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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

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,

FILED
Court Administrator

APR 29 2009

By UX Deputy

CULLEN SHEEHAN AND NORM COLEMAN,
CONTESTANTS,

FILE NO.
62-CV-09-56

VS.

AL FRANKEN,

CONTESTEE.

VOLUME NO. 2

JANUARY 27, 2009

ORIGINAL

REPORTED BY: JAMES M. TRAPSKIN
RPR, CM, CALIF. CSR 8407, ILL. CSR 084-004584

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THE AFOREMENTIONED court session took place on
the 27th day of January, 2009, before the Honorable Judges
Elizabeth A. Hayden, Kurt J. Marben and Denise D. Reilly
at the Minnesota Judicial Center, 25 Rev. Dr. Martin
Luther King Jr. Boulevard, St. Paul, Minnesota 55105, and
reported by James M. Trapskin, a Notary Public and
Registered Merit Reporter.

* * * * *

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Contestants':

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* * * * *

1 TUESDAY JANUARY 27, 2009 1:30 P.M. 6
 2 THE CLERK: The Ramsey County District
 3 Court is now in session. The Honorable Judges
 4 Elizabeth Hayden, Kurt Marben and Denise Reilly.
 5 Judge Reilly is presiding today.
 6 JUDGE REILLY: I'm sorry we got a late
 7 start today, that we didn't start at 9:00 like I said
 8 we were going to.
 9 For those of you who aren't trial attorneys,
 10 it's standard practice during a trial for the judge
 11 and the attorneys to meet to try to work out the
 12 logistics. And on the one hand we're required to
 13 hold court, and on the other hand you should know
 14 that the attorneys and Secretary of State's office,
 15 the AG's, the attorneys for the petitioners, as well
 16 as the three of us and our law clerks met almost all
 17 morning trying to work out the logistics of how to
 18 get the best evidence to this courtroom so that we
 19 can make the findings of fact that we need to make.
 20 We also understand that the municipalities and
 21 the 87 counties that are holding these original
 22 documents are under stress and strain from budgetary
 23 reasons, and that's why we wanted to see if there was
 24 some way for us to streamline the process.
 25 Having said that, Mr. Friedberg, we had

1 JUDGE REILLY: Oh, Mr. Langdon. 8
 2 MR. LANGDON: Thank you, Your Honor, good
 3 afternoon.
 4 Our first witness will be Gerald Anderson.
 5 JUDGE REILLY: If you would step forward,
 6 sir.
 7 Mr. Channing, if you would administer the oath
 8 of office once the witness is situated. Oh, not the
 9 oath of office, office of witness, perhaps.
 10 THE CLERK: Please state and spell your
 11 name full name for the record.
 12 THE WITNESS: Gerald W. Anderson,
 13 G-E-R-A-L-D, Walter, W-A-L-T-E-R, Anderson,
 14 A-N-D-E-R-S-O-N.
 15 JUDGE REILLY: Thank you, Mr. Anderson.
 16 You are keeping your voice up and we all appreciate
 17 that.
 18 Mr. Langdon.
 19 MR. LANGDON: Thank you, Your Honor.
 20 DIRECT EXAMINATION
 21 BY MR. LANGDON:
 22 Q. Good afternoon, Mr. Anderson.
 23 A. Excuse me, sir, I'm a little bit hard of hearing. I
 24 need you to speak a little bit louder.
 25 Q. Let me try this. Is that better?

1 Ms. Sonnen on the stand when we ended yesterday. 7
 2 MR. FRIEDBERG: Your Honor, based on
 3 discussions with the Court and what happened in
 4 court, I don't believe there was any probative value
 5 to her testimony yesterday and I move to strike it.
 6 Mr. ELIAS: I would have no problem
 7 striking her testimony. I would like an opportunity
 8 to examine the witness while she's here.
 9 MR. FRIEDBERG: She's not here.
 10 JUDGE REILLY: So if you want to question
 11 her, she can come back later.
 12 Mr. ELIAS: Should we reserve that for our
 13 case or just have her come back here?
 14 MR. FRIEDBERG: At your pleasure. I told
 15 her to go home based on the discussions we had this
 16 morning.
 17 JUDGE REILLY: It didn't seem like she had
 18 much firsthand knowledge.
 19 Mr. ELIAS: If I can proffer --
 20 JUDGE REILLY: You'll be able to question
 21 her when you call her back.
 22 So Mr. Friedberg, who is your first witness this
 23 afternoon going to be?
 24 MR. FRIEDBERG: Mr. Langdon is going to
 25 examine, Your Honor.

1 A. Thank you. 9
 2 Q. Good afternoon, Mr. Anderson.
 3 A. Good afternoon.
 4 Q. Thank you for coming in here today.
 5 Would you tell all of us where you live, sir?
 6 A. I, I live in the neighborhood of Como Park. The
 7 address is 1384 Franson in St. Paul, 55108.
 8 Q. How long have you lived there, sir?
 9 A. Well, my wife was actually born there. We moved
 10 there in '69, it's about 40 years.
 11 Q. Now, sir, are you a registered voter?
 12 A. Pardon me?
 13 Q. Are you a registered volunteer?
 14 A. Absolutely. I've been for many years.
 15 Q. For how long?
 16 A. I first voted in '52 for Eisenhower.
 17 Q. And we won't ask you today who you voted for, sir,
 18 that's your private business. But I do want to know
 19 whether you believe you were a voter in the last
 20 election that was held on November the 4th, 2008.
 21 A. Yes.
 22 Q. Now, how is it that you went about voting in that
 23 election?
 24 A. Because --
 25 MR. HAMILTON: Objection, Your Honor.

1 THE WITNESS: I voted by absentee ballot.¹⁰
 2 JUDGE REILLY: What's the basis of your
 3 objection?
 4 MR. HAMILTON: Your Honor, this witness is
 5 not within the scope of the 654 identified in the
 6 election -- in the Notice of Contest that brings us
 7 all here together.
 8 We filed a motion in limine to exclude evidence
 9 relating to other witnesses. Mr. Anderson, I
 10 appreciate, is not within the 654, and therefore the
 11 evidence being presented here is irrelevant.
 12 JUDGE REILLY: And as the attorneys know,
 13 the panel is working diligently on the motion
 14 in limine, and so we'll take your motion, it is under
 15 advisement, we haven't made a ruling on it. And in
 16 the interests of expediting these proceedings, we
 17 will hear Mr. Anderson's testimony.
 18 MR. HAMILTON: Subject to the objection?
 19 JUDGE REILLY: Subject to the objection.
 20 MR. HAMILTON: Thank you so much, Your
 21 Honor.
 22 MR. LANGDON: Thank you, Your Honor, may I
 23 proceed?
 24 JUDGE REILLY: You may.
 25 BY MR. LANGDON:

1 disregarded my vote and, and asked me if, indeed,¹²
 2 had voted and it was my signature, and I said, of
 3 course, it was.
 4 Q. Let me stop you right there, if I could, for just a
 5 minute if I could, sir?
 6 A. Pardon me?
 7 Q. Let me stop you right there for a minute.
 8 Did you in fact go through the effort to fill
 9 out an application to receive an absentee ballot?
 10 A. Oh, of course, yes. I had to. I called them up at
 11 the -- I forget where it is, the state department or
 12 something like that.
 13 And they did mail me one out, a request for an
 14 absentee ballot, and that was a form that we filled
 15 out, the both of us, and we signed that and they
 16 accepted that.
 17 Q. And let me stop you right there, sir, if I could, for
 18 just a minute. When you say "we filled it out," who
 19 do you mean?
 20 A. My wife and I. My wife and I did it all together as
 21 much I can't see and so she needs to point out where
 22 I can sign on, on the paper and on, on anything and,
 23 and watches me sign everything. So it's -- we
 24 consider us a we operation, everything we do.
 25 Q. So in this case, she helped you fill out the

1 Q. Why did you vote by absentee ballot, Mr. Anderson?¹¹
 2 A. Well, as you can see, I'm handicapped. I'm blind,
 3 first of all. And I have physical defects with my --
 4 I'm terminal, I should say that. And I have problems
 5 with my legs in getting around. But I also got
 6 problems and it's with your knees and it's the
 7 replacement. And it's difficult for us to go and
 8 stand in line and go.
 9 We usually do this. This is the first time
 10 where I tried the absentee ballot idea. And so we
 11 thought it would be a good idea and so we did it.
 12 And I'm sorry we did it because, because of what
 13 happened. My vote was not counted. Mine wasn't, and
 14 I couldn't believe that that could happen to me in
 15 America, but it did.
 16 Q. Let me stop you, sir. How is it that you know that
 17 your vote wasn't counted?
 18 A. Well, that's the unbelievable part. I should think
 19 that if they weren't going to, they weren't going to
 20 count it and throw it in the dustbin, they would at
 21 least call me and tell me why. They not only didn't
 22 call me and tole me they weren't going to count it
 23 until after the fact.
 24 And then somebody from the, from the Republican
 25 Party called and told me that, indeed, they

1 application, correct? 13
 2 A. She did.
 3 Q. And she pointed you where to sign it?
 4 A. She did indeed.
 5 Q. And even though you're blind you can still sign
 6 things, right?
 7 A. I signed it on the line she said. And then where it
 8 says "witness" she signed her name, and then we did
 9 the same to hers. I wit- -- she signed hers and then
 10 I signed and witnessed on the line she pointed out.
 11 And I think we did this, something on the envelope
 12 also.
 13 Q. So your wife voted by absentee ballot as well?
 14 A. Pardon me?
 15 Q. Your wife voted by absentee ballot as well.
 16 A. And for both those tickets. We witnessed for each
 17 other.
 18 Q. And, in fact, when you filled out the application,
 19 you did later receive an absentee ballot in the mail,
 20 didn't you?
 21 A. We did.
 22 Q. And did you go through the same process with your
 23 wife that you just described to us for the
 24 application?
 25 A. Exactly the same. Except --

14

1 Q. And --

2 A. -- hers was not rejected and mine was.

3 Q. And do you know -- do you have any reason why or any

4 idea why your ballot was rejected?

5 A. No, no good reason. It is true that since I cannot

6 see and am blind, perhaps my signature is not quite

7 as good as it once was, and it probably gets a little

8 crooked here and there.

9 And I am 75 years old and you could change a

10 little bit. And I'll admit to you that when I

11 originally signed my -- signed way back when, I had a

12 much better signature and being that it's not quite

13 as stable as it once did. And that's the only reason

14 I can possibly consider. But I should think that

15 they would at least double-check with me and, and ask

16 me, for God's sake.

17 Q. Did anybody call you and ask you?

18 A. No, and that's what made me angry about it. Nobody

19 called me, they just threw it in the, in the garbage

20 and, and if it was nothing, you know, my vote was

21 nothing.

22 And I couldn't believe this had happened in

23 America, that they could take my vote away from me,

24 but they did. They did, and as far as I know they

25 still haven't given it back to me. Have they?

16

1 signature if Mr. Hamilton wishes us to go through all

2 that. Otherwise, I will offer this exhibit as

3 Exhibit C-236.

4 JUDGE REILLY: Mr. Hamilton?

5 MR. LANGDON: Both pages.

6 MR. HAMILTON: On Counsel's representation,

7 we have no objection.

8 JUDGE REILLY: Exhibit C-236 is received.

9 MR. LANGDON: Thank you, Your Honor, and we

10 will have copies for the clerks and the entire panel.

11 Mr. Anderson, thank you so much for coming in.

12 I don't have any more questions for you, sir, but

13 Mr. Hamilton, who is a lawyer for the Contestee,

14 Mr. Franken, may have some questions for you.

15 THE WITNESS: Thank you.

16 JUDGE REILLY: Mr. Hamilton, do you have

17 any questions.

18 MR. HAMILTON: I do, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. HAMILTON:

21 Q. Good afternoon, Mr. Anderson. My name is Kevin

22 Hamilton. I represent Al Franken in this election

23 contest.

24 Can you hear me?

25 A. Yes, sir.

15

1 Q. Mr. Anderson, that will be among the things that this

2 court here today will decide.

3 A. Well, I want it back. I'm entitled to my vote.

4 Q. Sir, I have a copy of your absentee ballot envelope

5 and your absentee ballot application. I understand

6 that you're blind. I'd be happy to show this to you

7 and see if you could tell us that it was yours. If I

8 did, would you be able to identify it?

9 A. No, sir, I'm sorry I couldn't. My son could, he's

10 here.

11 Q. Your son is in the courtroom today with you, isn't

12 he?

13 A. He is my -- I call him my executive secretary. He

14 does all my bookwork and everything.

15 Q. Would you say --

16 A. There's nothing I have that he doesn't know.

17 Q. Would you say that he's pretty familiar with your

18 signature?

19 A. Beg your pardon?

20 Q. Would you say that he's pretty familiar with your

21 signature?

