



Mary Kiffmeyer

MINNESOTA SECRETARY OF STATE

For Release:
25 October 2002

Contact: Kent Kaiser
651-297-8919

Secretary of State Mary Kiffmeyer Explains What Happens to Ballot Upon Death of Sen. Wellstone

ST PAUL—Secretary of State Mary Kiffmeyer in a press conference this evening explained the basic process of what happens to the general election ballot upon the untimely death of Senator Paul Wellstone.

"To begin with, as a mother and grandmother, my heart goes out to all the friends and family of the Wellstone family and the other people on that plane today," said Kiffmeyer. "I know I join with all Minnesotans when I say how sorry we are for all of them. Our hearts and prayers go out to them during this time of tragedy and need."

"I know a great deal of questions are being asked with regard to the upcoming elections," said Kiffmeyer. "To begin with, it is important to know that Minnesota is blessed with thousands of election administrators and judges eager to do right by Senator Wellstone and Minnesota law. It is these hard-working folks who, in this time of tragedy, will rise to the occasion and provide the citizens of Minnesota with an election fully in keeping with this tradition."

"With that backdrop, here are some important points. The two matters before us: a vacancy in the office of US Senator and a vacancy in the nomination for this office for the November 5th election. Regarding the first point concerning the vacancy in the office of US Senator, Article 1, Section 3 and the 17th Amendment of the Constitution of the United States, the Governor is authorized to make a temporary appointment of a United States Senator to represent Minnesota in Congress," explained Kiffmeyer. "Therefore, this is a matter to be dealt with by Governor Ventura."

"On the second point, concerning the vacancy in the nomination for US Senator for the November 5th election, Minnesota Statute 204B.13 provides that if a vacancy occurs in nomination the major political party may fill this vacancy," said Kiffmeyer. "For this reason, and in this circumstance, the matter concerning the filing of a vacancy is left to the direction of the Democratic-Farmer-Labor Party, provided that its governing rules provide for such a procedure."

"However, when the DFL Party does designate a candidate, Minnesota Statute 204B.41 does provide for the production of an Official Supplemental Ballot. The ballot will contain the title of the office and the names of ALL the candidates nominated for the office. On election day, Supplemental Ballots will be given to the voter, along with the regular ballot for voting," explained Kiffmeyer.

"I am confident that it will be done accurately and in accordance with the law. Again, let me say that the people of Minnesota should be reassured that we will have an election November 5. This election will be conducted in a manner consistent with our tradition and practice of excellence," said Kiffmeyer.

"And, again, my sincerest condolences to Senator Wellstone's family," concluded Kiffmeyer.

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MINNESOTA SECRETARY OF STATE

For Release:
26 October 2002

Contact: Kent Kaiser
651-297-8919

Secretary of State Mary Kiffmeyer Explains “Supplemental” Ballot, Options for Absentee Voters Upon Death of Senator Wellstone

SAINT PAUL—Secretary of State Mary Kiffmeyer in a press conference today explained the “supplemental” ballot and options for absentee voters upon the death of US Senator Paul Wellstone.

“The past day has been a challenge for all of us and, again, my deepest sympathy goes out to the friends and family of Paul and Sheila Wellstone,” said Kiffmeyer.

“Our office has received many questions about two subjects that I’d like to address: the ‘Supplemental Ballot’ and the options for absentee voters,” said Kiffmeyer.

Secretary Kiffmeyer explained the following:

1. The **Original Regular Ballot** refers to the ballot containing Paul Wellstone’s name.
2. The **Official Supplemental Ballot** refers to the ballot containing all of the US Senate candidates, including the candidate that the DFL party chooses to fill the current vacancy.
3. The **New Regular Ballot** refers to the two of these together, with the US Senate race blotted out or stricken on the Original Regular Ballot. In other words, on Election Day, voters can expect to be given these two pieces of paper.

“The new supplemental ballots will be produced as soon as a replacement candidate is chosen, and the counties will immediately print them so they are available for Election Day and for absentee balloting,” said Kiffmeyer.

-Continued-

Secretary Kiffmeyer then explained the following points of interest to absentee voters:

- “First of all, if you sent in an absentee ballot, and voted for someone other than Paul Wellstone, then your ballot is just fine and you don’t need to do a thing. Your ballot will count just as you intended it to.
- If you have an absentee ballot in hand and intend to vote for someone other than Paul Wellstone, then you can go ahead and send in that ballot and it will work for you.
- If you have already sent in your absentee ballot and did vote for Paul Wellstone, and you do nothing else, your votes for all of the other races will count just as you intended. (MS 204B.41)
- If you have an absentee ballot in hand and want to wait to learn what the entire array of candidates will be, then you can do that knowing that you always have the option of writing in a name. (Minnesota Statutes 204B.09 subd. 3) You can mail in the ballot, or you may drop it off in person at the county auditor’s office, if you think time might be too tight to use the mail.
- If you have received an absentee ballot and haven’t yet sent it in and want to vote for the person that the DFL Party chooses to fill the vacancy, then you also may
 - a. go to the polls on Election Day to cast a New Regular Ballot. (MS 204B.41)
 - b. go in person to your county auditor’s office prior to Election Day, bringing your original absentee ballot with you to swap for a New Regular Ballot, when they become available.

