

29

FILED
Court Administrator

JAN 21 2009

By [Signature] Deputy

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
Case Type: CIVIL OTHER

File No. 62-CV-09-56

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,

Contestants,

**CONTESTANTS' ANSWER TO
COUNTERCLAIMS**

v.

Al Franken,

Contestee.

This Court has jurisdiction under Minn. Stat. § 209.12 to ensure that *all* votes legally cast be counted (and counted only once). The Notice of Contest directly and specifically challenges whether the recount properly included and tallied legally cast votes with respect to rejected absentee ballots, apparent double-counting of duplicate and original ballots and instances of missing ballots, as well as other matters. These claims, as well as Franken's counterclaims, to the extent they are meritorious, fall squarely within Minn. Stat. § 209.12 and thus within this Court's jurisdiction. The Court should consider only such ballots and votes as were legally cast on election day to reflect the true and correct tally for Contestant Norm Coleman and Contestee Al Franken.

ANSWER TO COUNTERCLAIMS

1. As to Paragraph 1 of the Counterclaim, Contestants deny that this Court lacks jurisdiction over the claims in the Notice of Contest. Contestants state that they are without information sufficient to form a belief as to whether the irregularities alleged in Franken's Counterclaims occurred. To the extent such irregularities did occur, Contestants state that this Court has jurisdiction over Franken's Counterclaims.

2. As to Paragraph 2 of the Counterclaim, Contestants admit that Franken is a Minnesota resident, eligible to vote under Minnesota election law. Contestants admit that Franken voted in the General Election. Contestants deny Franken's allegation that in the absence of the irregularities in the determination of the number of ballots lawfully cast in the General Election, Franken's margin of victory would be even larger than was certified by the State Canvassing Board.

FIRST COUNTERCLAIM

3. Contestants state that they are without information sufficient to form a belief as to whether the irregularities alleged in Paragraph 3 of the Counterclaim occurred. Contestants state that all rejected absentee ballots legally cast should be counted. If the Court agrees with Franken that the absentee ballots he identifies should be opened and counted, then every rejected absentee ballot that falls into each of the categories Franken identifies (that is, shares similar characteristics with respect to compliance with Minn. Stat. §§ 203B.12 or 203B.24) should be counted. Were it otherwise, the relief sought in Franken's First Counterclaim would violate the equal protection clause of the Minnesota and United States Constitutions.

4. As to Paragraph 4 of the Counterclaim, it contains legal conclusions and requires no response.

SECOND COUNTERCLAIM

5. Contestants state that they are without information sufficient to form a belief as to whether the irregularities alleged in Paragraph 5 of the Counterclaim occurred. Contestants state that all rejected absentee ballots legally cast should be counted. If the Court agrees with Franken that the absentee ballots he identifies should be opened and counted, then every rejected absentee ballot that falls into each of the categories Franken identifies (that is, shares similar characteristics with respect to compliance with Minn. Stat. §§ 203B.12 or 203B.24) should be counted. Were it otherwise, the relief sought in Franken's Second Counterclaim would violate the equal protection clause of the Minnesota and United States Constitutions.

THIRD COUNTERCLAIM

6. Paragraph 6 of the Counterclaim contains legal conclusions and requires no response.

7. Contestants state that they are without information sufficient to form a belief as to whether the irregularities alleged in Paragraph 7 of the Counterclaim occurred. Contestants' Notice of Contest requests that the Court require and permit inspection of all Ballots and Election Materials desired to be inspected by Contestants and Contestee pursuant to Minnesota Statutes § 209.06.

8. Contestants state that they are without information sufficient to form a belief as to whether the irregularities alleged in Paragraph 8 of the Counterclaim

occurred. Contestants' Notice of Contest requests that the Court require and permit inspection of all Ballots and Election Materials desired to be inspected by Contestants and Contestee pursuant to Minnesota Statutes § 209.06.

FOURTH COUNTERCLAIM

9. As to Paragraph 9 of the Counterclaim, Contestants state that their Notice of Contest requests that the Court require and permit inspection of all Ballots and Election Materials desired to be inspected by Contestants and Contestee pursuant to Minnesota Statutes § 209.06. With respect to duplicate ballots, Contestants state that a uniform standard should be applied across all precincts selected by Contestants and Contestee.

10. Contestants state that they are without information sufficient to form a belief as to whether the irregularities alleged in Paragraph 10 of the Counterclaim occurred. Contestants' Notice of Contest requests that the Court require and permit inspection of all Ballots and Election Materials desired to be inspected by Contestants and Contestee pursuant to Minnesota Statutes § 209.06. With respect to duplicate ballots, Contestants state that a uniform standard should be applied.

FIFTH COUNTERCLAIM

11. As to Paragraph 11 of the Counterclaim, it contains legal conclusions and requires no response.

12. Contestants state that they are without information sufficient to admit or deny the allegations in Paragraph 12 of the Counterclaim.

