


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MAR 11 2009

STATE OF MINNESOTA  
COUNTY OF RAMSEY

By  Deputy

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.

Dennis Peterson, et. al.,

Petitioners,

Supreme Court File No. A09-65

vs.

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

Respondents.

**PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF  
SECOND RENEWED MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

On February 10, 2009, this Court issued an order granting in part, and denying in part, Petitioners' motion for summary judgment. This Court held that 24 petitioners had "provided un rebutted evidence that their absentee ballots were legally cast and should be counted." Order, February 10, 2009, at 8. However, the Court concluded that the remaining 37 petitioners "have

not provided sufficient evidence to satisfy the Court that the absentee ballots complied with all of the requirements imposed by Minnesota law or the failure to comply with the law was not due to fault on the part of the voter but due to official error.” *Id* at 10. The Court further stated that “[i]n 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.”

On February 20, 2009, Petitioners brought a Renewed Motion for Summary Judgment setting forth individualized evidence that 19 of the 37 remaining absentee ballots were legally cast and should be counted. Through this Second Renewed Motion for Summary Judgment, Petitioners present individualized evidence establishing that an additional four absentee ballots were legally cast and should be counted. The facts in so far as they relate to the four Petitioners are not in dispute and there is no basis under Minnesota law to refuse to count Petitioners’ properly cast absentee ballots.

## **II. STATEMENT OF THE ISSUES**

1. Whether four Petitioners’ absentee ballots cast in the general election held on November 4, 2008, for the purpose of electing a United States Senator from the State of Minnesota should be opened and counted.

## **III. STATEMENT OF THE RECORD**

This motion is based on the following documents

1. Petition by Certain Minnesota Voters to Have Their Votes Counted Pursuant to Minn. Stat. § 204B.44; and
2. Affidavit of Charles N. Nauen dated March 11, 2009 and attached exhibits.

#### IV. STATEMENT OF UNDISPUTED MATERIAL FACTS

In the interest of economy and avoiding unnecessary repetition, the relevant facts are set forth separately, for each Petitioner, below. These facts are based upon documents, affidavits, or declarations made under penalty of perjury and are not, to Petitioners' knowledge, disputed.

#### V. ARGUMENT

As set forth in the following sections, Petitioners' absentee ballots in the November 4, 2008, general election were legally cast and should be accepted, opened, and counted.<sup>1</sup>

##### A. **Dakota County Ballot**

###### 1. Katie Kaszynski

Katie Kaszynski completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 1-A (Kaszynski Decl.); 1-B (Ballot Application). Ms. Kaszynski's correct name and address appear on her application for an absentee ballot. Nauen Aff. Ex. 1-A (Kaszynski Decl.); Ex. 1-B (Ballot Application). Ms. Kaszynski subsequently received an absentee ballot, marked it according to the directions, and enclosed it in the secrecy envelope. Nauen Aff. Ex. 1-A (Kaszynski Decl.); Ex. 1-C (Envelope). In addition, Ms. Kaszynski completed a new voter registration application which was provided with her absentee ballot. Nauen Aff. Ex. 1-A (Kaszynski Decl.). Ms. Kaszynski believes she likely enclosed the voter registration application with her absentee ballot in the secrecy envelope. Id.

Ms. Kaszynski signed the certificate of eligibility on her absentee ballot return envelope. Nauen Aff. Ex. 1-A (Kaszynski Decl.); Ex. 1-C (Envelope). Ms. Kaszynski's genuine signature appears on both her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 1-A (Kaszynski Decl.); Ex. 1-B (Ballot Application); Ex. 1-C (Envelope). Ms. Kaszynski's absentee ballot return envelope was properly executed by an authorized witness.

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<sup>1</sup> The ballots are organized by County.

Nauen Aff. Ex. 1-A (Kaszynski Decl.); Ex. 1-C (Envelope); Ex. 1-D (Voter Registration Record for C. Kaszynski). Ms. Kaszynski was previously registered to vote in Minnesota and submitted the new voter registration application to update her address. Nauen Aff. Ex. 1-A (Kaszynski Decl.). Ms. Kaszynski's absentee ballot is the only ballot she cast in the November 4, 2008 general election. Id.

2. Roxana Saad

In its February 10, 2009, Order, the Court ordered that Roxana Saad's absentee ballot return envelope and enclosed secrecy envelope be opened to determine whether her voter-registration materials were inside. The Court held that: "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." Order (Feb. 10, 2009) at 10.

