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Court Administrator

MAR – 2 2009

Deputy

March 2, 2009

VIA EMAIL AND U.S. MAIL

The Honorable Elizabeth A. Hayden
Room 135, Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1500

The Honorable Denise D. Reilly
Room 135, Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1500

The Honorable Kurt J. Marben
Room 135, Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1500

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
Second Judicial District Case No. 62-CV-09-56

Dear Judges Hayden, Marben and Reilly:

I write to bring several authorities from other jurisdictions regarding potential remedies in election contests to the Court's attention. As I noted in my February 27, 2009 letter, a substantial number of cases from other jurisdictions apply proportionate reduction, on a precinct by precinct basis, as a remedy when a party has proven the existence of illegal votes. The Court may wish to review, among other cases, *Hammond v. Hickel*, 588 P.2d 256 (Alaska 1978); *Huggins v. Superior Court*, 163 Ariz. 348 (1990); *Singleterry v. Kelly*, 242 Cal. App.2d 611 (1966); *Hileman v. McGinness*, 316 Ill. App.3d 868 (2000); and *Briggs v. Ghrist*, 28 S.D. 562 (1912), for discussion of that remedy and the impossibility of adequately determining for which party an illegal vote was cast. Other cases are discussed at 26 Am. Jur.2d *Elections* § 357.

Some courts have held that when the number of illegal votes exceeds the margin between the candidates—and it cannot be determined for which candidate those illegal votes were cast—the most appropriate remedy is to set aside the election. In that regard, the Court may wish to review the following cases addressing situations in which the number of illegal votes is large and the margin of victory small: *Marks v. Stinson*, 19 F.3d 873 (3d Cir. 1994); *Griffin v. Burns*, 570 F.2d 1065 (1st Cir. 1978); *Hardeman v. Thomas*, 208 Cal.App.3d 153

(1989); *Mead v. Sheffield*, 601 S.E.2d 699 (Ga. 2004); *Akizaki v. Fong*, 461 P.2d 221 (Ha. 1969); *Adkins v. Huckabay*, 755 So.2d 206 (La. 2000); *McCavitt v. Registrars of Voters of Brockton*, 434 N.E.2d 620 (Mass. 1982); and *Ippolito v. Power*, 241 N.E.2d 232 (N.Y. 1968).

Respectfully,

James K. Langdon

JKL/vkc
cc: Marc Elias, Esq. (via email)
        Kevin J. Hamilton, Esq. (via email)

AFFIDAVIT OF SERVICE BY ELECTRONIC MAIL

STATE OF MINNESOTA   )
) ss
COUNTY OF HENNEPIN   )

Re: In re Contest of General Election held on November 4, 2008 for the purpose of
   electing a United States Senator from the State of Minnesota
   Court File No. 62-CV-09-56

Cynthia Stalock, being first duly sworn, on oath, deposes and states that on the 2nd day
of March, 2009, she did send via electronic mail to:

 Marc Elias, Esq.
 Kevin J. Hamilton, Esq.
 frankenperkinsattys@perkinscoie.com

the last known electronic mail address of said addressees in which electronic mail she had
first attached a true and correct copy of the letter to Judges Hayden, Marben and Reilly.

            _____
            Cynthia Stalock

Subscribed and sworn to before me
this 2nd day of March, 2009.

_____
Notary Public

VICKI K. CHRYST
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2010