

MINNESOTA ELECTION REPORT: KEEPING MINNESOTA A MODEL FOR ELECTION ADMINISTRATION



Introduction

The 2008 election was a historic election in many respects. High interest and voter participation put a strain on the electoral system both in Minnesota and nationally. Despite intense pressure, Minnesota's election system performed extremely well, avoiding the large scale meltdowns that occurred in Florida in 2000 or Ohio in 2004.

This should come as no surprise. Minnesota has long been a national leader in voter participation and election administration. In fact, the 2008 election marked the seventh consecutive time that Minnesota led the country in voter turnout. This honor stems from Minnesota's tradition for strong civic engagement, as well as from election laws that encourage citizen participation, such as same day voter registration.

Yet, no system is perfect. The bright spotlight of the Minnesota U.S. Senate recount has allowed us to further examine the election process and identify areas that need reform. Problems include, among others:

- Approximately 12,000 absentee ballots were rejected, some properly and others improperly;
- Confusion over the voter registration procedures; and
- Some election judges did not provide assistance to those needing language assistance or with disabilities.

Election law and administration is not taken lightly in Minnesota. Unlike the United States Constitution, Article VII, Section 1 of the Minnesota Constitution guarantees the "right to vote of every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days." Despite best efforts, the 2008 election exposed some deficiencies in election administration and procedures that disenfranchised some voters. These defects can, and must, be remedied during the upcoming legislative session.

The legislature should make the following changes to improve Minnesota election law:

- Allow for early voting
- Create a no-excuse mail-in voting procedure
- Improve training of election judges
- Move the primary from September to June
- Install a 21st century voter registration system

Problems Voters Experienced on Election Day

Voter Registration Problems

Voter registration problems are the greatest barrier to voting throughout the country; even in Minnesota, which has Election Day Registration. Throughout Election Day, the media reported a whole host of registration problems faced by voters. The problems arose for a variety of reasons, including inadequately trained election judges, poorly informed voters, typographical errors in voter registration lists, and election judge fatigue (especially towards the end of a long day, such as Election Day 2008).

A disturbing number of people reported that they were registered voters, having voted at their precinct polling place many times before, but when they arrived on Election Day their name was no longer on the list of registered voters. Minnesota Public Radio (MPR) reported that about 75ⁱ individuals in one Rochester precinct discovered their names were no longer in the voting rolls. MPR also reported that Ron Steinwall of Bloomington called election officials to verify whether he was registered to vote, “and was told by officials in weeks leading up to today that he was. (Plus, he voted with no

To register at your polling place on Election Day, you must have **one** of the following with your current name and address in the precinct to verify your residence:

- A valid Minnesota driver’s license, learner’s permit, Minnesota ID card, or receipt for any of these
- A valid student ID card including your photo, if your college has provided a student housing list to election officials
- A Tribal ID card that contains your picture and signature
- A valid registration in the same precinct under a different name or address
- A notice of late registration sent to you by your county auditor or city clerk
- A voter registered in the same precinct as you who can confirm your address with a signed oath
- An employee of the residential facility where you live who can confirm your address with a signed oath

Alternatively, you may provide both 1) a photo ID from the list below, and 2) a current bill with your current name and address in the precinct.

Photo IDs (may be expired)

- Minnesota Driver's License
- Minnesota ID Card
- United States Passport
- United States Military ID Card
- Tribal ID Card
- Minnesota University, College, or Technical College ID Card

Bills (delivered electronically or by mail)

- Utility bill due within 30 days of election day:
 - Telephone (landline, cell, VOIP, etc.)
 - TV (cable, satellite, etc.)
 - Internet services
 - Electric
 - Gas
 - Solid Waste
 - Sewer Services
 - Water
- Rent statement dated within 30 days of Election Day that itemizes utilities
- Current student fee statement

problems at same polling place in 2006). But today when he got there, his name was not on the rolls.”ⁱⁱⁱ

Fortunately, Minnesota’s same day registration system prevented many of these voters from being disenfranchised. However, some voters were still turned away because they could not utilize same day registration for lack of proper documentation. For example, a voter in Saint Paul registered to vote the summer before the election. When the voter went to the polls, the voter’s name was not on the voter registration rolls and, because the voter had an expired driver’s license, the voter was not able to vote on Election Day.

