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Court Administrator

STATE OF MINNESOTA

JAN 06 2009

DISTRICT COURT

COUNTY OF RAMSEY

By lg Deputy

SECOND JUDICIAL DISTRICT

#55 Mot

In the Matter of the Contest of
General Election held on November 4, 2008
for the purpose of electing a United States
Senator from the State of Minnesota,

62-CV-09-56

Cullen Sheehan and Norm Coleman,

Contestants,

vs.

**MOTION FOR CONTEST
RULES AND PROCEDURES**

Al Franken,

Contestee.

TO: The Honorable Judges of the above-named Court, Al Franken, Contestee; Tim Pawlenty, Governor of State of Minnesota, and Mark Ritchie, Secretary of State of Minnesota.

NOTICE OF MOTION

PLEASE TAKE NOTICE that at the earliest available time available with the Court, before the three (3) judge panel (the "Panel") appointed pursuant to the Notice of Election Contest filed by Contestants, Contestants will bring the following motion on for hearing.

MOTION

Plaintiff moves for an Order establishing Rules and Procedures for the election contest in the form attached hereto as Exhibit A.

Dated: January 6, 2009

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EXHIBIT A

STATE OF MINNESOTA 2008 SENATE ELECTION CONTEST RULES

1. There shall be an inspection of all Ballots (as defined below) and Election Materials (as defined below) and a recount by local election officials and inspectors appointed by this Court of the Ballots cast for the office of United States Senator from the State of Minnesota in all precincts designated by representatives of Contestants and Contestee. Such precincts shall be designated on or before January __, 2009 by written notice to this Panel delivered by counsel for each of Contestants and Contestee, as applicable.

2. As used herein, "Ballots" means all Ballots cast or attempted to be cast in the General Election, including, without limitation, absentee Ballots, UOCAVA Ballots (including without limitation military Ballots), optical scan Ballots, hand-counted Ballots and duplicate Ballots made as substitutes for defective original Ballots under Minn. Stat. § 206.86, subd. 5.

3. As used herein, "Election Materials" means Ballots and other materials relating to the General Election including, without limitation, tally sheets, tabulating cards, summary statements, poll lists, voter certificates, voter registers (including same-day voter registers), accepted absentee ballot envelopes, rejected absentee ballot envelopes, voter registration applications, absentee ballot applications, election-day incident reports and/or other correspondence from election judges and/or election officials pertaining to the General Election, voting machine tape results and reports (including without limitation voting machine reports from the September 9, 2008 primary, pre-primary and pre-election testing reports relative to voting machines, voting machine reports from the General Election, voting system memory cards and computer log files), and reports of the post-election review audit process.

4. Contestants and Contestee shall notify the Panel no later than January __, 2009 as to the precincts in which inspections of Ballots and Election Materials are desired and for which recounting of Ballots are desired. Inspections and recounts shall occur in the presence of the legal custodian of such Ballots and Election Materials and shall proceed in the manner provided hereinbelow. All inspections shall be concluded by _____, 2009 in anticipate a trial to commence on _____, 2009.

BALLOT AND ELECTION MATERIAL INSPECTION AND COUNTING PROCEDURES

As required by Minnesota law, all inspections and counting shall occur in the office and in the presence of the legal custodian of the Ballots. Accordingly, all inspectors will report to the county auditor or other designated local election official ("Election Official") in his/her office in the courthouse at the county seat of the county or such other location where Ballots and Election Materials are located. Inspection and counting shall occur in a suitable room in the building where the Ballots and Election Materials to be inspected and counted are located, in a room which shall be adequately furnished, equipped, heated and ventilated. The Election Official personally or by such deputies as designated by the Election Official shall be personally present in the room where the inspection and counting takes place at all times during inspection and counting.

The inspection and counting will take place in a room that shall be open to the public to the extent that the facilities reasonably allow. The public area shall be physically separate from the area where the inspection and counting is taking place. The Election Official or his/her deputy shall remove any spectator whose conduct is intrusive to the inspection and counting procedure upon the request of any inspector. No persons will be permitted in the area where the inspection and recounting is taking place and while the Ballots are in the room except the inspectors, an observer appointed by each of Contestant and Contestee party (if they choose), and the Election Official or his/her deputies. Observers shall not be permitted to handle or view the Ballots and must remain in areas designated as observation areas by the Election Official or his/her deputies.

