

# Ineligible Wards Voting in Crow Wing County 2010 Election

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October 27, 2011



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**A joint paper by Minnesota Majority and Minnesota Freedom Council**

October 27<sup>th</sup>, 2011

## **Executive Summary**

In October of 2010, Montgomery Jensen witnessed a number of mentally disabled individuals being led into the Crow Wing County Courthouse to vote early by in-person absentee ballot. What he described seeing would seem to amount to voter fraud by exploiting mentally incapacitated vulnerable adults.

Conclusive evidence has been obtained demonstrating that unlawful voting was indeed taking place in Crow Wing County.

The Minnesota Constitution expressly forbids voting by individuals under guardianship, but a relatively recent, subtle change in statutes undermines the directive of the Constitution by requiring a judge to expressly remove the ward's right to vote in his or her guardianship order. Lacking that, the ward is considered eligible by current election system rules and governing statutes, though the state constitution differs. "The following persons shall not be entitled or permitted to vote at any election in this state," reads Article VII, Section 1 of the Minnesota Constitution, "A person who has been convicted of treason, or felony, unless restored to civil rights; **a person under guardianship**, or a person who is insane or **not mentally competent**."

The conflict between statute and the constitution muddies the legal waters for many wards, but in instances where a guardianship order expressly finds that the ward is "incapable of exercising the right to vote", no doubt remains. The statutes and the constitution are in agreement that individuals in those circumstances are ineligible to vote. That was exactly the case for at least 4 residents of a Crow Wing County group home who were brought to the court house by the group home operators to vote.

In a sworn statement, Montgomery Jensen described group home workers directing mentally incapacitated wards on who to vote for, and in at least one instance, filling out the ballot for a ward who immediately wandered away and refused to go back to the voting booth and seemingly did not want to vote. Mr. Jensen's fiancé also witnessed and corroborated these events.

The mentally incapacitated and disabled voters Jensen witnessed at the courthouse were discovered to reside at Clark Lake Group Homes, an adult foster care facility in Brainerd that's owned and operated by Lynn Peterson.

Based upon Jensen's statements, election crimes may have been committed. Specifically, the crime indicated is Improper Voter Assistance (MN Stat. 204C.15), a felony (MN Stat. 204C.41). Gross misdemeanor charges may also apply under MN Stat. 204C.16 (mismarking ballots). This is a form of voter fraud.

A grand jury was convened in Crow Wing County to examine the evidence and allegations on Tuesday, October 18, 2011, but it produced no indictments at that time. It's likely that insufficient proof of criminal intent was a factor in the grand jury's "no bill" determination.

Going forward, legislation to restore the Constitutional voter eligibility requirements and new legal and procedural safeguards are recommended to protect vulnerable adults and the electorate from errors, exploitation and abuse.

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### **Background**

Minnesota Majority is a state legislative watchdog group. Its main mission is to track and report on public policy issues and provide tools to make citizen involvement in the process easier. Since October of 2008, Minnesota Majority has been researching the integrity of Minnesota's election system, exposing numerous flaws and election crimes.

Minnesota Freedom Council is a not for profit volunteer organization, started in the Brainerd Lakes area. The organization first became interested in election integrity issues when they learned that many absentee ballots from soldiers stationed overseas were not being counted in Minnesota's elections due to a variety of reasons. The reputation they were developing for protecting election integrity in the area led Montgomery Jensen to contact the group for assistance after he witnessed what he described as abuse of vulnerable adults to commit voter fraud.

Minnesota Majority and Minnesota Freedom Council had been in communication about the overseas military absentee ballots and a collaboration between the organizations developed around investigating the vulnerable adults and other forms of voter fraud detected in Crow Wing County.

On October 29<sup>th</sup>, 2010, at approximately 4:40 PM, Montgomery Jensen and his fiancé witnessed what Jensen described as a large, disorganized crowd of apparently mentally disabled or incapacitated individuals in the area of the Crow Wing County courthouse set up for in-person, early absentee voting. Jensen stated that while observing the group he saw individuals who appeared to be group home workers directing people in their care on who to vote for and even completing ballots for them without their presence or direction.

Jensen's observations were cause for concern, so after reaching out to the Freedom Council and, through them, to Minnesota Majority for guidance, he submitted an affidavit describing the apparent improper and illegal voting activity he witnessed to Crow Wing County Attorney, Don Ryan on November 1<sup>st</sup>, 2010.

Meanwhile, the Freedom Council pursued an investigation of their own, using Minnesota's Data Practices Act law to begin to obtain evidentiary records including court guardianship orders, voter history files, and copies of completed absentee ballot envelopes, among other documents. They discovered that the mentally incapacitated and disabled voters were residents of the Clark Lake Homes in Brainerd, Minnesota. That facility is owned and operated by Lynn Peterson.

