

STATE OF MINNESOTA  
IN SUPREME COURT

APR 21 2009

FILED

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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,

Cullen Sheehan and Norm Coleman,

Appellants,

vs.

Al Franken,

Respondent.

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**RESPONDENT'S MOTION FOR  
EXPEDITED SCHEDULE**

Cullen Sheehan and Norm Coleman ("Appellants") have appealed the unanimous decision of the three-judge election contest court ("the District Court"), which, after a seven-week trial, affirmed the unanimous Minnesota State Canvassing Board certification that Al Franken ("Respondent") received the highest number of votes in the 2008 general election for the office of United States Senator. Because of the overriding public interest in the expeditious handling and resolution of this historic matter, Respondent respectfully moves for an order that:

1. The record of the District Court proceedings be provided to the Court by the close of business tomorrow, Wednesday, April 22, 2008;
2. Briefing be expedited pursuant to the schedule below, so that the case will be ready for argument twelve calendar days following provision of the record, or Monday, May 4, 2008; and

3. A date for oral argument be set such that the case will be argued promptly after briefing is complete.

This motion is made pursuant to Minn. Stat. § 209.09, subds. 2 & 4, Minn. R. Civ. App. P. 102 and 126, and the Court's inherent authority.

### **GROUND FOR MOTION**

Under the United States Constitution, Minnesota is entitled to be represented by two United States Senators. Minnesota has been without its second Senator for more than 100 days. In a trial that lasted seven weeks, Appellants were given every opportunity to make their case to the District Court. In its unanimous decision, the District Court declared that Respondent is entitled to the certificate of election. Now, because of the important public policy concern of ensuring that the interests of the citizens of Minnesota are properly represented in Congress, this appeal should be expedited.

Minnesota Statutes Chapter 209 contemplates that election contests will be expedited. For example, pursuant to Minn. Stat. § 209.065, the contest proceedings were brought on for trial twenty days after the notice of contest was filed.

Chapter 209 also provides that appeals from a District Court decision should be expedited. Minn. Stat. § 209.10, subd. 4, applies to an appeal of an election contest involving a statewide office. See Minn. Stat. § 209.09, subd. 2 (“section 209.10 subd. 4 applies to a contest regarding a statewide office . . .”). Subdivision 4 of § 209.10 provides for expedited appeals. The deadline for an appeal is ten days after the “decision” (not entry of judgment) of the election contest court. Id. The record on appeal must be certified and filed with the Supreme Court within fifteen days after service of the notice of appeal. Id. The appeal “takes precedence over all matters for the Supreme Court.” Id.

Even without the statutory mandate to expedite the appeal, the rules of appellate procedure provide the Court with full authority to expedite the briefing and resolution of this case. See Minn. R. Civ. App. P. 102 (permitting the Court, for good cause shown, to modify the usual rules of appellate procedure in the interest of “expediting decision upon any matter before it”); Minn. R. Civ. App. P. 126.02 (permitting the Court, for good cause shown, to limit time, except for the time to file a notice of appeal); Reserve Mining Co. v. Herbst, 256 N.W.2d 808, 812 n.2. (Minn. 1977) (noting advancement of a case for oral argument and shortening of briefing schedules at the request of the parties).

Indeed, this Court has repeatedly recognized the importance of expeditious briefing and decisions in disputes previously brought before the Court involving the U.S. Senate election. For example, on Senator Coleman’s first petition (regarding absentee ballots), the time from the filing of the petition to the Court’s decision was *six days*. See Norm Coleman, et al. v. Mark Ritchie, et al., Court File No. A08-2169. On the petition by Senator Coleman regarding original and duplicate ballots, the time from the filing of the petition to the Court’s decision was *five days*. See Norm Coleman v. Minnesota State Canvassing Board, et al., Court File No. A08-2206. This Court also established an expedited briefing schedule on the Section 204B.44 petition regarding the certificate of election. See Al Franken v. Timothy Pawlenty, et al., Court File Number A09-64.

To expedite this appeal, Respondent submits that the Court should take three actions.

