

MINNESOTA'S 2014 POST-ELECTION AUDIT

Report and Recommendations



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We would like to thank our dedicated volunteers and supporters for their commitment to election integrity.

*This report may be freely copied and distributed. It is available at: www.CEIMN.org

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Summary

Citizens for Election Integrity Minnesota (CEIMN) is a non-partisan organization, formed in 2004, that advocates for accurate, transparent, and verifiable elections in Minnesota and nationally. From 2006 to 2014, CEIMN organized eight statewide, non-partisan observations in Minnesota: five post-election audit¹ observations and three recount observations.

Consistent with previous observations, Minnesota's 2014 post-election audit was conducted in an efficient, transparent, and accurate manner. Nonpartisan observers expressed confidence in the integrity and the accuracy of the post-election audit procedures.

Minnesota's post-election audit provides an important check on the accuracy of our voting equipment.² CEIMN advocates that all states implement robust post-election audits based on recommended principles and practices.³

New developments in 2013 and 2014 included the adoption of legislation affecting post-election audits, changes in the auditing of absentee ballots, and the replacement of a substantial number of our aging voting machines.

Background: Post-Election Audits in Minnesota

What is a post-election audit?

A post-election audit, defined for the purposes of this report, refers to hand counting votes on paper ballots and comparing them to the corresponding Election Day voting machine totals. This is a method to check the accuracy of the machines.

¹ Minnesota officially refers to the audit as the "post-election review." CEIMN uses the phrase "post-election audit" which is the terminology most commonly used nationally.

² In the November 2014 General Election, there were 77 precincts that did not use voting machines to count polling place ballots; however, the absentee ballots cast in these precincts were tabulated by voting machines. Since absentee ballots and polling place ballots are combined for the purpose of the audit, all precincts, including hand count precincts, are subject to the random selection of the post-election audit.

³ *Principles and Best Practices for Post-Election Audits*. http://electionaudits.org/files/bestpracticesfinal_0.pdf.

Visit our audit laws searchable database for a summary of audit laws in every state.⁴ The database facilitates the comparison of state audit laws and contains 46 searchable fields.

Introduction of post-election audits in Minnesota and nationally.

Minnesota's first post-election audit took place in November 2006. At that time, Minnesota was one of sixteen states requiring a post-election audit. In 2014, twenty-nine states plus the District of Columbia conducted post-election audits.⁵ One additional state (Massachusetts) passed legislation in 2015 and will begin conducting audits in 2016. While some states have stronger post-election audit laws than others, this shift toward an audit requirement is a positive move toward improving the transparency and integrity of elections throughout the U.S.

Minnesota's post-election audit law.

After the statewide general election, precincts are selected by lot⁶ by each of the 87 county canvassing boards. Elections for Governor, President, U.S. Senator, and U.S Representative must be audited when they occur. The number of precincts randomly⁷ selected in each county is based on the total number of people who are registered to vote:

- Fewer than 50,000 registered voters: at least two precincts
- Between 50,000 and 100,000 registered voters: at least three precincts
- Over 100,000 registered voters: at least four precincts, or three percent of the total number of precincts in the county, whichever is greater

In some states, audits are conducted after election results are finalized, meaning that if an error is found, no corrective action is taken. This is not the case in Minnesota. The hand counted audit results are incorporated into the official results.

In addition, an audit can trigger more audits and can eventually lead to a full recount. For example, if the results of the audit in one of the precincts reveals a difference greater than one-half of one percent, or greater than two votes in a precinct where 400 or fewer voters cast ballots, the postelection review official must, within two days, conduct an additional review of

⁴ CEIMN State Audit Laws Searchable Database:http://www.ceimn.org/searchable_databases/state_audit_laws.

⁵ See the CEIMN State Audit Laws Searchable Database. Note that this list includes Ohio which conducts audits by a directive from the Office of the Secretary of State, but is not required by statute to conduct them.

⁶ Minnesota Statutes, section 206.89(2), Postelection review of voting systems.
<https://www.revisor.mn.gov/statutes/?id=206.89>.