During this time, Al Stene, the father of one of the group home residents Jensen witnessed receiving voting assistance from group home workers, was informed that his son James Stene had been brought to the courthouse to vote. Knowing his son's mental limitations and incompetence stemming from a tragic near-drowning when he was 12 years old, Al Stene became angry and got involved himself. In an affidavit submitted to Don Ryan on March 3<sup>rd</sup>, 2011, Stene stated, "it is apparent to me that James was exploited by these individuals who were caring for him by bringing him to vote."

Through the diligence of the Freedom Council, Al Stene, Montgomery Jensen and others, the situation began to draw attention from national media outlets, state representatives and senators, increasing the pressure and scrutiny on County Attorney Don Ryan, County Sheriff Todd Dahl and the Clark Lake Homes operated by Lynn Peterson.

Almost a year after the events witnessed by Jensen, a grand jury was convened on October 18<sup>th</sup>, 2011 to examine evidence and determine whether indictments were in order. On October 20<sup>th</sup>, 2011, the grand jury issued a "no bill" determination, meaning no criminal indictments were forthcoming. Because the grand jury deliberations are secret and sealed, their exact reasons are unknown but the "no bill" is likely

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related to ability to prove intent. Inability to prove intent beyond a reasonable doubt is the primary reason voter fraud charges are not filed in cases involving conclusive evidence of unlawful voting.

### 2003 Law Change

The Constitution of the State of Minnesota, Article VII, Section 1 describes the requirements to be eligible to vote. It states:

“Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct. The place of voting by one otherwise qualified who has changed his residence within 30 days preceding the election shall be prescribed by law. **The following persons shall not be entitled or permitted to vote at any election in this state:** A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; **a person under guardianship, or a person who is insane or not mentally competent.**”

In 1981, this language was codified in Minnesota Statute 201.01 (later 201.014), probably for clarity and ease of reference. At that time the statutes and the state constitution were in harmony regarding wards voting.

Then, in 2003, Senators Don Betzold and Geoff Michel introduced SF 112 (2003-2004 session), the Uniform Guardianship and Protective Proceedings Act. Buried at the end of Section 37 of the 82-page omnibus guardianship bill was this tiny provision: “(8) Unless otherwise ordered by the court, the ward retains the right to vote.”

Subsequently in 2005, another omnibus bill propagated the seemingly tiny change contained in SF 112 throughout the state's election statutes. It probably seemed to be a merely technical correction at that time, but in reality, this chain of legislative events served to subvert the state Constitution, leading to the present situation in which we see vulnerable adults being led in to vote, possibly being taken advantage of by the people who are supposed to be caring for them. It also raises difficult questions.

Before 2003, any judge issuing a guardianship order would do so knowing that the ward would become constitutionally ineligible to vote, so no further expansion or consideration of that point was necessary. It was not necessary to specifically note in the guardianship order that the ward is incapable of exercising the right to vote.

Does this mean that the wards previously presumed ineligible to vote became eligible (without review) after the 2003 statutory change since their guardianship orders do not specifically order otherwise? Or, since the judge created the orders under circumstances when such specific orders were needless, are we to presume that all wards with guardianship orders issued before 2003 remain incapable of exercising the right to vote, since that was the legal standard and expectation at the time the judge issued them?

Betzold and Michel, along with all the legislators who voted to enact SF 112 and Governor Tim Pawlenty who signed the legislation into law have done the state of Minnesota a grave disservice by not contemplating the consequences of the one little sentence buried in 82 pages of legislation.

There are over 20,000 wards residing in Minnesota, many living in group homes like the Clark Lake Homes. For some, their voting status is cut and dry. Those placed under guardianships after 2003 may have specific orders stating they are incapable of exercising the right to vote. The legal status of others who were placed under guardianship before 2003 is less clear.

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Despite the apparent ambiguity of some wards' status as voters, it is clear that ballots were cast in the names of some wards who are under guardianship orders that specify they are incapable of voting. How many more is yet to be seen.

The 2003 statutory change may have opened the door wider to exploitation of vulnerable adults and voter fraud.

## **Findings of Fact**

### **Wards legally incapable of exercising the right to vote voted**

At least 4 residents of the Clark Lake Group Home who are mentally disabled or incapacitated wards whose court guardianship orders specifically state they are incapable of exercising the right to vote were brought to the Crow Wing County Courthouse by group home workers to vote early through in-person absentee ballots. The outing led to ballots cast in the names of ineligible wards which were accepted and counted in the 2010 election.

### **Other mentally incapacitated wards also voted**

12 additional mentally incapacitated (according to court orders) individuals under guardianships and residing at the Clark Lake Group Homes, without specific court orders rescinding their rights to vote were also brought to the courthouse to vote.