13. As to Paragraph 13 of the Counterclaim, Contestants state that on information and belief, other convicted felons whose voting rights have not been restored were erroneously allowed to vote in the General Election. Franken's Fifth Counterclaim, however, fails to state a claim upon which relief can be granted because it is impossible to identify Mr. Eric S. Willems' ballot, or any other convicted felon's ballot, and as such there is no remedy for correcting the election judges' errors with respect to this matter. If votes of any convicted felons whose voting rights have not been restored are to be invalidated, this must be done for all convicted felons identified (which is impossible). Were it otherwise, the relief sought in Franken's Fifth Counterclaim would violate the equal protection clause of the Minnesota and United States Constitutions.

SIXTH COUNTERCLAIM

14. Contestants deny the allegations in Paragraph 14 of the Counterclaim. Contestants timely filed a sufficient Notice of Contest and this Court has jurisdiction over all claims set forth in the Notice of Contest. Contestants deny that they are requesting a "biased" "judicially-supervised re-count." Contestants' Notice of Contest requests that the Court require and permit inspection of all Ballots and Election Materials desired to be inspected by Contestants *and* Contestee pursuant to Minnesota Statutes § 209.06.

AFFIRMATIVE DEFENSES

1. By taking the positions he took before the Minnesota Supreme Court and the Canvassing Board and by filing Counterclaims, Franken is estopped from denying that this Court lacks subject matter jurisdiction over the claims in the Notice of Contest.

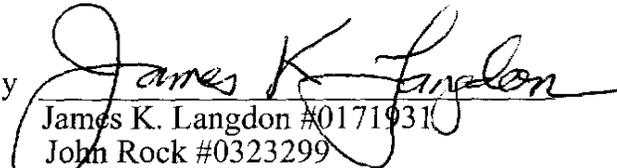
2. To the extent they seek to impose inconsistent standards and results, the relief sought in the Counterclaims would violate the equal protection clause of the Minnesota and United States Constitutions.

WHEREFORE, Contestants respectfully request that the Court grant the relief requested in their Notice of Contest.

Dated: January 19, 2009

JOSEPH S. FRIEDBERG CHARTERED
Joseph S. Friedberg #32086
Fifth Street Towers, Suite 320
150 South Fifth Street
Minneapolis, MN 55402
(612) 339-8626

DORSEY & WHITNEY LLP

By 
James K. Langdon #0171931
John Rock #0323299
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
(612) 340-2600

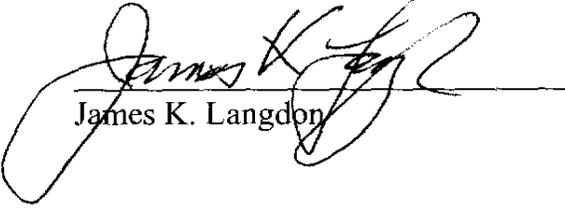
TRIMBLE & ASSOCIATES, LTD.
Tony P. Trimble, #122555
Matthew W. Haapoja, #268033
10201 Wayzata Blvd, Suite 130
Minnetonka, MN 55305
(952) 797-7477

KNAAK & KANTRUD, P.A.
Frederic W. Knaak #56777
3500 Willow Lake Blvd., Suite 800
Vadnais Heights, MN 55110
(651) 490-9078

Attorneys for Contestants
Cullen Sheehan and Norm Coleman

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under
Minn. Stat. § 549.211.


James K. Langdon

AFFIDAVIT OF SERVICE VIA EMAIL

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

Dianna Breymeier, being first duly sworn on oath, deposes and states that on the 19th day of January, 2009, she served the Contestants' Answer to Counterclaims by sending a true and correct copy via email:

The Honorable Elizabeth A. Hayden
Judge, Seventh Judicial District
Stearns County Courthouse
725 Courthouse Square
St. Cloud, MN 56303
elizabeth.hayden@courts.state.mn.us

The Honorable Kurt J. Marben
Judge, Ninth Judicial District
Pennington County Courthouse
101 North Main
Thief River Falls, MN 56701
kurt.marben@courts.state.mn.us

The Honorable Denise D. Reilly
Judge, Fourth Judicial District
Hennepin County Government Center
300 South Sixth Street
Minneapolis, MN 55487
denise.reilly@courts.state.mn.us

David L. Lillehaug, Esq.
Fredrikson & Byron, P.A.
4000 Pillsbury Center
200 South Sixth Street
Minneapolis, MN 55402-1425
dlillehaug@fredlaw.com

Kevin J. Hamilton, Esq.
Perkins Coie LLP
Suite 4800
1201 Third Avenue
Seattle, WA 98101-3099
KHamilton@perkinscoie.com

the last known email addresses of said addressees.

Subscribed and sworn to before me this
20th day of January, 2009

Vicki K. Chryst
Notary Public

Edward Bergman

