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FILED  
Court Administrator

STATE OF MINNESOTA	JAN 23 2009	DISTRICT COURT
COUNTY OF RAMSEY	By: <i>[Signature]</i> Deputy	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 from the State of Minnesota,

**ORDER**

File No. 62-CV-09-56

Cullen Sheehan and Norm Coleman,

Contestants,

vs.

Al Franken,

Contestee.

The above-entitled matter came on for hearing before the Court on January 21, 2009 upon a Verified Petition by Contestants for Appointment of Inspectors. Counsel noted their appearances on the record. The Court having heard and read the arguments of counsel, and based upon the files, records, and proceedings herein, makes the following:

**ORDER**

1. Contestants Motion for Inspection of Ballots is DENIED.
2. Any other relief not specifically provided herein is DENIED.
3. The attached Memorandum is incorporated herein by reference.

*[Signature]*

Elizabeth A. Hayden  
Judge of District Court

BY THE COURT:

*[Signature]*

Kurt J. Marben  
Judge of District Court

*[Signature]*

Denise D. Reilly  
Judge of District Court

Dated: *January 23 2009*

## MEMORANDUM

### I. Factual Background

Contestants Cullen Sheehan and Norm Coleman ("Contestants") filed a Notice of Contest with the Ramsey County District Court on January 6, 2009 contesting the general election of November 4, 2008 pursuant to Minnesota Statute §209.021. On January 22, 2009, Contestants filed a Verified Petition for Appointment of Inspectors. This matter is now before the Court upon that Petition.

### II. Legal Standard for Appointment of Inspectors

Minnesota Statute § 209.06, subd. 1 states:

After a contest has been instituted, either party may have the ballots inspected before preparing for trial. The party requesting an inspection shall file with the district court where the contest is brought a verified petition, stating that the case cannot properly be prepared for trial without an inspection of the ballots and designating the precincts in which an inspection is desired.

The Supreme Court stated in *Christenson v. Allen* that the plain language of Minnesota Statute § 209.06 "allows inspection only upon the court's acquiring jurisdiction of the contest and then only upon a showing that an inspection is needed to prepare for trial." 264 Minn. 395, 400, 119 N.W.2d 35, 29 (1963) (citing *O'Gorman v. Richter*, 31 Minn. 25, 16 N.W. 416 (Minn. 1883)).

### III. Contestants Have Not Shown Inspection is Needed for Trial

The Court determined that it has jurisdiction over this matter in its Order Denying Contestee's Motion to Dismiss. Contestants, however, have not met their burden of showing that an inspection is needed to prepare for trial.

**a. Voter Rolls**

At the hearing of this matter on January 22, 2009, Contestants requested the inspection of ballots and election materials, including voter rolls. Words and phrases should be construed according to their common and approved usage. Minnesota Statute § 645.08, subd. 1. Minnesota Statute § 209.06 only provides for the inspection of ballots. Voter rolls and any election materials other than ballots are outside the scope of the statute. If Contestants want to review voter rolls and other election material at a precinct, they will need to obtain it by subpoena or other available means.

**b. Ballots**

Contestants' Verified Petition, filed on the afternoon of January 22, 2009, after the hearing on this issue, states "Contestant Cullen Sheehan...believes and states that Contestants cannot properly prepare their case for trial without a recount of the Ballots in certain precincts pursuant to Minnesota Statutes § 209.06". *Verified Petition For Appointment of Inspectors* ¶ 3. The Verified Petition contains no further information regarding the nature of the information Contestants believe the inspection will reveal, how this information will be crucial in preparing their case for trial, or their inability to obtain the information in a more efficient manner.

At the hearing on this matter on the morning of January 22, 2009, Contestants stated that their primary reasons for requesting an inspection under Minnesota Statute § 209.06 were to narrow the issues for trial and compare voter rolls to the number of votes cast in a precinct. Contestants conceded that they would be able to prove their case without an inspection by calling election judges as witnesses, subpoenaing voter rolls, and subpoenaing ballots. The parties already viewed the ballots during the recount

process. Given that the trial of this matter must begin on January 26, 2009, the Court is not convinced that another inspection of the ballots is efficient or needed to prepare for trial.

**IV. Conclusion**

Contestants have not met their burden of showing that an inspection is needed to prepare for trial. Therefore, Contestants' motion is denied.