Note: state law does not allow the New Regular Ballot to be mailed to you. (MS 204B.41)

- If you need to vote absentee between now and Election Day, you will have the opportunity to vote with the New Regular Ballot as soon as they are available following the announcement of the name to the candidate chosen to replace Paul Wellstone on the ballot. Before that, ballots currently in use will continue to be available.
- It will be our direction to the county officials to continue processing absentee ballot requests without delay, knowing that the safeguards of write-in and showing up on Election Day are in place.”

“The county election officials in our state do a great job, and I am confident that voters will be served well-served under the circumstances,” concluded Kiffmeyer.

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Mary Kiffmeyer

MINNESOTA SECRETARY OF STATE

For Release:
27 October 2002

Contact: Kent Kaiser
651-297-8919

Secretary of State Mary Kiffmeyer Responds to DFL Party Concerns About Ballot

SAINT PAUL—Minnesota Secretary of State Mary Kiffmeyer today responded to DFL Party Chair Mike Erlandson's concerns about the official supplemental ballot and absentee ballot process upon the death of Senator Wellstone.

"I understand Minnesota and the DFL Party is grieving during this very tragic circumstance, creating a very complex election situation. We understand having questions about the ballots and the process. That said, I want to assure Minnesotans that the secretary of state's office is proceeding to take every step necessary for a smooth and proper election on November 5th," said Kiffmeyer. "Our first goal is to serve all the voters of Minnesota."

"Let's make it clear, there will be an election on November 5th and election administrators are working to ensure this is so. We are providing instructions to county administrators for the proper administration of the Official Supplemental Ballot," said Kiffmeyer.

"We have received and continue to receive legal advice from Attorney General Hatch," explained Kiffmeyer.

"The Secretary of State is not authorized in law to interfere or stop the absentee process being conducted by the county auditors. This process is currently underway and in accordance with the law. Any delay in this process may disenfranchise voters who wish to use this process in exercising their right to vote—particularly military personnel and college students studying abroad," said Kiffmeyer.

"There is a remedy for voters who have not completed and mailed absentee ballots. The remedy is to write-in their choice for US Senate after the DFL has made their nomination and then mail it in or drop it off at their county auditor's office. Alternatively, those who have mailed in their absentee ballots can go to the polls on Election Day to vote for the candidates of their choice," said Kiffmeyer.

"Regarding the example 'Official Supplemental Ballot,' provided to the media and public yesterday as a sample: it was prepared in accordance with Minnesota laws and rules," explained Kiffmeyer.

"The sample has been provided and the county election administrators who will complete and print the 'Official Supplemental Ballot' when the DFL Party has concluded its process for determining who will fill the vacancy in nomination," said Kiffmeyer.

Information about absentee voting upon the death of Senator Wellstone is available at www.sos.state.mn.us.

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OFFICIAL BALLOT

STATE GENERAL ELECTION BALLOT

_____ COUNTY, MINNESOTA

NOVEMBER 5, 2002

Judge _____

Judge _____

INSTRUCTIONS TO VOTERS


To vote, completely fill in the oval(s) next to your choice(s) like this:

FEDERAL OFFICES	STATE OFFICES	COUNTY OFFICES
UNITED STATES SENATOR VOTE FOR ONE	STATE AUDITOR VOTE FOR ONE	COUNTY ATTORNEY VOTE FOR ONE
	<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> CANDIDATE
	<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> CANDIDATE
	<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> write-in, if any _____
	<input type="radio"/> write-in, if any _____	COUNTY SURVEYOR VOTE FOR ONE
	ATTORNEY GENERAL VOTE FOR ONE	<input type="radio"/> CANDIDATE
UNITED STATES REPRESENTATIVE DISTRICT [NUMBER] VOTE FOR ONE	<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> CANDIDATE
<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> write-in, if any _____
<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> CANDIDATE Party _____	COUNTY QUESTIONS
<input type="radio"/> write-in, if any _____	<input type="radio"/> write-in, if any _____	COUNTY QUESTION [NUMBER]
STATE OFFICES	COUNTY OFFICES	[Body of question printed in upper and lower case letters.]
STATE SENATOR DISTRICT [NUMBER] VOTE FOR ONE	COUNTY COMMISSIONER DISTRICT [NUMBER] VOTE FOR ONE	<input type="radio"/> YES
<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> CANDIDATE	<input type="radio"/> NO
<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> write-in, if any _____	CITY OFFICES [CITY NAME OPTIONAL]
<input type="radio"/> CANDIDATE Party _____	COUNTY AUDITOR VOTE FOR ONE	COUNCIL MEMBER VOTE FOR UP TO TWO
<input type="radio"/> write-in, if any _____	<input type="radio"/> CANDIDATE	<input type="radio"/> CANDIDATE
STATE REPRESENTATIVE DISTRICT [NUMBER] VOTE FOR ONE	<input type="radio"/> CANDIDATE	<input type="radio"/> write-in, if any _____
<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> CANDIDATE	<input type="radio"/> write-in, if any _____
<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> write-in, if any _____	JUDICIAL OFFICES
<input type="radio"/> write-in, if any _____	COUNTY TREASURER VOTE FOR ONE	ASSOCIATE JUSTICE [SEAT NUMBER] SUPREME COURT VOTE FOR ONE
GOVERNOR AND LIEUTENANT GOVERNOR VOTE FOR ONE TEAM	<input type="radio"/> CANDIDATE	<input type="radio"/> CANDIDATE Incumbent
<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> CANDIDATE	<input type="radio"/> CANDIDATE
<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> write-in, if any _____	<input type="radio"/> write-in, if any _____
<input type="radio"/> write-in, if any _____	COUNTY RECORDER VOTE FOR ONE	JUDGE [SEAT NUMBER] COURT OF APPEALS VOTE FOR ONE
SECRETARY OF STATE VOTE FOR ONE	<input type="radio"/> CANDIDATE	<input type="radio"/> CANDIDATE
<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> CANDIDATE	<input type="radio"/> CANDIDATE Incumbent
<input type="radio"/> CANDIDATE Party _____	<input type="radio"/> write-in, if any _____	<input type="radio"/> write-in, if any _____
<input type="radio"/> write-in, if any _____	COUNTY SHERIFF VOTE FOR ONE	JUDGE [SEAT NUMBER] [NUMBER] DISTRICT COURT VOTE FOR ONE
	<input type="radio"/> CANDIDATE	<input type="radio"/> CANDIDATE Incumbent
	<input type="radio"/> CANDIDATE	<input type="radio"/> CANDIDATE
	<input type="radio"/> write-in, if any _____	<input type="radio"/> write-in, if any _____
		_____ Precinct
	VOTE FRONT AND BACK OF BALLOT	

