

JAN 22 2009

By COX Deputy
STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

JAN 13 2009

FILED

Court File No. AO9-0065

Dennis Peterson, Donald Applebee, Donelda Applebee, Jennifer Bartholomay, Mary Bell, Arvid Blackbird, Marilyn Borgen, Jordan Brandt, Catherine Bringham, Emma Bruggeman, Harold Buck, Judith Conlow, Ursela Cowan, Kourtney Dropps, Jeffrey Dustin, Laurence Engebretson, Debra Erickson, Dennis Erickson, Kim Falde, Josephine Garcia, Robin Girtz, Hannah Gorski, Ross Grandlienard, Richard Haefner, Sophie Hall, Caitlin Heinz, Alexis Horan, Phyllis Jarvis, Brian Johnson, Katie Kaszynski, Gloria Kervina, Evelyn Koehnen, Mary Koenigsberger, Michael Liebig, Craig Lindquist, Christopher Ludvigson, Phyllis Mathiowetz, Greg McCool, Michael Misterek, Tempest Moore, Donna Mortenson, Eila Nelson, Rebekah Nelson, Orin Ottman, Leona Quinlan, Thomas Quinlan, Charles Quinn, Gerald Ratzlaff, Joan Ratzlaff, Hubert Redepinning, Brenda Rengo, Christy Revsbeck, John Robertus, Karen Robitz, Roxanna Saad, June Srok, Douglas Stange, Ryan Stoa, Walter Thompson, Todd Toner, Carole Treloar, Shirley Vandyk, Audrey Verlo, and Lora West,

Petitioners,

vs.

Mark Ritchie, Minnesota Secretary of State; 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,

Respondents.

**PETITION BY CERTAIN
MINNESOTA VOTERS TO HAVE
THEIR VOTES COUNTED
PURSUANT TO MINN. STAT. §
204B.44**

Pursuant to Minn. Stat. § 204B.44, Petitioners petition the Supreme Court of the State of Minnesota to order that their votes cast in the November 4, 2008 general election for United States Senator from Minnesota be counted. Petitioners state and allege as follows:

JURISDICTION

1. This action is necessary to correct errors and omissions made by the Respondents related to the handling of properly cast absentee ballots in the November 4, 2008 election for United States Senator from Minnesota. Respondents are charged with duties concerning the election. This Court's order is necessary to ensure that all properly cast absentee ballots are counted.

2. This Court has jurisdiction over this matter pursuant to Minn. Stat. § 204B.44.

PARTIES

3. Petitioners are Minnesota residents qualified as eligible voters under Minnesota election law who cast absentee ballots in the November 4, 2008 general election for United States Senator from Minnesota. Petitioners' absentee ballots were wrongfully rejected and, therefore, not counted in the final election results.

4. Mark Ritchie is the Minnesota Secretary of State and the chief election official in Minnesota. In his capacity as the Secretary of State, Mr. Ritchie is responsible for the administration of elections in the State of Minnesota, including the November 4, 2008 general election for United States Senator from Minnesota. Mr. Ritchie is included in this action as a necessary party.

5. Carlton County is a political subdivision of the State of Minnesota. The Carlton County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

6. Cass County is a political subdivision of the State of Minnesota. The Cass County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

7. Clay County is a political subdivision of the State of Minnesota. The Clay County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

8. Crow Wing County is a political subdivision of the State of Minnesota. The Crow Wing County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

9. Dakota County is a political subdivision of the State of Minnesota. The Dakota County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

10. Hennepin County is a political subdivision of the State of Minnesota. The Hennepin County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

11. Kittson County is a political subdivision of the State of Minnesota. The Kittson County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

12. Lac Qui Parle County is a political subdivision of the State of Minnesota. The Lac Qui Parle County canvassing board is responsible for the administration of elections in the

County, including the November 4, 2008 general election for United States Senator from Minnesota.

13. Lake County is a political subdivision of the State of Minnesota. The Lake County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

14. Morrison County is a political subdivision of the State of Minnesota. The Morrison County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

15. Olmsted County is a political subdivision of the State of Minnesota. The Olmsted County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

16. Pine County is a political subdivision of the State of Minnesota. The Pine County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

17. Pope County is a political subdivision of the State of Minnesota. The Pope County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

18. Ramsey County is a political subdivision of the State of Minnesota. The Ramsey County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

19. Saint Louis County is a political subdivision of the State of Minnesota. The Saint Louis County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

20. Stearns County is a political subdivision of the State of Minnesota. The Stearns County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

21. Washington County is a political subdivision of the State of Minnesota. The Washington County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

22. Winona County is a political subdivision of the State of Minnesota. The Winona County canvassing board is responsible for the administration of elections in the County, including the November 4, 2008 general election for United States Senator from Minnesota.

