*12,000/306/16=0.0255%) Yet that 0.0255% differs by a factor of 20 from the Minnesota court's finding of 0.5%.

# Recommendation 1

## CAE's recommendation:

- Require voters to present a photo ID to access their ballots.

## What it gets wrong:

- CAE calls photo ID a “modest” change to the election system. However, a 2006 Brennan Center for Justice survey<sup>27</sup> found that up to 11% of U.S. citizens lack a valid photo ID. That same survey found that 18% of people over 65 do not have a current government-issued ID.

## What it leaves out:

- Minnesota already has multiple methods for making sure that voter fraud does not occur, and specifically to safeguard against ballot stuffing or repeat voting by an individual. Furthermore, multiple methods are used to check and verify the eligibility and identity of voters when they register. Together, these safeguards make photo ID at the polling place unnecessary.
- There has never been any proof that anyone has ever impersonated another voter. **In fact, on the February 5, 2010, *Almanac*, former state senator and lead recount attorney for Coleman, Fritz Knaak, said, “We were looking for fraud, but we did not see it.”**<sup>28</sup> This shows that people have been actively looking for fraud and nothing has been found.

## Our recommendation:

- We should not create unnecessary barriers to the participation of legitimate, eligible voters. A photo ID requirement would be such a barrier. Furthermore, instituting a photo ID requirement would not add integrity to the election system because there are current safeguards in place in Minnesota.

The concept of mandatory photo identification requirements for ballot access is a false solution in search of a problem that doesn't exist. There is no evidence of fraud in Minnesota elections; CAE does not deny this. Yet CAE insists it is not enough for us to *believe* that voter fraud does not occur; the report states that we must develop new systems, adopt new technology, to prevent potential fraud. There are already extensive checks in place to make sure that voters do not commit fraud when they are registered, and that they cast only one vote in the correct precinct on Election Day. Confirmation processes are similarly in place to verify the current address for a voter; if confirmation does not happen, again, their vote is challenged on Election Day. Challenged voters already must go through additional procedures to be able to vote.

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<sup>27</sup> *Citizens Without Proof: A Survey of Americans' Documentary Proof of Citizenship and Photo Identification*, Brennan Center for Justice at New York University School of Law. November 2006. [http://www.brennancenter.org/page/-/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/page/-/d/download_file_39242.pdf).

<sup>28</sup> <http://www.tpt.org/almanac/>

On Election Day, voters are required to sign a voter roster — this roster is reconciled with the number of ballots on Election Day to make sure no additional votes were cast. Absentee ballots are also matched against this roster to make sure that no one voted both in-person and absentee. The roster is also used to update a voting history for each voter: an individual who voted in multiple locations for the same election would be easily discovered and prosecuted for fraud, a felony offense including potential jail time of up to five years with a \$10,000 fine. Additionally, parts of the confirmation processes described above are completed again after Election Day; any irregularities are reported to the appropriate authorities to investigate possible fraud.<sup>29</sup>

These processes make the need for voters to present photo ID on Election Day unnecessary. Furthermore, instituting photo ID requirements would add an undue burden and disenfranchise many voters who are legally eligible to vote. As noted earlier, a 2006 Brennan Center for Justice<sup>30</sup> survey found that 11% of U.S. citizens lack a valid photo ID; many of these are lower-income, very young, or very old. That same survey found that 18% of people over 65 do not have a current government-issued ID.

These voters are still eligible to vote, and their access to the ballot is federally protected and cannot be infringed upon unduly by the state. Even if photo ID requirements have been ruled constitutional, we should seek to ensure ballot access to legitimate voters, rather than seeking methods to limit access. At this point in time, **Minnesota has processes in place that protect against voter fraud, yet do not discourage voter participation through the creation of unnecessary barriers for legitimate voters.** Given this, photo ID requirements would worsen, rather than improve, the strength and legitimacy of Minnesota's elections.

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<sup>29</sup> *The Minnesota Supreme Court Ruling A09-697*, June 30, 2009. <http://www.sos.state.mn.us/index.aspx?page=1405>

Pages 4-5. “No claim of fraud in the election or during the recount was made by either party.” and, footnote, “Coleman’s counsel confirmed at oral argument that Coleman makes no claim of fraud on the part of either voters or election officials.”

<sup>30</sup> *Citizens Without Proof: A Survey of Americans’ Documentary Proof of Citizenship and Photo Identification*, Brennan Center for Justice at New York University School of Law. November 2006. [http://www.brennancenter.org/page/-/d/download\\_file\\_39242.pdf](http://www.brennancenter.org/page/-/d/download_file_39242.pdf).

## Recommendation 2

### CAE's recommendation:

- Eliminate partisanship and do away with political appointments in the Office of the Secretary of State. Specifically, it recommends that the Office of the Secretary of State be required to hire from existing pools of state government employees for certain positions, rather than making political appointments.

### What it leaves out:

- The CAE report provides no evidence where partisanship negatively affected the recount. Rather, it relies on individual and public impressions of partisanship.
- There is no evidence in election research to indicate that changing the partisan nature of the Secretary of State's Office improves public trust in election or recount processes.
- There is no evidence to show that Minnesota's Secretary of State's Office is becoming increasingly partisan.

### Our recommendation:

- Unless there is compelling evidence that supports CAE's suggestions, maintain the current practice.

While the Secretary of State is a partisan-elected position, the CAE report fails to cite any proof of partisan actions made by the Office of the Secretary of State. In fact, independent observers, including the Ramsey District Court<sup>31</sup> and the GOP editor of Politics in Minnesota praised the Minnesota Secretary of State's office for their handling of the recount in a nonpartisan, fair, and transparent manner. In response to the CAE report, the Minnesota Free Market Institute wrote the following about this subject

... If the party system is competitive, control over the Secretary of State's office is bound to alternate. If no party expects to control the office

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<sup>31</sup> *Ramsey County District Court finding of fact*, conclusion of law and order for judgment in *Coleman v Franken*  
"The overwhelming weight of evidence indicates that the November 4, 2008 election was conducted fairly, impartially, and accurately." The court went on to say, "The citizens of Minnesota should be proud of their election system. Minnesota has one of the highest voter-participation rates in the country. The Office of the Minnesota Secretary of State and election officials throughout Minnesota's counties and cities are well-trained, fair, and conscientious and performed their duties admirably, Minnesota could not conduct elections without the hard work and diligence of its dedicated professionals and citizens volunteers, and the Court is proud of their service.  
<http://moritzlaw.osu.edu/electionlaw/litigation/documents/MNfinalorder.pdf>

permanently, then competition should keep them honest and cause them not to act in any way that they could pay the price for, down the road, when they are no longer in power.<sup>32</sup>

We agree with the Minnesota Free Market Institute's assessment and, until there are compelling facts with documented evidence that supports the suggestions and accusations made by CAE, we do not see the need to change the current practice of selecting the Secretary of State or individuals within the Office of the Secretary of State.

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<sup>32</sup> *Election Reform: Is the Cure Worse than the Disease?*, Minnesota Free Market Institute (Margaret Martin) October 29, 2009  
<http://mnfmi.org/2009/10/29/3672/>

## Recommendation 3

### CAE's recommendation:

- Eliminate partisanship from and increase effectiveness of the State Canvassing Board by changing its composition.

### What it gets right:

- CAE highlights the solid work being done by the Office of Administrative Hearings. We agree with the importance of recognizing their good work.
- Should there be an appeal of the State Canvassing Board's decision, Supreme Court and District Court judges who serve on the State Canvassing Board will need to recuse themselves from the decision.

### What it gets wrong:

- The State Canvassing Board did an admirable job in making decisions.
- The Canvassing Board's current composition does not make it inherently more partisan than the new composition proposed by CAE.

### What it leaves out:

- **Of the nearly three million votes cast, and of the over 1000 reviewed by the State Canvassing Board, only 14 ballots were decided by a 3-2 majority, some of the ballot decisions went to each candidate.** The rest were generally unanimously accepted by the bipartisan board. In addition, all major decisions of the State Canvassing Board were unanimous, including the adoption of the recount guidelines and accepting the tapes from Minneapolis when the ballots couldn't be found.
- Judges who are currently up for reelection are not allowed to serve on the board.

### Our recommendation:

- Maintain the State Canvassing Board as is, including its current composition.