### **Jensen's statements are supported by evidence**

The primary witness, Montgomery Jensen is established by time-stamped records of absentee ballot printing, to have been in the courthouse at the same time as the incapacitated voters. Another witness, Steve J. Wolff also places the Clark Lake Homes residents at the Courthouse on October 27<sup>th</sup> 2010 in a February 7<sup>th</sup> 2011 affidavit.

Voter history files in the Minnesota Statewide Voter Registration System indicate absentee ballots cast in the names of incapacitated persons residing at Clark Lake Homes and copies of court guardianship orders obtained for at least 4 of them are specific that the wards are "incapable of exercising their rights and powers to vote." Copies of their absentee ballot envelopes and voter histories have also been obtained.

Lynn Peterson, the owner of Clark Lake Homes and his staff including his family admitted taking the residents to the Crow Wing County Courthouse to vote, though they deny any wrongdoing, or knowledge of intentional wrongdoing. There have been no charges filed against any of the group home workers or operators.

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### **Recommendations**

Most voters will no doubt be concerned that our current election system is insufficient to prevent wards deemed incapable of voting from being compelled or allowed to do so. More must be done to protect vulnerable adults and the integrity of our election system against errors and abuse. To that end, Minnesota Majority and the Minnesota Freedom Council after examining the circumstances and evidence make the following recommendations:

1. Reverse the 2003 and 2005 statutory changes that created confusion about wards' ability to vote and create a mechanism or new classification of ward to enable high-functioning individuals with mental disabilities to vote if positively deemed appropriate by a court.
2. Institute voter eligibility verification procedures for election day (or same day) registrants, including a paper or electronic list of individuals known to be ineligible to vote such as wards, convicted felons and non-citizens.
3. Require group home owners, workers and other caregivers of wards to be informed and trained of the legally determined ability or inability of wards in their care to vote. The caregivers should be required to sign a document stating that they have received and understand the necessary information and training in this regard. Such a document would enable law enforcement to prove beyond doubt intent to violate election laws if they are responsible for assisting or compelling ineligible wards to vote.

### **Conclusion**

The evidence is suggestive of a possible illegal effort to broker votes, perpetrated by operators and/or employees of the Clark Lake Homes, but no charges have thus far been filed, perhaps because of an inability to conclusively demonstrate intent to commit fraud. Proving intent is a significant legal hurdle to charge violations of election laws. The evidence is conclusive that ballots were cast in the names of ineligible, mentally incapacitated wards and that the unlawful voting was facilitated or assisted by employees of Clark Lake Homes. Employees and operators of the group homes deny knowingly violating state election law.

Applicable criminal statutes may include:

- Improper voter assistance as defined in MN Stat. 204C.15, a felony;
- Mismarking ballots under MN Stat. 204C.16, a gross misdemeanor;
- Exploitation of a vulnerable adult under MN Stat. 609.2335 (2)(ii);
- Involuntary servitude under MN Stat. 626.5572 The act of forcing, compelling, coercing, or enticing a vulnerable adult against the vulnerable adult's will to perform services for the advantage of another.

The state Constitution doesn't preclude individuals who are under guardianships, mentally incompetent or insane from voting without good cause. The clause in Article VII, Section 1 isn't meant to punish. Its purpose is to protect – both the electorate and mentally incapacitated wards.

It should be obvious that a person deemed incapable of making decisions for themselves shouldn't be allowed to make decisions that affect everybody else. In addition, vulnerable adults are often incapable of protecting themselves against those who would take advantage of them for personal, financial or political gain.

**Report on Ineligible Wards Voting in Minnesota's 2010 Election  
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There are, of course, individuals under guardianships who are very high-functioning and who may appear under most circumstances to be completely competent. Nonetheless, these are the exception and despite the possible appearance of high-functionality, they still have been deemed by a court to be incapable of making some or all decisions for themselves due to a high risk of causing harm to themselves or others.

The Constitutional requirements for voter eligibility ought take precedence, in any case. The Constitution is specific that those under guardianships shall not be eligible or permitted to vote. A 2003 amendment to MN Stat. 201.014, which essentially restated the constitutional requirements for eligibility in statute changes the rules, however. It reads, "The following individuals are not eligible to vote. Any individual... under a guardianship in which the court order revoke's the ward's right to vote; or found by a court of law to be legally incompetent."

This change takes away the natural authority of the Constitution and gives it to judges who must then proactively order something that the Constitution finds to be the default position: that a ward is not eligible to vote. Here we see the danger in statutory attempts to subvert the state's constitution. The logical state of law would be to assume a ward under guardianship is not permitted to vote unless a judge orders that right restored in cases of high-functioning wards (the constitutionality of even this is questionable).

Constitutional arguments aside, at least 4 residents of the Clark Lake Group Homes plainly voted or had votes cast in their names while ineligible by both the constitutional and statutory standards. The evidentiary documents are quite clear and conclusive in this regard.

