
Eyes on the Vote Count:

**Non-partisan Observer Reports of Minnesota's 2008
Post-Election Audit and Recount**
SHORTEN REPORT VERSION

Mark Halvorson, Founder and Director
Sarah Martyn Crowell, Project Coordinator

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EXECUTIVE SUMMARY

Focus

This report describes the manual counting process in the 2008 Minnesota post-election audit and US Senate recount based on the reports of non-partisan observers. We analyze the accuracy of the optical scanners used in the audited precincts and we calculate the time and cost to conduct the audit. We also compare the vote margin change in the US senate recount with three other state legislative recounted races. We hope this will be of value to Minnesota as well as other states. This report does not focus on the processing of the rejected absentee ballots, which is at issue in the US Senate election contest.

Who We Are

Founded in 2004, Citizens for Election Integrity Minnesota (CEIMN) is a non-partisan, non-profit organization dedicated to ensuring accurate, transparent, and verifiable elections in Minnesota and nationwide.

Non-Partisan Observation Project

Over the last two years, CEIMN has organized four non-partisan observations of state-wide post-election audits or recounts in Minnesota. This effort has included partnerships with the League of Women Voters Minnesota and, for the 2008 recount, Common Cause Minnesota. The non-partisan observation of the US Senate race recount was the first of its kind in the country. For the 2008 post-election audit, 155 volunteers served as non-partisan observers and covered 75% of counties in Minnesota. For the 2008 recount, 77 volunteers served as non-partisan observers and covered 36% of all recount locations in Minnesota.

Verification of Minnesota's Election Outcomes

Key components, currently in Minnesota state laws, that help provide for a robust, independent verification of Minnesota's election outcomes include:

1. Voter-marked paper ballots that allow for manual post-election audits and manual recounts.
2. The requirement that recounts are conducted by hand, which is more efficient in determining voter intent than a machine count
3. A requirement to allow public observation of post-election audits and recounts that provides transparency
4. A recount provision for every close election contest

Highlights of Report Findings

The voting machines used in the audited precincts were shown to be accurate. All recount observers felt the counting procedures were accurate and none questioned the integrity of the count. No systematic concerns were raised by observers in the post-election audit or recount. Some procedures are in need of improvement, such as the absentee ballot process. The cost to conduct the audit is estimated at 9 cents per audited vote for a total cost of \$35,243.

The lessons learned from the observer reports and the unprecedented scrutiny of the US Senate recount can help to improve Minnesota's elections procedures.

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RECOMMENDATIONS

This report provides a description of the manual counting process based on the non-partisan observers' reports from the 2008 Minnesota audit and US Senate recount. Therefore, the recommendations below focus on the audit and recount processes. This report does not focus on the processing of the rejected absentee ballots, which are at issue in the election contest. As noted above, the current process for handling absentee ballots on Election Day is also in need of improvement. However, we have sought to limit our recommendations to those aspects of the election process for which we had clear data from the non-partisan observation process.

AUDIT AND RECOUNT

- A two-person protocol should be required whenever ballots are counted manually, including the ability for the second counter to verify the sort and number of ballots in each pile.
- The optical scan tallies should not be visible or available to the counters during the counting process, including any additional counting of ballots when discrepancies occur.
- Counting locations should be required to post end-of-the-day audit or recount tallies for observers and the public to review.
- The unsealing and sealing of ballots, as well as the transportation of the ballots to and from their secure location, should be publicly observable.
- Whenever ballots are retrieved from or returned to locked storage, two election officials should always be present.

RECOUNT

- The recount rule should give greater clarity and criteria to guide election officials in deciding when a challenged ballot should be deemed frivolous or legitimate.

AUDIT

- We support changing the Minnesota audit law to forgo the scheduled audit of any race that will also be recounted.
- The audit supervisor should be required to make optical scanner poll tapes available upon request of the observers.
- Access should be provided for all audit observers to clearly see all marks on the ballots.
- If a discrepancy is found between the optical scan tally and the manual audit count, the ballots should be counted again manually, using a different counting team if possible.
- Audit reporting forms should be revised so that categories are clearly defined and guidelines provided so they are filled out consistently.
- An explanation should be given whenever there is a difference between the optical scanner tally and the manual audit count.
- The audit sampling method should be changed from a fixed percentage to an adjustable-percentage (see following explanation.)

Minnesota's audit law uses a fixed percentage sampling method where the same number of precincts, by county, are randomly selected to be audited. Another model, known as the risk limiting model, uses an adjustable-percentage, where the number of precincts to audit is based on the size of the margin of victory. The smaller the margin of victory, the larger the percentage of precincts to be audited. With the risk limiting model, most statewide races require very few ballots to be counted to confirm machine accuracy (less than our current audit size).

