

STATE OF MINNESOTA
IN SUPREME COURT

Court File No. A09-345

Harold Shad; Joy Andis; Kristi Moler;
Cynthia Racine; Kelsey Smith; Jordan
Traub; Phyllis Ebert; Donald Gleason;
Raymond Kocisko; Mary Nelson; Patricia
Panagos; Neal Rootes ;Jeanette Stenson;
John Sullivan-Fedock; Clarice Brederson;
Henry Abel; Muriel Elaine Anderson;
Maura Coonan; George Fairbanks; Gloria
Fairbanks; Gerald Gauster; Lorraine
Gauster; Richard Myslajek; Christine
Paulu; Molly Vinyard-Williamson; Sarah
Wilensky; Jessica Fark; Guilford Lewis;
Barbara Miller; and Kathleen Wetterstrom,

Petitioners,

vs.

Mark Ritchie, Minnesota Secretary of
State; Cass County; Dakota County;
Hennepin County; Pope County; Ramsey
County; Sherburne County; Saint Louis
County; and Wabasha County,

Respondents.

**PETITION BY CERTAIN
MINNESOTA VOTERS TO HAVE
THEIR VOTES COUNTED
PURSUANT TO MINN. STAT. §
204B.44**

OFFICE OF
APPELLATE COURTS

FEB 23 2009

FILED

Pursuant to Minn. Stat. § 204B.44, Petitioners petition the Supreme Court of the State of Minnesota to order that their votes cast in the November 4, 2008 general election for United States Senator from Minnesota be counted. Petitioners state and allege as follows:

JURISDICTION

1. This action is necessary to correct errors and omissions made by the Respondents related to the handling of legally cast absentee ballots in the November 4, 2008 election for United States Senator from Minnesota. Respondents are charged with duties concerning the election. This Court's order is necessary to ensure that all legally cast absentee ballots are counted.

2. This Court has jurisdiction over this matter pursuant to Minn. Stat. § 204B.44.

PARTIES

3. Petitioners are Minnesota residents qualified as eligible voters under Minnesota election law who cast absentee ballots in the November 4, 2008 general election for United States Senator from Minnesota. Petitioners' absentee ballots were wrongfully rejected and, therefore, not counted in the final election results. Petitioners are listed by County of Residence in Exhibit A hereto.

4. Mark Ritchie is the Minnesota Secretary of State and the chief election official in Minnesota. In his capacity as the Secretary of State, Mr. Ritchie is responsible for the administration of elections in the State of Minnesota, including the November 4, 2008 general election for United States Senator from Minnesota. Mr. Ritchie is included in this action as a necessary party.

5. Cass County is a political subdivision of the State of Minnesota. The Cass County canvassing board is responsible for the administration of elections in the County,

including the November 4, 2008 general election for United States Senator from Minnesota.

6. Dakota County is a political subdivision of the State of Minnesota. The Dakota County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

7. Hennepin County is a political subdivision of the State of Minnesota. The Hennepin County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

8. Pope County is a political subdivision of the State of Minnesota. The Pope County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

9. Ramsey County is a political subdivision of the State of Minnesota. The Ramsey County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

10. Sherburne County is a political subdivision of the State of Minnesota. The Sherburne County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

11. Saint Louis County is a political subdivision of the State of Minnesota. The Saint Louis County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

12. Wabasha County is a political subdivision of the State of Minnesota. The Wabasha County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

BACKGROUND

13. Petitioners cast absentee ballots in the November 4, 2008 general election for United States Senator from Minnesota which were not counted in the final election results certified by the State Canvassing Board on January 5, 2009.

14. Under Minn. Stat. § 204B.44, an individual may file a petition with any judge of the Minnesota Supreme Court for the correction of “any wrongful act, omission, or error of any election judge, municipal clerk, county auditor, canvassing board or any of its members, the secretary of state, or any other individual charged with any duty concerning an election.”

15. Associate Justice Alan C. Page previously noted that an individual voter may use the process established in Minn. Stat. § 204B.44 to petition the Supreme Court to have the voter’s ballot counted. Coleman v. Ritchie, No. A08-2169, at D-4 (Minn. Dec. 18, 2008) (Dissent).