BACKGROUND

23. Petitioners cast absentee ballots in the November 4, 2008 general election for United States Senator from Minnesota which were not counted in the final election results certified by the State Canvassing Board on January 5, 2009.

24. Under Minn. Stat. § 204B.44, an individual may file a petition with any judge of the Minnesota Supreme Court for the correction of “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.”

25. Associate Justice Alan C. Page previously noted that an individual voter may use the process established in Minn. Stat. § 204B.44 to petition the Supreme Court to have the

voter's ballot counted. Coleman v. Ritchie, No. A08-2169, at D-4 (Minn. Dec. 18, 2008) (Dissent).

RESPONDENTS' ERRORS AND OMISSIONS

26. Respondents did not count Petitioners' properly cast absentee ballots in the November 4, 2008 general election for United States Senator from Minnesota.

27. The ballots for Petitioners 1 through 51, as listed in Exhibit A attached hereto, (hereinafter the "County-Rejected Petitioners") were rejected by county election officials and not counted in the November 4, 2008 general election for United States Senator from Minnesota.

28. For Petitioners 1 through 30, affidavits or declarations under oath were submitted to their counties of residence demonstrating that their absentee ballots were properly cast and, therefore, should have been counted. Affidavit of Charles N. Nauen ("Nauen Aff.") at ¶ 2. However, none of these votes were counted in the November 4, 2008 general election for United States Senator from Minnesota. The affidavits or declarations under oath for Petitioners 1 through 30 are attached to the Nauen Affidavit as Exhibit 1.

29. For Petitioners 31 through 51, verified copies of Minnesota Secretary of State Voter Lookup forms obtained from the official Minnesota Secretary of State Voter File FTP Server were submitted to their counties of residence demonstrating that their absentee ballots were properly cast and, therefore, should have been counted. Nauen Aff. at ¶ 4. However, none of these votes were counted in the November 4, 2008 general election for United States Senator from Minnesota. The verified copies of the Minnesota Secretary of State Voter Lookup forms for Petitioners 31 through 51 are attached to the Nauen Affidavit as Exhibit 2.

30. In Ramsey County, for example, a list of 15 improperly rejected absentee ballots with information demonstrating that the ballots were properly cast was submitted to the County on or about December 12, 2008. Nauen Aff. Ex. 3. On December 29, 2008, Ramsey County

Elections Manager Joe Mansky agreed that two of the absentee ballots included on such list were improperly rejected. Nauen Aff. Ex. 4. Yet, neither these two absentee ballots, nor any of the other improperly rejected absentee ballots, were included in the administrative recount for the November 4, 2008 general election for United States Senator from Minnesota. Nauen Aff. at ¶ 8.

31. For Petitioners 52 through 64, (hereinafter the “County-Identified Petitioners”) their properly cast absentee ballots were identified by the Counties as having been improperly rejected. Yet ballots cast by these County-Identified Petitioners were not included in the administrative recount because they were objected to in the process established by the Minnesota Supreme Court’s December 18, 2008 Order and implemented by the Secretary of State. As a result, these County-Identified Petitioners’ votes were not included in the election results certified by the State Canvassing Board on January 5, 2009. The absentee ballot envelopes and, in some cases, absentee ballot applications for Petitioners 52 through 64 are attached to the Nauen Affidavit as Exhibit 5.

32. For example, in Saint Louis County, 51 ballots were objected to by the Coleman campaign because of “mismatched dates” (i.e. different dates next to the signatures of the voter and the witness on the outer absentee ballot envelopes) even though no dates are required on such envelopes by Minnesota law. Nauen Aff. at ¶ 10.

33. Upon information and belief, County-Identified Petitioners received a letter from Minnesota Secretary of State Mark Ritchie stating that their ballots were not included in the final election results. *See* Nauen Aff. Ex. 5 (Example Letter).

CLAIM FOR RELIEF

WHEREFORE, Petitioners respectfully pray for an Order of the Court as follows:

1. Directing that Petitioners' absentee ballots shall be opened and counted, and the total be declared and certified, for such use as might be deemed appropriate by the United States Senate or the judges responsible for the election contest pending in the District Court for the County of Ramsey, No. 62- CV -09-56 or any other proper use under law, pursuant to procedures established by this Court.
2. Granting Petitioner's such other relief as the Court deems just and appropriate.

Dated: January 13, 2008

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

By:  _____

Charles N. Nauen, #121216
William A. Gengler, #210626
David J. Zoll, #0330681

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Minneapolis, MN 55401
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ATTORNEYS FOR PETITIONERS

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat.

§ 549.211

LOCKRIDGE GRINDAL NAKEN P.L.L.P.

