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Court Administrator

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By CW Deputy

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

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

District Court File No. 62-CV-09-56

Cullen Sheehan and Norm Coleman,

Contestants,

vs.

Al Franken,

Contestees,

ORDER GRANTING IN PART AND DENYING IN PART PETITIONERS' MOTION FOR SUMMARY JUDGMENT

Dennis Peterson, et. al.,

Petitioners,

vs.

Mark Ritchie, Minnesota Secretary of State, et. al.,

Respondents.

Supreme Court File No. A09-65

This matter comes before the Court on Petitioners Dennis Peterson, et. al.'s ("Petitioners") motion for summary judgment. After consideration of the arguments of counsel, the written submission of the parties, and the pleadings in the case, IT IS HEREBY ORDERED:

1. Petitioners' Motion for Summary Judgment is granted in part and denied in part.
2. The following absentee ballots shall be provided to the Secretary of State at a date

to be determined by the Court to be opened and counted at a date to be determined by the Court, and the total be declared and certified for such use as might be appropriate by the United States Senate, this Court, or any other proper use under law.

Douglas Stange	Crow Wing
Jennifer Bartholomay	Dakota
Kim Falde	Dakota
Leona Quinlan	Dakota
Thomas Quinlan	Dakota
Charles Quinn	Dakota
Gerald Ratzlaff	Dakota
Joan Ratzlaff	Dakota
Roxanna Saad	Dakota
Jordan Brandt	Hennepin
Hannah Gorski	Hennepin
Greg McCool	Hennepin
Rebekah Nelson	Hennepin
Karen Robitz	Hennepin
Audrey Verlo	Hennepin
Debra Kay Erickson	Kittson
Christopher Ludvigson	Lac Qui Parle
Hubert Redepenning	Lac Qui Parle
Richard Haefner	Olmsted
Donna Mortenson	Pope
Walter Thompson	Ramsey
Mary Bell	Saint Louis
Ross Grandlienard	Washington
Ryan Stoa	Winona

3. The absentee ballot of Roxanna Saad of Dakota County shall be provided to the Secretary of State at a date to be determined by the Court to open the secrecy envelope to determine whether it contains a complete voter registration application. In the event that a complete voter registration application is found within the secrecy envelope, Ms. Saad's absentee ballot shall be opened and counted in accordance with section 2 of this Order.

4. The attached Memorandum is incorporated as if fully set forth herein

5. Any requested relief not specifically granted herein is denied.

Dated: February 10 2009

Elizabeth A. Hayden
Elizabeth A. Hayden
Judge, District Court

Dated: 2/10/09

Kurt J. Marben
Kurt J. Marben
Judge, District Court

Dated: 2/10/09

Denise D. Reilly
Denise D. Reilly
Judge, District Court

MEMORANDUM

I. Procedural Posture

Petitioners are 61¹ individual voters who move this panel for an Order directing that absentee ballots that they cast in the November 4, 2008 general election for United States Senator from Minnesota. To that end, Petitioners filed a petition pursuant to Minnesota Statute § 204B.44 with the Minnesota Supreme Court on January 13, 2009. In the Petition, Petitioners named Secretary of State Mark Ritchie and each of counties in which they voted as Respondents.² Contestant Norm Coleman moved to intervene in the Petitioners' proceeding before the Supreme Court. On January 16, 2009, the Supreme Court issued an order granting Coleman's motion for intervention and directing the Petition to this Court for consideration and decision within the current election contest.

On January 21, 2009, Petitioners filed a motion for summary judgment seeking an order from this panel directing that their absentee ballots be opened and counted immediately and that the total of such votes be declared and certified for use in this election contest or by the United States Senate in any subsequent proceeding. On January 23, 2009, Contestants submitted a memorandum in response to Petitioners' motion for summary judgment arguing that if the Court granted Petitioners' motion, it was compelled to order the opening and counting of all ballots that Contestants claim fall within the same categories as Petitioners' ballots. Contestee did not file

¹ Originally there were 64 petitioners who filed the Petition with the Minnesota Supreme Court, but 3 of them withdrew their names as petitioners on January 29, 2009 because their ballots had already been opened and counted pursuant to the Minnesota Supreme Court's Order of December 18, 2008.