16. On January 16, 2009, the Minnesota Supreme Court referred a voter petitioner pursuant to Minn. Stat. 204B.44 to the three-judge district court panel for consideration and decision as part of the election contest pending in Ramsey County District Court

RESPONDENTS' ERRORS AND OMISSIONS

17. Respondents did not count Petitioners' legally cast absentee ballots in the November 4, 2008 general election for United States Senator from Minnesota.¹ Some of Petitioners' ballots were identified by the Counties as having been improperly rejected. Yet such ballots were not included in the administrative recount because they were objected to in the process established by the Minnesota Supreme Court's December 18, 2008 Order and implemented by the Secretary of State.

CLAIM FOR RELIEF

WHEREFORE, Petitioners respectfully pray for an Order of the Court as follows:

1. Directing that Petitioners' absentee ballots shall be opened and counted, and the total be declared and certified, for such use as might be deemed appropriate by the United States Senate or the judges responsible for the election contest pending in the District Court for the County of Ramsey, No. 62- CV -09-56 or any other proper use under law, pursuant to procedures established by this Court.

¹ Assuming the Supreme Court refers this Petition to the three-judge district court panel as part of the election contest pending in Ramsey County District Court, Petitioners intend to file a motion for summary judgment with all supporting evidence establishing that the Petitioners' absentee ballots were legally cast.

2. Granting Petitioner's such other relief as the Court deems just and appropriate.

Dated: February 20, 2008

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

By:  _____

Charles N. Nauen, #121216
William A. Gengler, #210626
David J. Zoll, #0330681

100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Telephone: 612-339-6900
Facsimile: 612-339-0981

ATTORNEYS FOR PETITIONERS

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under
Minn. Stat. § 549.211

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

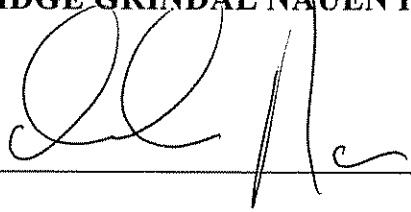
By:  _____

Exhibit A

	Name	County
1	Harold Shad	Cass
2	Joy Andis	Dakota
3	Kristi Moler	Dakota
4	Cynthia Racine	Dakota
5	Kelsey Smith	Dakota
6	Jordan Traub	Dakota
7	Phyllis Ebert	Hennepin
8	Donald Gleason	Hennepin
9	Raymond Kocisko	Hennepin
10	Mary Nelson	Hennepin
11	Patricia Panagos	Hennepin
12	Neal Rootes	Hennepin
13	Jeanette Stenson	Hennepin
14	John Sullivan-Fedock	Hennepin
15	Clarice Brederson	Pope
16	Henry Abel	Ramsey
17	Muriel Elaine Anderson	Ramsey
18	Maura Coonan	Ramsey
19	George Fairbanks	Ramsey
20	Gloria Fairbanks	Ramsey
21	Gerald Gauster	Ramsey
22	Lorraine Gauster	Ramsey
23	Richard Myslajek	Ramsey
24	Christine Paulu	Ramsey
25	Molly Vinyard-Williamson	Ramsey
26	Sarah Wilensky	Ramsey
27	Jessica Fark	Sherburne
28	Guilford Lewis	St. Louis
29	Barbara Miller	St. Louis
30	Kathleen Wetterstrom	Wabasha

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**PETITIONERS' AFFIDAVIT
OF SERVICE BY MAIL
OF PETITION BY CERTAIN
MINNESOTA VOTERS TO HAVE
THEIR VOTES COUNTED
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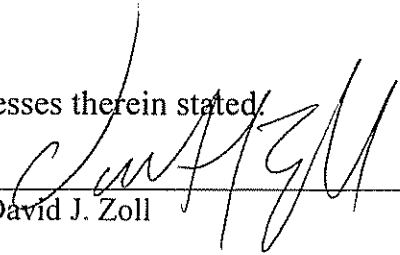
Respondents.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

David J. Zoll, being first duly sworn, on oath deposes and states that on the 20th day of February, 2009, he served by E-Mail and U.S. Mail, copies of the attached:


1. Petition by Certain Minnesota Voters to Have Their Votes Counted Pursuant to Minn. Stat. § 204B.44.

upon the parties on the attached list at the addresses therein stated.

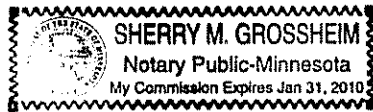


David J. Zoll

Subscribed and sworn to before me
this 20th day of February, 2009.