Currently, the State Canvassing Board is composed of the Secretary of State, two Minnesota Supreme Court judges, and two District Court judges. CAE proposes replacing all these members with administrative law judges from the Office of Administrative Hearings (OAH). CAE's main

argument rests on the presumption that the current State Canvassing Board is too partisan to fairly and capably handle the Board's duties. But CAE provides no evidence that the State Canvassing Board in fact acted in a partisan manner during the recount. As we point out numerous times in our responses to CAE's recommendations, the Courts found that the State Canvassing Board carried out its duties "fairly, impartially, and accurately."<sup>33</sup>

CAE argues that OAH administrative law judges would be more impartial, in part because they

...are subject to the state's Code of Judicial Conduct, which means they are barred from participating in partisan activities, endorsing candidates for elective office, or contributing to political campaigns.<sup>34</sup>

However, as it also notes, all judges are subject to this code — including those currently serving on the State Canvassing Board.

CAE claims that Supreme Court justices and District Court judges are biased because they are appointed by partisan officeholders or elected. But CAE fails to mention that OAH judges are also appointed by partisan officeholders. All judges, appointed or elected, have their own political leanings. All are required by law to set aside those leanings in order to make sound judicial decisions. Hence we are not convinced that replacing the existing panel with administrative judges from OAH will make the State Canvassing Board more clearly nonpartisan in any way.

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<sup>33</sup> As the Finding of Fact for the District Court held: "The overwhelming weight of evidence indicates that the November 4, 2008 election was conducted fairly, impartially, and accurately." The court went on to say, "The citizens of Minnesota should be proud of their election system. Minnesota has one of the highest voter-participation rates in the country. The Office of the Minnesota Secretary of State and election officials throughout Minnesota's counties and cities are well-trained, fair, and conscientious and performed their duties admirably, Minnesota could not conduct elections without the hard work and diligence of its dedicated professionals and citizens volunteers, and the Court is proud of their service."

*Ramsey County District Court finding of fact*, conclusion of law and order for judgment in *Coleman v Franken*.  
<http://moritzlaw.osu.edu/electionlaw/litigation/documents/MNfinalorder.pdf>

<sup>34</sup> No Longer a National Model *Fifteen Recommendations for Fixing Minnesota Election Law and Practice*, Center of the American Experiment (Kent Kaiser) October 2009. <http://www.americanexperiment.org/>

## Recommendation 4

### CAE's recommendation:

- Check for interstate double voting.

### What it leaves out:

- No supporting documentation is provided to back up CAE's claim that in 2008 "there were suspicions of double voting significant enough to make a difference."
- The recommendation is vague — it suggests only checking for interstate double voting — but it provides no details regarding how to prevent false positives.
- CAE recommends that "the results of these checks should be certified by the secretaries of state of all states checked and that the results should be publicized widely to instill public confidence in our election system" but it doesn't give a person, whose name wrongly appears on the list, a chance to document that they were wrongly placed on the list because of a false positive.

### Our recommendation:

- Do not use valuable resources to investigate an allegation that has never been substantiated. Therefore, we do not support this recommendation.

We have too many questions and concerns to support this recommendation, especially because there is no evidence that interstate double voting occurs. The CAE report failed to identify evidence of double voting during the 2008 election. **Furthermore, the Minnesota Supreme Court clearly stated that no evidence of voter fraud existed in the 2008 election. As noted earlier, on the February 5, 2010, *Almanac*, former state senator and lead recount attorney for Coleman, Fritz Knaak, said, "We were looking for fraud, but we did not see it."**<sup>35</sup> The Brennan Center examined allegations of double voting across the country and found that

...it is far more common to see allegations of epidemic double voting that are unfounded. Such claims are usually premised on matching lists of voters from one place to another; upon closer inspection, the match process shows error.

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<sup>35</sup> <http://www.tpt.org/almanac/>

Sometimes the interpretation is flawed: two list entries under the same name — even the same name and birthdate — indicate different individuals, as with two Kathleen Sullivans confused for each other in New Jersey in 2004.<sup>36</sup>

Despite this, the CAE report argues that mere potential of double voting requires action. In fact, this suggestion is not new. In 2005 the Commonwealth of Kentucky created a pilot project that focused on interstate double voting. “The goal is to clean up Kentucky’s voter rolls by moving those people who have registered to vote in other states. In theory this should help to prevent the practice of voting in two states, although no actual voter fraud of this type has been identified.”<sup>37</sup> Thus, the action taken by Kentucky, in many ways, is the same as the recommendation made by CAE. **In this case, they removed names from the voter rolls, of which 10 percent were wrongly removed.**<sup>38</sup>

Despite this, the CAE report argues that mere potential of double voting requires action. While we see that the mere act of checking the data does not create barriers to voters, we are concerned that there may be many false positives — will all the John Johnsons in Minnesota and its neighboring states be listed as suspects in interstate double voting? If so, will that mean that every time someone named John Johnson votes he will need to document that he is in fact a resident of Minnesota while people who have more unique names may not have document that they are current residents? If this is the case, does this lead to the beginning of voter ID or a photo ID requirement, which we oppose?<sup>39</sup> Since the Brennan Center found that there were two Kathleen Sullivans who were confused for each other in New Jersey, how can we be certain that others in Minnesota wouldn’t also be confused with each other?

In the state of Minnesota, it is not uncommon for two people to share the same exact name. But such surnames like Johnson, Block, and Swenson are also popular in surrounding states, like Iowa, Wisconsin, and the Dakotas. If what the CAE suggests becomes law in Minnesota, every election would bring a plethora of false positives that would deny many people the right to vote simply for sharing the same name with another person in the same state or region. We find that we have too many questions and concerns to currently support this recommendation, especially given the unfounded allegations.

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<sup>36</sup> *The Truth About Voter Fraud*, Brennan Center for Justice at New York University School of Law (Justin Levitt, counsel for the Democracy Program) 2007. <http://www.truthaboutfraud.org/pdf/TruthAboutVoterFraud.pdf>

<sup>37</sup> [http://moritzlaw.osu.edu/electionlaw/litigation/documents/KY\\_Amended\\_Petition.pdf](http://moritzlaw.osu.edu/electionlaw/litigation/documents/KY_Amended_Petition.pdf)

<sup>38</sup> *2010 Issues in Election Administration, Interstate Compacts*, (Legislative Brief) February 2010. Project Vote. Page 3. <http://projectvote.dreamhosters.com/images/publications/2010%20Issues%20in%20Election%20Administration/PV%20leg%20brief%20Interstate%20Comp%202010.pdf>

<sup>39</sup> See our response to recommendation one.

## Recommendation 5

### CAE's recommendation:

- Move the primary to an earlier date and extend the absentee ballot season.

### What it gets right:

- Both parts of this recommendation could greatly aid many voters.

### What it gets wrong:

- As we highlighted on pages 3-6, our analysis shows the rejection rate for military absentee voters was twice that of other absentee voters, not 16 times greater.

### What it leaves out:

- CAE fails to acknowledge the significant increase in the total number of military absentee voters and the sharp decline in rejection rates from that same group. This indicates that there have been substantial improvements in the system compared to years past.

### Our recommendation:

- We agree with both parts of this recommendation. We further recommend that CAE research the work done by nonpartisan groups in Minnesota to achieve the types of policies it is proposing.

The Secretary of State's office, election officials, and voting rights advocates (including CCMN, CEIMN, and LWVMN) worked to pass legislation during the 2009 legislative session that would have moved Minnesota's primary to August. This legislation was approved by the House and Senate, but vetoed by the Governor last year.

The legislation was introduced to better accommodate military personnel and those voting overseas. On January 9, 2009, CCMN Executive Director Mike Dean testified in front of the Senate Committee on State and Local Government Operations. Mr. Dean stated

The Pew Center for the States estimates that Minnesota military personnel voting overseas have a cushion of fewer than five days to accommodate any voting delays in the process. This is because Minnesota law only requires that ballots go out 30 days before an election. There is just not enough time to transport the ballot, execute the ballot, and return the ballot, even with the reforms that the legislature made during the last legislative session.

The Minnesota legislature is likely to move the primary elections to August. This is because last year's Federal Defense Bill mandates that state election officials provide a 45-day window for overseas military personnel to vote absentee.

The report fails to acknowledge that there has been an increase in the number of soldiers and others serving overseas in voting. This increase can be attributed to election law changes which occurred in 2008 that enabled election officials to electronically send ballots and that eliminated some of the burdensome requirements like ballot witnessing and signature matching. Furthermore, as we explained in pages 3-6, the reasoning provided in the CAE report for this recommendation is incorrect. While the report attempts to blame the Secretary of State's office for disproportionate rejection rates for military absentee ballots, the evidence for this does not exist. As noted earlier, the rejection rate for military absentee voters in 2008 was half the rejection rate in 2006

## Recommendation 6

### CAE's recommendation:

- Institute centralized administration of Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) as it pertains to absentee ballots.

### What it gets right:

- The majority of rejected UOCAVA ballots were rejected because they came in after the election deadline.