In other states, voters are routinely purged from the voter rolls by election administrators improperly and sometimes illegally. In fact, a civic organization in Colorado had to file a lawsuit during the 2008 election against the Colorado Secretary of State to stop voter purging from happening in the state. The lawsuit prevented some 30,000 individuals from being removed from the voting rolls illegally by the Secretary of State. U.S. District Judge John Kane issued a cease and desist order to the Secretary of State just days before the election, determining that the Secretary of State’s purge practices violated federal law.

The Minnesota Secretary of State Mark Ritchie has publically stated that his office did not remove people from the voting rolls, and we have no reason to doubt that assertion. But, it is still unclear how so many individuals from different parts of the state reported that they had been removed from the voting rolls. The most likely explanation is that election judges did not look closely enough at the voter registration rolls and thus missed the person’s name. In some locations there were long lines and election judges may have felt rushed to find voters’ names in the voter registration rolls and prematurely gave up.

During Ramsey County’s review of rejected absentee ballots, they discovered numerous absentee ballots were rejected by elections judges because the voter was not registered, despite the fact that Ramsey County voter registration records revealed that they were indeed registered to vote.

Secretary Ritchie’s office should examine how many individuals were required to register on Election Day even though they had previously voted in that same location. If a large number of people were same-day reregistering, it is likely that election judges had problems locating the individuals’ records on Election Day, which would explain the problem. However, if this is not the case, then we seriously need to investigate whether the voter registration rolls were purged prior to Election Day.

Election Judge Training

This election season, problems experienced by voters extended beyond registration issues. The Election Protection hotline received complaints from voters who were denied a ballot, despite bringing proper documentation that made them eligible for same day registration. Many instances involved students who attempted same-day registration with their student identification but were told that was not a proper form of identification. Despite the fact that state law allows student use their student ID to vote if their college provided a housing list to county election official. In cases that their college did not provide the list, they can use their student ID in combination utility bill, rent statement, or student fee statement [see page 3 for the complete details].

Errors by election judges also include the failure to offer assistance to voters. In one case from Ramsey County, an elderly voter was denied assistance in filling out the ballot even though state law provides that voters may request assistance from election judges. This is particularly relevant for older voters or those with vision problems who may have problems reading the small print on ballots. Also, language assistance was not provided to some voters, which also controverts federal law. An individual reported to the Election Protection hotline that election judges in Brooklyn Center were under the impression that they were under no duty to provide language assistance at the polls.

“It's probably a thankless job, which is why I am always sure to thank the election judges in the precinct where I vote.

Nevertheless, I'm struck today by how many people are working as election judges who don't know the election law, but aren't letting that stop them from offering an interpretation of it.”

Bob Collins
Minnesota Public Radio

Similarly, the Star Tribune reported that when a Somali woman, who spoke little English, went to vote, she was told by an election judge that she must not be a citizen if she could not speak English.ⁱⁱⁱ Luckily, other voters came to the women's defense and she was allowed to vote because she was already registered to vote. Please see the recommendations section for our proposals on improving training of election judges.

Rejected Absentee Ballots

Despite the foregoing issues, the most significant problem resulting from Minnesota's 2008 election are the 12,000 absentee ballots rejected on and before Election Day. Minnesotans should not be satisfied with a system in which so many voters cast a ballot and then did not have their vote counted. The Minnesota Supreme Court has already ordered some of these ballots to be counted as part of the senate recount, but it is unclear on what will happen with the remaining ballots. And, unfortunately, that will also be for the courts to decide as a part of Senator Coleman's election contest.

The courts should be the last resort when it comes to deciding the outcome of an election. While there are instances when courts can play an important role in determining electoral issues – such as violations of the Voting Rights Act or other constitutional questions related to voting and the exercise of fundamental rights – we should strive to keep the judicial branch out of elections for the executive and legislative branches. It is the role of Minnesota lawmakers and election administrators to identify ways to prevent so many ballots from being rejected, especially in light of the increasing number of people voting by absentee ballot, and to create systems that are easily replicable in future elections. The Secretary of State's office reported that twice as many people voted via absentee ballot during this election than in the 2006 election. This trend mirrors what has been happening in other states, where political parties have begun to encourage absentee voting as a form of early voting in order to bank early votes and make voting more convenient for individuals.