Notary Public



PETITIONERS' SERVICE LIST

Tony P. Trimble
Matthew W. Haapoja
Trimble & Associates, Ltd.
10201 Wayzata Boulevard
Suite 130
Minnetonka, MN 55305
trimblelegals@earthlink.net

Roger J. Magnuson
James K. Langdon
Dorsey & Whitney, LLP
50 South Sixth Street
Suite 1500
Minneapolis, MN 55402-1498
magnuson.roger@dorsey.com
langdon.jim@dorsey.com

Frederic W Knaak
Knaak and Kantrud, P.A.
3500 Willow Lake Boulevard
Suite 800
Saint Paul, MN 55110
fknaak@klaw.us

Joseph S. Friedberg
Joseph S. Friedberg, Chartered
150 South Fifth Street, Suite 320
Minneapolis, MN 55402

Marc E. Elias
Kevin J. Hamilton
David J. Burman
607 Fourteenth Street, N.W.
Suite 800
Washington D.C. 20005
frankenperkinsattys@perkinscoie.com

David L. Lillehaug
Fredrikson & Byron, P.A.
200 South Sixth Street
Suite 400
Minneapolis, MN 55402-1425
dlillehaug@fredlaw.com

Christopher J. Strandlie
County Attorney
Cass County Courthouse
300 Minnesota Avenue
Walker, MN 56484
chris.strandlie@co.cass.mn.us
cass.voter@co.cass.mn.us

James Backstrom
County Attorney
Dakota County Judicial Center
1560 Highway 55
Hastings, MN 55033-2392
jim.backstrom@co.dakota.mn.us
elections@co.dakota.mn.us

PETITIONERS' SERVICE LIST

Michael Freeman
County Attorney
Hennepin County Government Cntr
2000 Court Tower
300 South Sixth Street
Minneapolis, MN 55487
michael.freeman@co.hennepin.mn.us
daniel.rogan@co.hennepin.mn.us
jill.alverson@co.hennepin.mn.us

Belvin Doebbert
County Attorney
Pope County Courthouse
P.O. Box 288
Glenwood, MN 56334
belvin.doebbert@co.pope.mn.us
donna.quandt@co.pope.mn.us

Susan Gaertner
County Attorney
Ramsey County Courthouse
Ramsey County Government Center
West
50 Kellogg Blvd. West, Suite 315
St. Paul, MN 55102
susan.e.gaertner@co.ramsey.mn.us
darwin.lookingbill@co.ramsey.mn.us
elections@co.ramsey.mn.us

Kathleen Heaney
County Attorney
Sherburne County Govt. Center
13880 Highway 10
13880 Business Center Drive
Elk River, MN 55330-4601
attorney@co.sherburne.mn.us
auditor@co.sherburne.mn.us

Melanie Ford
County Attorney
St. Louis County Courthouse
100 North Fifth Avenue West
Duluth, MN 55802
fordm@co.st-louis.mn.us
dicklichd@co.st-louis.mn.us

James Nordstrom
County Attorney
Wabasha County Courthouse
625 Jefferson Avenue
Wabasha, MN 55981
jnordstrom@co.wabasha.mn.us
jleisen@co.wabasha.mn.us

Al Gilbert Esq.
Solicitor General
State of Minnesota
Attorney General's Office
1100 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101
al.gilbert@state.mn.us
mark.ritchie@state.mn.us

February 20, 2009

VIA MESSENGER

The Honorable Alan C. Page
Justice, Minnesota Supreme Court
Supreme Court of the State of Minnesota
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

RE: *Dennis Peterson, et al., v. Mark Ritchie, Minnesota Secretary of State, et al.*

Dear Justice Page:

Pursuant to Minn. Stat. § 204B.44, enclosed for filing is an original and one copy of the following:

1. Petition by Certain Minnesota Voters to Have Their Votes Counted Pursuant to Minn. Stat. § 204B.44; and
2. Affidavit of Service.

As enclosed is our firm check in the amount of \$500 for the requisite filing fee.

All parties are being provided with a copy of this letter and enclosures by e-mail and U.S. Mail. Thank you.

Very truly yours,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.



Charles N. Nauen

Enclosures

c: Listed on Affidavit of Service
Judge Elizabeth A. Hayden
Judge Kurt J. Marben
Judge Denise D. Reilly