

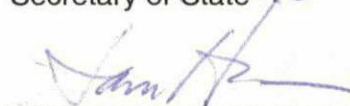
State of Minnesota


SECRETARY OF STATE

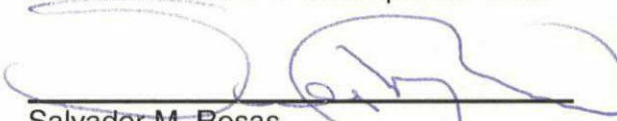



We, the undersigned legally constituted State Canvassing Board, as required by law, canvassed on November 19, 2002, the certified copies of the statements made by the County Canvassing Boards of the votes cast at the November 5, 2002, State General Election for United States Senator, United States Representatives, State Senators, State Representatives, Governor and Lieutenant Governor, Secretary of State, State Auditor, Attorney General, and State Judicial Offices. We have specified in the following report the names of persons receiving these votes and the number received by each in the several counties in which they were cast. The candidate for each office who received the highest number of votes is hereby declared to be elected.


Mary Kiffmeyer
Secretary of State


Sam Hanson
Associate Justice of the Supreme Court


Helen M. Meyer
Associate Justice of the Supreme Court


Salvador M. Rosas
Judge of the Second Judicial District


Heidi S. Schellhas
Judge of the Fourth Judicial District



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MINUTES
STATE CANVASSING BOARD
DECEMBER 10, 2002

1. Call to Order

Secretary of State Mary Kiffmeyer called the State Canvassing Board to order at 2:37 p.m. in Room 10 of the State Office Building. This meeting is a continuation of the November 19, 2002, Board meeting. Other members present were: Associate Justices Sam Hanson and Helen M. Meyer of the Supreme Court; and Judges Salvador M. Rosas of the Second District Court and Heidi S. Schellhas of the Fourth District Court.

Others present were: Lisa Kramer Rodacker, Recount Official, Mike McCarthy, Recount Official, Alberto Quintela, Acting Deputy Secretary of State, Bert Black, Legal Analyst-Office of the Secretary of State and Recount Official, Scott Simmons, Election Division Director-Office of the Secretary of State and Recount Official, Kris Eiden, Deputy Attorney General, Kenneth E. Raschke, Jr., Assistant Attorney General, and a court reporter hired by Attorney Brian Rice.

2. Approval of November 19, 2002 State Canvassing Board Minutes

Secretary Kiffmeyer noted that members had been provided with Minutes for the November 19, 2002 meeting of the Canvassing Board. After reviewing these Minutes, Justice Meyer moved and Judge Rosas seconded that the Minutes be approved as submitted. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

3. Presentation of Recount Report for House District 25B

Secretary Kiffmeyer recognized Scott Simmons, Election Division Director, Office of the Secretary of State and Recount Official for House District 25B, to present the recount report for House District 25B.

Mr. Simmons first reported on an update from the Canvassing Board Meeting of November 19, 2002, stating that he had figures for Wellstone votes in seven of the nine counties that did not report Wellstone votes for the General Election. He stated that Beltrami reported 130 votes for Wellstone, Chippewa-23, Cottonwood-30, Jackson-29, Mower-32, Pipestone-34, and Stearns-146.

Mr. Simmons then proceeded to the recount report for House District 25B. He called attention to the documents titled Recount Report for House District 25B, including a precinct-by-precinct report of votes, a Certification by Recount Officials and a spreadsheet of

vote totals and challenges. He also stated that the parties had agreed to remove all challenges to any ballots.

4. Review and Adoption of House District 25B Report

Mr. Simmons presented a recommendation to the Board for adoption of the recount report for House District 25B that allocated the challenged ballots back into the count and declared Mr. Cox to have received the most votes. After reviewing the report, Judge Rosas moved, (seconded by Judge Schellhas) to amend the recount report to include the disposition of the challenged ballots, to adopt the amended report and to certify the results in the House District 25B recount for Mr. Cox. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

After declaring the results, the Board signed a certificate certifying Mr. Cox elected.

5. Presentation of Recount Report for Senate District 12

Secretary Kiffmeyer recognized Scott Simmons, Election Division Director, Office of the Secretary of State and Recount Official for Senate District 12, to present the recount report for Senate District 12. Mr. Simmons described the report structure and summarized its contents. The report structure included an introduction, summary with vote changes, noted changes in totals, precinct by precinct summary, summary of remarks on challenges, and appendices, including: notice of recount, spreadsheet of results, stipulation agreement, and candidate materials.