⁷ This document will refer to the selection "by lot" within counties as a "random selection," even though the selection does include the nonrandom requirement that at least one selected precinct in each county must have had more than 150 votes cast in the general election.

the races in at least three precincts in the same jurisdiction where the discrepancy was discovered.⁸ The statute then outlines a continuum of audit escalation. If the machine error rate exceeds the specified threshold, it will trigger an additional round of audits which could eventually trigger a full recount. However, if the error(s) are attributed to voter intent, the official results are changed but no escalation occurs as noted in MS 206.89(4):

Valid votes that have been marked by the voter outside the vote targets or using a manual marking device that cannot be read by the voting system must not be included in making the determination whether the voting system has met the standard of acceptable performance for any precinct.⁹

Transparency.

The public can observe the random selection of precincts to be audited as well as the counting of the ballots. Since 2006, Citizens for Election Integrity Minnesota has organized five statewide, non-partisan observations of post-election audits throughout Minnesota. Three of these observations were done in partnership with the Minnesota League of Women Voters.

New Developments

Auditing absentee ballots.

Before 2010, absentee ballots were delivered to each precinct on Election Day; as a result, the polling place voting machine totals reflected the votes of both in-person voters and absentee voters. These absentee ballots were audited with the precincts randomly selected for the post-election audit.

Since 2010, absentee ballots have been tabulated separately, usually at a central location, by an Absentee Ballot Board (ABB). In the 2010 and 2012 post-election audits, ballots counted centrally by an ABB were considered to be one precinct for the purpose of a post-election audit. These precincts were eligible for the random selection of the post-election audit. Since some ABB precincts are extremely large (for example, Minneapolis had 15,143 voters in its 2012 ABB

⁸ Minnesota Statutes, section 206.89(5), Postelection review of voting systems.
<https://www.revisor.mn.gov/statutes/?id=206.89>.

⁹ Minnesota Statutes, section 206.89(4), Postelection review of voting systems.
<https://www.revisor.mn.gov/statutes/?id=206.89>.

precinct), there was a possibility that one of these very large precincts could be selected for auditing. This possibility was eliminated in legislation passed in 2013.

As a result of this new legislation, ballots counted by ABBs are no longer considered precincts eligible to be selected for an audit. Now the ballots to be reviewed for a precinct include both the ballots counted at the polling place for that precinct and the absentee ballots counted by an ABB for that precinct.¹⁰ CEIMN supports this change because it has the potential to reduce the workload of election administrators while ensuring that absentee ballots will continue to be audited.

Post-election audit no longer required for recounted races.

In 2008, some of the ballots were hand-counted twice for the U.S. Senate race—once for the post-election audit and once for the U.S. Senate recount. Similarly, some of the ballots were hand-counted twice in 2010 for the gubernatorial race. New legislation in 2013 stated that no post-election audit is required when a race is subject to a recount.¹¹ CEIMN supports this change, recognizing that there is no need to hand count a race twice.

Change in audit dates.

The county canvass of a general election occurs between the third and tenth day following the election. New legislation in 2013 requires that the post-election audit must not begin before the eleventh day after the state general election and must be completed no later than the 18th day after the state general election.¹² This change ensures that the post-election audit is conducted in a timely manner but not before the completion of the canvass of the general election. By the eleventh day after the election, the possibility of a recount would be apparent; counties could then proceed with the necessary post-election audits while omitting the auditing of races that will be recounted.

¹⁰ Session Laws of Minnesota 2013, Chapter 131, article 2, section 69.
<https://www.revisor.mn.gov/laws/?id=131&doctype=Chapter&year=2013&type=0>.

¹¹ Session Laws of Minnesota 2013, Chapter 131, article 2, section 70.
<https://www.revisor.mn.gov/laws/?id=131&doctype=Chapter&year=2013&type=0>.

¹² Session Laws of Minnesota 2013, Chapter 131, article 2, section 69.
<https://www.revisor.mn.gov/laws/?id=131&doctype=Chapter&year=2013&type=0>.

2014 Post-election Audit

Total number of precincts audited per county.