With this risk limiting audit model, the total number of precincts audited, on average, would be roughly similar

to the total number of precincts currently audited in our state. This audit model is more efficient and more effective at detecting election errors than our current model. This model represents audit best practices¹. For example, New Jersey passed a similar law in 2008 and several states have proposed similar laws. The soon-to-be-released Voter Confidence and Increased Accessibility Act of 2009 sponsored by US Representative Rush Holt (NJ) would require states to adopt one of two sampling methods: a tiered sampling provision in which, depending on the closeness of the race, at least 3% of precincts, 5% of precincts, or 10% of precincts would be audited; or an adjustable-percentage method with no fixed minimum number of precincts. In addition, the League of Women Voters recently released an audit report endorsing this model².

CONCLUSIONS

This section is based on the non-partisan observer reports and reflects these three areas covered in the report.

TRANSPARENCY

Election officials for both the audit and recount did an effective job of maintaining good order and preventing disruptions that could interfere with the counting or observing process. In addition, the high percentage of election officials who clarified procedures before the audit or the recount added transparency and helped reduce confusion and misunderstandings throughout the process.

While access to the counting tables in the audit was good overall, there were five locations where the ability to observe was limited. This is a concern because, given that state law requires the audit be open for public observation, audit observers should have adequate access to review the ballots as they are counted.

COUNTING PROCESS

The inclusion of at least two counters per counting team was a strength in the audit and recount counting process. The only exceptions were two locations in the audit and three locations in the recount. Having at least two officials can increase the efficiency and speed of counting, as well as provide a second person to double-check the count. However, the intense scrutiny by challengers during the recount provided an additional check on the accuracy of the counting process.

Election officials performed exceptionally well in ensuring that challenged ballots were marked and separated according to state law.

CHAIN OF CUSTODY

Audit: There were no instances of unsealed ballot containers or envelopes, or any examples of broken chain of custody. However, two counties used clear packing tape to seal containers/envelopes, which is less secure and accountable than using signed seal labels or numbered pull tags. Given this, best practices for securing ballots need to be clarified.

Recount: The overwhelming majority of counties followed good chain of custody procedures. Ninety percent of the reports indicate that ballots were sealed both before and after the counting and that ballots were under the observation of at least two officials during the counting. However, chain of custody was inadequate in one county. Four other counties showed minor chain of custody issues. This suggests a need for better specificity with chain of custody procedures.

1 Principles and Best Practices for Post-Election Audits: <http://www.electionaudits.org/principles.html>

2 Report on Election Auditing by the Election Audits Task Force: <http://tinyurl.com/pcf826>

During the recount, the city of Minneapolis was unable to produce a number of ballots in one precinct. This break in the chain of custody is of concern, but the State Canvassing Board determined that an independent verification provided by the optical scanner poll tapes and signatures on voter logs documented that votes were cast. This situation underscores the value of an independent verification to confirm that votes were cast and highlights the need to improve chain of custody procedures.

OVERALL CONCLUSIONS

These key components, that currently exist in state laws, help provide for a robust, independent verification of Minnesota's election outcomes:

- A voter-marked paper based system that allow for manual recounts and manual audit
- The requirement that recounts are conducted by hand, which is more efficient in determining voter intent than a machine count
- A public observation of audits and recount that provides transparency
- A recount provision for every close election contest
- A robust escalation mechanism in the audit law whereby additional precincts are audited if discrepancies are found
- The requirement that the audit tally is binding on the official results, offering a corrective measure prior to certification
- The option of additional targeted audits by losing candidates.
- Clear procedures regarding chain of custody and ballot accounting.

The voting machines used in the audited precincts were accurate. The process was transparent and efficiently administered by county and city election officials. No systematic concerns were raised by any observers in the audit or the recount. In addition, for the recount, all observers felt the counting procedures were accurate and none questioned the integrity of the counting.

Vote totals typically rise whenever there is a hand recount of a machine tally, as occurred in the recount. This is because some voters mis-mark their ballots - for example, by circling an oval instead of filling it in - in such a way that optical scanners cannot detect their intent. This underscores the importance of conducting recounts by hand count.

The absentee ballot process is the most troubling aspect of this election. The lesson learned is that there must be a uniform method for processing all ballots. We support efforts to streamline the absentee ballot process. We strongly oppose any calls for a runoff election. Runoff elections result in a precipitous drop in voter turnout, are very expensive, and while they may reduce the chances of an automatic recount, do not preclude such a scenario.

Minnesota's manual recount procedures are solid overall. What we have learned from this unprecedented scrutiny will help to make the process better.