Then Mr. Simmons explained the challenge categories: uninitialed ballots, duplicate ballots and other challenges. Mr. Simmons explained that there were 350 uninitialed ballots for Koering and 322 uninitialed ballots for Samuelson for a total of 672 uninitialed challenged ballots. Mr. Simmons stated that at this time no party had requested the opportunity for oral arguments. Mr. Simmons then asked for discussion from the Board.

Justice Hanson asked if there were uninitialed ballots in precincts with excess ballots, as he understood that uninitialed ballots should be counted unless there are excess ballots. Mr. Simmons stated that both in the election night count and in the recount, the number of ballots in every precinct reconciled with the number of voters, but believes that the candidate representatives would argue that in three precincts there might have been excess ballots. Justice Hanson asked specifically which precincts. Mr. Simmons stated that the Deerwood City ballot transfer case had a note suggesting that an Election Judge pulled out excess ballots on election night.

Judge Schellhas asked for clarification that the aforementioned 672 uninitialed ballots did not include any excess ballots then moved (seconded by Hanson) that ballots not initialed and not identified as excess be counted as valid and that the votes cast on those ballots as reported by the Recount Official be appropriately reallocated to the candidates. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Simmons explained the next category of challenged ballots, duplicate ballots. He explained that there were a total of five duplicate ballots challenged in four precincts, White Precinct having two. Mr. Simmons stated that there were no written materials submitted by the candidate representatives on the subject of duplicate ballots.

Mr. Simmons announced that the first ballot to be reviewed by the Board is from precinct Brainerd W4-P1. He also noted that in the materials the precinct was erroneously marked as Brainerd W4-P2. He stated that the reason for the challenge on this ballot was that it was a ballot marked "original 1" yet there was no corresponding counted ballot labeled "duplicate 1." He also stated that the number of counted ballots equaled the number of roster signatures plus absentee ballots. Mr. Simmons explained the duplication process, and how if a ballot doesn't work in a machine for instance, that two election judges of differing parties will mark the original ballot with "original" and a consecutive number, and then mark a new ballot marked "duplicate" with the matching consecutive number as the ballot was intended. Secretary Kiffmeyer noted that it could be assumed that the ballot was duplicated, but not marked as such because the ballot counts reconciled.

After review of the ballots, it was moved by Justice Hanson (seconded by Justice Meyer) not to count the original ballot for Brainerd W4-P1, marked for Koering. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

The next two challenged ballots Mr. Simmons presented were for White Precinct. He explained that the reason for the challenge was that the original ballots to these corresponding duplicate ballots did not have two election judge initials, and that the reason they were duplicated was because the original ballots were not for this precinct, and therefore could not be counted with this equipment.

After review of the ballots, Justice Hanson moved (seconded by Judge Rosas) that the two challenged ballots for White Precinct be allocated to Koering. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Simmons presented a challenged ballot for Garrison Township. He explained that the reason for the challenge was that this duplicate ballot had a corresponding original ballot where the voter intent may not have been clear.

After reviewing the ballot Judge Schellhas moved (seconded by Justice Hanson) that the challenged ballot for Garrison Township be allocated to Samuelson. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Simmons presented a challenged ballot for Little Falls W1 to the Board. He explained that the original ballot for this corresponding duplicate ballot could be considered an overvote.

After reviewing the ballot and corresponding original ballot Justice Meyer moved (seconded by Justice Hanson) that the challenged ballot for Little Falls W1 be allocated to Koering. There being no further discussion, the Secretary called the question, and the motion was adopted with four ayes and no nays.

Mr. Simmons then moved on to the other challenges in Crow Wing County. He presented three challenged ballots from Deerwood City. He explained that the challenge was by Samuelson's representative. He explained that the first ballot was challenged for being a "overvote."

After reviewing the ballot, Judge Schellhas moved (seconded by Justice Meyer) that the ballot for Deerwood City marked with a challenge of overvote be counted for Koering. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Simmons explained that the second ballot marked "Duplicate 4" was challenged because the corresponding original did not have election judge initials. After reviewing the ballot, Justice Hanson moved (seconded by Judge Schellhas) that the challenged ballot for Deerwood City marked "Duplicate 4" be counted for Koering. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Simmons presented the third challenged ballot for Deerwood City as an uncounted ballot that was marked "excess." Justice Hanson asked a question regarding the earlier discussion on uninitialed ballots and if this is the scenario in which the uninitialed ballots should be removed. The Board requested to hear from Samuelson's representative.

