

STATE OF MINNESOTA

IN SUPREME COURT

A22-1418

A22-1426

FILED

October 17, 2022

**OFFICE OF
APPELLATE COURTS**

In re: The Roseau County Ballot for the
November 8, 2022 General Election. (A22-1418)

In re: The Kittson County Ballot for the
November 8, 2022 General Election. (A22-1426)

O R D E R

Roseau County and Kittson County have each filed a petition under Minn. Stat. § 204B.44(a) (2020), to correct errors on the November 8, 2022, general election ballot.¹ The petitions state that the counties have committed the same errors: ballots in each county for the November 8, 2022, general election failed to include the political party affiliation for federal and state candidates and failed to include the word “incumbent” next to the names of currently serving judicial candidates (incorrect ballots). Roseau County states that it has sent incorrect ballots to absentee voters. Kittson County states that it has sent incorrect ballots to absentee voters and voters who vote by mail. Both counties have received completed incorrect ballots from voters.

Both petitions seek an order that corrects these errors. The petitions request some of the same relief. Both ask for an order that authorizes correction of the ballot and

¹ The cases of *In re: The Roseau County Ballot for the November 8, 2022 General Election*, No. A22-1418, and *In re: The Kittson County Ballot for the November 8, 2022 General Election*, No. A22-1426, are consolidated for decision.

distribution of the corrected ballot. Both want the authority to duplicate and then count completed incorrect ballots received from voters. The petitions, however, differ on whether voters who received incorrect ballots should be sent corrected ballots and if voters who submitted incorrect ballots should be informed that they have the option to spoil their original ballot and submit a corrected ballot.

We directed petitioners to personally serve the petition and other documents on the Minnesota Secretary of State and on the candidates for all state, federal, and judicial offices on the counties' ballots for the November 8, 2022, general election. We also directed petitioners to file statements addressing specific issues. Finally, we invited the Secretary of State and the candidates to respond to the petitions.

Petitioners filed the requested statements. They indicate that petitioners continue to seek different relief from the court.

The Secretary of State filed responses to both petitions. The Secretary of State argues that petitioners should send corrected ballots to all voters who received incorrect ballots. He also suggests petitioners should send written instructions to voters. If the voter has not yet submitted a ballot, the voter should be told to complete the replacement ballot. If the voter has returned an incorrect ballot, the voter should be told of the option to declare the ballot spoiled and receive a replacement ballot. The Secretary of State believes that petitioners should be authorized to duplicate ballots only after informing voters of their right to spoil their original ballot and cast a vote with a corrected ballot. Lastly, the Secretary of State argues for the court to order an exemption from the deadline imposed by Minn. Stat. § 203B.121, subd. 3(a) (2020), to prevent a vote cast on the incorrect ballot from blocking the voter from casting a vote on the corrected ballot.

Several candidates from the Minnesota Democratic-Farmer-Labor Party filed joint responses to the petitions. Their responses are generally supportive of the relief sought by Kittson County. Their response to the Roseau County petition is similar to that of the Secretary of State.

Candidate Travis Johnson filed a response to both petitions. He states that sending multiple ballots to voters might erode voter confidence in election integrity. Instead, he proposes notifying all voters who received incorrect ballots of the error on the ballot, giving them the omitted information, and informing them that they have the option to spoil their original ballot and cast a new one with a corrected ballot. Candidate Johnson further asks that counties be prohibited from duplicating ballots but that they be ordered to accept all incorrect ballots submitted by voters unless that voter spoils their original ballot and submits a corrected ballot.

It is undisputed that the November 8, 2022, general election ballot used by voters in Roseau and Kittson Counties omits information required by Minnesota law. The county auditor must prepare the ballot for a general election by including “[t]he names of the candidates for all state and federal offices” and “all judicial offices” to be voted on at that election. Minn. Stat. § 204D.11, subd. 1 (2020). “[T]he name of the political party or the political principle of each candidate for partisan office shall be printed” on the general election ballot. Minn. Stat. § 204B.36, subd. 2 (Supp. 2021); *see also* Minn. Stat. § 200.02, subd. 27 (2020) (defining “[p]artisan offices”). If a judicial candidate is currently a Minnesota judge or justice, “the word ‘incumbent’ shall be printed after that judge’s name as a candidate.” Minn. Stat. § 204B.36, subd. 5 (2020).