22 A. Oh, of course. I sign a lot of things in front of

23 him all the time. I have to.

24 MR. LANGDON: Your Honor, I'd be happy to

25 call his son as a witness to authenticate his

17

1 Q. All right. Thank you for coming in. I do appreciate

2 your time today.

3 I'd like to first ask you about the exhibit that

4 was just admitted, and I'm going to take a moment to

5 put it up on the screen there. I know you're not

6 able to see it but I'd like the Court to focus on it,

7 if I might.

8 A. I'm not able to see it, sir.

9 Q. While we put it up on the screen, Mr. Anderson,

10 you're certain that you signed your absentee ballot

11 envelope when you turned it in?

12 A. Say again, please.

13 Q. You signed your absent ballot envelope, sir?

14 A. I signed what?

15 Q. Did you sign your absentee ballot envelope?

16 A. Did I sign it?

17 Q. Yes.

18 A. I, I guess I don't understand your question. But,

19 yes, I did sign my absentee ballot.

20 Q. Okay. And you signed it where your wife pointed, is

21 that correct?

22 A. Yes.

23 Q. So you can't testify and state here today exactly

24 where the signature appears on the envelope?

25 A. Yes.

1 JUDGE MARBEN: Mr. Hamilton, could you¹⁸
 2 focus that exhibit?
 3 BY MR. HAMILTON:
 4 Q. All right. The exhibit is before the Court.
 5 Let me ask you, a moment ago you testified that
 6 you found out that your ballot had not been counted
 7 when you received a call from the Republican Party,
 8 did I hear you correctly?
 9 A. That is correct.
 10 Q. When did you receive that call, sir?
 11 A. Pardon?
 12 Q. When did you receive the call?
 13 A. The exact date I don't have, but it's -- I would say
 14 it's about, perhaps, two weeks to 10 days ago.
 15 Q. Two weeks or 10 days. So during the course of the
 16 actual recount, you didn't receive any calls from the
 17 Republican Party, is that correct?
 18 A. During the --
 19 Q. During --
 20 A. -- actual recall? I, I voted on the absentee ballot.
 21 Plus I, I don't keep track of that, I can't answer
 22 that. I can't answer that.
 23 Q. The best of your recollection, the first time you
 24 were contacted was about a week or 10 days ago?
 25 A. I'm sorry, I don't, I can't answer the -- all I can

1 MR. HAMILTON:
 2 what's been offered up to the be...
 3 is a declaration prepared by the Contestants ...
 4 case and I believe signed by Mr. Anderson.
 5 I'd ask counsel for a stipulation of its
 6 admissibility.
 7 MR. LANGDON: Your Honor, I have no
 8 objection whatsoever.
 9 MR. HAMILTON: Then we offer
 10 Exhibit F-1652, Your Honor.
 11 JUDGE REILLY: Exhibit F-1652 is received.
 12 BY MR. HAMILTON:
 13 Q. Mr. Anderson, the document that we just received into
 14 evidence is your affidavit and it's dated
 15 January 20th.
 16 Is that the about the date you think you signed
 17 your affidavit?
 18 A. Right. Is there a question there?
 19 Q. Yes, is January 20th the date you signed your
 20 affidavit?
 21 A. January 20th is the date that I signed?
 22 Q. Yes.
 23 A. That I signed?
 24 Q. I'm sorry, is that the date -- does that refresh yo
 25 recollection of the date you signed this?

1 tell you is the date I got the phone call. I have no¹⁹
 2 knowledge of your dates and times of recalls or
 3 anything else.
 4 Q. And did you prepare an affidavit, did you sign an
 5 affidavit that was prepared by the Republican Party
 6 for Contestants in this case?
 7 A. Yeah, I did.
 8 Q. Do you recall the date of that?
 9 A. I think, I believe that was dated last -- I think
 10 this is Monday, I believe that was Friday. Friday I
 11 believe we did that.
 12 Q. Friday this past week?
 13 A. This past week, yes.
 14 Q. Was that January 20th.
 15 A. I, I believe that's the date. My memory's not that
 16 good, but it, it was very recent, yes.
 17 You can ask my son. He, he read it to me, and
 18 he can give you the exact day, if you want it. If
 19 you want the exact date, please ask him. He was
 20 there, he read the affidavit to me in full so that I
 21 would know it and he read it out loud.
 22 And then he also witnessed me signing it, so why
 23 don't you check with him for the exact date that he
 24 wrote.
 25 Q. All right. Thank you.

1 A. I guess so.
 2 Q. Mr. Anderson --
 3 A. One day doesn't mean a whole lot to a gi
 4 anymore. That's fine, I'll take your word
 5 MR. HAMILTON: All right. Th
 6 Mr. Anderson. I have no further ques
 7 JUDGE REILLY: Any redire
 8 MR. LANGDON: No, Your H
 9 JUDGE REILLY: Thank you
 10 Then Mr. Anderson, you're excu
 11 for coming in and testifying.
 12 Is this Mr. Langdon or Mr. Fri
 13 else who's calling the next witness
 14 MR. LANGDON: Your H
 15 JUDGE REILLY: Will y
 16 the questioning this afternoon?
 17 MR. LANGDON: Wel
 18 it. I'll be doing most of it for t
 19 minutes.
 20 JUDGE REILLY: Th
 21 MR. LANGDON: Th
 22 making an appearance again
 23 Your Honor, Contestan
 24 Markman, rather. I apolo
 25 JUDGE REILLY:

1 I'm going to have the clerk administer the oath. 22
 2 EUGENE MARKMAN,
 3 having first been duly sworn, was examined and
 4 testified as follows:
 5 THE CLERK: Go ahead and have a seat. Once
 6 you get yourself situated, I'm going to ask that you
 7 state and spell your full name for the record.
 8 THE WITNESS: Eugene Carl Markman.
 9 DIRECT EXAMINATION
 10 BY MR. LANGDON:
 11 Q. Good afternoon, Mr. Markman. Thank you for coming in
 12 today.
 13 JUDGE REILLY: Mr. Markman, for the record,
 14 could you spell each of those names, please.
 15 THE WITNESS: Eugene, E-U-G-E-N-E, Carl
 16 C-A-R-L, Markman, M-A-R-K-M-A-N.
 17 JUDGE REILLY: Thank you, sir.
 18 BY MR. LANGDON:
 19 Q. Sir, would it help you if I got you a glass of water?
 20 It sounds like you got a dry throat.
 21 A. I have one here, I could just use it.
 22 Q. All right, thank you.
 23 Where do you live, sir?
 24 A. I live in Waite Park, Minnesota.
 25 Q. And are you a registered voter?

1 Q. Mr. Markman, take a look at the document that I just
 2 handed you; it's marked C-239 and tell the Court if
 3 you recognize it.
 4 A. I do recognize it.
 5 Q. What is it?
 6 A. It's the envelope that my ballot went into when it
 7 was sent back to the Stearns County.
 8 Q. And do you recognize the handwriting on the envelope?
 9 A. Yes, I do. It is mine.
 10 Q. Who is it?
 11 A. It is my writing and my signature on the top and my
 12 wife's signature on the bottom as a witness.
 13 Q. And are you able to tell, based on your experience as
 14 an election judge, from the copy of the ballot
 15 envelope that I provided you why, if at all, that it
 16 was marked as rejected?
 17 A. Because the "N" on the end of my name does not -- got
 18 two humps in it. It has one hump --
 19 MR. HAMILTON: Objection.
 20 THE WITNESS: -- and the line goes straight
 21 down.
 22 MR. HAMILTON: Objection, Your Honor, and I
 23 move to strike as a lack of personal foundation.
 24 This witness doesn't know the reason the county
 25 official who made this decision rejected the ballot.

1 A. Yes, I am. 25
 2 Q. For how long have you been a registered voter?
 3 A. Well, two years in Waite Park and 34 years in
 4 St. Cloud.
 5 Q. Did you vote in the last election on November 4th,
 6 2008?
 7 A. Yes, I did.
 8 Q. And by what process did you vote?
 9 A. Absentee ballot.
 10 Q. Tell us why you voted absentee.
 11 A. Because I'm also an election judge, and I voted in
 12 my -- for my precinct, but I worked in a St. Cloud
 13 precinct.
 14 Q. Have you voted absentee before?
 15 A. Yes, I have.
 16 Q. How did you go about voting absentee this time?
 17 A. Well, for the primary, my wife and I went to the
 18 courthouse, filled out the paperwork and done our
 19 voting at the courthouse, Stearns County.
 20 They mailed me the ballot for the general
 21 election which I filled out and returned.
 22 MR. LANGDON: May I approach the witness,
 23 Your Honor?
 24 JUDGE REILLY: You may.
 25 BY MR. LANGDON:

1 JUDGE REILLY: I'm going to overrule that. 25
 2 We'll give his testimony the weight that we decide to
 3 give it.
 4 BY MR. LANGDON:
 5 Q. Is there anything on the face of the exhibit itself,
 6 Exhibit 239, that provides any information to you
 7 all other than your own surmise with respect to y
 8 signature?
 9 A. No. Well, it says on here "Official use only,"
 10 rejected for the signature, but I can't even rea
 11 "Rejected signature," no -- no match, I guess.
 12 Whoever wrote this don't know how to write, e
 13 MR. LANGDON: May I approach the
 14 Your Honor?
 15 JUDGE REILLY: You may.
 16 THE WITNESS: See, where it says
 17 "No match," and I couldn't tell you what tha
 18 MR. LANGDON: Thank you, sir.
 19 JUDGE REILLY: Are you offering
 20 exhibit?
 21 MR. LANGDON: Yes, I am.
 22 JUDGE REILLY: What's the num
 23 MR. LANGDON: C-239, Your H.
 24 JUDGE REILLY: Is there any o
 25 MR. HAMILTON: No objection

1 JUDGE REILLY: Exhibit C-239 is received.²⁶
 2 BY MR. LANGDON:
 3 Q. Now, Mr. Markman, did there come a time when you were
 4 informed that your vote had not been opened and
 5 counted?
 6 A. Yes, I received a call from the Republican Party
 7 probably two and a half, three weeks ago, something
 8 like that.
 9 And the very next day I called the Stearns
 10 County Voter Registration. She informed me that my
 11 ballot was laying on her desk and it had not been
 12 counted.
 13 And I immediately got a phone number from her,
 14 and I called the State of Minnesota. And they sent
 15 me a letter, which I have here, showing my name
 16 misspelled wrong.
 17 And then they also, after that, sent me another
 18 letter who tells me who from Franken's party rejected
 19 my ballot.
 20 Q. And what does that say?
 21 A. I got to get my glasses. It says, "I, Chris," I
 22 think it's Sautter. Again he can't write his name so
 23 somebody can read it, S-A-U-T-T-E-R, the way I see
 24 it, "this day acting in capacity of Al Franken's
 25 legal representative" --

1 about extraneous handwriting.²⁸
 2 And third, I don't think the proper foundation's
 3 has been laid.
 4 MR. LANGDON: Your Honor, I'm happy to have
 5 the witness identify the handwriting on the document.
 6 It came from his files.
 7 JUDGE REILLY: I'm going to sustain it on
 8 foundation grounds.
 9 MR. LANGDON: May I inquire of the witness,
 10 Your Honor?
 11 JUDGE REILLY: You can, but I don't think
 12 it's going to help.
 13 MR. LANGDON: Well, if that's the case I'm
 14 not going to trouble Your Honor, and I will withdraw
 15 the offer, and I have asked all the questions I have
 16 for you, Mr. Markman, sir. Thank you.
 17 JUDGE REILLY: Mr. Hamilton, do you have
 18 any questions?
 19 MR. HAMILTON: I do, Your Honor.
 20 CROSS-EXAMINATION
 21 BY MR. HAMILTON:
 22 Q. Good afternoon, Mr. Markman.
 23 A. Good afternoon.
 24 Q. Thank you for coming in. I have a few questions for
 25 you.