Secretary of State, Kiffmeyer recognized Alan Weinblatt, representing candidate Samuelson. Mr. Weinblatt stated that he would like to make two points. One, that he does not agree with the earlier statement that this is the only precinct with an excess ballot issue, and two, that he interprets the statute to say not that you randomly take out a number of excess ballots, but that you take out all uninitialed ballots. Mr. Simmons stated that the ballot was found in the transfer case, marked with a note that said it was an excess ballot. When it was removed the numbers of ballots reconcile with the number of voters. Secretary Kiffmeyer stated that indeed all of the numbers of ballots counted reconciled with the number of voters. Mr. Simmons agreed that the Election Judges didn't follow procedures, but that the purpose of the recount was to count the ballots already counted, and to add this ballot into the ballot count would mean that there would now be an excess number of ballots.

Secretary Kiffmeyer recognized Ms. Kris Eiden, Deputy Attorney General, who stated that as the Attorney General's Office reads the statute (M.S. 204C.20) that when there is an excess all uninitialed ballots are to be removed. Mr. Simmons stated that in the voter intent statute (M.S. 204C.22) a ballot should be counted even if there is a technical error. Judge Schellhas asked what the opinion was from the Attorney General's office. Justice Hanson stated that he believed it was the Attorney General's opinion was to remove all of the ballots.

Justice Hanson moved (seconded by Justice Meyer) to count this ballot as a vote for Samuelson, and remove the 13 uninitialed ballots from the count. Secretary Kiffmeyer opened the floor for discussion. Judge Schellhas questioned how voter intent could be carried out by removing all of the uninitialed ballots and that only one uninitialed ballot should be removed. Justice Hanson affirmed that losing the voter's intent on the 12 other ballots was a consequence of not having election judge initials. Ms. Eiden stated that her belief was that the interpretation of M.S. 204C.20, subd 2, was to remove all uninitialed ballots. Mr. Weinblatt offered that this was the case in Johnson v. Trink. The Secretary called the question, and the motion was adopted with four ayes and no nays.

Mr. Simmons stated that the decision on this last ballot concluded the challenged ballots for Senate District 12 in Crow Wing County.

Secretary Kiffmeyer recognized Bert Black, Legal Analyst and Recount Official for Senate District 12 in Morrison County.

Mr. Black presented a challenged ballot for Agram Township. He explained that this ballot was challenged because there was a sticker over an apparent vote for one of the candidates and it was a possible overvote. After reviewing the ballot, Justice Hanson moved (seconded by Judge Rosas) that the challenged ballot for Agram Township be allocated to Koering. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for Bowlus. He stated that the Recount Official couldn't determine the voter's intent. After reviewing the ballot, Judge Schellhas moved (seconded by Justice Hanson) that the challenged ballot for Bowlus be allocated to Koering. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented two challenged ballots for the City of Buckman. He stated that these ballots were challenged for "overvotes." Justice Meyer asked which statute governs overvotes. Ms. Eiden stated that it was M.S. 204C.22, subd. 3. Justice Meyer then asked Ms. Eiden if it was her understanding that an overvote on another race doesn't affect the this race. Ms. Eiden stated that was her understanding. After reviewing the ballots Justice Hanson moved (seconded by Justice Meyer) that both challenged ballots for the City of Buckman be counted, one for Koering and one for Samuelson. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for Buckman Township. He stated that the challenge on the ballot was that there were identifying marks on the ballot. Judge Rosas stated that it was hard to determine what the mark was and if it was an identifying mark. Ms. Eiden stated that the mark must be wrongful and to take care not to disenfranchise the voter. Judge Schellhas noted that in Bell v. Callaway that not all marks should be considered as identifying.