Absentee and mail voting for the general election on November 8, 2022, began in Minnesota on September 23, 2022. *See* Minn. Stat. § 204B.35, subd. 4 (2020) (stating that absentee ballots must be available 46 days before an election); Minn. Stat. § 204B.45, subd. 2 (2020) (stating that ballots must be mailed to voters who vote by mail “[n]ot more than 46 days nor later than 14 days before a regularly scheduled election”).

We are authorized to correct an “error in preparing or printing any official ballot.” Minn. Stat. § 204B.44(a)(2). Ballot boards may duplicate defective absentee ballots and defective mail ballots. *See* Minn. Stat. § 203B.121, subd. 4 (Supp. 2021) (allowing accepted absentee ballots to be “duplicated as needed in the manner provided in section 206.86, subdivision 5”); Minn. Stat. § 204B.45, subd. 2 (2020) (allowing accepted mail ballots to be “duplicated as needed in the manner provided by section 206.86, subdivision 5”); Minn. Stat. § 206.86, subd. 5 (2020) (explaining that “a duplicate ballot card” is made for a “defective ballot card”). The appropriate path to correcting the ballot errors here is set forth in this order.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Petitioners Roseau County and Kittson County shall correct the ballot for the November 8, 2022, general election by printing the name of the political party or the political principle of each candidate for partisan office on the ballot and by printing the word “incumbent” after the name of any currently serving judge who is seeking election to judicial office. Petitioners shall make the corrected ballot available to all voters who request an absentee ballot or engage in in-person absentee voting after the date of this order

and to people who vote in person on November 8, 2022. Roseau County shall make the corrected ballot available to all voters who vote by mail.

2. Petitioners shall mail the corrected ballot identified in paragraph 1 of this order to all voters who have received an incorrect ballot but have not yet returned a completed ballot as of the date of this order.

3. Petitioners shall send a letter, along with the corrected ballot, to the voters identified in paragraph 2 of this order. This letter must inform these voters: (1) of the errors that occurred on their ballot; (2) that pursuant to an order of the Minnesota Supreme Court, they are receiving a corrected ballot; (3) that county records indicate that no ballot has yet been returned by the voter; (4) that if the voter has not yet mailed or returned their ballot, they should discard the original ballot and vote the replacement ballot for all offices using the enclosed envelope; and (5) how to contact the county if the voter has questions or wants additional information. When sending any letter required by this order, petitioners shall follow all applicable law and county policies regarding communications in languages other than English.

4. Petitioners shall send a letter to any absentee or mail voter who submits an incorrect ballot. This letter must inform these voters: (1) of the ballot errors; (2) that the letter is sent as required by order of the Minnesota Supreme Court; (3) that county records indicate that the incorrect ballot sent by the county has been returned by the voter; (4) that the voter has the option of calling the county at a specified telephone number to declare the original ballot spoiled and receive a corrected replacement ballot including the omitted information; and (5) of the processes outlined in paragraphs 5 and 6 of this order related to ballot counting.

5. If a voter chooses to spoil the incorrect ballot, petitioners shall issue the voter a replacement ballot identified in paragraph 1 of this order. The incorrect ballot will be treated as a spoiled ballot and will not be counted. The voter may use the replacement ballot to cast votes for all of the offices on the ballot. The replacement ballot will be counted in the ordinary course of business.

6. If a voter who submitted an incorrect ballot chooses not to spoil their ballot, all of the voter's selections for each office on the incorrect ballot will be copied onto a corrected replacement ballot and will be counted.

7. For purposes of the deadline to spoil absentee ballots for any voter who spoils an absentee ballot and submits a corrected ballot pursuant to this order, *see* Minn. Stat. § 203B.121, subd. 3(a); Minn. R. 8210.2600, subp. 1 (2021), the date the absentee ballot is accepted is the date the corrected ballot is accepted.

8. Paragraph 5 of our October 10, 2022, order in the Roseau County case and paragraph 5 of our October 11, 2022, order in the Kittson County case are vacated. Petitioners shall resume delivery of ballots to voters after they receive corrected ballots from their vendors.

Dated: October 17, 2022

BY THE COURT:



Lorie S. Gildea
Chief Justice

HUDSON, MOORE, III, JJ., took no part in the consideration or decisions in these cases.