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FILED  
Court Administrator

JAN 20 2009

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

By  Deputy

SECOND JUDICIAL DISTRICT

Case Type: CIVIL OTHER

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,

File No. 62-CV-09-56

Cullen Sheehan and Norm Coleman,

Contestants,

v.

Al Franken,

Contestee.

**CONTESTANTS' NOTICE OF MOTION AND MOTION FOR ORDER DIRECTING SECRETARY OF STATE TO DEPOSIT ORIGINAL DOCUMENTS WITH THE COURT**

To: Contestee Al Franken, by and through his attorneys David Lillehaug, Esq., Fredrikson & Byron, P.A., Suite 4000, 200 South Sixth Street, Minneapolis, MN 55402, and the Minnesota Secretary of State, The Honorable Mark Ritchie

**PLEASE TAKE NOTICE** that pursuant to Minnesota Rule of Civil Procedure 1 and Minnesota Rule of Evidence 1002, Contestants Cullen Sheehan and Norm Coleman hereby bring a Motion for Order Directing Secretary of State to Deposit Original Documents with the Court, before the Honorable Elizabeth A. Hayden, the Honorable Kurt J. Marben, and the Honorable Denise D. Reilly, to be heard at a date and time to be determined, if necessary, at the Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr., Blvd., St. Paul, MN 55155.

The grounds for Contestants' motion are as follows:

1. On November 18, 2008, the Minnesota State Canvassing Board met and directed the Minnesota Secretary of State to oversee an administrative manual recount of all votes cast in the office of United States Senator from Minnesota under Minn. Stat. § 204C.35.

2. As part of the administrative manual recount, the State Canvassing Board was charged with determining whether ballots challenged by the candidates would be counted or not counted. In December 2008, the State Canvassing Board completed its review of the challenged ballots.

3. As indicated in the Notice of Contest, ¶ 17, Coleman contends that non-uniform standards were being applied by the Board in determining whether to count or not count challenged ballots.

4. Contestants understand that the Secretary of State is in possession of all the original ballots that the candidates challenged during the administrative manual recount, the original recount incident reports, and the original recount summary statements.

5. Furthermore, pursuant to a December 18, 2008 Order by the Minnesota Supreme Court, as amended by the Minnesota Supreme Court's December 24, 2008 Order (attached hereto as Exhibit A), U.S. Senate candidates Norm Coleman and Al Franken, along with the Secretary of State and all county auditors and canvassing boards, engaged in a process to identify rejected absentee ballots that the parties agreed were rejected in error. The Court directed that local election officials 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 or in Minn. Stat.

§ 203B.24 for overseas ballots. It further required that 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.

6. As prescribed in the December 24, 2008 Order, local election officials delivered to the Secretary of State on or before January 2, 2009 certain previously rejected absentee ballots that the local election officials and the candidates agreed were rejected in error.

7. On January 3, 2009, the Minnesota Secretary of State opened and counted 933 absentee ballots that were previously rejected, but which the local election officials and candidates agreed should be counted.

8. Pursuant to communications with the Minnesota Secretary of State's office, Contestants understand that the original absentee ballot envelopes that were opened on January 3, 2009 by the Minnesota Secretary of State have been retained by the Secretary of State pursuant to the Supreme Court's December 24, 2008 Order.

9. As indicated in the Notice of Contest (*see* Notice, ¶¶ 10-11), Contestants believe that inconsistent standards have been applied across the State of Minnesota with respect to whether absentee ballots were accepted or rejected. Contestants further believe that a material and significant number of absentee ballots were improperly rejected by local election officials and were not counted on election day or during the recount. These improperly rejected absentee ballots were not within the set of improperly rejected absentee ballot envelopes opened and counted by the Minnesota Secretary of State on

January 3, 2009.

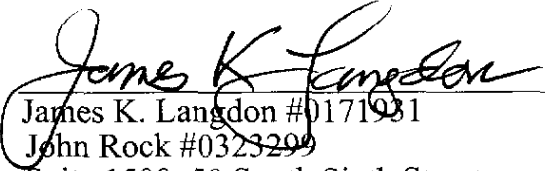
10. To ensure the uniform treatment of rejected absentee ballot envelopes and to ensure the uniform treatment of challenged ballots, and to expedite the Court's consideration of whether additional previously rejected absentee ballot envelopes should be accepted and counted and whether certain challenged ballots should be counted, the Court should have in its possession the original absentee ballot envelopes opened on January 3, 2009 and all the original challenged ballots. The Court should also have in its possession the original recount incident reports and original recount summary statements.

Accordingly, Contestants respectfully request that the Court grant their Motion, and direct the Minnesota Secretary of State to deposit the original absentee ballot envelopes opened on January 3, 2009, all the original challenged ballots in its possession, the original incident reports, and the original recount summary statements with the Ramsey County Court Administrator no later than January 23, 2009.

Dated: January 20, 2009

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# **EXHIBIT A**

OFFICE OF  
APPELLATE COURTS

STATE OF MINNESOTA

DEC 24 2008

IN SUPREME COURT

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 cursive script, 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.

**AFFIDAVIT OF SERVICE BY EMAIL**

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF HENNEPIN    )

Bryan C. Keane, being first duly sworn on oath, deposes and states that on the 20<sup>th</sup> day of January, 2009, he served:

Contestants' Motion for Order Directing Secretary of State to Deposit Originals with Court, and [Proposed] Order

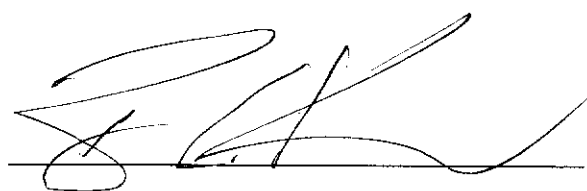
by sending true and correct copies via email addressed to:

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ATTORNEYS FOR CONTESTEE AL FRANKEN

the last known addresses of said addressees.



Subscribed and sworn to before me this  
20<sup>th</sup> day of January, 2009

  
\_\_\_\_\_  
Notary Public