1 MR. HAMILTON: Objection, Your Honor.²⁷ This
 2 document is not in evidence and it should not be
 3 read.
 4 THE WITNESS: The ballot --
 5 JUDGE REILLY: Sustained. Just a minute, I
 6 sustained the objection.
 7 MR. LANGDON: Thank you, Your Honor.
 8 Let me, if I may, have that.
 9 THE WITNESS: It's -- I have a copy of his
 10 letter. I still have a copy.
 11 MR. LANGDON: Your Honor, after you have
 12 had a chance to look at it, I'm going to offer
 13 Exhibit C-239-A.
 14 JUDGE REILLY: Through this witness?
 15 MR. LANGDON: I am, Your Honor.
 16 JUDGE REILLY: Mr. Hamilton?
 17 MR. HAMILTON: I object to this, Your Honor
 18 on three grounds.
 19 First relevance. A notification letter from the
 20 Secretary of State is irrelevant to this proceeding.
 21 Number two, there's handwriting on the top of
 22 the document that appears to be added after the
 23 document was created. It hasn't been identified.
 24 And in light of the document management troubles that
 25 we've had over the last 24 hours, I have concerns

1 You said you were a precinct election judge.²⁹
 2 A. I am a precinct election judge in St. Cloud,
 3 Minnesota.
 4 Q. In St. Cloud.
 5 A. And I'm chairman, I've been chairman for the last
 6 four years and a judge for six.
 7 Q. Fantastic. Thank you for your service.
 8 Did you serve in this last election?
 9 A. Yes, I did.
 10 Q. Were you there all day?
 11 A. Yes, I was.
 12 Q. How many hours did you work in that precinct?
 13 A. Sixteen.
 14 Q. Sixteen, that's a long day, right?
 15 A. Yes, it is.
 16 Q. How many people were working with you in that
 17 precinct?
 18 A. Eleven more.
 19 Q. Eleven more. Did they all work 16-hour days?
 20 A. All but one. One only worked four hours.
 21 Q. Is it fair to say that at the end of a 16-hour day on
 22 election day you're pretty tired?
 23 A. Not really when you have that many people and 822
 24 voters. We had a very good day, and I wouldn't say
 25 that I was overtired, and I'm sure my wife would

30

1 verify that when I got home.

2 Q. All right. So a 16-hour day and you were feeling

3 pretty refreshed by the end of the night.

4 A. I, I -- that is the way it goes when you're an

5 election judge, you prepare yourself accordingly

6 before you go in.

7 Q. All right. Was it busier than usual in St. Cloud

8 this year in this election?

9 A. Repeat that, please.

10 Q. Busier than usual this year in this election in

11 St. Cloud?

12 A. Oh, yes, about four times the normal crowd.

13 Q. Now, I'd like to direct your attention to the exhibit

14 that I believe is in front of you, the ballot

15 envelope.

16 Do you have that there?

17 A. Yeah, he took it back but I have one.

18 Q. You have a copy?

19 A. Yes, I do.

20 Q. Now, the bottom portion of that that you mentioned a

21 moment ago that says, "Office use only," do you see

22 that?

23 A. Yes.

24 Q. You didn't fill that out, did you?

25 A. No.

1 it was from some voting party. Republica I believe³²

2 they called themselves.

3 Q. Were you asked to intervene in the lawsuit by

4 someone?

5 A. Yes, I was.

6 Q. Who asked you to intervene in the lawsuit?

7 A. The attorney for this, for this group, or this

8 Republica, whoever they might be. He called me on

9 the phone and asked me to fill out an affidavit, and

10 I filled it out and sent it in by fax machine the

11 same date.

12 Q. Have they been paid any attorney's fees in connection

13 with the motions to intervene in this lawsuit?

14 A. Yes, they have.

15 MR. HAMILTON: Thank you. No further

16 questions.

17 JUDGE REILLY: Mr. Langdon, any redirect?

18 MR. LANGDON: No, Your Honor.

19 JUDGE REILLY: Thank you.

20 Mr. Markman, thank you for coming in. You may

21 step down.

22 THE WITNESS: Thank you.

23 JUDGE REILLY: Call your next witness.

24 MR. LANGDON: Thank you, Your Honor.

25 Contestants would call Kevin Hendrickson.

31

1 Q. You don't know who filled that out, do you?

2 A. Absolutely not.

3 Q. And you don't know why they filled it out?

4 A. Because it says "Rejected signature no match."

5 Q. And in order to figure out what they meant, no match

6 signature, no match, we'd have to ask whoever filled

7 this out, wouldn't we?

8 A. Well, I can tell you that the letter I received from

9 the State of Minnesota --

10 Q. Well, sir, I'm asking a different question.

11 In order to understand what this person meant

12 when they wrote this down, you have we have to ask

13 that person, wouldn't we?

14 A. I have no idea. There's a -- there's two initials

15 back here that I can't read.

16 Q. All right. You testified a moment ago that you

17 received a call from the Republican Party.

18 Did I hear you correctly?

19 A. That's correct.

20 Q. And did the -- I notice you're an intervenor where

21 you filed a motion to intervene in this lawsuit, is

22 that right?

23 A. Yes, I did. I have an affidavit here that it was

24 brought out to my house and signed by myself. And

25 I've been trying to figure out who that was from, but

33

1 MR. HAMILTON: Your Honor, I'd like to

2 renew my objection. This individual is not on the

3 list of 654 that were contained in the election

4 contest notice -- notice of contacts.

5 JUDGE REILLY: And your objection is noted

6 and taken under advisement along with the motion

7 in limine.

8 MR. LANGDON: Thank you, Your Honor.

9 KEVIN HENDRICKSON,

10 having first been duly sworn, was examined and

11 testified as follows:

12 THE CLERK: Go ahead and have a seat, sir.

13 Once you get comfortable, please state your full name

14 and spell it for the record.

15 THE WITNESS: Kevin Hendrickson, K-E-V-I-I-N,

16 H-E-N-D-R-I-C-K-S-O-N.

17 DIRECT EXAMINATION

18 BY MR. LANGDON:

19 Q. Good afternoon, Mr. Hendrickson.

20 Where do you live, sir?

21 A. Zimmerman, Minnesota.

22 Q. Are you a registered voter?

23 A. I am.

24 Q. For how long have you been one?

25 A. It's been two elections. The past was the first one.

1 I don't know the exact date but it's -- I voted in ³⁴
 2 two elections so far.
 3 Q. Did you vote in the last election on November the
 4 4th?
 5 A. Yes, I did.
 6 Q. How did you cast your vote?
 7 A. Absentee ballot.
 8 Q. Why did you vote absentee?
 9 A. I was working out of town and that was the only way I
 10 could vote that day.
 11 Q. And how did you get your absentee ballot?
 12 A. I filled out the form requesting an absentee ballot.
 13 Q. Did you get one.
 14 A. I did.
 15 Q. And what did you do with it?
 16 A. Filled it out, signed it, and my wife witnessed it
 17 and she signed it and we mailed it back.
 18 Q. When did you learn that your vote may not have been
 19 counted?
 20 A. That was two weeks ago.
 21 Q. How did you learn that?
 22 A. A phone call from the Republican Party.
 23 Q. Thank you for coming in today, sir.
 24 I want to show you an exhibit and then see if
 25 you recognize it.

1 our view, is a waste of time since we're beyond the ³⁶
 2 654. This particular ballot is irrelevant to this.
 3 MR. LANGDON: And, Your Honor, you have our
 4 argument on this and you know that we disagree
 5 strenuously.
 6 JUDGE REILLY: Objection, overruled,
 7 Exhibit C-238 is received.
 8 MR. LANGDON: Thank you, Your Honor.
 9 Thank you, Mr. Hendrickson. I have no further
 10 questions for you.
 11 JUDGE REILLY: Mr. Hamilton.
 12 CROSS-EXAMINATION
 13 BY MR. HAMILTON:
 14 Q. Good afternoon, Mr. Hendrickson. Thank you for
 15 coming in.
 16 A. Good afternoon.
 17 Q. I just have a few questions for you. You have
 18 Exhibit C-328 in front of you?
 19 A. Yup.
 20 Q. And you filled out the voter signature portion of
 21 that absentee ballot, is that correct?
 22 A. Yes.
 23 Q. I take it you did not fill out the part that says,
 24 "For office use only"?
 25 A. No, I didn't fill it out.

1 MR. LANGDON: May I approach the witness, ³⁵
 2 Your Honor?
 3 JUDGE REILLY: You may.
 4 BY MR. LANGDON:
 5 Q. Mr. Hendrickson, I put before a copy of you
 6 Exhibit C-238 in this matter.
 7 Do you recognize it?
 8 A. Yes.
 9 Q. What is it?
 10 A. It's the, the envelope which I signed and my wife
 11 signed as a witness for the absentee ballot.
 12 Q. And you can tell us definitively that that's your
 13 signature on there in the section where it says
 14 "Voter signature"?
 15 A. Hundred percent sure.
 16 Q. And your wife's signature on the witness?
 17 A. Yes.
 18 Q. As you sit here today, do you have any idea why your
 19 vote was rejected?
 20 A. No clue.
 21 MR. LANGDON: Your Honor, I would offer
 22 Exhibit C-238.
 23 MR. HAMILTON: Your Honor, we would object
 24 for the same reasons as articulated in the motion in
 25 limine, as well as 403 grounds. This obviously, in

1 Q. You can't tell us whose initials those are? ³⁷
 2 A. I wouldn't have a clue.
 3 Q. And it says, "No signature" there.
 4 Do see that?
 5 A. Yup.
 6 Q. You can't tell us what that means, right?
 7 A. I, I don't -- yeah, I don't know what that means.
 8 But my signature's there, but I don't know what it
 9 means.
 10 Q. So you wouldn't be able to say whether no signature
 11 means there's no signature on the absentee ballot
 12 application to compare it to, for example?
 13 MR. LANGDON: Objection, Your Honor. He
 14 has no foundation to even ask that question. That
 15 application is not in evidence, it's not been
 16 provided.
 17 MR. HAMILTON: I'm asking what he doesn't
 18 know. I'm not asking him about a document, I'm
 19 asking about what this witness doesn't know. He
 20 can't tell us what this meant.
 21 JUDGE REILLY: Sustained.
 22 BY MR. HAMILTON:
 23 Q. In order to find out what no signature meant by
 24 whoever wrote it here, we'd have to ask that person,
 25 correct?

38

1 A. Yeah, I would assume so, yeah.
 2 Q. And that person isn't here?
 3 A. Not to my knowledge, yes.
 4 MR. HAMILTON: Thank you. No further
 5 questions.
 6 JUDGE REILLY: Any redirect?
 7 MR. LANGDON: No, Your Honor.
 8 JUDGE REILLY: Thank you. You may step
 9 down.
 10 MR. KENNEDY: Your Honor, I'm Bruce
 11 Kennedy. I'm representing the intervenors, and until
 12 the Court rules otherwise I guess a party to this.
 13 I'd be more than happy to just sit and watch,
 14 but one of my clients just testified here and I
 15 wasn't given an opportunity to question him and he
 16 misstated some facts, and --
 17 JUDGE REILLY: Well, we haven't ruled on
 18 your motion for intervention yet, so you're not one
 19 of the parties or your clients aren't parties yet.
 20 MR. KENNEDY: Okay.
 21 JUDGE REILLY: We have scheduled that or
 22 are in the process of scheduling that for argument.
 23 MR. KENNEDY: Sure.
 24 JUDGE REILLY: Do you want to take a moment
 25 to talk with your client?

40

1 THE WITNESS: Wesley A. Briest, last name
 2 B-R-I-E-S-T.
 3 DIRECT EXAMINATION
 4 BY MR. LANGDON:
 5 Q. Good afternoon, Mr. Briest.
 6 MR. HAMILTON: Your Honor, at the outset
 7 I'd like to object. This witness is beyond the 654
 8 identified in the Notice of Contest and we object on
 9 that basis for the same reasons.
 10 JUDGE REILLY: And your objection is taken
 11 under advisement.
 12 MR. HAMILTON: Thank you, Your Honor.
 13 JUDGE REILLY: And we'll proceed with
 14 testimony.
 15 MR. LANGDON: Thank you, Your Honor.
 16 BY MR. LANGDON:
 17 Q. Mr. Briest, are you a registered voter in the State
 18 of Minnesota?
 19 A. Yes.
 20 Q. For how long have you been one?
 21 A. How long. Since about 1985.
 22 Q. And where do you live, sir?
 23 A. Eagan, Minnesota.
 24 Q. Did you vote in the last election?
 25 A. Yes.

39

1 MR. KENNEDY: I did actually speak with
 2 him. He made some misstatements about our -- about
 3 me and who hired me and so forth. And I don't know
 4 if it even matters, but I was hoping we could get a
 5 chance to clarify that, but --
 6 JUDGE REILLY: Mr. Hendrickson?
 7 MR. KENNEDY: No, Mr. Markman, the witness,
 8 made some statements about hiring us that were
 9 incorrect.
 10 JUDGE REILLY: For purposes of the contest
 11 that's in front of us, I don't think that his
 12 statements are relevant to our fact-finding mission.
 13 MR. KENNEDY: Thank you.
 14 JUDGE REILLY: Call your next witness.
 15 MR. LANGDON: Thank you, Your Honor.
 16 Contestant would call Wesley Briest. It will be
 17 just a moment, Your Honor, I apologize.
 18 JUDGE REILLY: Would you please swear in
 19 the witness.
 20 THE CLERK: Certainly, Your Honor.
 21 WESLEY A. BRIEST,
 22 having first been duly sworn, was examined and
 23 testified as follows:
 24 THE CLERK: State your full name and spell
 25 it for the record.