After reviewing the ballot Judge Schellhas moved (seconded by Judge Rosas) to allocate the challenged ballot for Buckman Township for Koering. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for Darling Township. He stated that the challenge on the ballot was that there was an overvote. After reviewing the ballot, Justice Hanson moved (seconded by Judge Schellhas) to allocate the Darling Township challenged ballot for Koering. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for Little Falls W1. After reviewing the ballot, Justice Meyer moved (seconded by Justice Hanson) that the ballot for Little Falls W1 not be counted for Koering. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for the City of Pierz. After reviewing the ballot, Justice Hanson moved (seconded by Justice Meyer) that the ballot for City of Pierz be counted for Samuelson. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for Pierz Township. He stated that the ballot was challenged because of having an identifying mark. Justice Hanson asked the candidate's representative which mark was considered identifying. Mr. Weinblatt stated that the mark on the State Senate portion of the ballot was the identifying mark. After reviewing the ballot, Justice Hanson moved (seconded by Judge Schellhas) that the challenged ballot for Pierz Township not be counted for Samuelson. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented two challenged ballots for Pike Creek Township, stating that the ballots were challenged because of overvotes. After reviewing the ballots, Justice Meyer moved, (seconded by Justice Hanson) that the challenged ballots for Pike Creek Township both be allocated to Koering. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for Rail Prairie Township. He stated that this ballot was not originally counted because of an identifying mark. Justice Meyer asked Mr. Black if she could assume that the voter made the marks. Mr. Black stated that he had no evidence to the contrary. Judge Schellhas stated that the person wrote what appears to be their name and address on the bottom of the ballot. Justice Hanson asked the Attorney General's Office to repeat the information on identifying marks. Ms. Eiden restated the court case. Justice Meyer asked what the mark was in that case. Ms. Eiden stated that there were lines opposite candidate names. Judge Schellhas stated that the ballot should be disregarded.

After reviewing the ballots Justice Meyer moved (seconded by Judge Rosas) that the challenged ballot for Rail Prairie Township not be counted for Samuelson. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for Swan River, stating that the challenge was that the ballot was an overvote. After reviewing the ballot, Justice Hanson moved (seconded by Judge Schellhas) that the challenged ballot for Swan River be allocated for Samuelson. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for Two Rivers Township, stating that the challenge was for an overvote. After reviewing the ballot, Justice Hanson moved, (seconded by Judge Schellhas) that the challenged ballot for Two Rivers Township be allocated for Samuelson. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented three challenged ballots for the City of Upsala. The Board reviewed each ballot separately. Mr. Black stated that the challenge on the first ballot was because of check marks. After reviewing the ballot, Justice Hanson moved (seconded by Judge Schellhas) that the first challenged ballot for the City of Upsala be allocated for Koering. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black stated that the challenge for the second ballot was because of a strikethrough over a candidate's name. After reviewing the ballot, Justice Meyer moved (seconded by Judge Rosas) that the second challenged ballot for the City of Upsala be allocated for Koering. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black stated that the challenge on the third ballot was for an undervote. After reviewing the ballot, Judge Schellhas moved (seconded by Justice Hanson) that the third challenged ballot for the City of Upsala be allocated for Samuelson. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black stated that the Board's decision on this last ballot concluded the challenged ballots for all of Senate District. Secretary Kiffmeyer suggested a recess to tally the vote counts. Having no objections, the board recessed at 4:13 p.m.

6. Review and Adoption of Senate District 12 Report

At 4:36 p.m., Secretary Kiffmeyer recognized Scott Simmons to submit the report as amended to include the reallocated votes. He stated that Samuelson had 16,273 votes after the recount and 322 reallocated votes for a total of 16,595 votes. He stated that Koering had 16,376 votes after the recount and 358 reallocated votes for a total of 16,734.

After reviewing the amended report for Senate District 12, Judge Rosas moved (seconded by Justice Hanson) to adopt the amended report for Senate District 12. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

After declaring the results, the Board signed a certificate certifying Mr. Koering elected.

7. Presentation of Recount Report of Senate District 27.

Secretary Kiffmeyer gave an overview of the recount process explaining that the candidate representatives had written and submitted briefs prior to the Canvass Board. She stated that the attorneys for the candidates will have five minutes maximum to talk on the Senate District 27 recount. She stated that no other allotted time will be given to the attorneys unless called upon by the Board.

Secretary Kiffmeyer recognized Bert Black, Legal Analyst-Office of the Secretary of State and Recount Official for Senate District 27. Mr. Black presented the recount report of Senate District 27. Mr. Black described the report structure and summarized its contents. The report structure included an introduction, summary with vote changes, noted changes in totals, precinct by precinct summary, summary of remarks on challenges, and appendices, including: notice of recount, spreadsheet of results, copy of selected Minnesota Statutes and M.R. 8235 and candidate materials. Mr. Black stated that the recount occurred in three counties: Fillmore, Freeborn and Mower, over three days: November 20, 21, and 22, 2002. Prior to the recount the vote difference between Schwab and Sparks was 33 votes. Mr. Black also stated that after the recount there was a 3 vote difference and 32 challenged ballots. He noted that there were several unusual circumstances in this recount including missing ballots in Austin W2 P1.