² The counties named were Carlton County, Cass County, Clay County, Crow Wing County, Dakota County, Hennepin County, Kittson County, Lac Qui Parle County, Lake County, Morrison County, Olmsted County, Pine County, Pope County, Ramsey County, Saint Louis County, Stearns County, Washington County and Winona County. The counties were named as Respondents on the basis of their responsibility for the administration of the election through their county canvassing boards. Pursuant to the withdrawal of the only petitioner from Morrison County, Morrison County was also withdrawn as a Respondent.

any papers in response or in opposition to Petitioners' motion for summary judgment. The Court heard argument on this motion on Friday January 30, 2009. At the hearing, attorneys appeared for and on behalf of Respondents Crow Wing County, Ramsey County, Hennepin County, and the Secretary of State. None of the Respondents opposed Petitioners' motions.

II. Standard of Review

Rule 56 of the Minnesota Rules of Civil Procedure is designed to implement the stated purpose of the rules – securing a just, speedy, and inexpensive determination of an action – by allowing a court to dispose of an action on the merits if there is no genuine dispute regarding the material facts, and a party is entitled to judgment under the law applicable to such facts. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). Accordingly, summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law. Minn. R. Civ. P. 56.03. Summary judgment is not intended as a substitute for trial when there are factual issues to be determined. *Naegele Outdoor Advertising Co. of Minneapolis v. City of Lakeville*, 532 N.W.2d 249, 252 (Minn. Ct. App. 1995). Summary judgment is a “blunt instrument” and “should be employed only where it is perfectly clear that no issue of fact is involved, and it is neither desirable, nor necessary to inquire into facts which clarify the application of the law.” *Donnay v. Boulware*, 144 N.W.2d 711, 716 (Minn. 1966).

In considering a summary judgment motion, the court must determine whether there are genuine issues of fact. *Pine Island Farmers Co-op v. Erstad & Reimer*, 649 N.W.2d 444, 447 (Minn. 2002); *DLH, Inc.*, 566 N.W.2d at 70. The substantive law determines which facts are material. *Bond v. Commissioner of Revenue*, 691 N.W.2d 831, 836 (Minn. 2005). A material

fact is one that will affect the outcome or result of a case. *Laska v. Anoka County*, 696 N.W.2d 133, 140 (Minn. Ct. App. 2005). The burden is on the moving party to show the absence of any genuine issue of material fact. Minn. R. Civ. P. 56.03; *Bixler v. J.C. Penney Co.*, 376 N.W.2d 209, 215 (Minn. 1985). Once the moving party has made a prima facie case that entitles it to summary judgment, the burden shifts to the nonmoving party to produce specific facts that raise a genuine issue for trial. *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. Ct. App. 2001) (citing Minn. R. Civ. P. 56.05; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988)).

III. The Relevant Statutory Standards Applicable to Petitioners' Motion for Summary Judgment

Petitioners filed their Petition pursuant to Minnesota Statute § 204B.44, which provides in relevant part:

Any individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions, or wrongful acts which have occurred or are about to occur:

...
(d) 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.

Minn. Stat. § 204B.44. Petitioners argue that the failure to count the absentee ballots that they cast in the November 4, 2008 general election constitute errors and omissions by county election officials that should be corrected.³ Petitioners argue that they cast their ballots in accordance with all requirements and local election officials wrongfully rejected them.

³ The Petition involves allegations of errors and omissions by county election officials and not any "wrongful acts" on their part. (Petition at 6.)

Minnesota Statute § 203B.12 details the requirements for absentee ballots cast by Minnesota voters and directs that absentee ballots are to be marked 'accepted' by election judges if they are satisfied that:

- (1) the voter's name and address on the return envelope are the same as the information provided on the absentee ballot application;
- (2) the voter's signature on the return envelope is the genuine signature of the individual who made the application for ballots and the certificate has been completed as prescribed in the directions for casting an absentee ballot, except that if a person other than the voter applied for the absentee ballot under applicable Minnesota Rules, the signature is not required to match;
- (3) the voter is registered and eligible to vote in the precinct or has included a properly completed voter registration application in the return envelope; and
- (4) the voter has not already voted at that election, either in person or by absentee ballot.