Many absentee ballots were properly rejected for very technical reasons that do not add to the integrity of the voting process. For example, absentee ballots were rejected because the signatures did not match, the dates of the witness and voter signature were not the same, or because the voter forgot to check the box indicating a reason for voting absentee. The last issue is the most troubling because this issue was addressed during the last legislative session but the measure was vetoed by the Governor. The high level of error in voting absentee, which resulted in nearly 12,000 rejected absentee ballots, demonstrates that the requirements are simply too complex and hinder, rather than facilitate, voting.

In addition, there are a number of voters who were disenfranchised by no fault of their own, but due to errors made by election officials. These errors occurred when voters received incorrect materials or information from election officials. Specifically, 25 voters in New Brighton were given the wrong absentee ballot packet and they were not asked to fill out a voter registration form. As a result of this error, these individuals will not have their vote counted in the 2008 election. Individuals should have their voting right protected from the errors of government officials.

Moreover, about 10% of the 12,000 absentee ballots were rejected because election officials did not receive them in time. Minnesota citizens and military personnel voting overseas have to navigate a very difficult process to have their vote counted. Because of Minnesota's late primary date, there is a very small window of time during which a potential voter can request, receive and send out an absentee ballot. The Pew Center for the States estimates that Minnesota's military personnel voting overseas have a cushion of fewer than five days to accommodate any 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.

This tight turnaround time is the reason that many of those ballots did not make it in on time.

The Senate Recount Procedures

The Minnesota Senate recount also went well overall, despite the immense political pressure exerted on the election officials in charge. We applaud the openness and transparency of the recount and state canvassing board's decision-making process. Minnesota's citizens overwhelmingly felt that the process was fair and thorough.^{iv}

Because this system is rarely put in play at a state-wide level, we have an opportunity now, having just witnessed the first state-wide recount of a general election in decades, to suggest a few changes. The most obvious area for reform is the process that resulted from the State Supreme Court's decision to allow the campaigns to insert themselves in the process to review absentee ballots that election officials deemed were improperly rejected.

This decision removed the process from the hands of non-partisan actors, local election officials, and put it into the hands of the political campaigns. As a result, there was a predictably clear pattern of voters in Republican-leading areas being disproportionately challenged by the Franken campaign and voters in Democratic-leaning areas being disproportionately challenged the Coleman campaign. In Scott County^v, of the 43 absentee ballots under review, 38 ballots, or 88%, were challenged by Franken. And in St. Louis County^{vi}, 96% of the challenged ballots, or 58/60 absentee ballots, were challenged by the Coleman campaign. This is not acceptable; election rules should never be interpreted by partisans.

But what is most disturbing is that these voters have no true remedy to appeal these partisan decisions and have their votes counted. The remedy process outlined in Minnesota State Statute 204B.44, Errors and Omissions^{vii}, provides too high of a hurdle to be a remedy for average voters. For those who are even able to discover it, the process basically requires an individual to retain counsel and file a lawsuit to have the issue addressed.