Secretary Kiffmeyer recognized Brian Rice, attorney, representing candidate Sparks to speak on Senate District 27. Mr. Rice, passed out a handout to the Canvass Board, then stated that there were 17 missing ballots. He noted that in a recount with 84 precincts that this number of ballots missing was very dramatic. Because the missing ballots would never be located, no one will ever know what the actual votes were on the ballots. He noted that in previous case law that when the ballots were not preserved then the count would be taken from election night numbers. He stated that the Canvassing Board was correct in throwing out excess uninitialed ballots earlier and hopes they would do the same for Albert Lea P2. He concluded by stating that the count for Sparks should be taken from election night for the precinct with the missing ballots (Austin, Ward 2, Pct 1).

Secretary Kiffmeyer recognized Fritz Knaak, attorney, representing candidate Schwab to speak on Senate District 27. Mr. Knaak noted that out of the 32 challenges only 10 are real

challenges. He also noted that because of the unusual circumstances of the vote totals for machine counted precincts that Schwab actually lost votes during the recount, because ninety percent of these losses occurred in Mower County, and he believes that this must be taken into consideration. Mr. Knaak also thanked the recount team and stated that they were fair and very professional.

Judge Rosas thanked the attorneys for their oral arguments and also noted that they also got to make their cases in written briefs to the Canvass Board.

Secretary Kiffmeyer noted that the state of Minnesota has 4106 precincts with 30,000 election judges, and that this election was very unusual and difficult. She stated that every vote in every race counts and that this is very much evident in these three races. She noted that millions of votes were cast in this election with no difficulty.

Secretary Kiffmeyer recognized Bert Black, Legal Analyst-Office of the Secretary of State and Recount Official for Senate District 27, to review the challenged ballots.

Mr. Black presented a challenged ballot for Sumner Township. He stated that the challenge on the ballot was for improperly transferring the intent of the voter to a duplicate ballot, where the corresponding original ballot had check marks. After reviewing the ballot, Justice Hanson moved, (seconded by Judge Schellhas) to allocate the challenged ballot for Sumner Township to Schwab. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented three challenged ballots for Albert Lea W3 P1. He stated the ballots were identified as spoiled and were challenged on this basis. Justice Hanson asked Mr. Black if there were excess ballots in this precinct. Mr. Black stated that there were 1559 ballots cast and during the recount there were 1560 ballots counted, therefore there was already an excess ballot without counting these three ballots.

After reviewing the first ballot, Justice Hanson moved, (seconded by Justice Meyer) to not allocate the first challenged ballot for Albert Lea W3 P1 for Schwab. Judge Schellhas questioned the motion and Justice Hanson explained that it appeared that the duplicate ballot was already cast for this ballot. Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays. After reviewing the next two ballots, Justice Hanson moved, (seconded by Justice Meyer) that the remaining two challenged ballots for Albert Lea W3 P1 not be allocated for Schwab. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for Albert Lea W4 P1. He stated that the challenge was that the ballot was not initialed by the election judges on a duplicate ballot. Secretary Kiffmeyer asked Mr. Black if this was an excess ballot, he stated that it was not. After reviewing the ballot, Justice Meyer moved, seconded by Justice Hanson that the challenged ballot for Albert Lea W4 P1 be allocated for Sparks. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented two challenged ballots for Albert Lea W6 P1. He stated that these were duplicate ballots. The question was asked if these would be excess ballots, Mr. Black stated that there were a total of 1191 persons who signed the roster and submitted absentee ballots, and 1189 ballots were counted in the recount making these two ballots not excess. After reviewing the ballot, Justice Hanson moved, (seconded by Judge Schellhas) that the challenged two ballots for Albert Lea W6 P1 be allocated for Sparks. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented 12 challenged ballots for Albert Lea Township P2. He stated that he, the Recount Official ruled all of these ballots invalid because the voter number and ballot number could not be reconciled. He noted that these ballots were found in the ballot box labeled Albert Lea Township P1, and when the sealed ballot box for Albert Lea Township P2 was opened it was empty. Mr. Black explained that there were 12 paper ballots discovered, 6 votes for Schwab and 6 votes for Sparks. He also noted that there were 11 votes recorded on the abstract, while the roster had 8 signatures and there were 2 absentee ballots. He stated that there was a note in the incident report that two of the ballots were from P1, but that still did not result in reconciliation of the numbers, and it appeared that the election judges did not remove any excess numbers. His ruling was (by agreement) challenged by both candidates. Mr. Black also noted that there were three uninitialed ballots, 2 votes for Sparks and 1 vote for Schwab.