### What it gets wrong:

- The total rejection rate for military absentee ballots was *not* 16 times greater than nonmilitary ballots. The rejection rate was two times greater. (See pages 3-6 of our response.)

### What it leaves out:

- When the CAE report was written, the Federal Defense Bill had already been signed. As noted earlier, this bill mandates that state election officials provide a 45-day window for overseas military personnel to vote absentee.

### Our response:

- The CAE report does not provide compelling reasons that UOCAVA absentee ballots should be administered in a centralized location. **In fact, the basis of CAE's recommendation was information that we have documented to be extremely inaccurate.**

The premise of CAE's recommendation is that "local election officials rejected absentee ballots at a rate 16 times higher than the rejection rate for non military ballots, and the vast majority of rejected ballots were rejected because they were received after the election deadline."<sup>40</sup> As noted earlier, the rejection rate was not 16 times greater, it was two times greater. And, improvements including earlier primaries and electronically sending ballots to UOCAVA voters should increase the number of ballots received before Election Day.

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<sup>40</sup> *No Longer a National Model Fifteen Recommendations for Fixing Minnesota Election Law and Practice*, Center of the American Experiment (Kent Kaiser) October 2009. <http://www.americanexperiment.org/>

With regard to the CAE recommendation to “create a centralized system of UOCAVA absentee ballot administration to be administered by civil servants in the Office of the Secretary of State.”<sup>41</sup> Minnesota Statute 203B.23 requires that county auditors establish ballot boards for absent voters who are in the military or people with temporary residence outside the United States, as defined in statute 203B.16. These ballot boards review all the documents submitted with absentee ballots as they receive them to confirm that they are completed correctly; if not, the absentee voter is contacted and given an opportunity to complete the document.

Finally, we’d like to point out that there are resources such as the Federal Voting Assistance Program (<http://www.fvap.gov/>), which provides information and assistance to U.S. Citizens, including people in the armed forces, who are living outside the United States. This centralized *information* system is good since it allows the military, embassies, and others to point to one place for citizens wishing to vote. Furthermore, the website for the Minnesota Secretary of State also has a link to information for individuals from Minnesota who are overseas and wish to vote (<https://minnesota.overseasvotefoundation.org/overseas/home.htm>.)

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<sup>41</sup> Ibid.

## Recommendation 7

### CAE's recommendation:

- Institute systems of bar-coding and central processing of absentee ballots.

### What it gets right:

- Current methods of processing absentee ballots could lead to problematic inefficiencies and inconsistencies.

### Lack of clarity of CAE recommendation:

- It's not clear if the CAE report is referring to the actual bar-coding of ballots, which would allow for tracking a particular ballot to a particular voter, violating the rights of individuals to cast their ballot in secret or if the report is recommending bar-coding the outer envelope.

### Our recommendations:

- Bar-code absentee envelopes, not ballots.
- Provide timely notice of rejection to absentee voters, allowing them to correct for technical errors.
- Continue nonpartisan efforts for centralized processing of absentee votes.

We assume CAE's recommendation for bar-coding was for the outer envelope to assist with processing. Obviously, bar-coding on the ballot itself should not be allowed because it would unlawfully connect the ballot to an individual voter. We support legislation that would allow for the absentee envelope (*not* the ballot) to be bar-coded for tracking purposes. By allowing the application and the secure envelope to be bar-coded and thus tracked, it could provide some efficiencies for elections officials and could have the potential to have results available to voters to provide information about where their application and ballot are in the process. This method would preserve privacy, as the voter's ballot, once counted, could not be tracked back to the individual.

Legislation passed by the Minnesota House and Senate last session would have centralized the processing of absentee ballots at the county level.<sup>42</sup> This legislation includes improvements based on lessons learned from the Senate recount; unfortunately the legislation was vetoed by the Governor.<sup>43</sup> This is clearly a nonpartisan reform that needs to pass before the 2010 election to prevent the high number of rejected absentee ballots that plagued the senate recount.

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<sup>42</sup> Legislation included the requirement that all use Minnesota Statewide Voter Registration System to process absentee ballots, which would have allowed for all to use the bar-codes.

<sup>43</sup> [https://www.revisor.mn.gov/revisor/pages/search\\_status/status\\_detail.php?b=Senate&f=SF1331&ssn=0&y=2009](https://www.revisor.mn.gov/revisor/pages/search_status/status_detail.php?b=Senate&f=SF1331&ssn=0&y=2009)

## Recommendation 8

### CAE's recommendation:

- Institute no-excuse absentee voting, allowing for voters to opt to vote absentee for any reason at all (but not early voting).

### What it leaves out:

- Once again, the CAE report fails to mention prior attempts at achieving reform and why they have failed. In this instance, legislation passed for “no-excuse” absentee voting in 2007 was vetoed by the Governor.

### What it gets right:

- No-excuse absentee voting would allow for broader participation in elections.

### What it gets wrong;

- The CAE report presents little evidence to explain its preference for absentee rather than early voting, and ignores numerous benefits of early voting, including the ability of a voter to verify that their ballot is properly completed so it can be counted by the machine, which is part of CAE's recommendation number nine.

### Our recommendation:

- In addition to instituting no-excuse absentee voting, we also recommend instituting early voting in order to both expand participation and shore up voter confidence in the election process.

No-excuse absentee voting is an idea that our organizations have long supported. We are pleased to learn that CAE also supports this reform. However, it is important to note that this legislation passed the legislature in 2007 and would currently be law had it not been vetoed by the Governor.

In light of the Governor's opposition to no-excuse absentee voting, more effort has been placed on instituting an early voting process, instead of no-excuse absentee voting, which the Governor has said he is open to

[The absentee ballot process] is supposed to be used if you're out of town, if you're sick, if you're hospitalized, and it's become used for convenience—which isn't a bad thing but the process really wasn't intended for that so the rules aren't modernized in that regard... I think that rather than having people lie about the reasons they may need an absentee ballot—in other words, saying they're out of town when they're really not out of town—**we'd be better served, amongst other things, looking at some sort of limited early voting because we know when people show up they log in and they run their ballot through the machine, it's a highly accurate process.**<sup>44</sup>  
[emphasis ours]

While we see no harm in allowing for both no-excuse absentee voting and early voting, we think that early voting is a better option because it gives voters the peace of mind that their vote will count. During the early voting process, a voter is able to verify their registration status, and the ballot is checked for errors when it goes through the machine. Such a process could help alleviate some of the problems that we saw during the 2008 election. First, any registration issues would be addressed immediately with the voter. Second, it would reduce the number of ballots that need to be reviewed by the Canvassing Board to determine voter intent.

CAE is opposed to early voting because it does not allow individuals to change their vote on Election Day. We believe that this is not a sufficient reason to oppose the benefits of early voting. Voters have the ability to decide when, in the course of a political debate, they would like to make a decision; all voters have the ability to wait until Election Day to cast their ballot should they wish to be free of any risk of new information affecting their decision.

In the extreme examples of 2002 and 1990, when a candidate's name was removed from the ballot during the absentee voting period, there needs to be an alternative way to issue new ballots for the affected race. Forcing voters, who have already said that they are unable to make it to the polling location on Election Day, to make a trip to their polling location so that they can vote on a new ballot is wrong and currently against the law. Federal law requires that accessible voting equipment be made available on Election Day. In the event of a change to the ballot so close to the election, there would not be enough time to re-program the equipment and have it tested.

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<sup>44</sup> *Land of P(aw)lenty*, WNYC: The Brian Lehrer Show. July 3, 2009  
<http://www.wnyc.org/shows/bl/episodes/2009/07/03/segments/135869>

## Recommendation 9

### CAE's recommendation:

- Make ballot-checking technology available to “in-person” absentee voters.

### What it gets wrong:

- That the ballot-checking technology would have caught the technical errors that caused many of the absentee ballots to be rejected, when in fact the technical errors were on the envelope and absentee ballot application forms, not on the ballots.

### What it leaves out:

- The Automark, a ballot marking machine currently used throughout Minnesota allowing disabled voters and others to mark ballots in secret, already exists.

### Our recommendation:

- Educate in-person absentee voters on their option to use the Automark ballot marking machine.
- Educate voters on how to correctly fill in ballots.
- Make the benefits of ballot-checking technology available to those who need to vote before Election Day by instituting early voting.

According to the CAE report, “many absentee ballots [were] rejected for technical errors. Therefore, we believe that local election officials who offer in-person absentee voting should make available the same ballot-scanning technology that is available to Election Day voters, but only for checking for errors on ballots.”<sup>45</sup> However, the main reasons absentee ballots can be rejected has nothing to do with the ballot itself as outlined here

There are four legal reasons for an election judge to reject an absentee ballot: a voter's signature doesn't match up with her absentee ballot application; the name and address on the ballot envelope doesn't match up with his address on

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<sup>45</sup> *No Longer a National Model Fifteen Recommendations for Fixing Minnesota Election Law and Practice*, Center of the American Experiment (Kent Kaiser) October 2009. <http://www.americanexperiment.org/>

the absentee ballot application; the voter is not registered in the precinct; or the person already voted in person. (Minnesota Statue, 203B.12.)