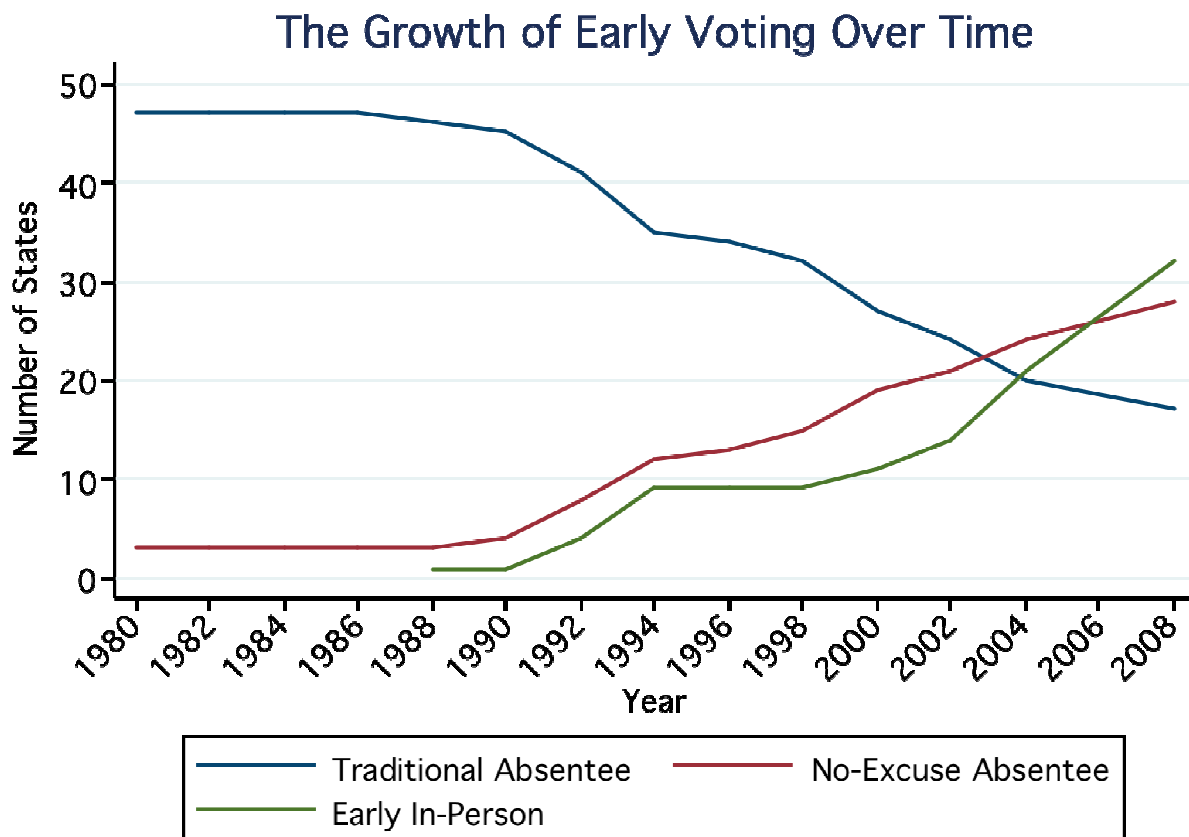
Minnesotans expect more from our voting system. As a state with historically high voter turn out and a civically engaged citizenry, Minnesota's voting system should shine. While we agree that the 2008 election was, in general, a smooth, transparent and lawful process, a few tweaks to the system will eradicate the problems that some voters did encounter this past election.

Recommendations for the 2009 Legislative Session

Early Voting

Minnesota should adopt early voting, at least for presidential and gubernatorial election years. The number of states that allow for early voting has increased significantly in recent years. Currently 32 states allow for residents to vote before Election Day. A recent study found that almost one-third of the electorate nationwide voted early in the 2008 election.^{viii}

Many Minnesotans already think that our state has early voting, evidenced by the numerous calls to the Election Protection hotline asking how individuals could vote early. This perception resulted largely from national media coverage of the 32 other states that have early voting. Campaigns also contributed, as political candidates and parties tried to promote absentee voting as “early voting.” Unfortunately, they did not fully explain the process, which contributed to voter confusion. Because Minnesota requires that voters using the absentee ballot process must select among four choices their reason for voting early, many people stretch the truth about their excuse for voting early. “Whether or not the state intended or sanctioned early voting, it clearly has come



to Minnesota through the absentee ballot process used by some 288,000 voters this year, Joe Mansky, Ramsey County Election Manager, said.^{ix} It is time that Minnesota legitimizes this practice and creates an early voting process.

Early voting would have prevented many of the problems that occurred with the 12,000 rejected absentee ballots. For those who in-person absentee voted, election officials could have addressed many problems on the spot, assuring voters would have their votes counted. Replacing in-person absentee voting with an early voting process would afford voters the same rights that any voter experiences on Election Day.

In addition, an early voting process would allow individuals to resolve problems with their voter eligibility. Under the current system, voters have a very small window of time to work out any issues with their voter registration record. Early voting would give them time to fix those problems in a reasonable time period.

The extra time afforded by early voting also helps to take pressure off the election system. We avoided large scale voting problems in many states in 2008 because they allowed for early voting. It helped to reduce the flood of voters that come in on one day and inevitably create problems. By reducing the number of voters that vote on Election Day, it can also help to reduce errors made by election judges.