The total number of precincts audited is based on the total number of registered voters. For counties that have over 100,000 registered voters, at least four precincts, or three percent of the total number of precincts in the county, whichever is greater, are audited. The following counties had over 100,000 registered voters at 7:00 a.m. on Election Day, November 4, 2014.¹³

1. Anoka (200,259 registered voters), 127 precincts
2. Dakota (248,443 registered voters), 140 precincts
3. Hennepin (713,621 registered voters), 414 precincts
4. Ramsey (292,886 registered voters), 171 precincts
5. St. Louis (119,898 registered voters), 177 precincts
6. Washington (152,236 registered voters), 88 precincts

In 2014, a total of 207 precincts were randomly selected to be audited throughout Minnesota. Seventy-three counties (84% of all counties) audited two precincts. Eight counties audited three precincts: Blue Earth, Brown, Carver, Olmstead, Sherburne, Sibley, Sterns and Wright counties.

Six counties audited four or more precincts. These counties were:

- Anoka (4 precincts, 3.15% of precincts)
- Dakota (5 precincts, 3.57% of precincts)
- Hennepin (13 precincts, 3.14% of precincts)
- Ramsey (5 precincts, 2.92% of precincts)
- St. Louis (5 precincts, 2.82% of precincts)¹⁴
- Washington (4 precincts, 4.55% of precincts)

¹³ *State of Minnesota Canvassing Report*. <http://www.sos.state.mn.us/Modules/ShowDocument.aspx?documentid=14540>, pp. 1-4.

¹⁴ St. Louis County has 53 precincts that hand count ballots, and the county's calculation of the 3% of precincts required to be audited is based on the 124 precincts that use voting machines.

Ballots counted for the audit.

There were 1,992,566 ballots counted in the November 2014 general election in Minnesota;¹⁵ of these, 91,299 (4.58%) were hand counted for the post-election audit. Of the ballots counted for the audit, 10,971 (12%) were absentee/mail ballots.¹⁶

Types of precincts selected for the audit.

In 2014, there were 4,106 polling place precincts in Minnesota. Five hundred eighty-eight (14.3%) of these precincts were precincts using mail balloting, and 3,547 (86.4%) were in-person precincts. Of these 4,106 precincts in Minnesota, 207 were audited, representing 5.0 % of the total. Twenty-four (11.6%) of the 207 audited precincts were mail ballot precincts and 183 (88.4%) were in-person, polling place precincts, indicating that the random selection of precincts selected a percentage of precincts close to the actual percentages of the polling place and mail ballot precincts in the state.

New voting equipment.

In 2014, Minnesota saw a significant use of new voting equipment. The new voting equipment models included the ES&S DS 200 precinct scanner and the ES&S DS 850 High Speed Central Count scanner. The following counties used one of these new models for tabulating polling place or absentee ballots: Anoka, Faribault, Hennepin, Marshall, Olmsted and Washington Counties. In addition, the City of Duluth used the DS 200. Throughout the state, this new equipment tabulated over one third of the ballots cast in the 2014 general election. The variety of equipment will expand in 2016 when Ramsey County will begin using a new system, the Hart InterCivic Verity Voting system.

Although Minnesota's post-election audit does not require the auditing of a representative sample of the different types of voting systems used in the state, one of the goals of the audit is to assess the performance of these systems. As our voting equipment changes, it is our hope that the random selection of precincts for the post-election audit would select precincts using

¹⁵ *State of Minnesota Canvassing Report*. <http://www.sos.state.mn.us/Modules/ShowDocument.aspx?documentid=14540>, p. 4.

¹⁶ Previously the totals for absentee ballots and mail ballots were reported separately by the Office of the Minnesota Secretary of State. The Office now reports a combined total for regular, and uniformed and overseas citizens absentee ballots accepted plus mail ballots accepted. Absentee ballots with federal offices only (used by citizens who are permanently or indefinitely overseas) continue to be reported separately.

all types of equipment and that the percentage of ballots audited from these voting systems would be roughly similar to the statewide percentage of ballots tabulated on these systems. As new equipment becomes certified and used in Minnesota, CEIMN will continue to monitor the extent to which ballots from all systems are audited. Table 1 shows the percentage of ballots audited in 2014 by vote tabulating system.