41

1 Q. How did you cast your vote? Not for whom, just how
 2 did you do it?
 3 A. Went to the ballot place and voted absentee.
 4 Q. Well, let me see if I can show you a document.
 5 MR. LANGDON: May I approach, Your Honor?
 6 BY MR. LANGDON:
 7 Q. See if it refreshes your recollection.
 8 MR. LANGDON: May I approach?
 9 JUDGE REILLY: You may.
 10 BY MR. LANGDON:
 11 Q. Tell me, sir, to the best of your recollection if you
 12 recognize it.
 13 A. Yes.
 14 Q. Looking at that document which I've marked as
 15 Exhibit C-237, does that refresh your recollection,
 16 sir, that you, in fact, did vote by absentee ballot?
 17 A. Yes, I did.
 18 Q. And you're sure of that.
 19 A. Uh-huh.
 20 Q. Do you recognize your signature on that document?
 21 A. Yes, I do.
 22 Q. And is it about in the third box down on the form,
 23 Wesley A. Briest, dated October 30th, 2008?
 24 A. Yes.
 25 Q. That's your handwriting?

42

1 A. That's my handwriting, correct.

2 Q. And do you recognize any of the other handwriting on

3 the exhibit?

4 A. Well, my wife's name just below it and her signature

5 way at the bottom.

6 Q. So your wife witnessed your signature?

7 A. Yes.

8 Q. And she signed the ballot as well?

9 A. Yes.

10 Q. And then what, did you drop it in the mail? If you

11 remember?

12 A. Yes, yes, we dropped it in the mail.

13 Q. Do you know, sir, whether or not your vote was

14 counted.

15 A. Well, I assumed it would be, yes.

16 Q. And why did you assume that?

17 A. Because we did everything we were asked to do and

18 then dropped it in the mail after that.

19 Q. Would you be surprised to learn that it wasn't

20 counted?

21 A. I was very surprised.

22 Q. And as you sit here today, you have no idea why, do

23 you.

24 A. No, not really.

25 MR. LANGDON: Your Honor, I'm going to

44

1 Mr. Langdon provided you a moment ago.

2 Do you have that in front of you?

3 A. Yes.

4 Q. And that's your signature there on the top half of

5 the page?

6 A. Yes, it is.

7 Q. Okay. And that's your wife's signature a little bit

8 below that under the "Name of witness"?

9 A. Yes.

10 Q. Okay. And do you see the box that says, "Address of

11 non-notary witness, State of Minnesota"? Do you see

12 that box right underneath your wife's name?

13 A. I didn't quite understand what you said.

14 Q. I'm asking you to look at the form. Right underneath

15 your wife's name there's a place to fill in the

16 address of the witness.

17 Do you see that?

18 A. Yes.

19 Q. It's blank, isn't it?

20 A. Correct.

21 Q. So it appears that the certificate has not been

22 completed by filling in the address, correct?

23 A. Well, I imagine that would be fair, yes.

24 MR. HAMILTON: Thank you, sir. I have no

25 further questions.

43

1 offer Exhibit C-237.

2 MR. HAMILTON: No objection.

3 JUDGE REILLY: Exhibit C-237 is received.

4 MR. LANGDON: Thank you, Your Honor.

5 And thank you for coming in, Mr. Briest. I

6 don't have any more questions for you but this

7 gentleman here may.

8 JUDGE REILLY: Mr. Hamilton?

9 THE WITNESS: Thank you.

10 CROSS-EXAMINATION

11 BY MR. HAMILTON:

12 Q. Good afternoon, Mr. Briest. My name is Tom Hamilton

13 and I represent the Franken campaign in this election

14 contest. Thank you for coming in.

15 Mr. Briest, is it possible that you voted in

16 person in addition to voting your absentee ballot?

17 A. Can you kindly repeat?

18 Q. Did you vote in person in the last election?

19 A. No. No, I voted absentee.

20 Q. And only by absentee.

21 A. Pardon?

22 Q. And you only voted by absentee?

23 A. Right. I only voted absentee, correct.

24 Q. Thank you, sir. If I could have you look at

25 Exhibit C-237, that's copy of the envelope that

45

1 JUDGE REILLY: Mr. Langdon.

2 MR. LANGDON: Very briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. LANGDON:

5 Q. Mr. Briest, where does your wife live?

6 A. Well, it's the same address.

7 MR. LANGDON: Thank you, sir. I have no

8 other questions. Thank you for coming in today.

9 MR. HAMILTON: May I ask one follow-up

10 question?

11 JUDGE REILLY: You may ask one follow-up.

12 RECROSS-EXAMINATION

13 BY MR. HAMILTON:

14 Q. You said your wife lives at the same address as you.

15 I take it, for a few years?

16 A. Yes.

17 Q. You didn't provide that information on this ballot

18 envelope, correct? Your wife's address is not on

19 that envelope?

20 A. I guess not. I don't know.

21 MR. HAMILTON: Thank you. No further

22 questions.

23 MR. LANGDON: Nothing further, Your Honor.

24 JUDGE REILLY: Thank you, sir. You are

25 excused.

46

1 THE WITNESS: Thank you.

2 JUDGE REILLY: Who is your next witness?

3 MR. LANGDON: Well, your Honor, it's

4 Mijanou Sampers.

5 JUDGE REILLY: Would you stand up and have

6 the oath administered, please.

7 MIJANOU SAMPERS,

8 having first been duly sworn, was examined and

9 testified as follows:

10 THE CLERK: Once you're situated, I ask

11 that you state your full name and spell it for the

12 record.

13 THE WITNESS: My name is Mijanou Rodriguez

14 Sampers. Mijanou is spelled M-I-J-A-N-O-U, middle

15 name Rodriguez, R-O-D-R-I-G-U-E-Z, and my last name

16 is Sampers, S-A-M-P-E-R-S.

17 DIRECT EXAMINATION

18 BY MR. LANGDON:

19 Q. Good afternoon, Ms. Sampers.

20 A. Good afternoon.

21 Q. I apologize for butchering your name.

22 A. That's quite all right.

23 Q. Where do you live, ma'am?

24 A. I live in Rosemount, Minnesota.

25 Q. Are you a registered voter?

48

1 A. I did through the mail, this exhibit.

2 Q. And your witness was?

3 A. Bernadette Rodriguez. Actually, she's my mother.

4 Q. That's your signature on it?

5 A. That is my signature.

6 Q. And it is her signature?

7 A. It is, yes, very much so.

8 Q. And it has your mother's address, too.

9 A. Yes, uh-huh.

10 MR. LANGDON: Your Honor, I'd offer

11 Exhibit C-240.

12 MR. HAMILTON: No objection, Your Honor.

13 JUDGE REILLY: Exhibit C-240 is received.

14 MR. LANGDON: Thank you, Your Honor.

15 Thank you, Ms. Sampers. I have no other

16 questions for you but Mr. Hamilton probably does.

17 CROSS-EXAMINATION

18 BY MR. HAMILTON:

19 Q. Good afternoon, Ms. Sampers.

20 A. Good afternoon.

21 Q. Thank you for coming in this afternoon.

22 Let me direct your attention to Exhibit C-240

23 that's in front of you there. The handwriting at the

24 bottom of the page, you see where it says,

25 "Signatures don't match," do you see that?

47

1 A. I am.

2 Q. Did you vote in the last election?

3 A. I did.

4 Q. How did you go about casting your vote?

5 A. Through absentee vote.

6 Q. Why absentee?

7 A. My husband and I were going to be gone from the city

8 all day.

9 MR. LANGDON: May I approach, Your Honor?

10 JUDGE REILLY: You may.

11 BY MR. LANGDON:

12 Q. Ms. Sampers, I've marked as Exhibit C-240 a copy of

13 what I understand to be an absentee ballot envelope,

14 the outside of it.

15 Would you take a look at it and tell us if you

16 recognize it?

17 A. I do.

18 Q. And was I right, it is an absentee ballot envelope?

19 A. It is, that is correct.

20 Q. Is it yours?

21 A. It is mine.

22 Q. How do you know?

23 A. It's got my signature on it.

24 Q. And did you complete that absentee ballot envelope

25 and stick it in the mail?

49

1 A. Uh-huh.

2 Q. And again, I'm sorry --

3 A. I see that.

4 Q. You didn't write that?

5 A. No, I didn't.

6 Q. Do you know who wrote that?

7 A. I don't.

8 Q. And it says, "Signatures don't match." You don't

9 know what they were looking at to see if they

10 matched, correct?

11 A. No, I don't. I'd like to know.

12 Q. We'd have to ask the person who wrote that and

13 processed your ballot in order to figure out what

14 they were referring to, right?

15 A. Yes.

16 Q. And you haven't had a chance to talk to that

17 individual?

18 A. No, I haven't.

19 Q. When did you first learn your ballot wasn't counted?

20 A. I was called on the phone.

21 Q. Who called you?

22 A. The Republican Party.

23 Q. And when was that?

24 A. Three weeks, four weeks ago.

25 Q. Three weeks ago.

50

1 A. Thank you.
 2 MR. HAMILTON: Thank you. No further
 3 questions.
 4 JUDGE REILLY: Do you have any redirect?
 5 MR. LANGDON: I do, Your Honor, very
 6 briefly.
 7 REDIRECT EXAMINATION
 8 BY MR. LANGDON:
 9 Q. You did fill out an application, didn't you --
 10 A. I did.
 11 Q. -- for an absentee ballot?
 12 A. Yes.
 13 Q. And you sent it in, right?
 14 A. I sent it in.
 15 Q. And you got one in the mail?
 16 A. I did get one in the mail.
 17 Q. And then later after all this, you learned that your
 18 vote had not been counted.
 19 A. Exactly.
 20 MR. LANGDON: Thank you. I don't have any
 21 questions for you beyond that, and I appreciate your
 22 coming in.
 23 THE WITNESS: Thank you.
 24 JUDGE REILLY: Mr. Hamilton?
 25 MR. HAMILTON: Thank you, Your Honor.

52

1 MR. LANGDON: As opposed to a standing.
 2 MR. HAMILTON: Actually, to make the
 3 record, I believe I need to identify by witness.
 4 I apologize for interrupting, but there were
 5 one, two, three -- four of the seven witnesses
 6 identified that were not in the election -- the
 7 Notice of Contest.
 8 JUDGE REILLY: Your objection is noted for
 9 the record and taken under advisement.
 10 And if the witness would please stand to have
 11 the oath administered.
 12
 13 DOUGLAS THOMPSON,
 14 having first been duly sworn, was examined and
 15 testified as follows:
 16 THE CLERK: As you're getting settled, I
 17 would ask you to announce your full name to the court
 18 and spell it for the record.
 19 THE WITNESS: Douglas Alan Thompson,
 20 D-O-U-G-L-A-S A-L-A-N T-H-O-M-P-S-O-N.
 21 DIRECT EXAMINATION
 22 BY MR. LANGDON:
 23 Q. Good afternoon, Mr. Thompson.
 24 Are you a registered voter in Minnesota?
 25 A. Yes.

51

1 RECROSS-EXAMINATION
 2 BY MR. HAMILTON:
 3 Q. Did you have a copy of your absentee ballot
 4 application before it was being entered in court
 5 today?
 6 A. No.
 7 Q. And the Republicans that called you, did they offer
 8 to show you a copy of that?
 9 A. I just -- I just saw the envelope copy.
 10 Q. That's all they showed you.
 11 A. Uh-huh.
 12 MR. HAMILTON: Thank you. No further
 13 questions.
 14 JUDGE REILLY: Thank you. You may step
 15 down.
 16 Mr. Langdon?
 17 MR. LANGDON: Contestants call Douglas
 18 Thompson.
 19 MR. HAMILTON: Your Honor, while the
 20 witness is taking the stand, we do object to the
 21 calling of this witness. Again, this witness is
 22 beyond the 654 identified in the Notice of Contest.
 23 MR. LANGDON: I'd be happy to give him a
 24 sitting objection, Your Honor.
 25 JUDGE REILLY: A sitting objection?