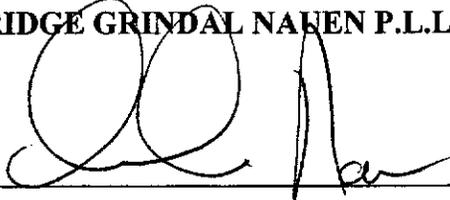
By:  _____

EXHIBIT A

	NAME	COUNTY
1	Jennifer Bartholomay	Dakota
2	Judith Conlow	Pine
3	Ursela Cowan	Ramsey
4	Jeffrey Dustin	Clay
5	Laurence Engebretson	Dakota
6	Debra Erickson	Kittson
7	Dennis Erickson	Hennepin
8	Josephine Garcia	Ramsey
9	Robert Girtz	Morrison
10	Hannah Gorski	Hennepin
11	Ross Grandlienard	Washington
12	Richard Haefner	Olmsted
13	Caitlin Heinz	Dakota
14	Katie Kaszynski	Dakota
15	Mary Koenigsberger	Dakota
16	Michael Misterek	Hennepin
17	Donna Mortenson	Pope
18	Rebekah Nelson	Hennepin
19	Eila Nelson	Lake
20	Leona Quinlan	Dakota
21	Thomas Quinlan	Dakota
22	Gerald Ratzlaff	Dakota
23	Joan Ratzlaff	Dakota
24	John Robertus	Ramsey
25	Karen Robitz	Hennepin
26	Douglas Stange	Crow Wing
27	Ryan Stoa	Winona
28	Walter Thompson	Ramsey
29	Todd Toner	Hennepin
30	Audrey Verlo	Hennepin
31	Donald Applebee	Hennepin
32	Donelda Applebee	Hennepin
33	Jordan Brandt	Hennepin
34	Catherine Bringham	Ramsey
35	Emma Bruggeman	Ramsey
36	Harold Buck	Dakota
37	Kourtney Dropps	Hennepin
38	Sophie Hall	Ramsey
39	Alexis Horan	Ramsey

EXHIBIT A

	NAME	COUNTY
40	Phyllis Jarvis	Saint Louis
41	Brian Johnson	Dakota
42	Evelyn Koehnen	Washington
43	Micheal Liebig	Ramsey
44	Craig Lindquist	Hennepin
45	Christopher Ludvigson	Lac qui Parle
46	Greg McCool	Hennepin
47	Tempest Moore	Ramsey
48	Orin Ottman	Winona
49	Brenda Rengo	Carlton
50	Christy Revsbeck	Dakota
51	Carole Treloar	Saint Louis
52	Mary Bell	Saint Louis
53	Arvid Blackbird	Dakota
54	Marilyn Borgen	Hennepin
55	Kim Falde	Dakota
56	Gloria Kervina	Hennepin
57	Phyllis Mathiowetz	Hennepin
58	Dennis Peterson	Saint Louis
59	Charles Quinn	Dakota
60	Hubert Redepenning	Lac qui Parle
61	Roxanna Saad	Dakota
62	June Srok	Saint Louis
63	Shirley Vandyk	Cass
64	Lora West	Stearns

State of Minnesota, Supreme Court
 I hereby Certify that the foregoing instru-
 ment is a true and correct copy of the
 original as the same appears on record in
 my office this 21 day of January
 20 09
Kyle Metzger
 Asst. Deputy Clerk

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January 13, 2009

Charles N. Nauen
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REPLY TO MINNEAPOLIS

VIA MESSENGER

The Honorable Alan C. Page
Justice, Minnesota Supreme Court
Supreme Court of the State of Minnesota
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

A09-0065

OFFICE OF
APPELLATE COURTS

JAN 13 2009

FILED

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RE: *Dennis Peterson, et al., v. Mark Ritchie, Minnesota Secretary of State, et al.*

Dear Justice Page:

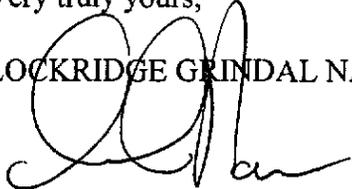
Pursuant to Minn. Stat. § 204B.44, enclosed for filing is an original and one copy of the following:

1. Petition by Certain Minnesota Voters to Have Their Votes Counted Pursuant to Minn. Stat. § 204B.44; and
2. Affidavit of Charles N. Nauen in Support of Petition by Certain Minnesota Voters to Have Their Votes Counted Pursuant to Minn. Stat. § 204B.44.

All parties are being provided with a copy of this letter and enclosures by e-mail. Thank you.

Very truly yours,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.


Charles N. Nauen

Enclosures

c: Respondents as Listed in Petition Caption (via e-mail)
Fritz Knaak (via e-mail)