# FIRST INTERIM REPORT AND INITIAL RECOMMENDATION
# OF
# TASK FORCE ON ELECTION INTEGRITY

January 30, 2012

By Executive Order 11-18, Governor Mark Dayton established the Task Force on Election Integrity pursuant to Minnesota Statute, §15.0593. Pursuant to the Executive Order, fifteen members have been duly appointed and are actively participating on the Task Force. Secretary of State Mark Ritchie and Joseph Nuñez (appointed by Governor Dayton) were elected co-chairs from among the members of the Task Force.

The Task Force has met approximately every 2-3 weeks beginning October 20, 2011. In accordance with the Executive Order, the Task Force has studied Minnesota election laws, processes and protocols, including those within the Office of the Secretary of State and within counties, cities and townships. The Task Force has initially focused on understanding the current processes, protocols and challenges involved in notifying or otherwise preventing felons from voting, and the various agencies and departments that currently have some ability to participate in such notifications. The Task Force has developed an understanding as to the legal and logistical challenges between and among various governmental bodies within Minnesota as to the sharing of databases and other information identifying felons who under Minnesota law are prohibited from voting, and those individuals no longer so prohibited. The Task Force has also developed an understanding of the challenges and expense in investigation and enforcement efforts by county attorneys throughout the state in connection with alleged voting violations. Finally, the Task Force has sought to understand the technological capabilities and limitations at voting locations throughout the state.

The purpose of this first Interim Report and Initial Recommendation is to provide the Governor and Legislature with observations with respect to current Minnesota law and protocols regarding the current prohibition of felons from voting and initial recommendations for revisions and enhancements to our system.

The ability of citizens - including those convicted of felonies - to understand their eligibility to vote based on nondiscriminatory laws coherently applied is vital to the protection of our Constitutional right to vote. However, we learned that no data base exists that can accurately identify when a felon regains the eligibility to vote, and that the question of disenfranchisement creates significant confusion among the public, election judges, election administrators and the individual convicted of a felony. There are currently no notification procedures consistently followed in the Minnesota criminal justice system in and among the different agencies involved with felons before, during and after either conviction or incarceration. Accordingly, the Task Force is of the opinion that current Minnesota law frustrates the ability of all citizens to clearly understand eligibility rules and frustrates election officials and county prosecutors in the administration of those rules.

The Task Force hereby offers the following initial observations and recommendations:

1. **North Dakota Model**. The Task Force has explored the model used in North Dakota and thirteen other states in which the determination of whether a felon is

disenfranchised is a matter of whether or not the felon is then incarcerated. This model provides that felons are ineligible to vote while incarcerated and automatically become eligible to vote once they leave prison. North Dakota Secretary of State Al Jaeger shared with the Task Force how well this model has worked in his state over decades. The Task Force is interested in continuing to understand the efficacy of a similar law in Minnesota. In addition to disenfranchising fewer citizens and potentially alleviating some racial disparities inherent in the operation of current law, limiting disenfranchisement to actually incarcerated felons would be more easily understood by all citizens, by those who would be disenfranchised and by election officials. This system also eliminates significant ongoing administrative and prosecutorial costs in addition to avoiding the tremendous cost of implementing new data systems and preparing and mailing written notifications. It also enhances a compelling public policy goal of re-integrating felons into the communities in which they reside in a positive way. The Task Force finds this an intriguing proposal and although it has garnered significant support within the Task Force, there are a number of additional issues that we want to explore. We will continue to study the attributes and dynamics of this model to consider whether it would serve Minnesota better than the current system.

2. **Recommendations Not Requiring Legislative Action**. The Task Force recommends the following protocols, which we believe will enhance the notification to felons as to their voting rights under current Minnesota law. The Task Force acknowledges, however, that many of these recommendations involve cost and expense for staff time, materials and postage, and that even with significant investment the notification system cannot perfectly address notification concerns.