When the CAE report stated that *ballots* were rejected for technical errors, it used the example of over-voting. An example of over-voting is if a voter selects two people as his or her choice for governor. In this case, neither vote for governor is counted but the rest of the ballot is unaffected. It is therefore inaccurate to claim, as CAE does, that the ballot is “rejected.” **The ballot itself is not rejected — just the areas that are not filled in correctly.** If CAE is concerned that in-person absentee voters are not filling in their ballots correctly, one solution is to suggest that voters use the Automark machine. **This machine is already available in many locations for in-person absentee voters.** It does not count the ballot but assists voters in correctly and accurately filling in the ballot.

Another option to consider is early voting, which we have described in our response to recommendation eight (pages 21-22). This would allow those who cannot vote on Election Day to have the opportunity to vote before, and to have their ballot processed in a manner that allows the voter to check their ballot for any technical errors. It provides the same benefits CAE argues should be expanded to those who would otherwise be in-person absentee voters.

## Recommendation 10

### CAE's recommendation:

- Institute a provisional ballot system.

### What it leaves out:

- Provisional ballots have led to consistently high rejection rates of ballots cast by legitimate, eligible voters.

### What it gets wrong:

- CAE suggests provisional ballots are a solution to help voters without ID, should a photo ID requirement be put in place. However, research on this practice suggests that provisional ballots for such voters are used as a means to disenfranchise them, rather than to ensure that their ballot is meaningfully cast.

### Our recommendation:

- Do not institute provisional ballots.

A number of reports, written by a diverse set of groups, including the Advancement Project, the Brennan Center, Demos, the United States Election Assistance Commission, the Pew Center, and the Wall Street Journal, all highlight issues with provisional ballots, specifically the high rejection rate. According to a study published in 2007 by the United States Election Assistance Commission, a strong plurality of the [provisional] ballots were rejected because the persons attempting to vote were found, upon further research, not to be registered in the jurisdiction. Another 16% [of rejected provisional ballots] were voters who sought to vote in a precinct other than where they are registered.<sup>46</sup> At issue is the fact that the voters had the *right* to vote but they did not know *where* to vote. Rather than send potential voters to the correct precinct, election judges accepted the provisional ballots. **We would much rather advocate that poll workers and election officials assist voters to find the appropriate precinct than to accept a provisional ballot with no intention of counting it or sending it to the correct precinct.**

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<sup>46</sup> *The 2006 Election Administration and Voting Survey: A Summary of Key Findings*, U.S. Election Assistance Commission. December 2007. Page 21. Casting and Counting Provisional Ballots, table D, Reasons for Rejecting Provisional Ballots. [http://www.eac.gov/clearinghouse/docs/eds-2006/edsr-final-adopted-version.pdf/attachment\\_download/file](http://www.eac.gov/clearinghouse/docs/eds-2006/edsr-final-adopted-version.pdf/attachment_download/file)

The study also found that 3.2% of rejected ballots were invalidated for being incomplete and another 2.2% were discarded because they lacked the voter's signature. **Thus, 20% of rejected provisional ballots were rejected because the voter either went to the wrong location or improperly completed their provisional ballot forms.** Similarly, the Brennan Center found that

...provisional ballots also created problems that did not exist before. For example, reports from polling sites across the country suggest that many voters who should have been entitled to cast regular ballots were given provisional ballots—which had a lower chance of being counted—instead.<sup>47</sup>

Clearly, the use of provisional ballots leads to a circumstance where more voters are disenfranchised, creating less confidence in the integrity of any election.

CAE suggests that provisional ballots be used when voters do not have sufficient ID (as a way to handle problems that will certainly manifest should we require photo ID, as proposed in recommendation number one). However, there are complications with this suggestion as well. The Brennan Center's report notes that

In jurisdictions that refused to count provisional ballots cast by voters without ID, the provisional balloting mechanism failed; there was simply no way [that] those voters could cast ballots that would be counted. **In fact, the provisional ballots offered to those voters were nothing more than sham ballots, void at the moment they were handed out, since the state officials had no plans to take any steps to verify those ballots and since there were no circumstances under which those ballots would count.**.... If all such individuals were presumptively ineligible to have their votes counted, there would be no reason to allow them to cast provisional ballots in the first place. **Worse yet, many voters who might have been able to obtain ID were deprived of their ability to cast a vote that would count because once they cast meaningless provisional ballots, they could not return and vote a regular ballot.**<sup>48</sup> [emphasis ours]

Some states have mechanisms to prevent the issuance of meaningless provisional ballots to voters without IDs. For instance, California counts the ballots as long as the voter signs an oath or affirmation of his or her identity in writing at the polls.<sup>49, 50</sup> **Currently, all voters in Minnesota already are required to sign such an oath** — it's often found at the top of the page of poll books. Thus, such a mechanism should not be necessary in Minnesota, since a voter must already sign an oath in order to get a regular ballot.

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<sup>47</sup> *Are HAVA's Provisional Ballots Working?*, Brennan Center for Justice at New York University School of Law (Wendy R. Weiser, Deputy Director, Democracy Program) March 29, 2006. [http://www.brennancenter.org/page/-/d/download\\_file\\_39043.pdf](http://www.brennancenter.org/page/-/d/download_file_39043.pdf)

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> The signing of an oath is not unique to California. In fact, of the seven states that require *photo* IDs, three of them (Florida, South Dakota, and Michigan) allow voters to vote on a regular ballot if they sign an oath indicating they are eligible to vote. Note that other states require IDs, but only seven require photo IDs.

(<http://www.ncsl.org/LegislaturesElections/ElectionsCampaigns/StateRequirementsforVoterID/tabid/16602/Default.aspx>)

In *Provisional Voting: Fail-Safe Voting or Trapdoor to Voter Disenfranchisement*, a report written by the Advancement Project and cited by the Wall Street Journal,<sup>51</sup> a list of five recommendations were made to reduce the disenfranchisement of voters. **At the top of the list was the elimination of barriers to voter registration. This recommendation is the exact opposite of CAE’s recommendation to require that photo IDs be presented by all Minnesota voters every time they vote.**<sup>52</sup> We agree with the Advancement Project’s recommendation that barriers to voter registration should be reduced. We strongly believe that everyone who has the right to vote should be allowed to vote. And, once they submit their ballot, it should be counted. We are concerned that if a provisional ballot system is put into place, people may go to the wrong polling station and may be provided a provisional ballot that will never be counted rather than be told where to vote. Therefore, we strongly oppose the use of provisional ballots.

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<sup>51</sup> *Provisional Ballots Get Uneven Treatment*, Wall Street Journal (Evan Perez). October 28, 2008.

<http://online.wsj.com/article/SB122515651921374669.html> “Provisional ballots, one of the fixes the government implemented following the disputed 2000 election, are often proving to be a poor substitute for the real thing.”

<sup>52</sup> The remaining four recommendations include eliminating the “wrong precinct rule; improving poll worker training, improving the administration of provisional voting, and increasing the scrutiny and transparency of provisional voting.

## Recommendation 11

### CAE's recommendation:

- Require recounts to be done in a central location.

### What it leaves out:

- CAE does not discuss any of the failings of centralization, such as the potential chain of custody issues arising from transporting ballots to a central location as well as reduced transparency due to reduced access for citizens across the state to observe the process.

### What it gets wrong:

- CAE's argument for centralization simply doesn't hold up because of numerous errors and assumptions throughout.

### Our recommendation:

- We support conducting recounts at the city or county level,<sup>53</sup> the creation of absentee ballot boards, streamlining the absentee ballot application process, and instituting early voting.

The following highlights some of the information and ideas provided in recommendation 11 of the CAE report and our responses to that information.

### **1. CAE argues that centralized recounts are superior, a fact it attempts to prove only by stating that Secretary of State had developed potential plans for attempting such centralization**

Experience from 2000 to 2007 showed that centralized recounts were superior to decentralized recounts, and detailed plans, including budgets, had been developed by the Office of the Secretary of State to prepare for centralized recounts. Regrettably, these plans were not followed for the 2008 senate.<sup>54</sup>

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<sup>53</sup> In Minnesota, some elections are administered at the city level (i.e. cities in Hennepin County) while other locations administer elections at the county level. We are *not* recommending new levels of election administration.