Minn. Stat. § 203B.12, subd. 2. Section 203B.07 sets forth the requirements for the certificate of eligibility printed upon an absentee ballot, which must be completed by the voter pursuant to § 203B.12, subd. 2(2) :

A certificate of eligibility to vote by absentee ballot shall be printed on the back of the return envelope. The certificate shall contain a statement to be signed and sworn by the voter indicating that the voter meets all of the requirements established by law for voting by absentee ballot. The certificate shall also contain a statement signed by a person who is registered to vote in Minnesota or by a notary public or other individual authorized to administer oaths stating that:

- (1) the ballots were displayed to that individual unmarked;
- (2) the voter marked the ballots in that individual's presence without showing how they were marked, or, if the voter was physically unable to mark them, that the voter directed another individual to mark them; and
- (3) if the voter was not previously registered, the voter has provided proof of residence as required by section 201.061, subdivision 3.⁴

⁴ This subdivision provides in relevant part:

Minn. Stat. § 203B.07, subd. 3. In referencing the completion of the certificate on the absentee ballot envelope, § 203B.12, subd. 2(2) requires that an absentee ballot envelope be properly sworn and executed by the voter and executed by an authorized witness. Similarly, by referencing "the application for ballots," § 203B.12, subd. 2(2) incorporates the requirements for

An individual may prove residence for purposes of registering by:

- (1) presenting a driver's license or Minnesota identification card issued pursuant to section 171.07;
- (2) presenting any document approved by the secretary of state as proper identification;
- (3) presenting one of the following:

(i) a current valid student identification card from a postsecondary educational institution in Minnesota, if a list of students from that institution has been prepared under section 135A.17 and certified to the county auditor in the manner provided in rules of the secretary of state; or

(ii) a current student fee statement that contains the student's valid address in the precinct together with a picture identification card; or

(4) having a voter who is registered to vote in the precinct, or who is an employee employed by and working in a residential facility in the precinct and vouching for a resident in the facility, sign an oath in the presence of the election judge vouching that the voter or employee personally knows that the individual is a resident of the precinct. A voter who has been vouched for on election day may not sign a proof of residence oath vouching for any other individual on that election day. A voter who is registered to vote in the precinct may sign up to 15 proof-of-residence oaths on any election day. This limitation does not apply to an employee of a residential facility described in this clause. The secretary of state shall provide a form for election judges to use in recording the number of individuals for whom a voter signs proof-of-residence oaths on election day. The form must include space for the maximum number of individuals for whom a voter may sign proof-of-residence oaths. For each proof-of-residence oath, the form must include a statement that the voter is registered to vote in the precinct, personally knows that the individual is a resident of the precinct, and is making the statement on oath. The form must include a space for the voter's printed name, signature, telephone number, and address.

...

(d) For tribal band members, an individual may prove residence for purposes of registering by:

(1) presenting an identification card issued by the tribal government of a tribe recognized by the Bureau of Indian Affairs, United States Department of the Interior, that contains the name, address, signature, and picture of the individual; or

(2) presenting an identification card issued by the tribal government of a tribe recognized by the Bureau of Indian Affairs, United States Department of the Interior, that contains the name, signature, and picture of the individual and also presenting one of the documents listed in Minnesota Rules, part 8200.5100, subpart 2, item B

...

Minn. Stat. § 201.161.

an application for an absentee ballot, which must be “timely received, signed and dated by the applicant” and “contain[] the applicant’s name and residence and mailing address, and state[] that the applicant is eligible to vote by absentee ballot for one of the reasons specified in [§] 203B.02” Minn. Stat. § 203B.04, subd. 1. Further clarification of the signature requirements imposed by Minnesota Election Law are also found in Minn. Stat. § 645.44, subd. 14, which provides that “the signature of a person, when required by law, (1) must be in the handwriting of the person, or, (2) if the person is unable to write, (i) the person’s mark or name written by another at the request and in the presence of the person” Minn. Stat. § 645.44, subd. 14.

These requirements are elucidated by Rules promulgated by the Secretary of State. These rules provide, in part, that if a voter hand delivers an absentee ballot return envelope, “the county auditor or municipal clerk shall inspect the envelope to verify that it is sealed and that the absentee voter’s certificate is properly completed.” Minn. R. 8210.2200, subp. 2. In addition, this Rule goes on to provide that “[w]hen an absent voter hand delivers an envelope which is unsealed or has an improperly completed absented voter’s certificate, the absent voter’s certificate, the absent voter shall be allowed to seal the envelope and correct or complete the certificate.” *Id.*

It is these principles that the Court applies to the individualized evidence provided by Petitioners in support of their motion for summary judgment.

