



July 1, 2024

VIA EMAIL ONLY

Karl Schmidt
Benton County Attorney
attorney@co.benton.mn.us

Re: Follow-up re: Benton County Absentee Ballot Board Resolution of January 16, 2024.

Dear County Attorney Schmidt:

We represent Minnesota Voters Alliance (“MVA”) and their volunteers and members who are voters within Benton County, Minnesota (the “County”). We write in the hope of avoiding a lawsuit seeking mandamus relief requiring the County to comply with Minnesota election law.

On January 24, 2024, we sent you a letter via email notifying you that the County’s 2024 Absentee Ballot Board Resolution (“Resolution”), adopted at the January 16, 2024 Board of Commissioners Meeting to establish an absentee ballot board, included language that did not comply with Minnesota law. See attached January 24, 2024 letter. We did not receive a response from you. I have attached our previous letter. We now write hoping to avoid litigation. **Please respond by July 9 to ensure MVA does not need to seek mandamus relief enforcing the County's clear legal duties.**

Since our previous letter, we contacted the Minnesota Secretary of State (“SOS”) to seek correction of an error in the 2022 Absentee Voting Administration Guide’s sample absentee ballot board resolution (“Sample ABB Resolution”). The Secretary corrected the error because of our request. The corrected Sample ABB Resolution in the 2022 Guide complies with the law we laid out in our previous letter. See attached 2022 Absentee Voting Administration Guide, p. 57.

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

<u>Benton County Resolution</u>	<u>SOS Sample ABB Resolution</u>
<p>WHEREAS the absentee and UOCAVA ballot board would consist of a sufficient number of election judges as provided in sections 204B.19 to 2048.22 or deputy county auditors trained in the processing and counting of absentee ballots;</p>	<p>WHEREAS, the Absentee Ballot Board must consist of a sufficient number of election judges appointed as provided in sections 204B.19 to 204B.22; and WHEREAS, the Absentee Ballot Board may include deputy county auditors trained in the processing and counting of absentee ballots;</p>
<p>THEREFORE, BE IT RESOLVED THAT, the Benton County Board of Commissioners hereby authorizes the Benton County Auditor-Treasurer to establish and implement an Absentee Ballot Board and UOCAVA Absentee Ballot Board that would consist of a sufficient number of election judges as provided in sections 204.19 to 204B.22 or deputy auditors to perform the task for all 2024 elections.</p>	<p>THEREFORE, BE IT RESOLVED THAT, the [insert county name] Board of Commissioners hereby establishes an Absentee Ballot Board effective [month day year] to perform the required tasks.</p>

The SOS’s updated Sample ABB Resolution complies with the Minnesota Supreme Court’s decisions in *Minnesota Voters Alliance v. County of Ramsey*, 971 N.W.2d 269 (Minn. 2022) (“*MVA I*”) and *Minn. Voters All. v. Office of the Minn. Sec’y of State*, 990 N.W.2d 710 (Minn. 2023) (“*MVA II*”). Benton County’s does not, for the reasons stated in our previous letter, which is attached.

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

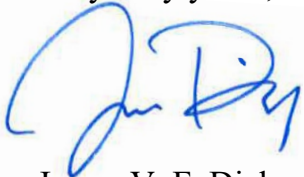
If not, the County must adopt a new resolution to ensure adequate election judges on the ABB and party-balance among those election judges. The County must have at least 2 election judges on its absentee ballot board, balanced by party, who can perform the signature-matching duty and other tasks only to be performed by election judges.

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If the County fails to comply with Minnesota law, our client has authorized us to seek immediate mandamus relief.

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

Very truly yours,



James V. F. Dickey
Attorney for Minnesota Voters Alliance

james.dickey@umlc.org
612-428-7002

cc: Douglas P. Seaton, Esq.
Client



January 24, 2024

VIA EMAIL ONLY

Daniel S. Shub
Benton County Attorney
dshub@co.benton.mn.us

Re: Benton County Absentee Ballot Board Resolution of January 16, 2024.

