

STATE OF MINNESOTA  
IN SUPREME COURT

DEC 24 2008

FILED

A08-2169

Norm Coleman, et al.,

Petitioners,

vs.

Mark Ritchie, Minnesota Secretary of  
State, The Minnesota State Canvassing Board,  
Isanti County Canvassing Board, et al.,

Respondents,

Al Franken for Senate and Al Franken,

Intervenor-Respondents.

ORDER

Petitioner Norm Coleman, respondent Mark Ritchie, Minnesota Secretary of State, intervenor-respondents Al Franken for Senate and Al Franken, the Hennepin and Ramsey County Canvassing Boards, and the County Auditors of Hennepin, Ramsey, Stevens, Beltrami, Crow Wing, Koochiching, Cottonwood, Anoka, Chisago, Carlton, and Traverse Counties have jointly moved for modification of this court's order of December 18, 2008, to adopt a revised procedure for opening and counting of absentee ballots that it is agreed were erroneously rejected to better preserve the secrecy of the votes contained therein.

The court appreciates both the purpose of the proposed modification and the cooperation of the moving parties in agreeing on a procedure. The proposed procedure also includes a short extension of the deadline for reporting of revised vote totals as a result of this process.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The joint motion for modification of the process prescribed in the order of this court filed December 18, 2008 in the above-entitled matter is granted, paragraph 3 of said order is vacated, and the process prescribed in paragraph 2 of this order is adopted.

2. Because previously rejected absentee ballots that all agree were rejected improperly should be counted, and in light of the fact that the State Canvassing Board has not yet certified the final results of the recount, we order candidates Norm Coleman and Al Franken and their campaign representatives, the Secretary of State, and all county auditors and canvassing boards to establish and implement a process, as expeditiously as practicable, for the purpose of identifying all absentee ballot envelopes that the local election officials and the candidates agree were rejected in error. The local election officials shall identify for the candidates' review those previously rejected absentee ballot envelopes that were not rejected on any of the four bases stated in Minn. Stat. § 203B.12 (2006), or in Minn. Stat. § 203B.24 (2006) for overseas absentee ballots. Any absentee ballot return envelopes that the local election officials and the candidates agree were rejected in error shall be delivered, unopened and uncounted, to the Minnesota Secretary

of State no later than January 2, 2009, along with a notice declaring the number of ballots so delivered. If in any county there are no absentee ballot envelopes that the local election officials and the candidates agree were rejected in error, the local election officials shall notify the Secretary of State of that fact no later than January 2, 2009. No later than January 4, 2009, the Minnesota Secretary of State shall open and count the absentee ballots delivered pursuant to this order. A candidate shall be permitted to challenge the declaration of which candidate for United States Senate such a ballot is to be counted for, using the challenge standards utilized during the pending recount process. The Secretary of State shall file a report with the State Canvassing Board indicating the total votes each candidate for United State Senator received among the ballots so received and counted and the State Canvassing Board shall receive the report, consider any challenges, and include the absentee ballots counted in its numbers in the pending recount and canvas. No county canvassing board shall report on the results contained in the ballots delivered to the Minnesota Secretary of State. The ballots opened and counted by the Minnesota Secretary of State relating to the vote for United States Senate may be scanned and copied for use by the candidates, but any portion of the ballot that might identify the origin of the ballot will be redacted from such scans. Candidates, their representatives, and the State Canvassing Board may visually observe the entire original ballot, but shall not make a record of the redacted information. After the recount and canvas process for the ballot has been completed, the ballot shall be retained under seal and may not be disclosed except by order of this court and in any election contest related

to the election for United States Senate. The ballots shall be returned to the counties for retention for the period set forth in Minn. Stat. § 204B.40 (2006).

Dated: December 24, 2008

BY THE COURT:

A handwritten signature in black ink, appearing to read "Alan C. Page", is written over a horizontal line.

Alan C. Page  
Associate Justice

MAGNUSON, C.J., and ANDERSON, G. Barry, J., took no part in the consideration or decision of this matter.