IV. Certain Petitioners Have Provided Sufficient Evidence to Show a Right to Relief Under Minnesota Statute § 204B.44 As a Matter of Law

Certain Petitioners have provided individualized evidence in support of their individual claims for relief under § 204B.44. Having reviewed all of the evidence provided by Petitioners in support of their motion, the Court determines that the Petitioners identified below have provided un rebutted evidence that their absentee ballots were legally cast and should be counted.

Accordingly, the Court determines that the following Petitioners are entitled to summary judgment on their claims pursuant to Minnesota Statute § 204B.44:

- Douglas Stange of Crow Wing County (Nauen Aff. Exs. 7-A – 7-C & Zoll Aff. Ex. 7-D);
- Jennifer Bartholomay of Dakota County (Nauen Aff. Exs. 8A-8-D);
- Kim Falde of Dakota County (Nauen Aff. Ex. 12-A – 12-C);
- Leona Quinlan of Dakota County (Nauen Aff. Ex. 17-A – 17-E);
- Thomas Quinlan of Dakota County (Nauen Aff. Ex. 18-A -18-E);
- Charles Quinn of Dakota County (Nauen Affidavit. Ex. 19-A – 19-C);
- Gerald Ratzlaff of Dakota County (Nauen Aff. Exs. 20-A – 20-C);
- Joan Ratzlaff of Dakota County (Nauen Aff. Exs. 21-A – 21-C);
- Jordan Brandt of Hennepin County (Nauen Aff. Exs. 27-A – 27-D);
- Hannah Gorski of Hennepin County (Nauen Aff. Exs. 30-A – 30-D);
- Greg McCool of Hennepin County (Nauen Aff. Exs. 34-A – 34-C);
- Rebekah Nelson of Hennepin County (Nauen Aff. Exs. 36A-36-D);
- Karen Robitz of Hennepin County (Nauen Aff. Exs. 37-A – 37-D);
- Audrey Verlo of Hennepin County (Nauen Aff. Exs. 39-A – 39-C);
- Debra Kay Erickson of Kittson County (Nauen Aff. Exs. 40-A – 40-D);
- Christopher Ludvigson of Lac Qui Parle County (Nauen Aff. Exs. 41-A – 41-C);
- Hubert Redepinning of Lac Qui Parle (Nauen Aff. Exs. 42-A – 42-C);
- Richard Haefner of Olmsted County (Nauen Aff. Exs. 45-A – 45-D);
- Donna Mortenson of Pope County (Nauen Aff. Exs. 47-A – 47-D & Zoll Aff. Ex. 47-E);
- Walter Thompson of Ramsey County (Nauen Aff. Exs. 58-A – 58-D);
- Mary Bell of Saint Louis County (Nauen Aff. Exs. 59-A – 59-B);
- Ross Grandlienard of Washington County (Nauen Aff. Exs. 65-A – 65-C); and

- Ryan Stoa of Winona County (Nauen Aff. Exs. 68-A – 68-C).

The Court also determines that Roxanna Saad has provided sufficient evidence that she enclosed her voter-registration materials within the secrecy envelope containing her absentee ballot. (Nauen Aff. Exs. 23-A – 23-C.) At a time and date to be determined, the Court shall order Roxanna Saad's absentee ballot return envelope and the enclosed secrecy envelope to be opened in order to determine whether Ms. Saad's voter-registration materials are indeed in the secrecy envelope. In the event that Ms. Saad's voter-registration materials are located and legally valid, the Court shall order the opening and counting of Ms. Saad's absentee ballot.

V. Certain Petitioners Have Not Provided Sufficient Evidence to Show a Right to Relief Under Minnesota Statute § 204B.44 As a Matter of Law

Upon review of the individualized evidence provided in support of Petitioners' motion for summary judgment, the Court determines that it cannot rule at this time and on this evidentiary record that the Petitioners identified below are entitled to judgment as a matter of law. These Petitioners have not provided sufficient evidence to satisfy the Court that their absentee ballots complied with all of the requirements imposed by Minnesota law or that any failure to comply with the law was not due to fault on the part of the voter but due to official error. The Court refuses to order the opening and counting of any ballot without sufficient evidence that the voter who cast the ballot complied with all relevant statutory requirements (or that any failure to comply was not due to fault on the part of the voter). In refusing to grant summary judgment to these Petitioners at this time, the Court makes no determination as to whether they may be entitled to relief under § 204B.44 at a later date upon submission of additional proof in support of their claims.