Table 1. Audited Ballots by Vote Tabulation System—2014*

Vote tabulating system	Total ballots tabulated statewide for this system	Percentage of ballots tabulated statewide for this system	Total ballots audited statewide for this system	Percentage of total ballots audited for this system
ES&S Digital Scan 200	623,226	31.28	18,358	20.11
ES&S Digital Scan 650	9,038	0.45	699	0.77
ES&S Digital Scan 850	83,886	4.21	2,672	2.93
ES&S Model 100	935,712	46.96	57,449	62.92
Premier Accuvote	334,752	16.80	11,973	13.11
Hand Count	5,952	0.30	148	0.16

*Compiled from data obtained from the Office of the Minnesota Secretary of State and from Minnesota county election officials. Note that these totals include absentee, mail and polling place ballots, and are adjusted for when, within a precinct, absentee ballots are tabulated by different equipment than polling place ballots.

Direct Observations

Training for observations that are nonpartisan and accurate.

CEIMN has a strong commitment to non-partisan and accurate observations. Therefore, all volunteers had to sign a Code of Conduct¹⁷ and attend a training session. Since CEIMN's volunteers are located both in the Twin Cities area and in Greater Minnesota, most of CEIMN's trainings were conducted over the telephone. The trainings included a review of the Code of Conduct and the observer questionnaire. The volunteers were reminded that they had to base all their reports on actual observations and that they were to remain strictly impartial with their observations.

Deployment of volunteers.

In 2014, CEIMN deployed 33 nonpartisan volunteers to observe the post-election audits in 29 counties and cities.¹⁸ This included one dedicated observer who drove almost 500 miles to observe the audits in four counties.

General observations and recommendations.

Consistent with previous observations, Minnesota's 2014 post-election audit was conducted in an efficient, transparent, and accurate manner. Nonpartisan observers expressed confidence in the integrity and the accuracy of the post-election audit procedures, and noted only a few areas for improvement.

¹⁷ The Code of Conduct CEIMN uses is based on the *Code of Conduct for International Election Observers*, Commemorated October 27, 2005, at the United Nations, New York, which has been endorsed by over 20 groups including United States Association of Former Members of Congress (USAFMC), National Democratic Institute (NDI), and Organization for Security and Cooperation in Europe, and Office of Democratic Institutions and Human Rights (OSCE/ODIHR).

¹⁸ In 2010, Hennepin County had a centralized location for its post-election audit while in 2014, 2012, 2008, and 2006 the post-election audits were conducted in cities within Hennepin County.

Audit Procedures and Transparency.

All audits started within 15 minutes of the scheduled start time with the exception of one, which was delayed by one hour due to a legislative recount.

Most observers rated the transparency of the audit process as excellent. Election officials were very helpful in explaining to observers any discrepancies or issues revealed by the audit and in explaining their decisions on these issues. The accommodations and the arrangement of the public viewing areas allowed most observers to see the marks on the ballots; however, observers were not able to view the marks on the ballots at four audits.

A transparent audit requires allowing observers to be informed of the determinations of election officials when evaluating ballot markings and to be close enough to the counting teams to see the marks on the ballots. This proximity allows an independent confirmation of the sorting, counting and evaluation of the ballots.

**CEIMN recommends that counties arrange their public viewing areas so that observers can be close enough to the counting teams to see the marks on the ballots, to be informed of the determinations of election officials, and to be shown any related documentation.*

Chain of Custody.

Most observers noted that the ballots were delivered to the audit location by at least two individuals and that the seals on the ballot containers were intact when delivered. However, observers at three audits noted the delivery of ballots by only one individual. Two observers noted that, while in the counting area, ballots were not under the observation of at least two election officials at all times.

CEIMN recommends that during the delivery and conduct of the audit the ballots at all times remain under the observation of at least two election officials.

Documentation and Results Tapes.

It is important, at the audit, for election officials to provide the original results tapes and documentation from the voting machines used in the polling places and by the Absentee Ballot Boards. This allows observers to independently verify the pre-audit voting machine tallies for the overvotes, undervotes, and the votes counted for each candidate in each audited race.

Although most election officials provided some original voting equipment documentation, there were five audits where observers noted this documentation was unavailable at the audit.

**CEIMN recommends that the original results tapes and documentation from the voting equipment be available for observers to review at the audit.*

Counting and Accuracy.