After reviewing the ballots, Justice Hanson moved, (seconded by Judge Schellhas) to not allocate the uninitialed ballots 2 for Sparks and 1 for Schwab. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays. After reviewing the 9 remaining ballots for voter intent, Justice Hanson moved, (seconded by Schellhas) to allocate the 9 initialed ballots, 4 for Sparks and 5 for Schwab for Albert Lea Township P2. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for Austin W1 P1. He noted that the challenge was because of an overvote. After reviewing the ballot Justice Hanson moved, (seconded by Judge Schellhas) to allocate the challenged ballot for Austin W1 P1 to Sparks. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for Austin W1 P2. After reviewing the ballot Justice Meyer moved, (seconded by Judge Schellhas) to allocate the challenged ballot for Austin W1 P2 to Schwab. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for Austin W2 P2. After reviewing the ballot, Justice Meyer moved, (seconded by Justice Hanson) not to allocate the challenged ballot for Austin W2 P2 to Schwab. After reviewing the ballot and after some discussion, the motion was withdrawn and Justice Hanson moved, (seconded by Judge Schellhas) to allocate the

challenged ballot for Austin W1 P1 to Sparks. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented two challenged ballots for Austin Township. The Board requested to review the ballots separately. After reviewing the first ballot, Justice Hanson moved, (seconded by Judge Rosas) to allocate the first challenged ballot for Austin Township to Sparks. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black noted that the second ballot was originally not counted for reason of over vote. Judge Meyer noted that it appeared that the voter intent was clear and that the voter intended to vote for any office not marked. Judge Schellhas stated that this ballot met the definition of an overvote and therefore should not be counted. Justice Meyer noted that in this instance that the mark of the voter may be the absence of a mark. Justice Meyer moved, (seconded by Justice Hanson) to allocate the second ballot for Austin Township to Sparks. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with three ayes and one nay.

Mr. Black presented a challenged ballot for the City of Brownsdale. He stated that the challenge was the same as the last presented ballot. After reviewing the ballot, Judge Rosas moved, (seconded by Justice Meyer) to allocate the ballot from Brownsdale to Schwab. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with three ayes and one nay.

Mr. Black presented a challenged ballot for LeRoy Township. After reviewing the ballot, Justice Hanson moved, (seconded by Judge Rosas) to allocate the ballot for LeRoy Township to Sparks. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for the City of Lyle because of an overvote. After reviewing the ballot, Justice Meyer moved, (seconded by Judge Rosas) to not count the ballot for Lyle to Sparks. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented a challenged ballot for the City of Racine. After reviewing the ballot, Judge Rosas moved (seconded by Judge Schellhas) to allocate the ballot for Racine to Sparks. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Mr. Black presented materials for Austin W2 P1. He stated that this was the precinct with the missing 17 ballots, and that there were also challenged ballots in this precinct. The Board asked to deal with the missing ballots before the challenged ballot issues. Mr. Black stated that before the Board was the final tabulation tape from the precinct counter and the seals from the ballot boxes for this precinct. He stated that during the recount 1400 ballots were counted and 3 ballots were challenged. He noted that there were 1420 voters according to the machine tapes, therefore there appeared to be 17 ballots unreconciled. Mr. Black stated

that he and candidate representatives interviewed several individuals including the Austin City Clerk, Austin Deputy City Clerk, Austin W-2, P-1 Election Judges and the Mower County Auditor on November 21, 22, 25, and 27, and received written materials from the candidate representatives.

Mr. Black summarized the circumstances surrounding the missing ballots. He stated that on election night, the totals and summary statements were given to the Auditor, and because the numbers did not reconcile the Auditor asked the election judges to reconcile the numbers. Two election judges working with the Deputy Clerk could not get the numbers for the absentee ballots to reconcile. He noted that the Deputy Clerk gave a general statement regarding ballot allocation and counting to the election judge. He also noted that the election judge interpreted the instructions to mean to remove the ballots and go home. He noted that the election judge took the ballots home and burned them with her other recycling.