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1 Q. And for how long have you been one?
 2 A. Twenty years.
 3 Q. Did you vote in the last election?
 4 A. I did.
 5 Q. How did you cast your ballot?
 6 A. Absentee ballot.
 7 Q. Why?
 8 A. My mother's in Arizona and has cancer, and me and my
 9 sisters and brothers were taking turns to come down
 10 and take care of her, and it was going to be my turn
 11 in this.
 12 Q. Did you, in fact, get an application for an absentee
 13 ballot?
 14 A. We got an application. My girlfriend of 20 years
 15 filled the application out for it.
 16 Q. Let me put a copy of what we understand to be the
 17 outside envelope of the absentee ballot and your
 18 application in front of you and then I'll ask you a
 19 couple of questions about them.
 20 MR. LANGDON: May I approach, Your Honor.
 21 JUDGE REILLY: You may.
 22 MR. LANGDON: May I approach the witness?
 23 JUDGE REILLY: You may.
 24 BY MR. LANGDON:
 25 Q. I put before you, Mr. Thompson, a copy of what we

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1 marked as Exhibit C-241. It's two pages.
 2 Can you tell us what it is?
 3 A. C-241 is apparently the absentee ballot application
 4 that my girlfriend filled out. I was out of town so
 5 I couldn't fill it out to get my absentee ballot.
 6 Q. So you didn't fill it out yourself.
 7 A. No, I didn't.
 8 Q. After having been with your girlfriend for so long,
 9 are you comfortable that you recognize her
 10 handwriting?
 11 A. Yes, I am.
 12 Q. Is this her handwriting?
 13 A. Yes, it is.
 14 Q. And is that her handwriting purporting to be the
 15 signature of Douglas Alan Thompson?
 16 A. Yes, it is.
 17 Q. And you're Douglas Alan Thompson, right?
 18 A. Correct.
 19 Q. So she filled this application out and she told you
 20 she sent it in, is that right?
 21 A. Correct.
 22 Q. And then you received in the mail an absentee ballot
 23 to fill out, right?
 24 A. Correct.
 25 Q. Do you recognize the first page of Exhibit C-241 as

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1 A. After the election, I was told it wasn't counted.
 2 Q. How did you learn that?
 3 A. I was called by someone from the Republican Party
 4 that told me that.
 5 MR. LANGDON: I think that's all I have for
 6 you, sir. Thank you very much.
 7 THE WITNESS: Thank you.
 8 JUDGE REILLY: Are you offering C-241?
 9 MR. LANGDON: I knew there was something,
 10 Your Honor. Thank you very much.
 11 I am, indeed, offering C-241.
 12 JUDGE REILLY: Any objection, Mr. Hamilton?
 13 MR. HAMILTON: No objection, Your Honor.
 14 JUDGE REILLY: Exhibit C-241 is received.
 15 MR. LANGDON: Thank you, Your Honor.
 16 JUDGE REILLY: Thank you.
 17 MR. HAMILTON: Your Honor, I would like to
 18 point out that we do object and would like to reserve
 19 an objection related to the relevance because this
 20 individual is not within the 654. I just note that
 21 for the record.
 22 JUDGE REILLY: I think you already did.
 23 MR. HAMILTON: Thanks.
 24
 25

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1 that absentee ballot envelope?
 2 A. Yes.
 3 Q. Now, do you recognize the handwriting on it?
 4 A. Yes, I do.
 5 Q. Whose is it?
 6 A. Mine.
 7 Q. Are you referring to the signature within the block
 8 on the form stating "Voter's signature"?
 9 A. That's correct.
 10 Q. And that's your signature?
 11 A. Yes, it is.
 12 Q. Dated on October 22nd of 2008, or is it the 23rd?
 13 A. 22nd, it looks like.
 14 Q. Did someone witness you --
 15 A. Yes.
 16 Q. -- filled out the ballot and signed the forms?
 17 A. Yes.
 18 Q. Who was that?
 19 A. That would be my girlfriend, Darcy Pepper.
 20 Q. Is that her signature on it?
 21 A. Yes, it is.
 22 Q. And you sent the absentee ballot in the mail?
 23 A. Yes, I did.
 24 Q. And did you ever come to learn that your ballot had
 25 not been counted?

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CROSS-EXAMINATION

1 BY MR. HAMILTON:
 2 Q. Good afternoon, Mr. Thompson. My name is Kevin
 3 Hamilton and I represent the Al Franken campaign in
 4 this election contest. Thank you for coming in this
 5 afternoon.
 6 Let's start, and I think I understood you
 7 correctly, you didn't fill out this absentee ballot
 8 application at all, did you?
 9 A. No, I didn't.
 10 Q. You didn't sign it.
 11 A. No, I did not.
 12 Q. And the person who did is your girlfriend Darcy
 13 Pepper?
 14 A. Correct.
 15 Q. Okay. So let's look at that exhibit, if we could,
 16 the absentee ballot application.
 17 Under the name, I take it that's your name,
 18 Douglas Alan Thompson?
 19 A. That's correct.
 20 Q. And date of birth, that's your date of birth?
 21 A. Yes.
 22 Q. And phone number, that's your telephone number?
 23 A. Correct.
 24 Q. And the address, is that your address?
 25

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1 A. Correct.

2 Q. And then the address to where the absentee ballot was

3 going to be sent, that's the same, so that's your

4 address?

5 A. Correct.

6 Q. But the signature is not your signature.

7 A. No, it's not.

8 Q. All right. So if we turn to the other page of this

9 exhibit, this is your absentee ballot return

10 envelope, is that right?

11 A. Yes.

12 Q. And where it says, "Voter's signature," did you sign

13 it there?

14 A. Yes, I did.

15 Q. And then Ms. Pepper signed it as your witness.

16 A. Yes, she did.

17 Q. So you don't know whether your vote's been counted or

18 not, do you?

19 A. I was told that it wasn't.

20 Q. You were told that by one someone involved in the

21 Republican Party?

22 A. Correct.

23 Q. Do you know who that was?

24 A. No, I don't.

25 Q. Have you ever spoken with any election officials

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1 about the reasons for rejecting your ballot?

2 A. No, I haven't.

3 Q. We'd have to ask them to know what their reason for

4 rejecting the ballot was, wouldn't we?

5 A. I suppose.

6 Q. And do you think it might be that your girlfriend

7 signed the application and you signed the absentee

8 ballot envelope, is that possible?

9 A. I believe that's why.

10 MR. HAMILTON: Thank you. Nothing further.

11 REDIRECT EXAMINATION

12 BY MR. LANGDON:

13 Q. But this is, in fact, your genuine signature,

14 right --

15 A. Yes, it is.

16 Q. -- on the ballot envelope?

17 A. Yes, it is.

18 Q. And you are a registered voter, are you not?

19 A. Yes, I am.

20 MR. LANGDON: That's all I have for you,

21 sir. Thank you for taking the time and coming in

22 today.

23 JUDGE REILLY: Just a minute.

24 MR. HAMILTON: I might just have another

25 question for you, sir.

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RECROSS-EXAMINATION

1 BY MR. HAMILTON:

2 Q. You said that's your genuine signature on the

3 absentee return envelope?

4 A. Yes, it is.

5 Q. Not your genuine signature on the absentee ballot

6 application?

7 A. No, it is not.

8 Q. Now, I don't know you and I suspect the election

9 administrators may not be familiar with your

10 signature.

11 You'll agree with me that an election official

12 looking at these two documents would have no idea

13 which one your girlfriend signed and which one you

14 signed, is that right?

15 A. I suppose not. But in my, my way of thinking, if, if

16 I put this in the envelope and I sign, that it's

17 sealed. It's locked twice in two envelopes, it's got

18 my signature on it. That my vote should count,

19 not --

20 Q. The question, sir --

21 A. -- not, not --

22 Q. -- the question, sir, is the election administrators

23 would have no way of knowing which is your genuine

24 signature, isn't that true?

25

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1 MR. LANGDON: Objection, foundation, Your

2 Honor. That's calling for him to speculate.

3 JUDGE REILLY: Sustained.

4 MR. HAMILTON: Thank you. No further

5 questions.

6 MR. LANGDON: Nothing further, Your Honor.

7 JUDGE REILLY: You may step down.

8 MR. FRIEDBERG: Mr. Gelbmann.

9 If I could have a moment, Your Honor.

10 JUDGE REILLY: You may.

11 I'm going to ask you to stand up. Is this your

12 next witness, Mr. Friedberg?

13 MR. FRIEDBERG: It is, Your Honor.

14 JUDGE REILLY: What is his name?

15 MR. FRIEDBERG: His name is Jim Gelbmann.

16 JUDGE RILLEY: Thank you.

17 JAMES GELBMANN,

18 having first been duly sworn, was examined and

19 testified as follows:

20 THE CLERK: Go ahead and get settled, and

21 once you're settled, I'm going to ask that you state

22 your full name for the record and spell it.

23 THE WITNESS: My name is James R. Gelbmann,

24 J-A-M-E-S, R, as in Richard, Gelbmann,

25 G-E-L-B-M-A-N-N. I usually go by Jim.

1 MR. LILLEHAUG: Your Honor, objection ⁶²
 2 this witness. This witness was not on the witness
 3 list submitted by the Contestant yesterday.
 4 There was a subpoena to the Secretary of State's
 5 office. It appeared to be for a custodian of
 6 records, it did not identify Mr. Gelbmann.
 7 JUDGE REILLY: Are you calling him as a
 8 custodian of records?
 9 MR. FRIEDBERG: I am, Your Honor. And
 10 basically I believe this comes out of the discussion
 11 that I wasn't a party to that somebody from that
 12 office was going to come in and be the foundation for
 13 this record that's going in.
 14 JUDGE REILLY: Objection overruled.
 15 DIRECT EXAMINATION
 16 BY MR. FRIEDBERG:
 17 Q. Mr. Gelbmann, would you give us basically your
 18 background, your education, professional training?
 19 A. Yes, I'm a graduate of the University of Minnesota
 20 Morris.
 21 I've worked in state and federal government my
 22 entire career. I've worked for the state auditor as
 23 a deputy state auditor.
 24 I've worked for the department of energy and
 25 economic development as an assistant commissioner.

1 Q. In relation to the most recent election, what were ⁶⁴
 2 your duties?
 3 A. My duties were to work with the -- our elections
 4 director Gary Poser, in handling all aspects of the
 5 election, both prior to the election, preparing the
 6 counties for the election, the cities for the
 7 election, dealing with election training that got
 8 started last July where we train the county auditors.
 9 I also, postelection, worked on a daily basis
 10 both with the secretary of state and the director of
 11 elections in overseeing the recount activities of the
 12 state canvassing board.
 13 Q. And have your duties in relation to that election
 14 continued up until this day?
 15 A. Yes, they have to a lesser extent. Once the state
 16 canvassing board made its final determination, my
 17 responsibilities became much less and became much
 18 more responding to subpoenas and data practices
 19 requests as opposed to having a firsthand
 20 participation in the process.
 21 Q. What were your duties in relation to what the state
 22 canvassing board did?
 23 A. My duties were to be at every canvassing board
 24 meeting.
 25 My duties were to make sure that the objected --

1 I have worked for the state planning agency as a ⁶³
 2 planning principal.
 3 I have worked for the U.S. senator Mark Dayton
 4 as Mark Dayton's state director.
 5 I have worked for the house of representatives
 6 as a committee administrator.
 7 And I am currently, since April of this year,
 8 employed as the deputy secretary of state for the
 9 State of Minnesota.
 10 Q. And basically how many years of public service is
 11 that?
 12 A. About 27.
 13 Q. You and I have never met, have we?
 14 A. No, we have not.
 15 Q. Why don't you explain to the Court what your current
 16 job is and what your responsibilities are.
 17 A. As deputy secretary of state, I oversee the
 18 operations of the Secretary of State's office, which
 19 encompasses the business services section, the
 20 elections section and the technology section looking
 21 over the day-to-day operations of the office and
 22 participating in any issue that might come before any
 23 of those three sections.
 24 I have five managers that report directly to me.
 25 I report directly to the secretary of state.

1 or the ballots that were contested or challenged ⁶⁵
 2 ballots, excuse me, were ready for preparation by our
 3 elections director.
 4 Basically to make sure the Secretary of State
 5 was ready to -- in his role as chair of the state
 6 canvassing board to handle the state canvassing
 7 portion of the recount.
 8 Q. At a certain point in time was a communication sent
 9 out to the counties from your office asking for
 10 basically an evaluation and a return of a certain
 11 number of absentee ballots or envelopes that had not
 12 been opened?
 13 A. That, that is correct.
 14 Q. Why don't you tell the court how that came about.
 15 A. There was some concern among election officials,
 16 local election officials at the county level that
 17 there were a number of absentee ballots that were
 18 improperly rejected.
 19 We met with both candidates, had representatives
 20 of both candidates together to talk about this issue.
 21 We had talked with the counties about
 22 establishing a -- and this was actually directed by
 23 the canvassing board. The state canvassing board
 24 directed the Secretary of State's office to have all
 25 the counties categorize all the rejected absentee

1 ballots into one of five categories. And the five ⁶⁶
 2 categories were the four categories for admissibility
 3 of absentee ballots, criteria that absentee ballots
 4 must achieve in order to be counted.
 5 And the fifth category was if an absentee ballot
 6 did not meet any of those five -- did any not
 7 complete any of those five criteria, then they would
 8 be placed in the fifth category which we referred to
 9 as wrongly rejected absentee ballots. Absentee
 10 ballots for which there would not be lawful
 11 rejection, a reason for rejecting.
 12 Q. All right. And how did the counties find out about
 13 their duties in relation to these facts?
 14 A. I believe they found out about their responsibility
 15 in relation to these ballots by a memo probably from
 16 me or Mr. Poser. I cannot recollect at this time
 17 whether it was sent out under my signature or
 18 Mr. Poser's signature advising them how to divide the
 19 ballots.
 20 Q. Where were the ballots supposed to come to from the
 21 counties?
 22 A. Well, initially the ballots were to remain with the
 23 counties. They were just instructed them to divide
 24 them into five categories. That was the initial
 25 determination of the canvassing board.