<sup>54</sup> *No Longer a National Model Fifteen Recommendations for Fixing Minnesota Election Law and Practice*, Center of the American Experiment (Kent Kaiser) October 2009. <http://www.americanexperiment.org/>

**Our response:**

CAE does not provide us with a set of criteria on which to judge the superiority of centralized or decentralized recounts. The consideration of potential plans and budgets by the Secretary of State does not serve as evidence that such a plan is superior, a point CAE must surely realize given its critique of other policies currently put forth by that office.

**2. CAE claims there are great downsides to decentralization. However, it fails to specify exactly what these are**

We understand the reluctance to invest the money required to conduct a centralized recount after the 2008 election and the preference to push the costs of recounts onto local governments. Yet we believe that the benefits of a centralized recount outweigh the costs, and, after the 2008 election, we saw with great clarity the downsides of decentralization. Therefore, we recommend requiring multi-county recounts to be conducted in a central location.<sup>55</sup>

**Our response:**

Cost is the only downside for centralization that is mentioned. What should be a greater concern — chain of custody of the ballots and reduced public transparency of the process — is not even mentioned. In the 2008 recount **our nonpartisan observation teams found the chain of custody to be quite solid overall**. Centralized counting introduces an unnecessary risk, multiplying the potential chain of custody issues by requiring the need to transport and store 2.9 million ballots from 87 counties.

Furthermore, the non-monetary costs of centralization may, in fact, outweigh what CAE considers benefits. In *Election Reform: Is the Cure Worse than the Disease?*, a response to the CAE report by the Minnesota Free Market Institute, the author writes

Centralizing ballot counting is no guarantee of fraud elimination. In fact, it makes fraud on a massive scale, more possible if not more likely. In the case of a state like Minnesota, one need not even imply that the fraud could be intentional. A small mistake at the local level would involve a minimal number of ballots and would be less likely to throw an entire election and elections system in disrepute. A mistake on the state level would be, by definition, systemic and could be catastrophic.<sup>56</sup>

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<sup>55</sup> Ibid.

<sup>56</sup> *Election Reform: Is the Cure Worse than the Disease?*, Minnesota Free Market Institute (Margaret Martin) October 29, 2009 <http://mnfmi.org/2009/10/29/3672/>

We are much more compelled to follow the thinking of the Minnesota Free Market Institute's concerns of the potential for massive fraud under a centralized recount model than CAE's concern about monetary costs. Also, because a decentralized model allows for more transparency through citizen involvement, confirmed by our nonpartisan volunteers<sup>57</sup> observing the recount, we do not believe that fraud occurred at the local level using a non-centralized system.

### **3. CAE misrepresents the arguments made for centralization by state officials projecting greater benefit through uniform training and procedures**

Training of recount officials could be standardized, thereby increasing the consistency of standards and procedures. The 2008 senate recount was marred by varying standards and procedures from county to county. Two former secretaries of state, Mary Kiffmeyer (Republican) and Joan Growe (Democrat), were both quoted in the media saying that a centralized recount could have offered this benefit.<sup>58</sup>

#### **Our response:**

CAE does not report or document that procedures varied from one location to another. In fact, the Office of the Secretary of State provided webinars to train recount officials. Thus, the training was consistent.

The comments made by these state officials are not in agreement to the extent that CAE implies. For example, reporting on Joan Growe's opinion on centralizing recounts, on January 9, 2009, the Minneapolis Star Tribune wrote

Former Secretary of State Joan Growe, like Ritchie a DFLer, said she could make a case either way [centralized or decentralized]. The local approach Ritchie opted for, she said, "clearly would be less expensive, and cost is a factor." On the other hand, she said, a centralized location might be easier for observers and counters. "Everyone would all get the same instructions at the same time and you could be a little more consistent," she said. "But there's always the human factor. You're dealing with equipment and human beings. Neither is perfect and neither will ever be perfect."<sup>59</sup>

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<sup>57</sup> As noted earlier, the volunteer observers were experienced and trained — all, at the minimum, had observed the 2008 audit. Furthermore, CEIMN goes to both the Minnesota Republican Party State Convention and the Minnesota Democratic-Farmer Party State Conventions to recruit volunteers.

<sup>58</sup> No Longer a National Model *Fifteen Recommendations for Fixing Minnesota Election Law and Practice*, Center of the American Experiment (Kent Kaiser) October 2009. <http://www.americanexperiment.org/>

<sup>59</sup> *Cutting costs may have had own price*, Star Tribune. (Patricia Lopez) January 9, 2009. <http://www.startribune.com/politics/national/senate/37371114.html?>

Former Secretary of State Growe clearly weighs the benefits of both options. In that same article, statements made by Former Secretary of State Kiffmeyer indicate that she is an advocate for centralized location. Clearly, the two individuals mentioned in the CAE report do not hold the same strong opinion on this matter.

#### **4. CAE argues that centralized recounts would make public monitoring more accessible**

A recount could be monitored more closely. Media, political operatives, and the public could more easily observe recount operations taking place in a centralized location and could detect whether inconsistencies existed.<sup>60</sup>

#### **Our response:**

The recount was conducted in 110 locations,<sup>61</sup> many of which were very crowded; yet party challengers were allowed access to view the ballots at all of these facilities. One location would make it more difficult for many citizens to observe, especially for those who live outside the metropolitan area.<sup>62</sup>

If communication is the concern — such as reports between local election administrators with the Secretary of State, or between challengers and those they represent — we live in an age of many options. With text messaging and email-capable phones, challengers can receive consistent (and quiet) communications from their party, and election administrators can receive regular communications from the Office of the Secretary of State.

#### **5. CAE argues that centralized recounts are faster than decentralized recounts**

A centralized recount could be done more quickly than a decentralized recount. The plans that were established by the Secretary of State in 2004 called for a statewide recount to be completed in just one week, instead of two or three weeks as was the case in 2008, using two shifts per day. During the 2008 senate recount, county officials did not institute multiple full-time shifts.<sup>63</sup>

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<sup>60</sup> *No Longer a National Model Fifteen Recommendations for Fixing Minnesota Election Law and Practice*, Center of the American Experiment (Kent Kaiser) October 2009. <http://www.americanexperiment.org/>

<sup>61</sup> *Coleman and Franken: Fighting over the Minnesota Recount*, Time Magazine, in partnership with CNN. (Justin Horwath). November 17, 2008. <http://www.time.com/time/politics/article/0,8599,1859543,00.html>

<sup>62</sup> This assumes that centralization would be done in the metropolitan area. .

<sup>63</sup> *No Longer a National Model Fifteen Recommendations for Fixing Minnesota Election Law and Practice*, Center of the American Experiment (Kent Kaiser) October 2009. <http://www.americanexperiment.org/>

### **Our response:**

We believe that most important issue is to count the ballots in an accurate and transparent manner — not to conduct the recount as quickly as possible. But, the fact of the matter is that **2.9 million ballots were counted in three weeks — including the Thanksgiving holiday**. The State Canvassing Board met for four days. They then waited to finalize the results because the Supreme Court had indicated it was going to order that more ballots be included. The entire process was completed by January 5. We do not believe that a centralized location could speed up the process. In fact, the additional step of moving the ballots to one location could slow down the process.

### **6. CAE argues that career civil servants have greater professionalism in running elections than election judges**

...a centralized recount could rely on the work of career civil servants—specifically, state employees—rather than volunteer election judges. We believe adopting this plan would increase the professionalism of the operations and would provide greater accountability.<sup>64</sup>

### **Our response:**

We believe that accuracy, integrity, experience, and professionalism are critical to elections. We commend the work and the dedication of election judges throughout the state. Our work has taught us that experienced election judges act in both an accountable and professional manner. Furthermore, experienced election judges may have a better understanding and greater interest in the election process than many state employees. From our observations, the recount was conducted by local election officials with their most experienced election judges. State employees are neither trained for this work nor do they perform election duties routinely. For that reason, we do not see the need to remove state employees from their regular duties to perform the work of experienced election judges.

### **7. CAE argues that the use of state employees instead of county officials would bring impartiality to the process**

A centralized recount using state employees would bring about a measure of impartiality in making determinations on ballots. Under the procedures employed in the 2008 senate recount, county officials, who had previously dealt with the ballots, were responsible for checking their own work. We believe it would be better for a disinterested third party to check the work.<sup>65</sup>

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<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

**Our response:**

CAE's reasoning here is rather shaky, especially as their use of the vague "dealt with the ballots," provides little helpful information. Nonetheless, it seems to imply that county officials handle ballots before and during Election Day. Even in these locations, the people who hand-count the ballots (such as precinct-level judges) may not be the same people who recount the ballots. All together, these represent a small number of the total of ballots. For the majority of ballots, it is only during the recount that county officials actually see all the ballots.

