

October 25, 2004

VIA FACSIMILE AND US MAIL

Mary Kiffmeyer
Minnesota Secretary of State
100 Rev. Dr. Martin Luther King Jr. Blvd.
180 State Office Building
St. Paul, MN 55155-1299

Dear Ms. Kiffmeyer:

I am writing on behalf of the American Civil Liberties Union of Minnesota (“ACLU-MN”) to request your immediate attention to certain conflicts between Minnesota election law and governing and superseding federal law, which threaten to disenfranchise significant numbers of Minnesota voters on November 2, 2004.

The Help America Vote Act of 2002 (“HAVA”), 42 U.S.C. § 15483, subd. (b), establishes identification requirements for individuals registering to vote by mail, who have not previously voted in a state (here Minnesota) for a federal office. The federal statute allows a mail registrant who votes in person to present the following to the appropriate state or local election official as sufficient evidence of name and address: (a) a current and valid photo identification **or** (b) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

Minnesota’s identification requirements for certain individuals registering to vote by mail, who have not previously voted in Minnesota for a federal office, are significantly more restrictive than those established by HAVA. Under Minnesota Rule 8200.5100, identification must be proved by (1) a current and valid photo identification, or (2) a driver’s license, passport, military or student identification that does not have a current address, **together** with a recent utility bill showing the current address of the voter. The second prong of this Rule violates federal law in at least three ways.

First, the federal law does not require photo identification at all, so long as another approved identifying document is presented. Second, the list of documents sufficient to establish residence and the right to vote under federal law is much longer than the list under state law: The federal list includes a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter, whereas the state list is limited to current utility bills. Third, a government document under federal law includes identification issued by Indian tribes, which means that tribal documentation showing

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name and address of the voter constitutes sufficient federal voting identification, even if the tribal member does not live on the reservation. In contrast, under Minnesota law, Minn. Stat § 201.061, Subd. 3, tribal identification is sufficient identification only for tribal members living on an Indian reservation.

In addition, with respect to election-day registrants, which is a separate category from those registering to vote by mail, the State of Minnesota is prohibited by the Fourteenth Amendment of the United States Constitution and similar provisions of the Minnesota Constitution from differentiating between tribal identification cards held by individuals who live on the reservation and those who live off the reservation. Once Minnesota is required by federal law to accept tribal identification for mail registrants who live off the reservation, it can no longer limit the use of tribal identification for same-day registrants to those who live on the reservation.

We believe that the current ways in which Minnesota law violates federal law could easily be remedied by prompt and prominent notice from you to all election officials within Minnesota advising them to accept identification in accordance with federal law as set forth above. Moreover, because Minnesota Statute §201.061 Subdivision 3 (2) grants the Secretary of State discretion to approve documents that will be accepted as proper identification, you have the specific discretion under Minnesota law to make sure that Minnesota law complies with federal law. We request that you inform us by the close of business on October 26, 2004 that you intend to provide such prompt and prominent notice. We are happy to comment on or suggest the form and specific content of such notice.

ACLU-MN is committed to insuring that the right to vote is fully protected in Minnesota. ACLU-MN is also committed to working with you cooperatively to resolve these problems and insure maximum voter participation on election day. I look forward to receiving your response by the end of the business day on Tuesday October 26, 2004. If I do not hear from you, I will pursue other methods of relief. I also intend to advise the media of this correspondence.

Sincerely,

Charles Samuelson

cc: Timothy E. Branson, Esq.
Robin M. Wolpert, Esq.