Example "Official Supplemental Ballot" for United States Senator,
November 5, 2002 General Election

OFFICIAL SUPPLEMENTAL BALLOT

COUNTY OF _____
NOVEMBER 5, 2002

 Put an (X) in the square opposite the name of each candidate you wish to vote for.

UNITED STATES SENATOR
VOTE FOR ONE

<input type="checkbox"/>	CANDIDATE Green
<input type="checkbox"/>	CANDIDATE Independence
<input type="checkbox"/>	CANDIDATE Republican
<input type="checkbox"/>	CANDIDATE Democratic-Farmer-Labor
<input type="checkbox"/>	CANDIDATE Constitution
<input type="checkbox"/>	write-in, if any

— The ballot width may be no less than 4" wide. —

(Official Supplemental ballot per M.S. 204B.41, M.S. 204D.11, subd. 1; M.S. 204B.36, .37; M.R. 8250.0100, .1250)

The instructions on the top of the ballot

1. the supplemental ballot is a paper ballot.
2. a ballot with the United States Senate office will follow the guidelines for the White Ballot
3. instructions to the voters for the White Ballot is: "Put an (X) in the square opposite the name of each candidate you wish to vote for." And "VOTE FOR ONE"

1. The supplemental ballot is a paper ballot.

204B.41 Vacancy in nomination; changing ballots.

When a vacancy in nomination occurs through the death or catastrophic illness of a candidate after the 16th day before the general election, the officer in charge of preparing the ballots shall prepare and distribute a sufficient number of separate **paper ballots** which shall be headed with the words "OFFICIAL SUPPLEMENTAL BALLOT." This ballot shall contain the title of the office for which the vacancy in nomination has been filled and the names of all the candidates nominated for that office. **The ballot shall conform to the provisions governing the printing of other official ballots as far as practicable.**

204B.35 Preparation of ballots.

Subdivision 1. **Application.** All ballots for every election shall be prepared in accordance with sections 204B.35 to **204B.44** and chapter 204D, **except for voting machine ballots or as otherwise provided by law.**

2. A ballot with the United States Senate office will follow the guidelines for the White Ballot

204D.13 White ballot; partisan offices.

Subdivision 1. **Order of offices.** The candidates for partisan offices shall be placed on the white ballot in the following order: senator in Congress shall be first; representative in Congress, second; state senator, third; and state representative, fourth. The candidates for state offices shall follow in the order specified by the secretary of state. Candidates for governor and lieutenant governor shall appear so that a single vote may be cast for both offices.

Subd. 2. **Order of political parties.** The first name printed for each partisan office on the white ballot shall be that of the candidate of the major political party that received the smallest average number of votes at the last state general election. The succeeding names shall be those of the candidates of the other major political parties that received a succeeding higher average number of votes respectively. For the purposes of this subdivision, the average number of votes of a major political party shall be computed by dividing the total number of votes counted for all of the party's candidates for statewide office at the state general election by the number of those candidates at the election.

Subd. 3. **Nominees by petition; placement on ballot.**

The names of candidates nominated by petition for a partisan office voted on at the state general election shall be placed on the white ballot after the names of the candidates for that office who were nominated at the state primary. Prior to the state primary, the secretary of state

shall determine by lot the order of candidates nominated by petition. The drawing of lots must be by political party or principle. The political party or political principle of the candidate as stated on the petition shall be placed after the name of a candidate nominated by petition. The word "nonpartisan" shall not be used to designate any partisan candidate whose name is placed on the white ballot by nominating petition.