We currently demand too much from our election judges, who routinely put in 12-16 hours on Election Day.^x Anything we can do to reduce that burden will improve the entire process. It could also help cities, counties and local government units that manage elections save money by not needing to hire as many election judges and all the administrative burdens that come with it, such as training for so many individuals. But, more importantly, it makes it easier for people to vote. Election laws already create a significant number of hoops that individuals must jump through in order to vote. Voting should be made easy and convenient for people.

No Excuse Mail-in voting

If a potential voter wants to vote by absentee, they have to state one of four reasons for doing so. But, these rules have become antiquated because many individuals use absentee mail-in voting as a convenient way to vote in Minnesota, even though this technically violates the letter and spirit of the current absentee voting law. The law should be changed to allow for no excuse mail-in voting. For the very same reasons that were identified for early voting, no excuse mail-in voting would make sense.

This recommendation would allow any eligible voter to request ballot by mail. Currently 28 states allow no-excuse mail-in voting. In addition to these changes, the absentee balloting process should be streamlined. The application and reply ballot materials can be confusing as evidenced by the fact that 12,000 absentee ballots were thrown out during the last election. The Secretary of State's office should review the absentee ballot forms and identify ways to simplify them, then make recommendations to the legislature to removing the requirement that the signatures match and the need for a

witness signature. These requirements are not necessary to protect the integrity of the process and just create unnecessary steps for the voter. Instead, the form could ask for a driver's license number or the last four digits of an individual's social security number to ensure the ballot was legitimately cast. These small changes will go a long way to reduce the number of voters that will have their ballots thrown out in future elections.

Better Training of Election Judges

Many reported problems on Election Day stem from inadequately trained election judges. While election judges play a critical role in the voting experience, they need to be trained well to ensure that every eligible voter that comes to the polling location is able to vote. When election judges do not fully understand election procedures it jeopardizes the entire process.

The Secretary of State's Office should work with local election officials to improve the training of election judges. Many election judges reported attending short training sessions months in advance of the election, which did not adequately prepare them for the task on Election Day. We suggest that the Secretary of State consider longer training session that provide information in a more timely fashion, with refresher courses offered to those who have served as an Election Judge in the past. Online training would also allow election judges to have access to training materials in the days leading up to the election.

Move the Primary from September to June

The current primary is too close to the general election, which accounts for many of the problems experienced by those whose absentee ballots were rejected for being untimely. The current system affords military personnel overseas a very small window to receive and send back their ballots. The Pew Center for the States recommends that ballots be available at least 45 days before the election to ensure sufficient time for military personnel to fill out and return them.

The primary election would need to be moved up four weeks ahead of September primary to give military personnel and those voting overseas enough time to vote. This would put the primary in early August, which is the middle of high vacation season for Minnesotans. Many Minnesotans would not be around to vote. That is why it is necessary to move the primary up even further to May or June. That would ensure a higher level of participation and interest from the electorate.

In addition, it will increase the likelihood of competitive primary races. Currently, political parties discourage intra-party races in the primary because they feel that it negatively impacts their chances during the general election. As a result, most intra-party races are decided by a handful of people.

Moving the primary up provides candidates more time to recover from a primary election and allows the electorate to focus more on the general election. Currently, the campaign for the general election only runs for six weeks and that does not allow for much time to have a serious debate on many issues.

21st Century Voter Registration

Year after year, voters experience issues with voter registration: determining whether they are registered and how to get registered. Minnesota should make the registration process simpler for voters.

Minnesota should adopt a 21st century voter registration system, which would automatically register citizens when government agencies can ascertain a person's address and eligibility. The most logical place to start is with the state's Department of Motor Vehicles. The Minnesota DMV could automatically register people to vote when they apply for a driver's license, which would have their current address of residence, and those that do not wish to register could opt-out.

Individuals that apply for a driver's license for the first time could have their record flagged and automatically activated when the individual turns 18 year of age. This new system would reduce the number of people that would have to register and re-register by using data already collected and verified by the government.

In addition, the system could also be used to identify people that are ineligible to vote. Cross referencing this data with the Department of Corrections database will help ensure that individuals are not improperly added to the voter registration rolls. However, it is important that any individual that is removed from the voting rolls first be notified to ensure that the information is correct.