1 process a public process whereby the candidates ⁶⁸
 2 themselves could have representatives at the location
 3 where they were going to go through the ballots.
 4 In most counties that did occur. In most
 5 counties the counties published the date and time and
 6 location as to when they would be going through the
 7 ballots and allowed the representatives of both of
 8 the candidates to be present as this administrative
 9 task of dividing the absentee ballots into the five
 10 categories occurred.
 11 Q. Was that at the suggestion of the Secretary of State
 12 or did the counties decide to do that on their own?
 13 A. That was at the suggestion of the Secretary of State.
 14 The Secretary of State's office wanted this to be as
 15 transparent a process as possible, wanted this
 16 process to be open to the public and we wanted both
 17 candidates to be able to have representatives there
 18 to observe this process of dividing the ballots into
 19 the five various categories.
 20 As I said, we cannot order counties to do
 21 administrative functions, they have their right to do
 22 things the way they want to do it, but we did
 23 recommend that they do it in a public process.
 24 Q. I think I caught the word "most" in there.
 25 Would that be true?

1 What the canvassing board really wanted to do ⁶⁷ at
 2 that time, at that initial time which was probably
 3 back in late November, I don't know the exact date,
 4 but what the canvassing board was trying to do is to
 5 determine the extent of the problem of the rejected
 6 absentee ballots. There had been allegations during
 7 the recount activity that there were a significant
 8 number of absentee ballots that had been rejected
 9 improperly, but there was no way to quantify how many
 10 absentee ballots had been rejected improperly.
 11 So what the canvassing board really wanted us to
 12 do, the Secretary of State's office to do is ask the
 13 counties to look through all rejected absentee
 14 ballots and give the canvassing board some
 15 determination of the actual number of absentee
 16 ballots that were improperly rejected.
 17 Q. Now, we can assume that in any election there's going
 18 to be some mistakes, correct?
 19 A. I believe that's a correct assumption.
 20 Q. Fine. So the first thing that happened here is that
 21 the counties themselves were asked to introspectively
 22 look at their own absentee ballots and determine
 23 which ones they had made mistakes on, is that fair?
 24 A. That is a fair assumption. Although they were also
 25 asked by our office to make it available, to make the

1 A. That is true. ⁶⁹
 2 Q. How many, if you know, counties refused to do it?
 3 A. Initially, I believe there were very few counties
 4 that actually refused to do it. I would say I could
 5 probably -- less than 10 counties refused to do it.
 6 There were probably another 10 to 15 counties
 7 that did it on their own without posting a public
 8 process and without inviting the candidates to
 9 participate in that process. They basically went
 10 through the absentee ballots by themselves and made a
 11 determination. That would be my own estimate. I'd
 12 have to check.
 13 Q. Okay, that's fine. I'm not going to hold you to it.
 14 Somebody might but it won't be me.
 15 So you're saying that about 10 counties
 16 essentially said they really didn't care to do it and
 17 maybe 10 or 15 more did it on their own because they
 18 heard it should be done and didn't care to follow
 19 your suggestion as to transparency, is that fair?
 20 A. That's fair. Except I would want to check the
 21 numbers, but it's fair the numbers are roughly
 22 correct.
 23 Q. What happened with the counties that refused?
 24 A. They continued to refuse and we did not receive
 25 ballots from them or the numbers from them.

1 When we went back to the canvassing board, ⁷⁰
 2 we were only able to give them, the canvassing board a
 3 partial response to their questioning about how broad
 4 of a problem is this.
 5 For counties that refused to do it, we couldn't
 6 tell them, the canvassing board, how many ballots
 7 would have ended up in Pile Number 5. We were only
 8 able to give them a partial number as to how many
 9 ballots were wrongly rejected.
 10 Q. Well, what were you able to eventually do about
 11 those counties, if anything?
 12 A. Eventually, the Supreme Court did come forward with a
 13 motion. And, again, I have to go back to my records
 14 to recollect the exact sequence of events. But
 15 eventually the Supreme Court came forward with a
 16 motion saying that all wrongly rejected absentee
 17 ballots that both candidates and the counties agree
 18 were wrongfully rejected shall be forwarded to the
 19 state canvassing board for opening and counting.
 20 Q. Would it be fair to say that certainly there were
 21 different percentages county by county? We're not
 22 talking about how much, but all counties weren't the
 23 same in the percentage of ones that they agree had
 24 been wrongly rejected, right?
 25 MR. LILLEHAUG: Objection as to foundation

1 that they, indeed, do not have any wrongfully ⁷²
 2 rejected absentee ballots, that they were -- that
 3 they stood by that determination.
 4 Again, I could be wrong on that, but we did make
 5 an effort to make sure that all counties complied
 6 with the State Supreme Court order.
 7 Q. And of course, you couldn't know for a fact whether
 8 they did.
 9 A. As I said, we reached out to the counties for which
 10 we had no absentee ballots being forwarded to us and
 11 asked them, is it your position, that no absentee
 12 ballots were wrongfully rejected.
 13 In most cases and probably in all cases, I have
 14 an e-mail on my e-mail system that asks for the
 15 documents that the county was -- because we did allow
 16 communication via e-mail -- to document that the
 17 county did indeed -- was maintaining the position
 18 that they had no wrongfully rejected absentee ballots
 19 to forward to the State Secretary of State.
 20 Q. Now, I don't want you to name any counties when I ask
 21 you this question. You're saying there were about 10
 22 that initially refused, correct?
 23 A. That is correct, under 10. Under 10.
 24 Q. And somewhere between five and 10 didn't find any
 25 mistakes.

1 and form of the question also. ⁷¹
 2 JUDGE REILLY: Sustained.
 3 BY MR. FRIEDBERG:
 4 Q. All right. Were there any counties that at least
 5 have taken the position that they made no mistakes?
 6 A. There were a handful of counties that had not
 7 submitted any wrongfully rejected absentee ballots.
 8 I could not tell you how many but probably less than
 9 10.
 10 Q. All right. Somewhere between five and 10, fair?
 11 A. I can't tell you without checking my records.
 12 Q. Now, they were ordered by the Supreme Court to do it,
 13 correct?
 14 A. That is correct.
 15 Q. And frankly, you don't know if they did it or not,
 16 right?
 17 MR. LILLEHAUG: Objection as to foundation.
 18 Also form with respect to "frankly."
 19 JUDGE REILLY: Sustained as to foundation.
 20 BY MR. FRIEDBERG:
 21 Q. Do you know whether or not the counties that found no
 22 mistakes actually checked to see if they hadn't.
 23 A. In my best recollection, I or Mr. Poser have talked
 24 to all 87 counties, and were told for the ones that
 25 did not provide us with any rejected absentee ballots

1 A. That -- again, I cannot be sure of the numbers ⁷³
 2 without checking my records, but that sounds about
 3 right.
 4 Q. Is there a relationship between the counties that
 5 refused to do it and the ones that didn't find any
 6 mistakes?
 7 MR. LILLEHAUG: Objection, vague.
 8 JUDGE REILLY: Overruled. You can answer
 9 if you can.
 10 THE WITNESS: I cannot answer. I mean, I,
 11 I would assume that there's a mixture. Without going
 12 back to my records, I could not answer that question.
 13 I would assume some of the counties that refused
 14 initially were -- they might be the same counties as
 15 had submitted no rejected -- wrongfully rejected
 16 absentee ballots.
 17 BY MR. FRIEDBERG:
 18 Q. Now, were these that refused to do it necessarily
 19 small counties?
 20 A. With one exception, they were small counties.
 21 Q. And the exception was?
 22 A. St. Louis County.
 23 Q. They refused originally to do it?
 24 A. Initially they refused to do it, but they did it when
 25 the Supreme Court directed them to do it.

1 Q. Mr. Gelbmann, I believe you've got a multipage ⁷⁴
 2 document in front of you, do you?
 3 A. Yes, I do.
 4 Q. All right. Yours isn't marked with a number, is it?
 5 A. No, it is not.
 6 Q. Showing you what's been marked as Exhibit C-245 that
 7 is a multipage document and it includes what appears
 8 to be an e-mail string as well as another bunch of
 9 documents.
 10 Could you identify what that is without telling
 11 us the content of it and how it came to be?
 12 A. Yes, it's got -- the front page is an e-mail from me
 13 to the two campaigns that some -- that state that
 14 there is going to be attached to the e-mail a
 15 spreadsheet that lists the names of the wrongfully
 16 rejected absentee ballots that were counted by the
 17 State Canvassing -- by the Secretary of State's
 18 office on January 3rd that list the names, the county
 19 from which they came and the reason that was written
 20 on the absentee ballot envelope for the initial
 21 rejection of those ballots.
 22 Q. Okay. The first three pages are part of -- well, the
 23 first two pages are some e-mails that kind of set
 24 this up.
 25 And then is the third page just a standard

1 Exhibit C-245, Your Honor. ⁷⁶
 2 MR. LILLEHAUG: Possible objection. May I
 3 voir dire the witness?
 4 JUDGE REILLY: You may.
 5 MR. LILLEHAUG: Good afternoon,
 6 Mr. Gelbmann. David Lillehaug for Al Franken.
 7 Exhibit 245 that you have in front of you, did
 8 you bring that with you today?
 9 THE WITNESS: I brought a copy of it with
 10 me today, yes.
 11 MR. LILLEHAUG: And are you testifying
 12 today pursuant to subpoena?
 13 THE WITNESS: I am testifying today due to
 14 a subpoena for a custody of records to
 15 the Secretary -- a subpoena that was directed to the
 16 Secretary of State's office.
 17 There are two boxes checked to bring absentee
 18 ballots by 1:00 today, and then also to appear -- or
 19 a person who has the custody of records for the
 20 Secretary of State to appear as a witness.
 21 MR. LILLEHAUG: And with respect -- so the
 22 subpoena is to the Secretary of State's office and
 23 you're appearing pursuant to that subpoena for the
 24 office?
 25 THE WITNESS: That is correct.

1 attachment to the e-mail? ⁷⁵
 2 A. That is correct. It's an Excel spreadsheet.
 3 Q. And then the rest of the pages, and they're not
 4 numbered, but there's a bunch of pages that are
 5 attached to it, is that true?
 6 A. That is true.
 7 Q. And that's where we see the individual ballots. In
 8 other words, what county they come from, the first
 9 and last name of the voter by absentee, and then the
 10 ostensible reason for rejection, correct?
 11 A. That is correct.
 12 Q. All right. And that document is a document that your
 13 office prepared, correct?
 14 A. That is right. It was prepared at the request of the
 15 Coleman campaign. The document was actually
 16 prepared, and we notified the Franken campaign of the
 17 data practices request that we had received relative
 18 to this document. And we notified the Franken
 19 campaign and the document was compared in the
 20 presence of both the Coleman campaign and Franken
 21 campaign representatives.
 22 Q. All right. And the e-mails that are attached, you
 23 are a party to those e-mails, is that correct?
 24 A. That is correct.
 25 MR. FRIEDBERG: Offer Coleman

1 MR. LILLEHAUG: Did the subpoena direct you ⁷⁷
 2 to bring the list that was prepared by request of the
 3 Coleman campaign that we now see in this C-245?
 4 THE WITNESS: No, it did not.
 5 MR. LILLEHAUG: Well, your Honor, it looks
 6 like we've gone well beyond custodian witness, but if
 7 that's where we're going, I'll have
 8 cross-examination. No objection.
 9 JUDGE REILLY: Exhibit C-245 is received,
 10 then, in its entirety.
 11 MR. FRIEDBERG: Thank you, Your Honor.
 12 JUDGE REILLY: And Mr. Friedberg, how much
 13 longer do you intend to go?
 14 MR. FRIEDBERG: I never really know but a
 15 while, I think.
 16 JUDGE REILLY: Why don't we take a break
 17 here then.
 18 THE WITNESS: Your Honors?
 19 JUDGE REILLY: Yes.
 20 THE WITNESS: If I may, I, I do want to
 21 correct one misstatement that I believe I did
 22 misspoke -- speak about St. Louis County.
 23 I don't -- I did -- do think that St. Louis
 24 County did initially object to preparing the ballots,
 25 dividing the ballots into the piles of five, but I