As noted earlier, **election officials did not work behind closed doors or in a vacuum during the recount; instead, they allowed observers from both parties to view their work.**

## Recommendation 12

### CAE's recommendation:

- Recount only ballots counted on Election Day.

### What it gets wrong:

- By claiming there were no statutes in place to guide the processing of the rejected absentee ballots CAE ignores the fact the Minnesota Supreme Court's instructions on this matter were directly taken from state statutes.
- Numerous claims are made about the partisanship of other parts of the recount process, however, no facts, citations, or evidence are provided to support these suggestions.

### What it left out:

- The Canvassing Board did not decide to include any rejected absentee ballots in the count. They were clear that they did not have the authority to do this. **Ballots were added only because the court ordered that they be added.** This was not the Canvassing Board's decision.

### Our recommendation:

- In general, all ballots that are counted on Election Day and included in the state canvass should be recounted. However, in rare situations, as in the missing ballots in Minneapolis (see discussion below), it may be necessary and appropriate to consider all existing evidence when determining how many ballots were cast.

The following highlights some of the information and ideas provided in this part of the CAE report and our responses to that information.

### **1. CAE argues that the entire recount process was “fatally flawed”**

The 2008 senate recount was fatally flawed from the moment that, for the first time in state history, ballots that were not included in the initial count on Election Day were introduced into the recount.<sup>66</sup>

#### **Our response:**

To say that the recount was “fatally flawed” dramatically overstates the situation and belittles the difficult decisions made by election and judicial officials alike. While there were problems in the processing of absentee ballots in the 2008 recount, CAE ignores the reasons provided by decision-makers for including previously rejected absentee ballots in the recount process.

### **2. CAE claims that the decision to recount certain absentee ballots was made by the Secretary of State, and improperly so**

This included, specifically, absentee ballots that later were deemed “improperly rejected.” We were especially dismayed when the secretary of state reversed his decision that these ballots should not be included in the recount—his initial gut reaction, that those ballots should have been the subject not of a recount but of a court contest, was correct.<sup>67</sup>

#### **Our response:**

**This decision was made by the Supreme Court, not by the Secretary of State.** Coleman petitioned the State Supreme Court to not allow the acceptance of previously rejected absentee ballots. But on December 18, 2008, the Supreme Court ruled that under the errors and omission statute 204B.44 these ballots could be accepted if both parties along with election officials all agreed. To place blame solely on the Secretary of State misstates the statutory basis for the decision and the more complex decision-making process involved in applying the respective statutes to the recount.

### **3. CAE claims that there is no statutory basis for including previously rejected ballots**

The inclusion of new ballots was especially problematic because there were no statutes telling how to deal with them—or even allowing for them. Consequently, varying standards were employed among counties, which resulted in unequal treatment of voters across the state.<sup>68</sup>

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<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

## **Our response:**

As noted earlier, the Supreme Court based their decision on relevant statutes. The unequal treatment was not due to a lack of statutes providing guidance, but instead to the different ways the absentee panels, established by the Supreme Court, accepted the ballots.

### **4. CAE cites an erroneous number of absentee ballots rejected in specific locations and claims that voters were “enfranchised or disenfranchised” based on place of residence because of disparate methods for handling absentee ballots**

Some counties followed the letter of the law and rejected absentee ballots on every minute technicality; other counties followed looser standards and accepted ballots that would have been rejected in another county. Election officials in the City of Minneapolis, for example, did not check the registration of absentee ballot witnesses for the absentee ballots cast there; Carver County officials, by contrast, checked every single one of them and rejected the ballots of people whose witnesses were not registered. To give some concreteness to the problem: In total, election officials in Saint Louis County, Ramsey County, and the City of Minneapolis rejected an aggregate total of only seven absentee ballots; by contrast, election officials in Carver County, which is much smaller in population than any one of those other three entities, rejected 188 absentee ballots. Therefore, voters, in effect, were enfranchised or disenfranchised depending on their residence.<sup>69</sup>

## **Our response:**

It is not clear whether CAE’s reference to the “aggregate total of only seven absentee ballots”<sup>70</sup> means the aggregate total of ballots rejected *because the witness was not registered*, or if it should be read more literally, and mean that the *aggregate* total of rejected absentee ballots in the three locations was seven. **Regardless, CAE is wrong.**

We contacted election officials in the locations named in the CAE report and learned that only one — Carver County — tracked how many absentee ballots were rejected because the witness was not registered to vote. **This means it is impossible to accurately determine how many were rejected for the specific reason mentioned by CAE in the three other locations.**

But if CAE intended that this should be read literally, then its information is incorrect. Based on figures supplied by election officials in all four locations, **Saint Louis County, Ramsey County, and the City of Minneapolis rejected an aggregate total of 2,744 absentee ballots, while election officials in Carver County rejected 527 absentee ballots. These numbers differ, substantially, from those reported by the CAE.**

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<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

Regarding whether voters were disenfranchised depending on where they voted, the election contest panel had this to say on the matter in their unanimous ruling

The overwhelming weight of the evidence indicates that the November 4, 2008 election was conducted fairly, impartially, and accurately. There is no evidence of a systematic problem of disenfranchisement in the state's election system, including in its absentee-balloting procedures.<sup>71</sup>

This position was upheld by the Minnesota Supreme Court.<sup>72</sup>

## **5. CAE claims there is reason to believe that counties also improperly accepted ballots**

Moreover, if one agrees that there were improperly rejected ballots, then, given the varying standards for acceptance and rejection among counties, then one must believe that there were improperly accepted ballots. This further exacerbates the problem of introducing new, previously rejected absentee ballots into the mix.<sup>73</sup>

### **Our response:**

This claim has already been argued in a court of law, but Coleman's attorneys could not establish that a county had improperly accepted certain absentee ballots.<sup>74</sup>

## **6. CAE claims the State Canvassing Board also caused “inequality among voters” by failing “to take a global look at the absentee ballot system”**

We believe that including some improperly rejected absentee ballots, but not all rejected absentee ballots, was especially problematic because the State Canvassing Board never seemed to take a global look at the absentee ballot system. We believe that if the board was going to consider new absentee ballots, then it should have started by establishing standards on how to deal with all absentee ballots. The piecemeal inclusion of some new

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<sup>71</sup> *Final Ramsey County District Court Order*, April 13, 2009, page 55.

<sup>72</sup> The trial court found that election judges applied the election laws in a consistent and uniform manner. The court found that election jurisdictions adopted policies they deemed necessary to ensure that absentee voting procedures would be available to their residents, in accordance with statutory requirements, given the resources available to them. (Footnote continues on next page) The court also found that differences in available resources, personnel, procedures, and technology necessarily affected the procedures used by local election officials reviewing absentee ballots. [T]he court found that Coleman did not prove that these differences were calculated to discriminate among absentee voters. Cited as 767 N.W.2d 456 at 465. See also 456 at 460 and 464.

<sup>73</sup> *No Longer a National Model Fifteen Recommendations for Fixing Minnesota Election Law and Practice*, Center of the American Experiment (Kent Kaiser) October 2009. <http://www.americanexperiment.org/>

<sup>74</sup> See *Coleman v. Franken*, 767 N.W. 2d 456 at 468, (Minn. 2009)

absentee ballots, without clearly established standards, was a backward way of handling the ballots. It led to unacceptable processing inconsistencies among ballots—that is, to unacceptable inequality among voters.<sup>75</sup>

**Our response:**

As we stated earlier, the Minnesota Supreme Court provided guidance for how election officials and the political parties were to accept previously rejected absentee ballots.

**7. CAE continues to claim that the inclusion of previously rejected absentee ballots was partisan and unfair**

Because of the difficulties in determining exactly what ballots might have been either rejected or accepted erroneously, any disputed ballots that were not in the original count should have been the subject for a possible court contest, not a subject for the recount. Bringing only some of the disputed ballots into the recount process was highly problematic. This was especially true because of the fact that the process by which new ballots were allowed into the recount was seen as partisan.<sup>76</sup>

**Our response:**

The process for how to accept rejected absentee ballots was set by the Minnesota Supreme Court. CAE ignores this fact, characterizing a process created by a politically neutral group as “partisan” without providing any evidence to bolster its case. It also does not provide any evidence that Minnesota voters felt the process was “partisan.” (Please also refer to our comments on points two and three, found on page 35.)