No inspecting of Election Materials or counting of Ballots shall take place except when all three inspectors and the Election Official or designated deputies are in the room.

The inspection and counting room should contain a large table or series of tables arranged so that the three inspectors may sit or stand side by side on one side of the table and the Election Official (or designated deputy) on the other. The neutral inspector should sit or stand in the center during the inspection. At other times the positions of the three inspectors may be rotated.

The following supplies shall be used:

(a) Rubber stamps or pads will be supplied for identifying Ballots in accordance with the instructions below, the pad being supplied by the Election Official.

(b) An adding machine shall be supplied by the Election Official.

Each team of inspectors will be supplied at or before the time it starts its recount with an adequate supply of official report forms and a rubber stamp.

There shall be no adjournment of counting for meals or for the day until the counting of a particular precinct, township or ward is completed. Upon any adjournment for any reason including for a meal or for the day, the Election Official (or designated deputies), who shall have exclusive control of the Ballots, shall return all Ballots and Election Materials to the locked vault or storage area.

Ballot Checking Procedure

1. Initial Procedure.

(a) The Election Official or designated deputy or deputies shall produce the Ballot container (boxes) one (1) precinct at a time in the numerical order designated in the official county tally sheets unless storage arrangements require otherwise. This shall be done in the presence of all inspectors who shall examine the box to see if the seals are broken and note any that are found broken on an incident report, a copy of which incident report shall be delivered by the Election Official to the Panel and counsel for each of Contestants and Contestee.

(b) The Election Official shall then remove any election register from the container, where such registers are found or available.

(c) If there is no election register, the voters' certificates or, if the same are not available, the duplicate registration files of persons who voted shall be counted.

(d) The inspectors shall then count the names in the election register, voters' certificates or duplicate registration files to determine the number of persons who voted in such precinct on election day and to verify the total number of Ballots to be counted in such precinct.

2. An inspection shall be made of all accepted and rejected absentee ballot return envelopes found and the inspectors may challenge any of them and such disputed envelopes shall be appropriately marked as exhibits with the rubber stamp and included as exhibits for return to the Panel (with a copy to counsel for each of Contestants and Contestee). With respect to rejected absentee ballot return envelopes, the inspectors shall be permitted to examine the polling rosters to determine whether the person submitting the envelope was actually registered to vote and whether or not such person voted in person or by absentee on election day. If such person was not registered to vote or did vote in person or by absentee on election day, the Election Official shall make a written designation of the same within an incident log to be submitted to the Panel (with copies to counsel for each candidate) as provided herein.

3. Inspecting and Counting the Ballots.

(a) The apparently-voted Ballots shall first be inspected and such Ballots shall not be commingled with other Ballots. The Election Official shall open the boxes or envelopes containing the apparently voted white Ballots and hand them to the neutral inspector.

(b) All such Ballots shall be placed face down in front of the neutral inspector, who shall be seated or stand between the Franken inspector and the Coleman inspector.

(c) The neutral inspector shall turn the Ballots over one at a time, placing Ballots apparently voted for Coleman in front of the Franken inspector and Ballots apparently voted for Franken in front of the Coleman inspector.

(d) As Ballots are turned over by the neutral inspector (and before being placed by him in the piles of undisputed Coleman or Franken Ballots as hereinafter provided and before the next Ballot is picked up by the center inspector) the Coleman or Franken inspector, as the case may be, using as much time as desired, may challenge by voice or agreed signal, any Ballot which either wishes to dispute.

(e) All challenged Ballots shall immediately be placed by the neutral inspector in separate piles of (1) Disputed Ballots for Coleman and (2) Disputed Ballots for Franken respectively. Such piles shall be in front of and across the table from the center inspector.

(f) All unchallenged Coleman Ballots and all unchallenged Franken Ballots shall be placed across the table from the inspectors in appropriate separate piles; the undisputed Coleman Ballots to be placed in front of the Franken inspector and the undisputed Franken Ballots to be placed in front of the Coleman inspector. All other candidate Ballots and all blank Ballots shall be placed in separate piles across the table from the inspectors.