1 don't think they waited until the Supreme Court ⁷⁸
 2 ordered them to do it. It was just one of those
 3 issues where we had a difference of opinion with
 4 St. Louis County as to how necessary that was, but I
 5 don't think they had to -- they actually waited until
 6 the Supreme Court ordered it to do the separation.
 7 MR. FRIEDBERG: Your Honor, I don't have
 8 any objection.
 9 JUDGE REILLY: Thank you for correcting
 10 that.
 11 We'll stand in recess for 15 minutes.
 12 (A recess was taken.)
 13 JUDGE REILLY: Mr. Gelbmann, I'll have you
 14 resume the witness stand.
 15 BY MR. FRIEDBERG:
 16 Q. Mr. Gelbmann, is the document still in front of you?
 17 A. Yes, it is.
 18 Q. The front page of the document, that is essentially
 19 an e-mail from you to Tony Trimble, Mr. Knaak,
 20 Mr. Lillehaug, Mr. Hamilton with copies to others,
 21 and the subject is the initially rejected absentee
 22 ballots.
 23 Could you tell me essentially the substance of
 24 this letter, what you're explaining?
 25 A. Yes, what I'm explaining is we were asked to go

1 talked to both campaigns and made it clear this is ⁸⁰
 2 how we would proceed, is we would meet at the office
 3 of the Secretary of State in a conference room with
 4 both campaigns present and open the envelopes
 5 contain -- the envelopes that contained the
 6 wrongfully rejected absentee ballots and make a
 7 spreadsheet in the presence of the two campaigns of
 8 the names, the counties from which they came, and the
 9 reasons stated on the envelope for rejecting --
 10 initially rejecting the absentee ballot.
 11 That took -- it was a two-day process. We did
 12 all the counties but -- other, other than Hennepin
 13 County the first day, and then came back in the
 14 morning of the second day, on January 21st, and
 15 completed Hennepin County's wrongfully rejected
 16 absentee ballots.
 17 The -- when we completed the recount of all of
 18 the envelopes, we noticed that there was a
 19 discrepancy in the number of envelopes and the number
 20 of ballots actually cast.
 21 And the first page of this document, a memo from
 22 me to both of the campaigns, explains why there were
 23 only 928 -- 929 envelopes and there were 933 absentee
 24 ballots cast. And there's a variety of explanations.
 25 Q. That was my next question. Would you explain to the

1 through the envelopes that contained the 933 ballots ⁷⁹
 2 that were counted on January 3rd. These were the
 3 wrongfully, wrongfully rejected absentee ballots that
 4 both candidates and the local election official
 5 agreed had been wrongfully rejected.
 6 And when we counted them, counted the ballots,
 7 we did not keep a record of the names on the
 8 envelopes, and we were subsequently served with a
 9 data practices request for the copies of those
 10 envelopes.
 11 Unfortunately, the copies of those envelopes
 12 also had information on them that would, if put
 13 together with a -- the ballot itself, could identify
 14 the voter. And we objected to the data practices
 15 request on those grounds.
 16 We talked with the Coleman campaign
 17 representatives about our objections to the data
 18 practices request, and agreed that in substitution
 19 for actually producing the copies of the envelopes we
 20 would produce the county from which the envelope
 21 came, the name of the voter on the envelope and the
 22 reasons stated on the envelope for initially
 23 rejecting the absentee ballot.
 24 We then got a similar request from the Franken
 25 campaign that they wanted the same information. We

1 Court what that discrepancy is and what it's based ⁸¹
 2 on, at least to the best of your knowledge?
 3 A. Okay. Again, when we noticed the discrepancy between
 4 929 and 933, I met with Gary Poser, who is the
 5 director of elections. And he I had kept very good
 6 records of these envelopes as they came in from the
 7 various counties.
 8 And, for example, the first, the first incident
 9 in Clay County, we were missing two envelopes. And
 10 that we, we -- he had a record, it was a handwritten
 11 note that he had made when he was receiving these
 12 envelopes that Clay County had sent us with only a
 13 secrecy envelope and no -- and, and the ballot.
 14 And that two, two of their ballots were sent
 15 with only the secrecy envelope and did not have the
 16 outside white envelope that we were looking at. So
 17 two of those ballots, we would not have seen the
 18 envelope because Clay, Clay County did not send us
 19 the envelope, they just sent us the secrecy envelope
 20 and the ballot itself.
 21 In Dakota County we are missing one name from a
 22 single envelope that actually had two ballots inside
 23 of it. I believe it's a husband and wife or a
 24 brother and sister, I'm not sure which, that
 25 submitted their absentee ballots in a single

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1 envelope.
 2 They both put their name on the envelope, they
 3 both signed the envelope. They both had a witness on
 4 the envelope, but they only used one envelope,
 5 probably to save postage or actually is -- or
 6 probably is the reason they put it in a single
 7 envelope.
 8 And unless you looked at the envelope very
 9 carefully as you were counting these or making the
 10 spreadsheet, it would be very easy to miss that there
 11 were actually two voters' names on a single envelope.
 12 So that explains why one of the envelopes was
 13 missing.
 14 In Fillmore County, there was one outside
 15 envelope that had no secrecy ballot and no, no
 16 ballots in it. No secrecy envelope and no, no ballot
 17 in it. Therefore, one of the four envelopes we
 18 received from Fillmore County had no ballot inside.
 19 From Washington County, our office received one
 20 e-mail ballot without the accompanying certificate.
 21 There are certain ballots from overseas that are
 22 allowed to be e-mailed into our office under the
 23 UOCAVA statutes, and there was -- the certificate
 24 accompanying that ballot was not forwarded to us from
 25 Washington County.

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1 In most cases, that's what they did, they sent
 2 us those ballots back. There was a handful, and
 3 again I use the term "handful," probably five or six
 4 counties, that actually sent us all of their wrong --
 5 all of their ballots that they felt were wrongfully
 6 rejected. In several of those cases, we did it via
 7 e-mail. For example, Pennington County sent us all
 8 three wrongfully rejected absentee ballots, and --
 9 Q. Let me stop you for a second. We got to get some
 10 nomenclature here.
 11 Pennington County sent you three ballots that
 12 they believed were wrongfully rejected?
 13 A. That is correct.
 14 Q. Okay. But they had not been looked at by the
 15 campaigns.
 16 A. That was my, my -- my observation was that there was
 17 no record that the compains had looked at those.
 18 Q. Okay.
 19 A. I received an e-mail from the Coleman campaign saying
 20 that they had no objection to the three envelopes
 21 from Pennington County.
 22 I sent out an e-mail to the Franken campaign
 23 asking if they had any objection to the three
 24 envelopes from Pennington County, and they replied
 25 back via e-mail that they had no objection. And so

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1 And in St. Louis County, we should have had 101
 2 envelopes. When we counted, there were only 100
 3 names from St. Louis County, and we believe that that
 4 was simply going through the envelopes, they tend to
 5 stick together as you're going through and making the
 6 list, and we believe that that was just an error
 7 where two envelopes stuck together and we had only
 8 entered the one name from the one envelope.
 9 Q. The best you can figure, exactly how many envelopes
 10 and ballots do you have?
 11 A. The best I can figure is we have 933 ballots and 929
 12 white external envelopes.
 13 Q. Now, these ballots have all been counted, correct?
 14 A. That is correct.
 15 Q. And they were counted by the canvassing board.
 16 A. That is correct. They were counted by the Secretary
 17 of State's office and results of the counting were
 18 reported to the state canvassing board.
 19 Q. Excuse me. Now, how many envelopes did you
 20 originally receive back that apparently the counties
 21 thought were wrongfully rejected?
 22 A. That's a very difficult question to answer. The
 23 counties were directed to send us only the ballots
 24 that both the local election official and the two
 25 candidates agreed had them wrongfully rejected.

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1 the three Pennington County ballots were then
 2 counted.
 3 In another case, in the case of -- I can't
 4 remember the names of the counties, but there were
 5 about four counties where they sent us all their
 6 rejected absentee ballots, and I knew that they had
 7 not had -- been vetted by the two candidates, the
 8 local officials.
 9 Q. Let me stop you again. Did they send you all their
 10 rejected absentee ballots or did they send you all of
 11 what they believe were wrongfully rejected?
 12 A. They sent me -- they sent the Secretary of State's
 13 office all the ballots that they believed were
 14 wrongfully rejected.
 15 Q. Okay.
 16 A. And, again, they -- they acknowledged to us, either
 17 by e-mail or by phone call, that the candidates had
 18 not had an opportunity to review those absentee
 19 ballots or rejected absentee ballots and obtain their
 20 concurrence that they were wrongfully rejected.
 21 And, so I can't remember the date. I could if I
 22 went back to my calendar, I could find the date.
 23 But I assembled representatives from both
 24 campaigns to the state office building and in Room 10
 25 of the state office building we went through those

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1 envelopes.

2 One was McLeod County, I do remember, and went

3 through ballot by ballot, ballot envelope by ballot

4 envelope. And either -- you know, if one of the

5 candidates objected, they had to fill out the form

6 saying that they objected, that they believed that

7 this ballot was rightfully rejected under Minnesota

8 law. Otherwise, we put the names in the pile that we

9 counted on January 3rd.

10 Q. During that process, do you -- I don't expect you to

11 remember exactly, but do you remember approximately

12 how many ballots you're talking about?

13 A. The most, I think, was in McLeod County. They had,

14 I'm guessing, anywhere from 20 to 30 ballots that

15 they had sent us.

16 Stearns County was a unique situation where

17 Stearns County had brought a portion of their

18 ballots, the ballots that they felt were wrongfully

19 rejected, to another county, a neighboring county,

20 Willmar, Kandiyohi County, to be examined by the two

21 campaigns.

22 But they rejected for -- and I can't remember

23 the reason; I could if I went back to my notes. They

24 forgot to bring another subset of about 20 some

25 absentee ballots that they felt were wrongfully

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1 exactly or approximately, how many of the ballots

2 that the local officials felt were wrongly rejected

3 were not eventually classified as wrongfully

4 rejected?

5 A. Slightly over 400 ballots.

6 Q. Okay.

7 A. Statewide, that's the statewide number.

8 Q. Now, where are those ballots?

9 A. Those ballots have been either -- were maintained by

10 the county themselves because they -- because again,

11 in most cases, other than the cases that I just

12 talked about, in most cases the counties only sent us

13 the ones -- or absentee ballots that both candidates

14 agreed had been wrongfully rejected.

15 And in the cases such as McLeod County and

16 Stearns County and Winona County, if a candidate --

17 one way or the other -- a candidate representatives

18 objected to that ballot being counted, we mailed

19 those ballots back to the counties. So the 400 plus

20 ballots that the local officials believed were

21 wrongfully rejected but one or the other candidate

22 disputed and felt had been rightfully rejected, all

23 of those ballots are now back at the counties. Some

24 have been mailed to us, but we mailed them back after

25 one or the other candidates objected.

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1 rejected. They, for some reason, did not bring those

2 to Kandiyohi County to go through that vetting

3 process with the candidates. And therefore Stearns

4 County sent those down to us. And I believe -- like

5 I said, I believe there were about 20 Stearns County

6 ballots in that envelope.

7 The other two counties -- there were two other

8 counties. One was Winona, and I believe they only

9 had one or two ballots, absentee ballot envelopes

10 that they felt were wrongfully rejected.

11 And there was one other county and, again, I

12 can't remember, but it was a small number of

13 wrongfully rejected, two, three, four wrongfully

14 rejected absentee ballots.

15 And again, the candidates were given the

16 opportunity to either say that they agreed that that

17 was a wrongfully rejected absentee ballot, agreed

18 with the local official that that was a wrongfully

19 absentee ballot, or they could say they disagreed,

20 they believed that that ballot was rightfully

21 rejected, in which case we required them to sign a

22 document stating their reason why they did not

23 believe the ballot was rightfully rejected.

24 Q. All right. Now, let me go back to the question I

25 asked you a couple minutes ago. Do you know, either

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1 Q. So that's slightly more than 400 plus a bunch more.

2 A. Four -- there were approximately 400. And again, I

3 do not recall --

4 Q. That is slightly more than 400.

5 A. Slightly, slightly more than 400 absentee ballots

6 that the local official, the local election

7 professionals believed had been wrongfully rejected,

8 but one or the other candidate objected and said no,

9 they believed that ballot had been rightfully

10 rejected, are still out at the counties with the

11 counties.

12 Q. All right. Now, when I looked at the -- turn to what

13 would be Page 4 this list is broken down by county,

14 correct?

15 A. That is correct.

16 Q. And it's not really broken down, it's not in any

17 order other than that.

18 A. Alphabetical by county.

19 Q. Well, county are alphabetical but the people within

20 the county are not.

