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Court Administrator

JAN 23 2009

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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  
from the State of Minnesota,

Court File No. 62-CV-09-56

Cullen Sheehan and Norm Coleman,

**CONTESTANTS' MEMORANDUM  
OF LAW IN RESPONSE TO  
PETITIONERS' MOTION FOR  
SUMMARY JUDGMENT**

Contestants,

v.

Al Franken,

Contestee.

Dennis Peterson, et. al.,

Supreme Court File No. A09-65

Petitioners,

v.

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

Respondents.

Petitioners, 64 individual voters who previously petitioned the Supreme Court to have their wrongly rejected absentee ballots counted, have likewise moved this Court to have their votes counted. Contestants agree that these, *and all* wrongly rejected absentee ballots should be counted.

The mandate of equal protection requires that all ballots cast be evaluated equally and that the same rules be applied to each voter. As set forth in Contestants' Summary

Judgment Memorandum, the inconsistent treatment of absentee ballots throughout the state on election day and during the recount raises serious equal protection concerns. The most equitable and efficient remedy to such equal protection violations is to presume that all rejected absentee ballots are legal votes and to exclude only those cast by ineligible voters or tainted by fraud or bad faith. *See generally* Contestants' Summary Judgment Memorandum.

The mandate of equal protection requires that, at a minimum, all similarly situated absentee ballots be treated equally. Thus, if the Court orders that Petitioners' wrongly rejected absentee ballots be counted it should order that all other similar wrongly rejected absentee ballots be counted as well.

Most of Petitioners' absentee ballots are, in fact, found in the categories of wrongly rejected absentee ballots identified in Contestants' Summary Judgment Memorandum. Indeed, Petitioners' absentee ballots are found in each of the following categories of rejected absentee ballots identified by Contestants:

- **CATEGORY A-1:** Absentee ballots excluded, even though marked "accepted" by local election officials.
- **CATEGORY A-2:** Absentee ballots excluded, even though not marked "rejected" by local election officials.
- **CATEGORY C-1:** Absentee ballots rejected for lack of voter signature where pre-fixed sticker obstructed certification section or instructions.
- **CATEGORY D-1:** Absentee ballots rejected for missing absentee ballot application.

- **CATEGORY D-3:** Absentee ballots rejected for lack of genuine signature, even though the envelope contained the voter's genuine signature.
- **CATEGORY D-6:** Absentee ballots rejected for lack of proof of residence, even though witness checked that such proof was provided.
- **CATEGORY D-7:** "Registered Voter" absentee ballots rejected for lack of registration, even though the voter was actually registered.
- **CATEGORY D-8:** "Non-Registered Voter" absentee ballots rejected for lack of registration, even though the voter was actually registered.
- **CATEGORY D-9:** Absentee ballots rejected for lack of valid witness, even though the witness was a registered Minnesota voter.

*Compare* Petitioners' Memorandum of Law in Support of Motion for Summary

Judgment with Affidavit of John Rock (filed in support of Contestants' Motion for Summary Judgment), Exs. 1, 2, 4, 5, 7, 12, 13, 14, and 15 (chart listing, and absentee ballot envelopes of, rejected absentee ballots in the categories noted above).

### **CONCLUSION**

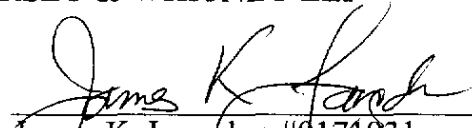
For the reasons set forth above, and in Contestants' Memorandum of Law in Support of Motion for Summary, Contestants do not object to Petitioners' Motion for Summary Judgment so long as the Court orders that all other similar wrongly rejected absentee ballots, be accepted and counted.

Dated: January 22, 2009

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