

STATE OF MINNESOTA
IN SUPREME COURT
A22-1351



In re: 2022 General Election Ballot for Minnesota
House of Representatives District 67A.

O R D E R

On September 27, 2022, the Ramsey County Elections Manager filed a petition under Minn. Stat. § 204B.44(a) (2020), to correct an error on the November 8, 2022, general election ballot. The petition states that due to a clerical error, ballots in Ramsey County incorrectly list Beverly Peterson, and not Scott Hesselgrave, as the Republican Party candidate for Minnesota House District 67A (incorrect ballot). According to the petition, at least 960 of these incorrect ballots have been issued as absentee ballots to voters; at least 13 of those absentee ballots have been returned to the Ramsey County Elections Office. Petitioner seeks an order authorizing: 1) correction of the ballot for House District 67A, 2) distribution of the corrected ballot, 3) procedures for notifying voters who have already submitted an absentee ballot with this error of the option to declare their original ballot spoiled and receive a replacement ballot, and 4) procedures for counting these voters' ballots, depending on whether or not they chose to spoil their original ballot. These procedures include creating replacement ballots if the voter chooses not to spoil their original ballot.

In an order filed on September 28, 2022, we directed petitioner to serve the petition and our order on the Minnesota Secretary of State and to personally serve those same documents on the candidates for House District 67A. We also directed petitioner to file a memorandum addressing, in part, whether absentee voters who have received a copy of the incorrect ballot but have not yet returned a completed ballot should be sent a corrected ballot and clarifying the relief petitioner sought with respect to the notification he asked to send voters who had already submitted absentee ballots with the error. Finally, we invited the Secretary of State and the candidates to respond to the petition.

Petitioner filed the required memorandum. In it, he agrees that absentee voters who have received an incorrect ballot but have not yet returned a completed ballot should be sent a corrected ballot. He also clarifies what information should be included with the notification he asked to send to voters who had already submitted absentee ballots with the error. Along with his memorandum, petitioner provided copies of two letters he proposes to send to absentee voters who have received an incorrect ballot, Exhibit A and Exhibit B.

The Secretary of State and candidate Liz Lee filed responses to the petition. The Secretary of State indicates that petitioner's answers to the questions in our prior order are correct to the best of his knowledge. Candidate Lee agrees with petitioner's plan to remedy the ballot error but suggests minor changes to it.

It is undisputed that the November 8, 2022, general election ballot used by voters in Ramsey County does not list the correct Republican Party candidate for House District 67A. The Republican Party of Minnesota had a vacancy in nomination for the November 8, 2022, general election because its candidate for Minnesota House District 67A, Beverly

Peterson, died in early August 2022. *See* Minn. Stat. § 204B.13, subd. 1 (2020) (defining a vacancy in nomination). On August 29, 2022, the Minnesota Secretary of State sent the Ramsey County Elections Office a certificate of nomination; the Republican Party had nominated Scott Hesselgrave to replace Beverly Peterson as its candidate for Minnesota House District 67A in the November 8, 2022, general election. *See* Minn. Stat. § 204B.13, subd. 2(a)–(b) (2020) (authorizing a major political party to nominate a new candidate if there is “a vacancy in nomination for partisan office that occurs on or before the 79th day before the general election”). Under applicable law, “[t]he name of the candidate nominated by the party” to fill such a vacancy in nomination “must appear on the general election ballot.” *Id.*, subd. 2(b). But Ramsey County ballots incorrectly list Beverly Peterson, and not Scott Hesselgrave, as the Republican Party candidate for Minnesota House District 67A.

We are authorized to correct an error in the “printing of the name . . . of any candidate . . . on any official ballot.” Minn. Stat. § 204B.44(a)(1). Ballot boards may duplicate defective absentee 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. § 206.86, subd. 5 (2020) (explaining that “a duplicate ballot card” is made for a “defective ballot card”). Petitioner has proposed an appropriate plan to remedy the ballot error. We approve that plan with minor modifications, as indicated later in this order.

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

IT IS HEREBY ORDERED THAT:

1. Petitioner Ramsey County Elections Manager shall correct the ballot for the November 8, 2022, general election by listing Scott Hesselgrave as the Republican Party candidate for House District 67A. Petitioner 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.

2. Petitioner shall mail a new ballot that correctly lists Scott Hesselgrave as the Republican Party candidate for House District 67A to all voters who have received a copy of an absentee ballot that incorrectly lists the Republican Party candidate for House District 67A but have not yet returned a completed ballot as of the date of this order. Petitioner shall modify the last sentence of paragraph three of Exhibit A to read: “If you have not yet mailed in your absentee ballot, you should discard the original absentee ballot and vote this replacement ballot for **all of the offices** instead.” Petitioner shall send this letter, along with the corrected ballot, to the voters identified in this paragraph.

3. Petitioner shall contact any voter who submits an absentee ballot that incorrectly lists the Republican Party candidate for House District 67A and inform these voters that they have the option of declaring their original ballots spoiled and receiving a replacement ballot with the correct name on it. Petitioner shall add the following emphasis to the second-to-last sentence of the fourth paragraph of Exhibit B: “You will then be able to re-vote **all of the offices** on the ballot with the replacement ballot.” Petitioner shall send this letter to the voters identified in this paragraph. When sending the letters required by this order, petitioner shall follow all applicable law and county policies regarding communications in languages other than English.

4. Any voter who chooses the option to spoil their ballot, as detailed in paragraph 5, must do so on or before November 1, 2022.

5. If a voter chooses to spoil their ballot, petitioner shall issue the voter a replacement ballot that includes the correct names for the candidates for House District 67A, as well as all other offices on the ballot. The original ballot will be treated as a spoiled ballot and will not be counted. The voter may re-vote all of the offices on the ballot with the replacement ballot. The replacement ballot will be counted in the ordinary course of business.

6. If a voter who voted for the deceased candidate for House District 67A chooses not to spoil their ballot, then the Ramsey County Elections Office shall disregard that voter's vote for District 67A. That vote will not count because the candidate is deceased. The voter's choice for any other offices on their original ballot will be copied onto a replacement ballot and will be counted. In such a circumstance all of the voter's original votes will be counted except for the vote for District 67A.

7. If a voter who voted for someone other than the deceased candidate for District 67A chooses not to spoil their ballot, then the Ramsey County Elections Office shall count that voter's vote for District 67A. In such a circumstance, all of the voter's selections for each office on the ballot, including District 67A, will be copied onto a replacement ballot and will be counted.

Dated: October 3, 2022

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lorie S. Gildea".

Lorie S. Gildea
Chief Justice