8250.0100 DEFINITION OF WHITE BALLOT.

The "white ballot" is the ballot used at general elections and is the ballot on which are printed the names of the candidates appearing on the presidential ballot and those candidates nominated for the offices of United States senator, United States representative, state senator, state representative, governor and lieutenant governor, secretary of state, state auditor, state treasurer, and attorney general.

3. instructions to the voters for the White Ballot is: "Put an (X) in the square opposite the name of each candidate you wish to vote for." **And "VOTE FOR ONE"**

204B.36 Ballots; form.

Subdivision 1. **Type.** All ballots shall be printed with black ink on paper of sufficient thickness to prevent the printing from being discernible from the back. All ballots of the same color shall be substantially uniform in style of printing, size, thickness and shade of color. When the ballots of a particular color vary in shade, those used in any one precinct shall be of the same shade. All ballots shall be printed in easily readable type with suitable lines dividing candidates, offices, instructions and other matter printed on ballots. The name of each candidate shall be printed in capital letters. The same type shall be used for the names of all candidates on the same ballot.

Subd. 2. **Candidates and offices.** The name of each candidate shall be printed at a right angle to the length of the ballot. At a general election the name of the political party or the political principle of each candidate for partisan office shall be printed above or below the name of the candidate. The name of a political party or a political principle shall be printed in capital and lower case letters of the same type, with the capital letters at least one-half the height of the capital letters used for names of the candidates. At a general election, blank lines containing the words "write-in, if any" shall be printed below the name of the last candidate for each office, or below the title of the office if no candidate has filed for that office, so that a voter may write in the names of individuals whose names are not on the ballot. One blank line shall be printed for each officer of that kind to be elected. At a primary election, no blank lines shall be provided for writing in the names of individuals whose names do not appear on the primary ballot.

On the left side of the ballot at the same level with the name of each candidate and each blank line shall be printed a square in which the voter may designate a vote by a mark (X). Each square shall be the same size. Above the first name on each ballot shall be printed the words, "Put an (X) in the square opposite the name of each candidate you wish to vote for." At the same level with these words and directly above the squares shall be printed a small arrow pointing downward. Directly underneath the official title of each office shall be printed the words "Vote for one" or "Vote for up to ..." (any greater number to be elected).

8250.0300 FORM OF BALLOTS.

The white ballot shall be printed with black ink on white paper as close as practicable to 30 pound. The ballot shall be no less than four inches wide and printed so as to be easily legible, with suitable lines for divisions between candidates, offices, instructions, and other matter proper to be printed on the ballot. The auditor shall prepare the ballots in such a manner as to enable the voter to understand what candidates have been nominated and how many are to be elected to each office and to designate the voter's choice easily and accurately.

STAT AUTH: MS s [204D.11](#)

8250.0400 TOP OF BALLOT.

Under the heading of the white ballot and the name of the county shall be printed in upper and lower case letters the words "Put an (X) in the square opposite the name of each candidate you wish to vote for." On the left side of the words and directly above the squares in which a voter marks choices shall be printed a small arrow pointing downward.

8250.0700 NUMBER OF CANDIDATES.

Directly underneath the title and identification of each office shall be printed in uppercase letters the words "VOTE FOR ONE" or more, according to the number to be elected.

STAT AUTH: MS s [204D.11](#)

8250.1200 TYPE STYLES AND SIZES.

The words "Put an (X) in the square opposite the name of each candidate you wish to vote for" must be printed in upper and lower case in as large as practicable but no smaller than 8-point bold type.

The words "STATE GENERAL ELECTION BALLOT" must be printed in upper case in as large as practicable but no smaller than 18-point type.

The office and its identification must be printed in upper case in as large as practicable but no smaller than 10-point bold type.

The words "VOTE FOR ONE" must be printed in upper case in as large as practicable but no smaller than 8-point bold type.

The names of the candidates must be printed in upper case in as large as practicable but no smaller than 8-point bold type.

The party designation or political principle must be printed in upper and lower case in as large as practicable but no smaller than 8-point bold type.

The words "OFFICIAL BALLOT" on the back of the ballot must be printed in upper case in as large as practicable but no smaller than 18-point bold type, the date in upper case in as large as practicable but no smaller than 8-point type, and the word "Judge" in upper and lower case in as large as practicable but no smaller than 10-point type.

STAT AUTH: MS s [204D.11](#); [206.57](#)

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To: Interested Persons

From: Peter S. Wattson, Senate Counsel *PW*
651/296-3812

Subj: Filling Wellstone Vacancy

This memorandum explains the procedure for filling the vacancies created by the untimely death of U.S. Senator Paul Wellstone.

The death of an incumbent creates a vacancy in the office. Minn. Stat. § 351.02 (1).

A vacancy in the office of U.S. senator may be filled by the Governor making a temporary appointment of a person to hold office until a successor is elected at the regular election held November 5. Minn. Stat. § 204D.28, subd. 11. The person elected at the regular election succeeds to the office for the remainder of the unexpired term. Minn. Stat. § 204D.28, subd. 12.