- Brenda Rengo of Carlton County (Nauen Aff. Exs. 4-A – 4-C (no declaration or other evidence presented that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that voter did not vote in

person on Election Day or submit another absentee ballot; that the voter signed an absentee ballot application or that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths⁵);

- Shirley VanDyck of Cass County (Nauen Aff. Ex. 5 & Zoll Aff. Ex 5-A (declaration silent and no other evidence presented that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths).);
- Jeffrey Dustin of Clay County (Nauen Aff. Exs. 6-A – 6-C & Zoll Aff. Ex. 6-D (declaration silent and no other evidence presented that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths and evidence presented that the voter failed to sign and swear to the certificate of eligibility on the absentee ballot return envelope).);
- Arvid Blackbird of Dakota County (Nauen Aff. Ex. 9 (no declaration or other evidence presented that rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election and that voter did not vote in person on Election Day or submitted another absentee ballot, that voter signed an absentee ballot application,⁶ or that the voter was registered to vote in the precinct in which he cast his absentee ballot).);
- Harold Buck of Dakota County (Nauen Aff. Ex. 10-A – 10-C (evidence presented that the voter did not sign an absentee ballot application and declaration silent and no other evidence presented that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths).);
- Laurence Engebretson of Dakota County (Nauen Aff. Exs. 11-A – 11-D (declaration silent and no other evidence presented that rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that voter did not vote in person on Election Day or submit another absentee ballot).);
- Caitlin Heinz of Dakota County (Nauen Aff. Ex. 13-A – 13-C (declaration silent and no other evidence presented that the voter signed an absentee ballot application));

⁵ The Court determines that certain Petitioners have not shown that their absentee ballot complied with all applicable statutory requirements and thus are not entitled to judgment as a matter of law because they have failed to provide evidence that the witness who signed the absentee ballot return envelope was a registered voter in Minnesota, a notary public or other individual authorized to administer oaths as required by § 203B.07, subd. 3. The Court may later hold that these Petitioners are entitled to judgment as a matter of law upon submission of additional proof by way of declaration, affidavit, or other evidence that the individual who executed their absentee ballot return envelope was a valid witness under § 203B.07, subd. 3

⁶ At this time, the Court refuses to presume that the mere issuance of an absentee ballot is sufficient evidence to show, as a matter of law, that a voter signed an absentee ballot application given the evidence presented that at least one Petitioner submitted an absentee ballot return envelope without completing and absentee ballot application. (Nauen Aff. Ex. 10-C at ¶ 4.)

- Katie Kaszynski of Dakota County (Nauen Aff. Exs. 15-A – 15-D (insufficient evidence presented that the voter was registered and eligible to vote in the precinct));
- Mary Koenigsberger of Dakota County (Nauen Aff. Exs. 16-A – 16-D (declaration silent and no other evidence presented that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that voter did not vote in person on Election Day or submit another absentee ballot));
- Christy Revsbeck of Dakota County (Nauen Affidavit Ex. 22-A evidence presented that the voter did not sign the certificate of eligibility on the absentee ballot return envelope and no declaration or other evidence presented that the voter signed an absentee ballot application, that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths, or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that voter did not vote in person on Election Day or submit another absentee ballot));
- Donald Applebee of Hennepin County (Nauen Aff. Exs. 24-A – 24-C (no declaration or other evidence presented that the voter signed an absentee ballot application, that the voter was registered and eligible to vote in the precinct, that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths, or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot).)
- Donelda Applebee of Hennepin County (Nauen Aff. Exs. 25-A – 25-C (no declaration or other evidence presented that the voter signed an absentee ballot application, that the voter was registered and eligible to vote in the precinct, that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths, or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot).);
- Marilyn Borgen of Hennepin County (Nauen Aff. Ex. 26 & Zoll Aff. Ex. 26-A (evidence presented that the voter did not sign absentee ballot application));
- Kourtney Dropps of Hennepin County (Nauen Aff. Exs. 28-A – 28-C (no declaration or other evidence presented that the voter signed an absentee ballot application, that the voter was registered and eligible to vote in the precinct, that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths, or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot).));