Subsequently, a copy of Ms. Saad's legally-valid voter-registration application was found and introduced at trial as part of Exhibit F 1792. *See* Nauen Aff. Ex. 4 (fourth unnumbered page). Therefore, there is no reason to delay ordering that Ms. Saad's absentee ballot be opened and counted.

**B. Hennepin County Ballot**

1. Kourtney Dropps

Kourtney Dropps completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 2-A (Dropps Decl.); 2-B (Ballot Application). Ms. Dropps's correct name and address appear on her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 2-A (Dropps Decl.); Ex. 2-B (Ballot Application); Ex. 2-C (Envelope). Ms. Dropps signed the certificate of eligibility on her absentee ballot return envelope. Nauen Aff. Ex. 2-A (Dropps Decl.); Ex. 2-C (Envelope). Ms. Dropps's genuine signature appears on both her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 2-

A (Dropps Decl.); Ex. 2-B (Ballot Application); Ex. 2-C (Envelope). Ms. Dropps's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 2-A (Dropps Decl.); Ex. 2-C (Envelope); Ex. 2-D (Voter Registration Record for B. Collison). Ms. Dropps is registered to vote in the precinct where she resided.<sup>2</sup> Nauen Aff. Ex. 2-A (Dropps Decl.); Ex. 2-E (Voter Registration Record for K. Dropps). Ms. Dropps's absentee ballot is the only ballot she cast in the November 4, 2008 general election. Nauen Aff. Ex. 2-A (Dropps Decl.).

### **C. Ramsey County Ballots**

#### **1. Tempest Moore**

Tempest Moore completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 3-A (Moore Decl.); 3-B (Ballot Application). Ms. Moore's correct name and address appear on her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 3-A (Moore Decl.); Ex. 3-B (Ballot Application); Ex. 3-C (Envelope). Ms. Moore signed the certificate of eligibility on her absentee ballot return envelope. Nauen Aff. Ex. 3-A (Moore Decl.); Ex. 3-C (Envelope). Ms. Moore's genuine signature appears on both her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 3-A (Moore Decl.); Ex. 3-C (Envelope). Ms. Moore's absentee ballot return envelope was properly

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<sup>2</sup> The record printed from the Secretary of State Voter Registration Records admitted into evidence as Exhibit F 2085 shows that Ms. Dropps is registered to vote at 17222 81<sup>st</sup> Avenue North, Maple Grove, MN. Nauen Aff. Ex. 2-E (Voter Registration Record for K. Dropps). The record also indicates that Ms. Dropps initially registered to vote on June 13, 2008 and that her registration was updated effective January 26, 2009 pursuant to an application dated October 28, 2008. *Id.* A record obtained from the official Minnesota Secretary of State Voter File FTP Server on December 8, 2008, prior to the January 26, 2009 update to Ms. Dropps's voter registration, shows that she was registered to vote at 17222 81<sup>st</sup> Avenue North, Maple Grove, MN effective June 13, 2009. Nauen Aff. Ex. 2-F (SOS Voter Lookup for K. Dropps). In short, Ms. Dropps was registered to vote at 17222 81<sup>st</sup> Avenue North, Maple Grove, MN, the same address that appears on her absentee ballot application and return envelope, for the November 4, 2008 general election.

executed by an authorized witness. Nauen Aff. Ex. 3-A (Moore Decl.); Ex. 3-C (Envelope); Ex. 3-D (Voter Registration Record for K. Moore). Ms. Moore is registered to vote in the precinct where she resided. Nauen Aff. Ex. 3-A (Moore Decl.); Ex. 3-D (Voter Registration Record for T. Moore). Ms. Moore's absentee ballot is the only ballot she cast in the November 4, 2008 general election. Nauen Aff. Ex. 3-A (Moore Decl.).

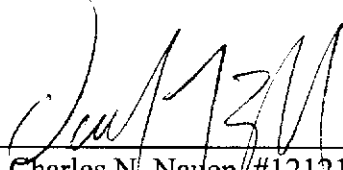
**VI. CONCLUSION**

Because there are no disputed issues of material fact, Petitioners respectfully asks this Court to enter an order directing that Petitioners' absentee ballots in the November 4, 2008, general election shall be opened and counted.

Date: March 11, 2009

**LOCKRIDGE GRINDAL NAUEN P.L.L.P.**

By: \_\_\_\_\_

  
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