The vacancy in nomination for the office of U.S. senator to be elected November 5 may be filled by the DFL Party under Minn. Stat. § 204B.13, subd. 2, by filing a nomination certificate signed and sworn to by the party chair and secretary within seven days after the vacancy occurs but not later than four days before the general election. Seven days after today would be Friday, November 1, which is also the fourth day before the general election. To provide the full four days before the general election, I believe the deadline for filing the nomination certificate would be Thursday, October 31.

The ballot procedure for the November 5 election is set forth in Minn. Stat. § 204B.41:

When a vacancy in nomination occurs through the death or catastrophic illness of a candidate after the 16th day before the general election, the officer in charge of preparing the ballots shall prepare and distribute a sufficient number of separate paper ballots which shall be

Interested Persons
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headed with the words "OFFICIAL SUPPLEMENTAL BALLOT." This ballot shall contain the title of the office *for which the vacancy in nomination has been filled* and the names of all the candidates nominated for that office. The ballot shall conform to the provisions governing the printing of other official ballots as far as practicable. The title of the office and the names of the candidates for that office shall be blotted out or stricken from the regular ballots by the election judges. The official supplemental ballot shall be given to each voter when the voter is given the regular ballot or is directed to the voting machine. Regular ballots shall not be changed nor shall official supplemental ballots be prepared as provided in this section during the three calendar days before an election. Absentee ballots that have been mailed prior to the preparation of official supplemental ballots shall be counted in the same manner as if the vacancy had not occurred. Official supplemental ballots shall not be mailed to absent voters to whom ballots were mailed before the official supplemental ballots were prepared. (Emphasis added.)

Note that this supplemental ballot applies to an office "for which the vacancy in nomination has been filled." I conclude that, if the vacancy in nomination is *not* filled by the deadline of October 31, there should be no supplemental ballot prepared and "the title of the office and the names of the candidates for that office" should not be blotted out or stricken from the regular ballots.

If the name of Paul Wellstone were to remain on the November 5 ballot and he be elected, there would be created a vacancy in the term of office that, under the 20th Amendment to the U.S. Constitution, begins on January 3, 2003. That vacancy would be filled by the Governor under Minn. Stat. § 204D.28, subd. 11, until a successor was elected and qualified at a special election. This appointment would be made presumably no later than January 3, 2002, three days before the new Governor-elect was sworn in on "the first Monday in January" under Minn. Const. art. VII, § 7, or January 6, 2003.

Minn. Stat. § 204D.28, subd. 6, provides that the special election would be held "at the next November election if the vacancy occurs at least six weeks before the regular state primary preceding that election." "November election" is defined as either the state general election in even-numbered years or "the first Tuesday after the first Monday in November of odd-numbered years." Minn. Stat. § 204D.28, subd. 4. The "regular state primary" is defined as either the state primary before the state general election or "a primary held four weeks before the first Tuesday after the first Monday in November of odd-numbered years." Minn. Stat. § 204D.28, subd. 5. This vacancy would be occurring on January 3, 2003, which is more than six weeks before "four weeks before the first Tuesday after the first Monday in November" of 2003, so I conclude that the special election would be held in November 2003 for the five years and two months remaining in the term.

PSW:cs
Attachments

204B.13 VACANCY IN NOMINATION.

Subdivision 1. **Death or withdrawal.** A vacancy in nomination may be filled in the manner provided by this section. A vacancy in nomination exists when:

(a) A major political party candidate or nonpartisan candidate who was nominated at a primary dies or files an affidavit of withdrawal as provided in section 204B.12, subdivision 2a; or

(b) A candidate for a nonpartisan office, for which one or two candidates filed, dies or files an affidavit of withdrawal as provided in section 204B.12, subdivision 1.

Subd. 2. **Partisan office; nomination by party.** (a) A vacancy in nomination for partisan office shall be filled as provided in this subdivision. A major political party has the authority to fill a vacancy in nomination of that party's candidate by filing a nomination certificate with the same official who received the affidavits of candidacy for that office.

(b) A major political party may provide in its governing rules a procedure, including designation of an appropriate committee, to fill vacancies in nomination for all offices elected statewide. The nomination certificate shall be prepared under the direction of and executed by the chair and secretary of the political party and filed within seven days after the vacancy in nomination occurs or before the 14th day before the general election, whichever is sooner. If the vacancy in nomination occurs through the candidate's death or catastrophic illness, the nomination certificate must be filed within seven days after the vacancy in nomination occurs but no later than four days before the general election. The chair and secretary when filing the certificate shall attach an affidavit stating that the newly nominated candidate has been selected under the rules of the party and that the individuals signing the certificate and making the affidavit are the chair and secretary of the party.

Subd. 3. Repealed, 1991 c 320 s 16

Subd. 4. **Nonpartisan office; filling vacancy by nominating petitions.** A vacancy in nomination in a nonpartisan office may be filled by nominating petition in the manner provided in sections 204B.06 to 204B.09. The petition shall be filed within one week after the vacancy in nomination occurs, but not later than four calendar days before the election.

An eligible voter is eligible to sign a nominating petition to fill a vacancy in nomination without regard to whether that eligible voter intends to vote or did vote for any candidate for that office at the primary or signed other nominating petitions for candidates for that office.