This process will save county governments a significant amount of money because they would not have to process a large volume of voter registration cards; rather, this process would be done automatically. In these tight economic times, this is one way that Minnesota can make government operations more efficient while also alleviating burdens on voters.

In addition, voters should be able to confirm their registration status through the Secretary of State's website. Voters do experience significant confusion about whether they are registered or not. The Election Protection hotline received hundreds of phone calls from individual wondering if they were registered to vote. Allowing voters to check their registration status will help reduce voter uncertainty with the registration process. Colorado, Michigan, New Mexico, Virginia, and Wisconsin already allow their citizens to verify their registration via phone or Internet. This would allow the voters to be more proactive to address any problems or changes to their registration before Election Day, reducing congestion and confusion at the polls.

Conclusion

Minnesota has long been considered a model for election administration. Routinely, people from all over the world come to Minnesota to see how we operate a fair and nonpartisan election process. Minnesota has earned that reputation because of our desire to learn from our mistakes and constantly improve the voting process. This election, along with the U. S. Senate recount, provides a unique opportunity to advance another series of reforms that will keep Minnesota as the model for election administration.

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Footnotes

ⁱ “I just talked to Csilla Szabo of Rochester, who says she’s still upset at her experience when she tried to vote at the People of Hope Church in Rochester around Midmorning. ‘I’ve been registered for two years, I went through the line and my name was not on the voter roll,’ she said. ‘I had to re-register and it’s a good thing I had proper ID with me. I asked the election judge where I could file a complaint and she said she didn’t think there was any way for individuals to file a complaint.’

Ms. Szabo says while she was there, another couple had the same problem and the election judge told her that it’s happened to about 75 people at that voting place today. ‘When I submitted my ballot, I looked at the counter and it said 750 people had voted. That means more than 10-percent of the registered voters weren’t on the list.’”
Source - http://minnesota.publicradio.org/collections/special/columns/news_cut/archive/2008/11/same-day_registration_is_savin.shtml

ⁱⁱ http://minnesota.publicradio.org/collections/special/columns/news_cut/archive/2008/11/same-day_registration_is_savin.shtml

ⁱⁱⁱ <http://www.startribune.com/local/west/34149814.html?elr=KArksUUUU>

^{iv} http://www.pollster.com/blogs/mn_senate_recount_surveyusa124.php

^v Results of 2008 Minnesota Senate Election in Scott County

Norm Coleman – 51%

Al Franken – 31%

Dean Barkley – 17%

^{vi} Results of 2008 Minnesota Senate Election in St. Louis County

Al Franken – 55%

Norm Coleman – 32%

Dean Barkley – 12%

^{vii} 204B.44 ERRORS AND OMISSIONS; REMEDY.

Any individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions, or wrongful acts which have occurred or are about to occur:

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- (a) an error or omission in the placement or printing of the name or description of any candidate or any question on any official ballot;
 - (b) any other error in preparing or printing any official ballot;
 - (c) failure of the chair or secretary of the proper committee of a major political party to execute or file a certificate of nomination;
 - (d) any wrongful act, omission, or error of any election judge, municipal clerk, county auditor, canvassing board or any of its members, the secretary of state, or any other individual charged with any duty concerning an election.

The petition shall describe the error, omission, or wrongful act and the correction sought by the petitioner. The petition shall be filed with any judge of the Supreme Court in the case of an election for state or federal office or any judge of the district court in that county in the case of an election for county, municipal, or school district office. The petitioner shall serve a copy of the petition on the officer, board or individual charged with the error, omission, or wrongful act, and on any other party as required by the court. Upon receipt of the petition the court shall immediately set a time for a hearing on the matter and order the officer, board or individual charged with the error, omission or wrongful act to correct the error or wrongful act or perform the duty or show cause for not doing so. The court shall issue its findings and a final order for appropriate relief as soon as possible after the hearing. Failure to obey the order is contempt of court.

^{viii} <http://www.democracycorps.com/strategy/2009/01/the-2008-electorate/>

ix

http://www.minnpost.com/sharonschmickle/2008/12/10/5176/lessons_from_the_recount_officials_look_for_silver_lining

^x We should also consider other tactics for lessening the burden on election judges, such as exploring split shifts, which may also attract additional citizens to participate in the process without having to make the intense time sacrifice.