Dear County Attorney Shub:

We represent Minnesota Voters Alliance (“MVA”) and their volunteers and members who are voters within Benton County, Minnesota (the “County”). We have reviewed a copy of the County’s 2024 Absentee Ballot Board Resolution (“Resolution”) adopted at the January 16, 2024 Board of Commissioners Meeting to establish an absentee ballot board (“ABB”).

The Resolution appears to miss a key aspect of the Minnesota Supreme Court’s decisions in *Minnesota Voters Alliance v. County of Ramsey*, 971 N.W.2d 269 (Minn. 2022) (“*MVA I*”) and *Minnesota Voters Alliance v. Office of the Minnesota Secretary of State*, 990 N.W.2d 710 (Minn. 2023) (“*MVA II*”). I hope that by providing this important information, the County is able to quickly and easily correct the error in the current Resolution.

In relevant part, the Resolution establishes “an Absentee Ballot Board . . . that would consist of a sufficient number of election judges as provided in sections 204B.19 to 204B.22 *or* deputy auditors to perform the task for all 2024 elections. (emphasis added). Elsewhere, similarly, the Resolution states, “WHEREAS the absentee and UOCAVA ballot board would consist of a sufficient number of election judges as provided in sections 204B.19 to 204B.22 *or* deputy county auditors trained in the processing and counting of absentee ballots.” (emphasis added).

While the County may intend to include party-balanced election judges on its ABB, the Resolution leaves open the possibility that the ABB could be staffed entirely by deputy county auditors. The Minnesota Supreme Court has held this to be impermissible in two different decisions in the past two years.

The Court explicitly required counties to include a sufficient number of election judges, who must be party-balanced by statute, on their ABBs to conduct signature matching between absentee ballot applications and signature envelopes where voters’ provided identification numbers do not match. Minn. Stat. § 203B.121, Subd. 2(b)(3); *MVA I*, 971 N.W.2d at 280 (“If the number does not match, *the election judges* must compare the signature provided by the applicant to determine whether the ballots were returned by the

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same person to whom they were transmitted.”) (emphasis in original) (internal quotation marks omitted). “This task is committed to election judges alone, and the absentee ballot board must therefore include a sufficient number of election judges to handle this duty.” *Id.*¹ *MVA II*, 990 N.W.2d at 717 (reiterating that Minn. Stat. § 203B.121, subd. 2(b)(3) assigns the task of “review[ing] signatures in the event of an identification number mismatch” exclusively to “election judges.”).

Again, because the Resolution uses the disjunctive “or,” it suggests that the County’s ABB *could* be filled with all “deputy county auditors.” But an ABB could *not* be filled with *only* deputy auditors because only election judges are statutorily permitted to perform certain tasks, such as the comparison of signatures where there is an identification number mismatch.

We are aware that for the 2020 general election, the County appointed the Auditor-Treasurer’s internal staff to the ABB. Benton County Board Minutes, September 15, 2020, at 1. And in 2022, the County adopted a resolution virtually identical in its problematic language to that under discussion here. Benton County Board Packet, January 4, 2022, at 63.

We therefore ask the County to adopt a new resolution to ensure party-balanced election judges are appointed to its ABB. The County must have at least 2 election judges on its ABB, balanced by party, who can perform the signature-matching duty.

Please confirm that the County will take appropriate action to correct this issue. If you would like to discuss further, you can contact me by email or by phone at my direct dial below.

Very truly yours,



James V. F. Dickey
Attorney for Minnesota Voters Alliance

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612-428-7002

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

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cc: Douglas P. Seaton, Esq.
Andy Cilek

2022

Minnesota

Absentee Voting Administration Guide



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APPENDIX A - SAMPLE FORMS

ABSENTEE BALLOT BOARD RESOLUTION

BOARD OF COUNTY COMMISSIONERS

[insert county name], MINNESOTA

Date:

Resolution Number:

Motion by Commissioner:

Seconded by Commissioner:

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

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

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

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

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

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

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

STATE OF MINNESOTA

[insert county name]

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

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

_____ County Administrator

_____ Administrator's Designee