Subd. 5. **Candidates for governor and lieutenant governor.** (a) If a vacancy in nomination occurs in the race for governor, the candidate for governor determined under this section shall select the candidate for lieutenant governor. If a vacancy in nomination occurs in the race for lieutenant governor, due to a vacancy in nomination for governor or due to the withdrawal or death of the candidate for lieutenant governor, the candidate for governor shall select the candidate for lieutenant governor as provided in this subdivision.

(b) For a vacancy in nomination that occurs before the 16th day before the general election, the name of the lieutenant governor candidate must be submitted by the governor candidate to the filing officer within seven days after the vacancy occurs, or before the 14th day before the general election, whichever is sooner. If the vacancy in nomination occurs through the death or catastrophic illness of the candidate for lieutenant governor, the candidate for governor shall submit the name of the new lieutenant governor candidate to the secretary of state within seven days after the vacancy in nomination occurs but no later than four days before the general election. If the vacancy in nomination occurs through the death or catastrophic illness of the candidate for governor, the new candidate for governor shall submit the name of the lieutenant governor candidate within seven days after the vacancy in nomination for governor is filled under section 204B.13, subdivision 2, but no later than four days before the general election.

Subd. 6. **Vacancy after deadline.** If a candidate withdraws after the 16th day before the general election but before four days before the general election, the secretary of state shall instruct the election judges to strike the name of the withdrawn candidate from the general election ballot and shall substitute no other candidate's name. Filing officers may not accept a nomination certificate for filing to fill a vacancy in nomination resulting from the filing of an affidavit of withdrawal by a candidate after the 14th day before the general election. Vacancies occurring through death or catastrophic illness after the 16th day before the general election are governed by section 204B.41.

HIST: 1981 c 29 art 4 s 13; 1986 c 444; 1991 c 320 s 8-12

204D.28 UNITED STATES SENATE VACANCY; MANNER OF FILLING.

Subdivision 1. **Scope of section.** Every vacancy in the office of United States senator shall be filled in the manner provided in this section.

Subd. 2. **Definitions.** The definitions in subdivisions 3 to 5 apply to this section.

Subd. 3. **Vacancy.** "Vacancy" means a vacancy in the office of United States senator.

Subd. 4. **November election.** "November election" means:

- (a) The state general election in even-numbered years; or
- (b) The first Tuesday after the first Monday in November of odd-numbered years.

Subd. 5. **Regular state primary.** "Regular state primary" means:

- (a) The state primary at which candidates are nominated for offices elected at the state general election; or
- (b) A primary held four weeks before the first Tuesday after the first Monday in November of odd-numbered years.

Subd. 6. **Special election required; exception; when held.** Every vacancy shall be filled for the remainder of the term by a special election held pursuant to this subdivision; except that no special election shall be held in the year before the term expires.

The special election shall be held at the next November election if the vacancy occurs at least six weeks before the regular state primary preceding that election. If the vacancy occurs less than six weeks before the regular state primary preceding the next November election, the special election shall be held at the second November election after the vacancy occurs.

Subd. 7. **Special primary; when held.** A special primary shall be held at the regular state primary preceding the November election at which the special election is held.

Subd. 8. **Notice of special election.** The secretary of state shall issue an official notice of any special election required to be held pursuant to this section not later than ten weeks before the special primary, except that if the vacancy occurs ten weeks or less before the special primary, the secretary of state shall issue the notice no later than two days after the vacancy occurs. The notice shall state the office to be filled, the opening and closing dates for filing of candidacy and the dates of the special primary and special election. For the purposes of those provisions of sections 204D.17 to 204D.27 that apply generally to special elections, this notice shall be used in place of the writ of the governor.

Subd. 9. **Filing by candidates.** The time for filing of affidavits and nominating petitions for candidates to fill a vacancy at a special election shall open six weeks before the special primary or on the day the secretary of state issues notice of the special election, whichever occurs later. Filings shall close four weeks before the special primary.

Subd. 10. **United States senator; candidates; designation of term.** When the names of candidates for both offices of United States senator are required to be placed on the same ballot, the expiration date of the term of each office shall be printed on the ballot opposite the name of each candidate for nomination or election to that office.

Subd. 11. **Temporary appointment.** The governor may make a temporary appointment to fill any vacancy. An appointee shall hold office until a successor is elected and qualified at a special election or until a successor is elected pursuant to subdivision 12.

Subd. 12. **Succession by regularly elected senator.** An individual who is elected to the office of United States senator for a regular six-year term when the office is vacant or is filled by an individual appointed pursuant to subdivision 11, shall also succeed to the office for the remainder of the unexpired term.

Subd. 13. **Application of other laws.** Except as otherwise provided in this section, all of the provisions of sections 204D.22 to 204D.27 that apply generally to other special elections apply to a special election held pursuant to this section.