- Dennis Erickson of Hennepin County (Nauen Aff. Exs. 29-A- 29-C (declaration silent and no other evidence presented that the voter signed the absentee ballot application).);
- Gloria Kervina of Hennepin County (Nauen Aff. Ex. 31-A – 31-C (evidence presented that the voter did not sign the absentee ballot application));
- Craig Lindquist of Hennepin County (Nauen Aff. Exs. 32-A – 32-C (no declaration or other evidence presented that the voter was registered and eligible to vote in the precinct, that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths, or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot).)
- Phyllis Mathiowetz of Hennepin County (Nauen Aff. Exs. 33-A- 33-C (evidence presented that the voter did not sign an absentee ballot application));
- Michael Misterek of Hennepin County (Nauen Aff. Exs. 35-A – 35-D (evidence presented that the voter did not sign an absentee ballot application));
- Todd Toner of Hennepin County (Nauen Aff. Exs. 38-A – 38-C & Zoll Aff. Ex. D (declaration silent and no other evidence presented that the voter signed an absentee ballot application and or that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths));
- Eila Nelson of Lake County (Nauen Aff. Exs. 43-A – 43-C & Zoll Aff. Exs. 43-D – 43-E (declaration silent and no other evidence presented that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths);
- Judith Conlow of Pine County (Nauen Aff. Exs. 46-A – 46-C & Zoll Aff. Ex. 46-D (declaration silent and no other evidence presented that the voter signed an absentee ballot application or that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths));
- Catherine Brigham of Ramsey County (Nauen Aff. Exs. 48-A – 48 –C (no declaration or other evidence presented that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot).);
- Emma Bruggeman of Ramsey County (Nauen Aff. Exs. 50-A – 50-C (no declaration or other evidence presented that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths or that the rejected absentee ballot was the only ballot submitted by the voter during the

November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot.);

- Ursela Cowan of Ramsey County (Nauen Aff. Exs. 51-A – 51 – C (evidence presented that the voter did not sign the certificate of eligibility on the absentee ballot return envelope).);
- Josephine Garcia of Ramsey County (Nauen Aff. Exs. 52-A – 52-C (declaration silent and no other evidence presented that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths).);
- Sophia Hall of Ramsey County (Nauen Aff. Exs. 53-A – 53-C (no declaration or other evidence presented that the voter was registered and eligible to vote in the precinct, that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot).);
- Alexis Horan of Ramsey County (Nauen Aff. Exs. 54-A – 54-D (no declaration or other evidence presented that the voter was registered and eligible to vote in the precinct on November 4, 2008, that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths witness is registered to vote in Minnesota or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot).);
- Michael Liebig of Ramsey County (Nauen Aff. Exs. 55-A – 55-C (no declaration or other evidence presented that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths witness is registered to vote in Minnesota or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot).);
- Tempest Moore of Ramsey County (Nauen Aff. Exs. 56-A – 56-C (no declaration or other evidence presented that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot).);
- John Robertus of Ramsey County (Nauen Aff. Exs. 57-A – 57-D (evidence presented that the voter presented proper proof of residence in accordance with Minn. Stat. § 201.161 at the time he submitted his absentee ballot);
- Phyllis Jarvis of Saint Louis County (Nauen Aff. Exs. 60-A – 60-C (no declaration or other evidence presented that the voter signed an absentee ballot application, that the

witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths, or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot.);

- Dennis J. Peterson of Saint Louis County (Nauen Aff. Exs. 61-A – 61-C (evidence presented the voter's address on the return envelope was not the same as the information provided on the absentee ballot application);
- June Srok of Saint Louis County (Nauen Aff. Ex. 62-A (no declaration or other evidence presented that the voter signed an absentee ballot application, that the voter the was registered and eligible to vote in the precinct, that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths, or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot).);
- Carole Treloar of Saint Louis County (Nauen Aff. Exs. 63-A – 63-C (evidence presented that certification on absentee ballot return envelope was not witnessed and no declaration or other evidence presented that the voter signed an absentee ballot application, or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot).);
- Lora West of Stearns County (Nauen Aff. Ex. 64 (no declaration or other evidence presented that the voter signed an absentee ballot application, that the voter was registered and eligible to vote in the precinct, that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths, or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot); and
- Orin Ottman of Winona County (Nauen Aff. Ex. 67-A – 67-C (no declaration or other evidence presented that the witness was a person registered to vote in Minnesota, a notary public or other individual authorized to administer oaths, or that the rejected absentee ballot was the only ballot submitted by the voter during the November 4, 2008 general election or that the voter did not vote in person on Election Day or submit another absentee ballot).

VI. Conclusion

For the reasons set forth above, the Court grants in part and denies in part Petitioner's motion for summary judgment.