4. Duplicates/Originals. As the Ballots are sorted, the Election Official shall remove all ballots that are marked as "DUPLICATE" Ballots and place such duplicate Ballots in a separate

pile. At the conclusion of the sorting process, the Election Official shall open the envelope of original ballots for which duplicates were made for that precinct (if such envelope can be found) and match the original ballots to the corresponding duplicates for which matches exist. The matched duplicates and originals shall be compared to each other to determine whether election judges properly discerned the intent of the voter; either inspector may challenge any such duplicate on the grounds that it does not match the original in the manner provided in these Rules for challenges. If one or more duplicate Ballots cannot be matched to corresponding original Ballots, *only* the duplicate Ballot(s) shall be included in the count.

5. Counting of Ballots. Each pile of Ballots (including those voted for any other candidate and blank Ballots) shall then be counted separately by all three inspectors exclusively by the pile (of 25) method and the results reconciled and recorded on summary statements, the originals of which must be delivered to the Panel (with copies).

6. Reporting of Discrepancies. The inspectors shall then note any discrepancies between their Ballot totals and the vote and Ballot totals as shown on the election registers, or voters' certificates. The inspectors shall also note any discrepancies between their Ballot totals and the vote and Ballot totals as shown in the report of the precinct Ballot judges. All such discrepancies shall be described in all possible detail on incident reports, the originals of which shall be provided to the Panel (with a copy to counsel for each of Contestants and Contestee).

7. Identification stamps shall then be stamped on the back of each disputed Ballot in the upper right hand corner (unless some mark already on any of such Ballots requires some other location).

8. Each such disputed Ballot shall then have marked on the stamped space a record showing county, municipality, precinct number, party challenging, and with each party's challenge in each precinct being consecutively numbered. The form of the challenge numbers shall be as follows:

- Challenge C-1 (*et. seq.*) shall mean a challenge by a Coleman inspector.
- Challenge F-1 (*et. seq.*) shall mean a challenge by a Franken inspector.

9. Thereafter the inspectors shall examine any "spoiled," "rejected," "blank" or other Ballots which were not included with the box, envelope or package of apparently counted Ballots and either party's inspector may mark any of such material or any part of it as an exhibit or exhibits.

10. Each inspector shall be permitted a reasonable opportunity to make such notes or other record of each disputed Ballot or other exhibit as the inspector may deem necessary. The originals of all challenged Ballots and other applicable Election Materials shall be delivered by the Election Official or his/her representative to the Panel and one (1) copy of each shall be provided to counsel for each of Contestants and Contestee.

11. Vote totals will be noted on official summary statements in form ordered the Panel, including votes for Coleman, Franken, Other and Ballots challenged by each of Coleman inspectors and Franken inspectors.

12. All reports and incident logs to the Panel shall be completed and signed by all of the inspectors. The originals shall be delivered by the Election Official or his/her representative to the Panel and one (1) copy of each shall be provided to counsel for each of Contestants and Contestee.

13. The Election Official or his deputy shall return all undisputed Ballots to the Ballot envelope or box and reseal it. No challenges shall thereafter be made and no re-inspection of any Ballots or Election Materials shall be permitted without leave of the Panel. The Election Official shall put all disputed Ballots and all other disputed materials, and if requested by either party's inspector, the election register together with one (1) copy of the official report for the precinct in question in the envelope marked on the outside "Election Contest Inspectors' Report, Disputed Ballots and Other Exhibits."

14. The Election Official shall seal the envelope marked "Election Contest Disputed Ballots" with tape in the presence of the inspectors and shall write his or her name across the sealed flap.

15. The same procedure shall then be repeated for the next precinct.

16. Not later than the first business day following completion of counting and inspection, the Election Official shall enclose in separate sealed envelopes all original materials to be delivered to the Panel from each precinct and shall then deliver or mail by overnight courier, registered or certified mail, postage prepaid, each set of material as follows:

VARIATIONS

The above Rules may not be modified or changed without the Order of this Panel.