**8. CAE claims Democrats were favored by the introduction of previously rejected absentee ballots to the recount**

The overwhelming majority of originally rejected absentee ballots that were introduced into the recount, and the majority of absentee ballots that were possibly accepted improperly but ignored in the recount, came from Democratic strongholds; the overwhelming majority of originally rejected absentee ballots that continued to be ignored in the recount came from Republican-leaning areas.<sup>77</sup>

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<sup>75</sup> *No Longer a National Model Fifteen Recommendations for Fixing Minnesota Election Law and Practice*, Center of the American Experiment (Kent Kaiser) October 2009. <http://www.americanexperiment.org>

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

### **Our response:**

Again, CAE claims partisanship without providing any facts to back up its claims. But, the fact of the matter was that be included, based on the state Supreme Court’s ruling, representatives of *both* candidates and the relevant election official had to agree to accept any previously rejected ballots. Therefore, both candidates had an equal opportunity to object or accept ballots.

### **9. CAE implies that the missing ballots in Minneapolis never existed and ignores legal precedent in how to handle the situation**

In addition, there were votes counted in the City of Minneapolis for which there were no ballots in existence to back up the numbers. These “missing” ballots should have been the subject of a court contest, not a recount. The recount should have considered only the ballots that had been counted on Election Day—and only ballots that could be physically recounted. Again, the drama involved in getting these “missing” ballots counted, in spite of their apparent nonexistence, was viewed as partisan.<sup>78</sup>

### **Our response:**

This misrepresents the various forms of evidence from a polling place available to election officials interested in conducting a recount. At the end of Election Day, every polling place has the following three items: the ballot itself; the voter signature log; and the electronic tally from the optical scanner tape. **The State Canvassing Board ruled *unanimously* that the tally from the optical scanner tapes could be used to determine that votes were cast in Minneapolis, and based their decision on legal precedent from two cases.**<sup>79</sup>

### **10. CAE faults the director of elections in Minneapolis for partisanship in the recount process**

This suspicion was fueled by the fact that the director of elections in Minneapolis at first explained how there might never have been ballots to back up the numbers indicated on the ballot scanner from the precinct in question. Later, we were distressed to witness the City of Minneapolis director of elections seeming to buckle under partisan influence and, along with the deputy secretary of state and the Democratic mayor of

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<sup>78</sup> Ibid.

<sup>79</sup> *State Canvassing Board Minutes*, December 10th 2002, regarding the ruling on Senate District 27 and *Moon v. Harris*, 122 Minn. 138, 142 N.W. 12

Minneapolis, to backtrack and declare that ballots must have simply gone missing. Again, these possible votes should have been a subject for a court contest, not a recount.<sup>80</sup>

**Our response:**

CAE has taken both the actions and words of the director of elections in Minneapolis out of context. Furthermore, according to Ms. Reichert, the former director of elections in Minneapolis, Mr. Kaiser never spoke with her. Ms. Reichert reported that when she first learned about the missing ballots, she was merely speculating with reporters about what might have caused this. The following day, after she and other Minneapolis election officials had a chance to investigate the matter, she stated that the ballots must have been lost.

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<sup>80</sup> *No Longer a National Model Fifteen Recommendations for Fixing Minnesota Election Law and Practice*, Center of the American Experiment (Kent Kaiser) October 2009. <http://www.americanexperiment.org/>

## Recommendation 13

### CAE's recommendation:

- In the case of “duplicate” ballots, count the duplicates, not the originals.

### What it gets right:

- Describing the processing of absentee ballots on Election Day.

### What it leaves out:

- Minnesota Statutes are already clear on the creation and use of duplicate ballots.

### Our recommendation:

- We agree that duplicate ballots, once made, are the official ballot and should be used in the recount. Furthermore, we support the 2010 Office of the Secretary of State proposed rules which states that the original ballot envelope may not be opened in future recounts and can only be done in a contest.

According to Minnesota Statute 206.86, “if a ballot card is damaged or defective so that it cannot be counted properly by the automatic tabulating equipment, a true duplicate copy must be made of the damaged ballot card in the presence of two judges not of the same major political party and must be substituted for the damaged ballot card.” The Office of the Secretary of State *Election Judge Guide* provides details for determining voter intent and for creating a duplicate ballot as stipulated in M.S. 204C.22 and M.R. 8230.385.0, respectively.

We believe that Minnesota has clear rules for determining voter intent as well as for making and using duplicate ballots. Since the statutes indicate that the duplicate ballot shall be substituted for the original, we agree that once it is substituted, the duplicate ballot should be counted. Thus, we agree with this aspect of the CAE report. But, we also believe that there should be a process to formally request a review of duplicate and original ballots in specific precincts so long as the voter's privacy is not infringed upon. It is the lack of uniform, legal procedure for such a review process — not the existence of the process itself — that became problematic in the 2008 recount.

## Recommendation 14

### CAE's recommendation:

- Follow laws currently on the books and formally increase uniformity and specificity of procedures.

### What it implies:

- That the recount procedures were chaotic on such a scale as to foster not only honest mistakes but also potential fraud.

### What it gets wrong:

- The 2008 U.S. Senate recount was neither chaotic nor were the laws inconsistently applied. The Minnesota Supreme Court ruled that there was not sufficient evidence to suggest otherwise.

### What it leaves out:

- The existing laws and procedures in Minnesota are of sufficient breadth and specificity that any problems encountered during the recount were slight in comparison to similar recounts conducted in other states.
- The first nonpartisan observation of a manual recount undertaken in the United States found the recount to be orderly and well conducted. The free report,<sup>81</sup> published by CEIMN, on the observation was made public in the spring of 2009, well before the CAE report.

### Our recommendation:

- We of course agree that laws should be followed with uniformity. We also support efforts to streamline the absentee ballot process, including the establishment of absentee ballot boards.

Claiming that the recount was chaotic, and suggesting that the Secretary of State himself described it as such, the CAE report ignores his full description of the situation. On Minnesota Public Radio, on

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<sup>81</sup> *Eyes on the Vote Count: Non-partisan Observer Reports of Minnesota's 2008 Post-Election Audit and Recount*, Citizens for Election Integrity Minnesota (Mark Halvorson and Sarah Martyn Crowell) May 26, 2009. [http://www.ceimn.org/files/ceimn.report\\_color.pdf](http://www.ceimn.org/files/ceimn.report_color.pdf)

January 5, 2009, the Secretary of State said that the recount “moved from what was a chaotic beginning to something that I think most Minnesotans are proud of.”<sup>82</sup>

CAE’s argument that standards and procedures were applied inconsistently has been tried in the court of law and found wanting. The Minnesota Supreme Court held that the laws were clear and uniform, and ultimately found that the laws, to the greatest extent possible, were followed. Coleman’s attorneys were not able to establish that the laws were not followed.<sup>83</sup>

CEIMN, CCMN, and, LWVMN together sent 77 trained and experienced nonpartisan observers to observe the recount across the state. All were asked to make observations on the level of order and uniformity in the counting process. **In 98% of reported observations, election officials maintained good order and prevented interference with the recount process.**<sup>84</sup> We were meticulous in our review of our nonpartisan volunteers’ observations. **They observed neither chaos nor fraud.** As organizations that focus on election integrity, we take such issues very seriously. If either chaos, the improper application of election law, or fraud had occurred, we would have made our observations and concerns public.

Beyond claiming that rules were not uniformly followed, CAE suggests that Minnesota’s rules lack both rigor and specificity. However, as the 2008 election demonstrated, laws and rules in Minnesota effectively prevented the type of chaos that could have clouded the process, as happened in Ohio in 2004 and Florida in 2000. “Florida had no state voter intent law like we do, which was one of the reasons that their recount was so chaotic,” said Joe Mansky, the chief elections official in Ramsey County.<sup>85</sup> We agree with Mr. Mansky that the specificity of Minnesota’s voter intent laws, among others, helped to successfully guide the 2008 recount process.

To suggest the adoption of a rule to reconcile ballots and also argue that it appears the 2008 recount was the first recount in Minnesota history that did not have a reconciliation process is contradictory. The former implies that such rules are not in place and the latter implies they are in place. For the record, on election night, election judges routinely conduct ballot reconciliation at the precincts, per Minnesota Statue 206.86. The claim is made that the lack of ballot reconciliation “enabled ‘sticky fingers’ ballots to disappear and allowed ‘mystery ballots’ to appear and get counted after Election Day during the recount.” We find the use of such inflammatory terms, presented without citation or evidence, to be irresponsible.