October 28, 2002

To: Interested Persons

From: Peter S. Wattson, Senate Counsel
651/296-3812

Subj: Wellstone Vacancy - Precedent from 1990

As you may recall, the last time Minnesota had to fill a vacancy in nomination in a major contest was in 1990, when Jon Grunseth withdrew from the governor's race just eight days before the general election. When the Independent-Republican Party failed to agree on a candidate to fill the vacancy in nomination, Secretary of State Joan Grove prepared a supplemental ballot under Minn. Stat. § 204B.41 with the names of Arne Carlson and Joannell Dyrstad on it. I don't know the reason she gave for preparing the supplemental ballot rather than leaving Mr. Grunseth's name on it, but I do recall that her reason for choosing their names to put on the ballot was that they had finished second in the state primary.

Mr. Grunseth's lieutenant governor candidate, Sharon K. Clark, filed a petition with the Minnesota Supreme Court to compel the Secretary of State to leave her name on the ballot. On November 1, 1990, the Thursday before the general election, the Supreme Court denied her petition, saying "The Secretary of State did not err in deciding to place on the ballot as the Independent-Republican entry for governor and lieutenant governor the names of Arne Carlson and Joannell Dyrstad." *Clark v. Grove*, 461 N.W.2d 385 (Minn. 1990).

The laws on filling a vacancy in nomination, Minn. Stat. §§ 204B.13 and 204B.41, were amended by Laws 1991, ch. 320, to address the problems that had occurred. One problem that was not addressed was what happens when the major political party fails to certify the name of a candidate to fill the vacancy before the deadline.

The portion of Minn. Stat. § 204B.13, subd. 2, that formerly said, "A vacancy in nomination of a major political party may be filled . . ." was amended to read, "A vacancy in nomination for partisan office shall be filled as provided in this subdivision. A major political party has the

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authority to fill” Both before and after 1990, the major political power was given the authority to fill the vacancy but was not specifically mandated to do so.

No language was added to specify what happens when the major political party fails to meet the deadline. No change was made in the portion of Minn. Stat. § 204B.41 that says that the supplemental ballot “shall contain the title of the office *for which the vacancy in nomination has been filled*” (Emphasis added.) We are left with the precedent of what the Secretary of State did in 1990, which was to prepare a supplemental ballot with the name of the candidate who finished second in the primary. The Supreme Court ruled that she “did not err” in doing so.

Therefore, although I believe the proper reading of the statute would be for the Secretary of State not to prepare a supplemental ballot if the DFL Party does not certify the name of a candidate to fill the vacancy in nomination by October 31, her decision to prepare a supplemental ballot with the name of Dick Franson (who finished second to Paul Wellstone in the primary) on it would be supported by the precedent of 1990.

PSW

Attachments

461 N.W.2d 385
(Cite as: 461 N.W.2d 385)

C

Supreme Court of Minnesota.

Sharon K. CLARK, Petitioner,

v.

Joan Anderson GROWE, Secretary of State of the
State of Minnesota, Respondent.

No. C9-90-2346.

Nov. 1, 1990.

Following withdrawal of gubernatorial candidate, candidate for office of lieutenant governor brought petition to compel Secretary of State to place her name on ballot. The Supreme Court, Wahl, J., held that petitioner was not entitled to have her name on ballot.

Petition denied.

Popovich, C.J., filed dissenting opinion in which Yetka, J., joined.

West Headnotes

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Following withdrawal of gubernatorial candidate, candidate for office of lieutenant governor was not entitled to have her name on ballot, despite contention that Secretary of State had no authority to accept less than joint withdrawal of both candidates. M.S.A. Const. Art. 5, § 1; M.S.A. § 204B.13.

*386 Mark Briol, Minneapolis, on behalf of petitioner Clark.

John Tunheim, Chief Deputy Atty. Gen., on behalf of respondent Secretary of State.

Bruce Willis, Minneapolis, on behalf of Arne Carlson for Governor Volunteer Committee.

ORDER

The above-entitled matter came on for hearing before the court sitting en banc on Thursday, November 1, 1990 on the petition of Sharon K. Clark for relief pursuant to Minn.Stat. § 204B.44(d) (1988), alleging

that the respondent Joan Anderson Growe, Secretary of State erred in failing to place petitioner's name on the ballot as the Independent-Republican candidate for the office of lieutenant governor in the general election scheduled for November 6, 1990. Appearances at the hearing were as follows: Mark Briol on behalf of the petitioner Clark; John Tunheim, Chief Deputy Attorney General on behalf of the respondent Secretary of State; and Bruce Willis on behalf of Arne Carlson for Governor Volunteer Committee.

WHEREAS, the Secretary of State has advised the parties and the court that she intends to place on the ballot as the Independent-Republican candidates for governor and lieutenant governor the team of Arne Carlson and Joanel Dyrstad pursuant to Minn. Const. art. V, § 1 and Minn.Stat. § 204B.13 (1988); and

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Sharon K. Clark to compel the Secretary of State to place her name on the ballot as the Independent- Republican candidate for lieutenant governor in the general election be, and the same is, denied. The Secretary of State did not err in deciding to place on the ballot as the Independent-Republican entry for governor and lieutenant governor the names of Arne Carlson and Joanel Dyrstad.

POPOVICH, C.J., and YETKA, J. dissent.

POPOVICH, Chief Justice, dissenting.