To be clear, it is not the wards who may be guilty of election crimes. If a crime was committed as it appears, it would be the caregivers who are responsible. From statements from Montgomery Jensen, it seems most or all of the incapacitated Clark Lake Group Home residents were unaware of what they were doing, or why. James Stene has made public statements that he did not want to vote, in fact.

The 2003 state law change increased the likelihood of mentally incompetent vulnerable adults being exploited to steal their votes, and increased the chance that unlawful votes would affect elections through ignorance or error.

The law no longer provides adequate protection to vulnerable adults or the electorate. Subverting the Constitution through statutory changes in favor of liberalizing our voting system has left our elections and vulnerable adults wide open to abuses. Our current Election Day registration (and same-day absentee registration) system is also partly to blame. Voters registering 20 days or more before an election can be verified as eligible before ballots are issued. Election Day registration doesn't currently employ any such verification standards, thus enabling ineligible voters to obtain and cast ballots unchallenged.

There are over 20,000 people in Minnesota under guardianship orders. Researching their voter history and court records including guardianship orders is time and labor-intensive, and is just getting underway at the time of this report. Preliminary findings indicate the problem of voting by ineligible wards is not confined to Crow Wing County and Clark Lake Group Homes.

A bill introduced by Rep. Mary Kiffmeyer (former secretary of state) would conform the state's statutory voter eligibility requirements to the Constitution. HF 1119 still makes it possible for high-functioning wards to retain the ability to vote by a court order, but does so in a common-sense manner that conforms to the Constitution. This is one potential permanent solution to this problem. Another reform that would assist in preventing the exploitation of vulnerable adults for voter fraud would be instant voter eligibility verification at the polling place, accomplished via a computer system capable of accessing databases of known ineligible voters, including those under guardianships.

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**APPENDIX I: Wards residing at Clark Lake Homes deemed incapable of exercising the right to vote, in whose names absentee ballots were cast in Minnesota's 2010 General Election**

First Name	Middle	Last Name	Address	Street	City
CRIEG	JOSEPH	RUESKEN	14660	RIVERSIDE DR	BRAINERD
DANIEL	JONATHAN	CAREL	14660	RIVERSIDE DR	BRAINERD
CHICO	ALLEN	DAVIS	12350	STATE HIGHWAY 18	BRAINERD
JAMES	ALLEN	CAREL	2822	ADDISON AVE	BRAINERD

**APPENDIX II: Ward residing at Clark Lake Homes with pre-2003 guardianship order (ineligible to vote) in whose name an absentee ballot was cast.**

First Name	Middle	Last Name	Address	Street	City
SCOTT	ALLEN	BURTON	12350	STATE HIGHWAY 18	BRAINERD

When Scott Burton received his Order for Guardianship on 4/17/1989, all wards under guardianship were ineligible to vote according to the MN Constitution. The 2003 statutory change leaves his eligibility in question. This ward has now voted 2010 election.

**APPENDIX III: Wards residing at Clark Lake Group Homes without specific orders regarding their ability to exercise the right to vote, in whose names ballots were cast in Minnesota's 2010 General Election**

First Name	Middle	Last Name	Address	Street	City
BENJAMIN	CHARLAS	HAWKINSON	1202	13TH ST SE	BRAINERD
LEE	JOSEPH	HOLLEY	1202	13TH ST SE	BRAINERD
MARC	CHARLES	WELZANT	12350	STATE HIGHWAY 18	BRAINERD
NATHAN	JOHN	PUCHALLA	1119	BEECH ST	BRAINERD
GRANT	RICHARD	BRUMBERG	1202	13TH ST SE	BRAINERD
MARK	DAVIS	MOODY	1202	13TH ST SE	BRAINERD
ROBERT	LEWIS	BJORKE	1119	BEECH ST	BRAINERD
LARRY	DUANE	ERICKSON	1119	BEECH ST	BRAINERD
MARY	LOUISE	MCHALE	602	10TH ST S	BRAINERD
DUANE	PETER	MIERS	2822	ADDISON AVE	BRAINERD

**APPENDIX IV: Ward residing at Clark Lake Homes under pre-2003 conservatorship changed to guardianship who claimed he was "made to vote" – voter status unclear**

JAMES	ALAN	STONE	14660	RIVERSIDE DR	BRAINERD
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James Stone suffered a traumatic brain injury when he was 12 years old and placed under a conservatorship. The conservatorship was changed to a guardianship after the 2003 statutory changes (without informing his parents). James Stone claimed he was "made to vote" by group home workers. His father, Alan Stone filed a complaint immediately upon learning of his son's voting activity. Alan Stone contends that his son was exploited even though he may retain the right to vote under current statutes. Alan Stone said that anyone who knows James knows he is incompetent to vote. When Asked by a reporter who he voted for, James responded, "Gerald Ford."