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<sup>82</sup> *Franken declares victory after board certifies him on top*, Minnesota Public Radio. (Elizabeth Baier and Mark Zdechlik). January 5, 2009. [http://minnesota.publicradio.org/display/web/2009/01/05/coleman\\_denied/](http://minnesota.publicradio.org/display/web/2009/01/05/coleman_denied/)

<sup>83</sup> *Coleman v. Franken*, A09-697, Minn. 2009, starting on page 9

<sup>84</sup> *Eyes on the Vote Count: Non-partisan Observer Reports of Minnesota’s 2008 Post-Election Audit and Recount*, Citizens for Election Integrity Minnesota (Mark Halvorson and Sarah Martyn Crowell) May 26, 2009. Page 21. [http://www.ceimn.org/files/ceimn.report\\_color.pdf](http://www.ceimn.org/files/ceimn.report_color.pdf)

<sup>85</sup> *Could recount rewrite the Senate race?*, KARE11 News (Scott Goldberg) November 06, 2008. <http://kare11.mlogic.mobi/detail.jsp?key=90844&rc=lo&full=1>

## Recommendation 15

### CAE's recommendation:

- Institute a runoff election for extremely close elections (but not instant runoff voting), to take place in December.

### What it leaves out:

- If a runoff election occurred in December many military and overseas voters would be disenfranchised.
- All evidence is that runoff elections result in severe drop-off of voters, leading to election outcomes that are determined by a much smaller percentage of voters.

### What it gets wrong:

- CAE rejects the concept of instant runoff voting (IRV) without elucidating how it works or what it means to achieve. Hence, its depiction generally misrepresents IRV. For more information on the process of instant runoff voting, and to understand how it does not violate the “one-man-one-vote” principle, visit FairVote’s IRV page: <http://www.fairvote.org/instant-runoff-voting>.

### Our recommendation:

- Runoff elections should *not* be instituted.

Runoff elections should not be instituted for two primary reasons. First, runoffs effectively disenfranchise UOCAVA voters (voters covered under the Uniformed and Overseas Absentee Voting Act). Second, voter turnout decreases for runoff elections. Both these factors mean that the final decision in any runoff election is made by a smaller number of voters. The following provides explanations of these two issues:

#### **Disenfranchise UOCAVA voters.**

CAE recommends runoff voting, specifically recommending that the runoff should take place in December. This recommendation disenfranchises UOCAVA voters because the timeline suggested would provide an incredibly short window of time for overseas absentee voters. The Federal Voting Assistance Program estimates that 45 days are needed for overseas

absentee ballots, and that the Pew Center has also recommended that Minnesota provide more time for absentee balloting. The movement of the primary to August addresses these concerns. Also, having runoff elections in December could violate federal law: as we already mentioned on pages 16 and 17, in 2009, new regulations were passed that require “all states to provide overseas voters with the new option of getting ballots electronically and no later than 45 days before the election. This is so voters have adequate time to complete and mail them back to the United States.”<sup>86</sup>

In recommendation five of the CAE report, it uses the word, “shameful” when considering the possibility of military overseas voters receiving their ballots after Election Day.<sup>87</sup> We agree — it would be shameful to prevent UOCAVA voters a chance to vote. A runoff election in December would do just that.

### **Decrease in Voter Turnout.**

The disenfranchisement of UOCAVA voters is one example of how runoff elections lead to decreased voter participation. But available evidence suggests that, on average, runoffs also result in lower voter turnout.

In an August 2000 report, FairVote noted that

...voter turnout generally declines between the first-round of a primary runoff and the second round. Voter turnout declined in 67% of all state and federal runoffs, with the decline being particularly steep for runoffs for low-profile offices.<sup>88</sup>

To independently assess the evidence that voter turnout in runoffs actually declines, we reviewed several recent races in Georgia, a state which conducts runoff elections. We looked at the 2008 U.S. Senate race, as well as four other races in 2009. As the table on the following page demonstrates, there was a sharp decline in the number of voters for the 2008 Senate runoff. For the smaller races in 2009, the decline varied from as little as 6.41% to as much as 53.2%, with an average decline of 31%.

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<sup>86</sup>*Congress Approves Bill Helping Overseas Voters*, New York Times.(Ian Urbina) October 22, 2009.  
[http://www.nytimes.com/2009/10/23/us/politics/23vote.html?\\_r=2&scp=1&sq=urbina%20congress%20overseas%20voters&st=cse](http://www.nytimes.com/2009/10/23/us/politics/23vote.html?_r=2&scp=1&sq=urbina%20congress%20overseas%20voters&st=cse)

<sup>87</sup> Within the CAE quote that is mentioned, it states that “many potential military absentee voters actually *received* their absentee ballots *after* Election Day.” We were not able to find any documentation of this allegation.

<sup>88</sup>*Impact of U.S. Runoff Elections on Racial Minorities and Women: An Analysis and Comparison with Instant Runoff Voting*, FairVote, Center for Voting and Democracy (Rob Richie and Caleb Kleppner). August 2000.  
<http://archive.fairvote.org/irv/bullock.htm>

## Change in voter turnout in Georgia

<b>Example 1: U.S. Senate Candidates (2008)</b>	<b>Number of voters: November 2008<sup>89</sup></b>	<b>Number of voters: December 2008 (runoff)<sup>90</sup></b>	<b>% change in turnout</b>
<b>Chambliss</b>	1,867,097	1,228,033	-34.23
<b>Martin</b>	1,757,393	909,923	-43.23
<b>All others</b>	127,995	NA	NA
<b>Total</b>	3,752,485	2,137,956	-43.03
<b>Example 2: Races (2009)</b>	<b>Number of Voters: November 2009<sup>91</sup></b>	<b>Number of Voters: December 2009 (runoff)<sup>92</sup></b>	<b>% change in turnout</b>
<b>State Senator, District 35</b>	13,823	6,469	-53.2
<b>State Representative, District 58</b>	5,655	5,292	-6.41
<b>State Representative, District 129</b>	4,480	3,085	-31.14
<b>State Representative, District 141</b>	5,514	3,650	-33.80

The data in the above table verifies that voter turnout declines for runoff elections regardless of the race, year, or location within Georgia. This substantiates the reports mentioned on the previous page.

We believe elections should be structured to ensure wide voter participation and high voter turnout. Runoff elections simply do not help achieve these goals — runoff elections result in severe drop in the number of voters, resulting in outcomes that are determined by a much smaller percentage of voters.

<sup>89</sup> Information about general election results at [http://sos.georgia.gov/elections/election\\_results/2008\\_1104/003.htm](http://sos.georgia.gov/elections/election_results/2008_1104/003.htm)

<sup>90</sup> Information about runoff results at [http://sos.georgia.gov/elections/election\\_results/2008\\_1202/003.htm](http://sos.georgia.gov/elections/election_results/2008_1202/003.htm)

<sup>91</sup> Links to general election results for each race at [http://sos.georgia.gov/elections/election\\_results/2009\\_1103/](http://sos.georgia.gov/elections/election_results/2009_1103/)

<sup>92</sup> Links to runoff election results for each race at [http://sos.georgia.gov/elections/election\\_results/2009\\_1201/](http://sos.georgia.gov/elections/election_results/2009_1201/)

## Conclusion

The Center of the American Experiment (CAE) proposes that “significant changes are needed” in Minnesota’s election systems. However, the CAE report provides no documentation to back up its claims and, upon close scrutiny, its claims are found to be highly inaccurate and misleading, which calls into question its conclusions and recommendations. We have seen the report’s so-called “facts” as well as its recommendations in opinion pieces in newspapers across Minnesota. One example of a “fact” is its claim that the rejection rate for military absentee voters was 16 times greater than regular absentee voters, when in fact it was double. In addition, the military absentee rejection rate was cut in half between 2006 and 2008 and further improvements have already been made. Since its “facts” have been published throughout Minnesota, we hope that our response will also be published to set the record straight.

The following three recommendations, discussed throughout our response are key changes that will insure the integrity of elections while not creating undue barriers to voters. We hope the legislature will pass them and that the Governor will sign them into law this year.

1. Streamline the absentee ballot process including the creation of absentee ballot boards.
2. Allow for early voting which would provide voters the same rights and privileges that voters have on Election Day.
3. Move the primary election date, which would allow overseas voters adequate time to complete and mail ballots back to the United States.

At the foundation of our election system are and should be standards for fair, transparent, accurate, and verifiable elections. Common Cause Minnesota and Citizens for Election Integrity Minnesota hold these same standards to our work and to our reporting. We understand the importance of monitoring, evaluating, and improving our election system which is why we have provided careful documentation in our response. We disagree strongly with the report produced by CAE and believe the preponderance of evidence supports our conclusion that Minnesota’s elections are transparent, verifiable, and accurate — and are, indeed, a national model.

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*Citizens for Election Integrity-Minnesota ([www.ceimn](http://www.ceimn)) is a state-wide, nonpartisan organization that advocates for verifiable, transparent and accurate elections in Minnesota and across the country.*



*Common Cause Minnesota ([www.commoncause.org/mn](http://www.commoncause.org/mn)) is a nonpartisan government watchdog organization committed to election fairness and transparency.*