   - Encourage the Minnesota Judicial Branch to amend the Petition to Plead Guilty form used by Minnesota courts to include a warning where appropriate, initialed by the defendant, that in the event the plea is accepted in the form set forth in the Petition, the right to vote will be lost until probation is completed, and that either registration or voting prior to regaining the right to vote is itself a felony offense.
   - Suggest that the owner of the "Minnesota Judges' Criminal Benchbook" add a strong recommendation that judges include a verbal reminder of the disenfranchisement at sentencing, including a reminder that either registration or voting during probation is itself a felony offense and may cause a revocation of probation.
   - Encourage the Minnesota Judicial Branch to revise the electronic template for Minnesota Sentencing Orders to prominently include a warning that either registration or voting while serving a felony sentence, including during probation, is itself a felony offense.
   - Encourage all probation officers to use the recommended revised template of the Probation Agreement executed by defendants that will prominently

include a reminder that conviction of a felony results in a loss of voting privileges.

- Encourage probation officers to effectively communicate to felons being put on administrative probation that either registration or voting during probation is itself a felony offense and may cause a revocation of probation. The probation officer case notes should identify when this information was communicated to the felon.
- The Office of the Secretary of State should provide signs to local election officials to be posted at all polling places warning convicted felons that it is a separate felony crime to register to vote or to vote before probation is completed.

3. **Recommendations Requiring Legislative Action.**

- Provide legislative authority and adequate funding to the Department of Corrections and the Office of the Secretary of State to allow the Department of Corrections to transmit from its databases of felony offenders a precisely-defined data-set to the Office of the Secretary of State (both before and after general elections) for the purposes of (i) challenging the voter record of anyone who is registered to vote who is not eligible because they are serving a felony sentence and (ii) removing the challenge from the voter record of anyone who is registered to vote who has become eligible to vote because they have completed their felony sentence.
- Provide legislative authority and adequate funding to the Department of Corrections and the Office of the Secretary of State to allow the Department of Corrections to include in the above-described data-set the last known address of convicted felons who are on supervised release or on probation so that the Office of the Secretary of State can provide a written reminder that either registration or voting while on supervised release or probation is itself a felony offense and may cause a revocation of their current status. This notification should be sent at least one month prior to a state general election.
- Provide legislative authority and adequate funding for and require written notification to each released felon at his/her last known address reminding them that either registration or voting during the upcoming election is itself a felony offense.
- Provide legislative authority for and require written notification to each felon at his/her last known address who has completed probation and has no new felony conviction that the person's right to vote as been reinstated, and providing adequate funding to the Secretary of State's office to do so.
- Provide legislative authority to provide plain language on voter registration applications and on polling place rosters regarding the disenfranchisement of certain felons under Minnesota law. (Changing the language on registration

applications and the polling place rosters could not be effective before the 2012 general election.)

- Consider reducing the crime of registration by a person who is ineligible to vote from a felony-level offense to a misdemeanor.
- Create an administrative process for resolving felon eligibility questions, including allowing election officials to determine that a registrant is ineligible by reason of a felony conviction and allowing the subject of the determination to either rescind the registration or contest the determination.
- Revise Minnesota statutes to provide that the signature of a disenfranchised felon on the polling place roster is legally sufficient evidence of the intent of such individual to vote.
- Create an affirmative defense to the registration crime for those felons who withdraw their registration in writing before voting and being charged with a registration crime. The defense would be available if the offender (1) has not voted, (2) has not been charged and (3) withdraws the registration.
- Prohibit sending or delivery of Minnesota absentee ballots to a felon that provides the address of a facility that only houses felony-level offenders.
- Amend Minnesota law to move responsibility for investigating voting violations from County Attorneys to law enforcement. In addition, require County Attorneys to follow the prosecuting standards currently set by the American Bar Association as they review and charge alleged violations that have been investigated by law enforcement and forwarded to the County Attorney for consideration.

Respectfully submitted this 30th day of January, 2012

Mark Ritchie

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