1. Expedite the Preparation and Filing of the Record. Minn. Stat. § 209.10, subd. 4, states that “the record on appeal must be made, certified and filed in the Supreme Court within fifteen days after service of notice of appeal.” (Emphasis added.) The fifteen day period is not a jurisdictional requirement. The Court has discretion to order the record to be filed at any time

“within” that period. Here, the transcript of proceedings is complete and need only be filed with the Supreme Court. Both sides have had full access to the transcript and the District Court cited it repeatedly in its decision. The exhibits admitted at trial are in the Minnesota Judicial Center and may be transferred immediately to the custody of the Supreme Court. Counsel is advised that the District Court file has been fully prepared for appeal. Therefore, this Court should order that the record be filed by the close of business tomorrow, Wednesday, April 22, 2009.

2. Expedite the Briefing Schedule. All issues that are expected to be part of this appeal were fully briefed in the District Court. For many weeks, both Appellants and Respondent have been in possession of the full transcripts of the proceeding and all of the admitted evidence. Appellants were anticipating an appeal and working on their Supreme Court brief well before the Notice of Appeal was filed. As Appellant Coleman said on April 15, 2008, “We are hoping the court gives us an accelerated schedule, so we are actually working on the briefs now.”<sup>1</sup> Indeed, Appellant Sheehan confirmed that the Notice of Appeal was not filed immediately after the District Court’s decision so that Appellants would have more time to prepare their brief.<sup>2</sup> Further, Appellants were represented below and are now represented on appeal by a large team of lawyers drawn from three law firms, including the largest firm in the state, with a demonstrated capacity to prepare and file comprehensive briefing on an accelerated basis. In short, neither party to this appeal would be prejudiced by the acceleration of the appeal.

Accordingly, Respondent suggests the following briefing timeline:

- A. Opening brief of Appellants – Monday, April 27, 2009, five calendar days after delivery of the record;

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<sup>1</sup> See *Saint Paul Pioneer Press*, “‘It’s going to take a little longer,’ Coleman says of Senate race,” April 16, 2008.

<sup>2</sup> See *MinnPost.com*, “An explanation for why Coleman hasn’t filed notice of appeal,” April 17, 2009.

- B. Opposition brief of Respondent – Saturday, May 2, 2009, five calendar days after service of the opening brief; and
- C. Reply brief – Monday, May 4, 2009, two calendar days after service of the opposition brief.

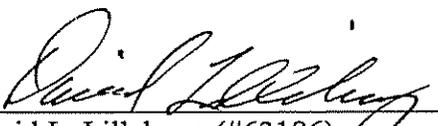
3. Set an Expedited Date for Oral Argument. Respondent respectfully suggests that the Court schedule oral argument now for a date very shortly after the reply brief is submitted.

More than five full months have elapsed since the November 4, 2008, general election. More than three months have elapsed since the State Canvassing Board declared the election result and the United States Senate convened to address the nation's urgent business. Yet, unlike every other state in the union, Minnesota stands alone with only a single United States Senator to represent its citizens and respond to their concerns. While Appellants had the right to challenge the State Canvassing Board's decision before three judges and now have the right to appeal the District Court's unanimous decision rejecting their claims, Respondent submits that the overriding public interest in resolving this dispute promptly requires that this appeal be expedited.

Dated: April 21, 2009

Respectfully submitted,

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*Motion for Admission Pro Hac Vice Pending*  
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*Attorneys for Respondent Al Franken*



April 21, 2009

**VIA MESSENGER**

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OFFICE OF  
APPELLATE COURTS

APR 21 2009

FILED

Re: 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, Cullen Sheehan and Norm Coleman v. Al Franken  
Court File Number: A09-697

Dear Mr. Grittner:

Enclosed for filing with respect to the above-captioned matter please find the following documents:

1. Four copies of Respondent's Motion for Expedited Schedule; and
2. Affidavit of Service.

By copy of this letter, we are serving counsel for Appellants.

Sincerely,

*Richard D. Snyder*

Richard D. Snyder

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