Most observers reported that the ballot counting teams checked the accuracy of each other's work and followed a two-person protocol for counting. When discrepancies between the Election Day counts and the audited counts did occur, observers reported the diligence of election officials to achieve an accurate count and an understanding of the reasons for any discrepancy. One county, after completing its audit, discovered an error in a precinct's totals; in order to achieve an accurate count, the counting teams were reconvened the following day and the precinct was re-audited.

Recording audit results.

Most observers reported that the totals from the counting teams were accurately recorded on the official audit forms; however, one observer noted that an election official corrected an obvious error on the Post-Election Review Worksheet after the worksheet had been signed by the post-election review officials. In another instance, an election official corrected a mistake in data submitted by a counting team and recorded this on the Post-Election Review Worksheet after the counting team had completed its counting and submitted its signed worksheets to the review official.

CEIMN recommends that any changes to audit documentation be coordinated with the counting teams and election officials who can confirm the accuracy of the changes.

New absentee ballot audit process.

In 2014, the ballots to be reviewed for a precinct included both the ballots counted at the polling place for that precinct and the absentee ballots counted centrally by an ABB for that precinct. This new process appeared to work well. Observers reported that absentee ballots were counted using the same procedures as used for the polling place ballots and that the results were reported separately. Most observers reported that the absentee ballots were

delivered and removed from the audit location in sealed containers; however, at one audit location, the absentee ballots were delivered and removed in unsealed containers.

CEIMN recommends that the transport of absentee ballots occur in sealed containers subject to the same chain-of-custody procedures as polling place ballots.

Review of Audit Data Reported by the Counties

Minnesota Counties are required to report post-election audit results to the Office of the Minnesota Secretary of State¹⁹ which provides an Election Reporting System for receiving data, generating reports, and publishing post-election results.²⁰ The results from the 2014 audit indicated that the audited hand count resulted in few changes to candidate vote totals; however, there were indications of a few errors in audit procedures and reporting. These issues include:

- 1) One county audited two precincts and neither of them had more than 150 votes as required by law.²¹
- 2) At the start of the audit, several counties reported a different number of total votes for the precinct than were reported in their certified county canvass.

It is not uncommon for the final count of the number of voters/ballots to change from the beginning of the audit to the end of the audit. This can happen, for example, when a voting machine has jammed on Election Day and a ballot is inadvertently run through the ballot counter twice. This type of error can be reconciled at the audit with the hand counting of the ballots and a review of the documentation from the precinct. However, regardless of how the number of ballots voted in a precinct change during the audit, the number of ballots should not change between the time the county canvassing board certifies the precinct results and the start of the post-election audit, without a publicly reported explanation of the reasons for this change. Such an explanation could include a change in ballots voted as a result of a recount or a change explained by a data entry error.

¹⁹ Minnesota Statutes, section 206.89(6).

²⁰ Minnesota's 2014 general election results are available at: <http://www.sos.state.mn.us/index.aspx?page=1804>. The 2014 post-election audit results are available at: <http://www.sos.state.mn.us/index.aspx?page=1156>.

²¹ Minnesota Statutes, section 206.89(2).

3) One county reported different ballot totals among the three races audited.

The 2014 audit hand counted three races—Governor, U.S. Senate, and U.S. Representative. For each precinct, the same pile of ballots was counted three times, once for each race. The total number of ballots counted for each of the three races should be the same.

Recommendations for audit reporting.

Although it is the responsibility of the counties to conduct the audits and report the data accurately, CEIMN recommends that the Office of the Secretary of State expand its Election Reporting System to assist counties in their audit reporting. As the collection point for election data, the Election Reporting System has the potential to inform counties when there are problems with the reported data. CEIMN recommends that the Office of the Secretary of State use that system and other methods to provide feedback to county election officials when:

- a) *The number of ballots for the precinct at the start of the audit differs from the total number voting in the general election (as certified by the county canvass board) and when an explanation is needed for this discrepancy.*
- b) *County officials have selected precincts for their audit that do not conform to the requirements of the audit statute.*
- c) *County officials have submitted different values for the number of ballots counted for each of the races audited.*

Please submit comments to:

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*In memory of our dear friend
Linda Goodspeed
CEIMN board member, volunteer, and passionate election integrity advocate.*

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