I would require the Independent-Republican party to fulfill the basic duty owed to its members: providing nominees for office. Avoiding its duty and requiring the court to settle the political differences within that party is disrespectful of the role of the judiciary and a misuse of the judicial process. I disagree that the I-R party does not have an appropriate committee to decide this matter. By statute the administration of party affairs is vested in the state executive committee:

The state executive committee of the party shall have charge of the administration of the party's affairs, subject to the direction and control of the state convention and the state central committee.

Minn.Stat. § 202A.12 (1988). This statutory language is replicated exactly in the By-Laws of the Independent Republican Party. The naming of a candidate to fill an unexpected vacancy in the nomination surely constitutes a "party affair" and should not be delegated to this court. In short, nothing in the I-R constitution or by-laws limits the executive committee's power to act under unforeseen circumstances such as these. In an analogous situation, the Attorney General opined that the party should fill the vacancy and nominate a person. *387 Op. Att'y Gen. No. 47, at 96-99 (Sept. 22, 1948).

Under our constitution, governor and lieutenant governor are chosen by a single vote applying to both offices. Minn. Const. art. 5 § 1; Minn.Stat. § 204D.13, subd. 1 (1988). Under our statutes, candidates for governor and lieutenant governor must file their affidavits of candidacy jointly. Minn.Stat. § 204B.06, subd. 7 (1988). Voters are even instructed that they are to vote for "one team" in a gubernatorial election. Minn.Stat. § 206.61, subd. 7 (1988). It follows then that just as the Secretary of State cannot accept a filing for governor without the corresponding filing for lieutenant governor, the Secretary of State should not accept the withdrawal by only one half of a gubernatorial ticket. Here, only the candidate for governor has offered to withdraw. The Secretary of State had no authority to accept anything less than a joint withdrawal of both candidates. Accordingly, the attempted withdrawal by Grunseth was invalid, and logically, Grunseth and Clark remain the I-R nominees. By improperly accepting that withdrawal, the Secretary of State has allowed an apparent vacancy in the governor slot. Nominee Clark did not withdraw, however, and therefore there is no vacancy to be filled regarding the nomination for lieutenant governor.

The majority apparently believes the "team" concept embodied by our constitution eliminates both candidates when only one requests withdrawal and the other does not consent to withdrawal. The inevitable result of this reasoning is that an incumbent governor could not appear on the ballot if the lieutenant governor withdrew at the last minute. Doubtless, the legislature could not have intended such an unreasonable and absurd result. See Minn.Stat. § 645.17 (1988). Even if the governorship is popularly perceived as the dominant office in a gubernatorial election, that is no justification for ignoring the constitutional delineation of a separate office for the lieutenant governor, an office having specific duties under the law. In fact, the Secretary of State even issued a separate certificate of nomination to Sharon Clark.

The intent of the voters may be the only principle guiding the determination of this unfortunate case. In the primary election, 169,000 people voted for the Grunseth/Clark team, giving them the I-R nomination. This court cannot disregard those votes, nor should we decide a political matter that is wholly outside the realm of judicial expertise. The best this court can hope to do is to give effect to the will expressed by those voters who have selected Sharon Clark as the party nominee for lieutenant governor. While logically Grunseth and Clark should remain on the ballot, I would require the Secretary of State to at least include Sharon Clark on the ballot as the I-R nominee for lieutenant governor.

YETKA, Justice.

I join in the dissent of Chief Justice Popovich.

461 N.W.2d 385

END OF DOCUMENT

Minn. Stat. § 204B.13 (1990)

Laws 1991, c. 320, §§ 8 to 12 rewrote subs. 1 and 2; in subd. 4 substituted "A vacancy in nomination in a nonpartisan office" for "If a vacancy in nomination cannot be filled pursuant to subdivision 2 or 3, the vacancy"; and added subs. 5 and 6 regarding candidates for governor and lieutenant governor and vacancies after the deadline. Prior to revision subs. 1 and 2 read:

"Subdivision 1. Death or withdrawal. A vacancy in nomination may be filled in the manner provided by this section. A vacancy in nomination exists when:

"(a) A major political party candidate or nonpartisan candidate who was nominated at a primary dies, withdraws, or for any other reason ceases to be the nominated candidate for that office; or

"(b) A candidate for a nonpartisan office, for which one or two candidates filed, dies or withdraws after the last day for filing for that office.

"Subd. 2. Partisan office; nomination by party committee. A vacancy in nomination of a major political party may be filled by filing a nomination certificate not later than four days before the general election with the same official who received the affidavits of candidacy for that office.

"The nomination certificate shall be prepared under the direction of and executed by the chair and secretary of the proper committee of that political party. The chair and secretary when filing the certificate shall attach an affidavit stating that the newly nominated candidate has been selected by that committee and that the individuals signing the certificate and making the affidavit are the chair and secretary of the committee."

Laws 1991, c. 320, § 16 repealed subd. 3 providing for the filling of vacancies in nomination of major political parties when there is no committee to do so under subd. 2.

Minn. Stat. § 204B.41 (1990)

Laws 1991, c. 320, § 13 substituted "When a vacancy in nomination occurs through the death or catastrophic illness of a candidate after the 16th day before the general election" for "When a vacancy in nomination is filled pursuant to section 204B.13, after the ballots have been printed".