Justice Hanson asked Mr. Black if it could be determined if these ballots were absentee ballots with Wellstone votes and that is why they couldn't be reconciled. Mr. Black stated that he could not provide any evidence to what votes were on the missing ballots. Justice Hanson asked for an opinion from the Attorney General's Office. Ms. Eiden said that she researched other cases of missing ballots and all of the instances had entire precincts missing so the counts were taken from the Election Day tallies. She stated that the best evidence of a vote is the vote itself. She recommended that the board count the votes for Sparks from the Election Day tapes and, count the Schwab votes as recounted.

Justice Hanson raised concerns about using vote totals from two different sources. He asked for the totals as offered by recount. Mr. Black stated that the total for Schwab before recount was 634 votes and after recount was 647, while the totals before the recount for Sparks was 642 and 633 after. He noted that this was a loss of 8 votes for Sparks, while a gain for Schwab. Justice Meyer asked what the Board should do when the Recount Official cannot reconcile the numbers. Secretary Kiffmeyer noted that the recount occurred, the numbers were presented, however there were missing ballots. She stated that this is such a rare case that there is no guidance for the Board.

Ms. Eiden restated that in case law the count of election day was taken when missing ballots occurred. Secretary Kiffmeyer noted that in this case a majority of the ballots are available for recount. Justice Meyer clarified the earlier suggestion of the Attorney General's Office, saying that the board should take the vote totals for Sparks from the tape and the vote totals for Schwab from the recount.

Justice Hanson moved (seconded by Justice Meyer) that the Attorney General's opinion be adopted, which would take the vote totals for Sparks from the machine tapes and the vote totals for Schwab from the recount. Secretary Kiffmeyer opened the floor for discussion. Mr. Black noted that this would allocate 641 votes for Sparks and 647 votes for Schwab. Judge Rosas raised a question about counting ballots from the recount in the case of one candidate and the original in another. Justice Meyer stated that she had the same concern, except that this is very unusual, and that it appeared that votes were reallocated after the

recount. She stated that this seems extraordinary in an optical scan precinct. Judge Schellhas asked that the question be called, and the motion was adopted with three ayes and one nay.

Mr. Black presented the three challenged ballots for Austin W2 P1. He noted that with these ballots there was not an excess of ballots even accounting for the 17 missing ballots. After reviewing the first ballot, Justice Hanson moved, (seconded by Judge Schellhas) to allocate the first challenged ballot in Austin W2 P1 to Schwab. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

After reviewing the second ballot, Justice Hanson moved (seconded by Judge Schellhas) to allocate the second challenged ballot in Austin W2 P1 to Schwab. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

After reviewing the third ballot, Justice Hanson moved (seconded by Judge Schellhas) to allocate the third challenged ballot in Austin W2 P1 to Schwab. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

Secretary Kiffmeyer suggested a recess to tally the vote counts. Having no objections, the Board recessed.

8. Review and Adoption of the Senate District 27 Report

At 6:57 p.m., Secretary Kiffmeyer recognized Mr. Black to present the amended report. Mr. Black first thanked the members of the Board for consideration of a difficult recount. He then stated the results with allocated ballots. Mr. Black stated that Schwab had a recount of 15,073 with 12 reallocated ballots for total votes of 15,085. He stated that Sparks has a recount total of 15,076 with 20 reallocated votes for total votes of 15,096. Mr. Black stated that as a result, Dan Sparks had the most votes.

After reviewing the amended report, Justice Hanson moved (seconded by Justice Meyer) to adopt the Senate District 27 amended report. There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

After declaring the results the Board signed a certificate certifying Mr. Sparks elected. Justice Meyer moved (seconded by Judge Schellhas) to certify the results.

There being no further discussion, Secretary Kiffmeyer called the question, and the motion was adopted with four ayes and no nays.

8. Adjournment

There being no further business to come before the Canvassing Board, Justice Hanson moved (seconded by Justice Meyer) that the Canvassing Board do now adjourn. There being no

further discussion, the Secretary called the question, and the motion was adopted with four ayes and no nays. The Canvassing Board then adjourned at 7:03 p.m.

Respectfully submitted,

Scott R. Simmons
Director of Election Division
Office of the Secretary of State