21 A. Right.

22 Q. All right. What I want to do, about how many

23 different reasons, and you can guess and if you're

24 wrong, nobody's going to blame you, but about how

25 many different reasons are reflected in this list why

1 ballots were rejected in the first place? 90
 2 MR. LILLEHAUG: Objection as to foundation
 3 by Mr. Friedberg's question, asking for speculation.
 4 JUDGE REILLY: Sustained.
 5 BY MR. FRIEDBERG:
 6 Q. More than one?
 7 A. Definitely more than one.
 8 Q. All right. Then let's go over it. I can see at the
 9 top of this first page "No notary stamp," okay?
 10 A. (Nods head.)
 11 Q. Explain to the Court what that means in relation to
 12 the rejection of the ballot.
 13 MR. LILLEHAUG: Objection as to foundation.
 14 May I be heard on this?
 15 JUDGE REILLY: What foundation is missing?
 16 MR. LILLEHAUG: What foundation is missing
 17 is asking Mr. Gelbmann whether he has the expertise
 18 and the knowledge of the particular ballot to explain
 19 what the notation, "No notary stamp" means.
 20 JUDGE REILLY: Are you asking in general or
 21 as to this particular?
 22 MR. FRIEDBERG: No, I'm asking in general.
 23 I mean, I think I've qualified him as an expert.
 24 JUDGE REILLY: Overruled.
 25 BY MR. FRIEDBERG:

1 process that we went through, we know that there is a 92
 2 ballot which has been counted where the election
 3 officials thought originally that it ought to have a
 4 notary stamp, and then they decided they were wrong
 5 and this ballot has now been counted, correct?
 6 MR. LILLEHAUG: Objection, asking him to
 7 speculate as to what election officials thought; no
 8 foundation laid for that.
 9 JUDGE RILLEY: Sustained.
 10 BY MR. FRIEDBERG:
 11 Q. Somebody rejected this ballot because there was no
 12 notary stamp, right?
 13 A. Based on what was written on the envelope, that would
 14 be correct.
 15 Q. You have no reason that anybody would make up a
 16 reason. That this is where the election judge writes
 17 on the certificate the reason for rejecting the
 18 ballot, correct?
 19 MR. LILLEHAUG: Objection, same objection.
 20 JUDGE REILLY: Sustained.
 21 BY MR. FRIEDBERG:
 22 Q. Was no notary stamp written on this certificate?
 23 A. It would appear so.
 24 Q. Okay. Now, I want to move down to "No reason." And
 25 as we look through these pages, there's many, many

1 Q. Basically what does that mean when it's given as a 91
 2 reason for no notary stamp?
 3 A. I can't be 100 percent sure, but the reason that an
 4 absentee ballot would require a notary stamp is if
 5 they were an absentee ballot from out of state and
 6 they did not have a Minnesota registered voter to
 7 serve as their witness.
 8 The other option for them would be to have a
 9 notary public from outside Minnesota serve as their
 10 witness. I can only speculate, and, again, this
 11 would only be speculation, that this came from out of
 12 state. There was not a Minnesota registered voter
 13 available, a notary public. A person with a notary
 14 public in another state witnessed the signature but
 15 did not provide a notary stamp.
 16 Q. And is that -- I mean, you understand the law about
 17 these and you're familiar with these absentee ballots
 18 and the laws and procedures that govern them.
 19 Is that, in your opinion, a reason to reject an
 20 absentee ballot?
 21 A. I do not have the legal expertise to be able to say.
 22 That would be a determination that would be made at
 23 the county level, not at the Secretary of State's
 24 level.
 25 Q. All right. But in any event, now based on this

1 where the reason for rejecting it is "No reason," 93
 2 correct?
 3 A. Yes, although again when it says, "No reason," it
 4 doesn't necessarily say on the ballot envelope no
 5 reason.
 6 Q. I understand that. There was no reason given, right?
 7 A. Yes, there was -- basically that space where you
 8 would write why you were rejecting the absentee
 9 ballot was left blank.
 10 Q. All right. And a election judge or two election
 11 judges had rejected this in the count. That's how it
 12 got here, right?
 13 A. It was rejected either at the absentee ballot board
 14 level, some counties have absentee ballot boards that
 15 determine what ballots will be accepted or rejected.
 16 In some of those cases, and in a case where
 17 there's an absentee ballot board, if they accept an
 18 absentee ballot and send it on to the precinct level
 19 to be counted, the only reason that an election judge
 20 at the precinct level would reject that absentee
 21 ballot is if the person -- if they knew that the
 22 person had died since passing their ballot, or if a
 23 person shows up on election day and votes on election
 24 day, which would then be noted in the roster that the
 25 person would sign.

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1 A person in Minnesota is able to cast an
 2 absentee ballot, and then if he or she determines
 3 they want to change their vote, they are allowed to
 4 show up on election day, sign the roster, election
 5 day roster and vote their ballot again, in which case
 6 the absentee ballot is rejected.
 7 Q. Now, that's another specific reason that's given on a
 8 number of these, correct, that the voter came in and
 9 voted in person?
 10 A. I'd have to look through, but I would assume that
 11 there probably is on several that -- where it says
 12 the voter voted in person. That's common.
 13 Q. Now, there's another one that "No proof of
 14 residence."
 15 Now, there's a box that's supposed to be
 16 checked, right?
 17 A. That's right.
 18 Q. So explain to the Court basically why a ballot would
 19 originally be rejected for no proof of residence.
 20 A. I cannot tell, frankly, why a specific election judge
 21 would determine that there was no proof of residence.
 22 Again, there's a -- when you fill out the form,
 23 you need to check the, the -- what was checked by --
 24 there's a proof of residence by the witness who was
 25 witnessing that, the absentee ballot.

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1 commonly happens is the election judges are looking
 2 for these names on the roster after working a 12- to
 3 14-hour day. And many times in the case of a
 4 hyphenated name -- maybe it's Jones-Smith -- the
 5 election judge may look under Smith but the person's
 6 name is actually alphabetized under Jones-Smith. And
 7 they can't find the name on the roster so they assume
 8 that the person is not a registered voter.
 9 In hindsight and when, when the election
 10 officials from the county from which this ballot came
 11 went back to their roster or went back to the, what
 12 we call the SVRS, Statewide Voter Registration
 13 System, they were able to find that that person's
 14 name was, indeed, on the roster. But the two
 15 election judges that were looking for the name on the
 16 roster to see if the person had voted in person were
 17 not able to find the name on the roster either
 18 because they had a hyphenated name, they were looking
 19 under the wrong letter of the alphabet or because
 20 they might have been 20 John Smiths and they couldn't
 21 find the right John Smith.
 22 Q. Or they were just plain tired and missed it.
 23 A. That, that is correct.
 24 Q. All right. Now, do you know whether or not, before
 25 this ballot was admitted and the ballot counted, do

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1 And there's a space on the envelope for, for
 2 example, say look at a driver's license and you can
 3 check the driver's license. There's a space on the
 4 envelope to write the driver's license, but there's
 5 no requirement that the driver's license actually be
 6 written there, they just have to check the box.
 7 Some election judges may feel that -- or may
 8 believe that they needed to not only check the box
 9 but they looked at their driver's license to make
 10 sure that they were witnessing for someone who was a
 11 resident of the State of Minnesota and registered to
 12 vote. But they also had to fill in the driver
 13 license number, and that's not required by law.
 14 Q. If that was the reason it's rejected, it would be
 15 erroneously rejected, correct?
 16 A. That is correct.
 17 Q. All right. What does "Not on the roster" mean?
 18 A. "Not on the roster" would mean that the person's
 19 name, when the election judge was checking at the
 20 precinct level, when the election judge was checking
 21 to see if that person had voted on that day, they
 22 were unable to find the person's name on the
 23 ballot -- on the roster, which would indicate that
 24 the person was not registered.
 25 However, I might add that what is common -- what

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1 you know whether or not that person's name actually
 2 appeared on the roster?
 3 A. I have 100 percent confidence in our election
 4 officials, our local election officials that
 5 administer the elections at the local level.
 6 When we ask them to separate the -- when the
 7 canvassing board, the State canvassing board asked
 8 the election officials to segregate the ballots into
 9 five categories, one of the categories was is the
 10 person a registered voter. And I have 100 percent
 11 confidence that our election officials are
 12 professionals at the county level, would not put that
 13 ballot into the Category 5 if they had not first
 14 checked to make sure that that person was a
 15 registered voter.
 16 Q. Where can you look to determine if a person is a
 17 registered voter?
 18 A. The place that you would look would be the Statewide
 19 Voter Registration System which is updated on an
 20 annual basis, or updated even on a nightly basis, I
 21 should say, as people register to vote.
 22 And also, you would look under the election day
 23 registrations that occur on election day. Minnesota
 24 has the ability to register on election day, so you
 25 do have to look at both the Statewide Voter

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1 Registration System which is updated up until
 2 October 14th preceding the general election, and then
 3 after October 14th, you would have to look at the
 4 election day registrations to find out if a person
 5 was registered.
 6 Q. So it's clear that if somebody's envelope was not
 7 accepted and was rejected for the reason that their
 8 name didn't appear on the roster or the ostensible
 9 reason that they were not a registered voter, if, in
 10 fact, they're a registered voter and the local
 11 officials never turned that up, they missed it, and
 12 that person's ballot still has not been counted, it
 13 should be, correct?
 14 A. That would be correct. However, we did ask the
 15 election officials to look at all their ballots and
 16 determine whether or not they were wrongfully
 17 rejected.
 18 Q. Okay. I take it you're not going to vouch for the
 19 fact that they found them all, that they could have
 20 made mistakes like people do, correct?
 21 A. They could have made mistakes.
 22 Q. And if at this point in time a person's ballot is
 23 still rejected but they do show up as having been
 24 registered back on election day, their ballot should
 25 have been counted and it should be counted, correct?

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1 April of this year, so I would not be the person to
 2 be able to answer that question.
 3 Q. What was your reaction when you first saw that, did
 4 you understand what you were looking at?
 5 A. Again, what I suspected happened, and this is just
 6 suspecting without, you know, knowing firsthand, you
 7 got to talk to the person who rejected the absentee
 8 ballot as to why that -- it has been marked accepted
 9 and then found, found its way into the rejected pile.
 10 My, my suspicion is that it was accepted by an
 11 absentee ballot board, by a county that had an
 12 absentee ballot board, forwarded it on to a precinct.
 13 And then either the election judge realized that the
 14 person had died since the ballot was cast, because
 15 again, some of the election judges are familiar with
 16 the local individuals and may recognize that that
 17 person had, indeed, died, passed away since that
 18 absentee ballot was cast, or when they went through
 19 the roster, they found that the absentee ballot, that
 20 the person who cast the absentee ballot had actually
 21 showed up in person because their signature appeared
 22 next to their name on the election day roster.
 23 Q. Well, could it be that the ballot was marked --
 24 there's no reason for rejection written there, the
 25 ballot was marked accepted, could it just plain be a

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1 A. That would be my position, yes.
 2 Q. Now, this next one is a bit confusing to me, so
 3 pardon me. It says, "No reason accepted."
 4 Do you want to explain that?
 5 A. And I'll explain that because that's -- several times
 6 I found that to be true myself when I was going
 7 through the envelopes.
 8 When we were doing this sorting of the envelopes
 9 and entering them onto the spreadsheet, there were
 10 three staff people from my office, myself and Gary
 11 Poser -- or excuse me, Kate Moen and Karen Hoffman,
 12 were going through the ballots and making these
 13 notations.
 14 And in a number of cases of the ones that I was
 15 looking at, you would see that an envelope was marked
 16 "accepted" and then there was no reason why it was
 17 rejected. Again, I, I could suppose what --
 18 Q. Well, let me stop you for a second. If it says
 19 accepted, how do you know it was rejected? And I
 20 think that's obvious but answer the question anyway.
 21 A. Because the county official -- well, first of all,
 22 because the ballot is still inside the envelope.
 23 Q. But what was your reaction -- have you ever seen that
 24 before in other elections?
 25 A. I've only joined the Secretary of State's office in

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1 mistake that it got placed in the wrong place for a
 2 while?
 3 MR. LILLEHAUG: Objection as to form,
 4 multiple reasons, indefinite ballot, indefinite
 5 mistake, asking him to speculate on an indefinite
 6 election.
 7 JUDGE REILLY: Sustained.
 8 Do you want to break the question down?
 9 MR. FRIEDBERG: Sure.
 10 BY MR. FRIEDBERG:
 11 Q. At some point in time people touched these ballots,
 12 correct? They touched the envelopes.
 13 A. Yes.
 14 Q. All right. And they put them in places where they
 15 belonged, correct?
 16 A. That is correct. Election judges touched the
 17 envelopes.
 18 Q. Yes. When you have one that's marked accepted but it
 19 turns up as rejected, isn't the easiest explanation
 20 that somebody just put a ballot in the wrong place?
 21 MR. LILLEHAUG: Same objections.
 22 JUDGE REILLY: Sustained.
 23 BY MR. FRIEDBERG:
 24 Q. The reasons that you've given are essentially your
 25 speculation as to how this could have happened,

1 correct? 102
 2 MR. LILLEHAUG: I guess now Mr. Friedberg
 3 is impeaching his own questions and answers.
 4 Objection.
 5 JUDGE REILLY: Overruled.
 6 BY MR. FRIEDBERG:
 7 Q. You've speculated as to how this could come about
 8 and, in fact, that is speculation, you don't know for
 9 a fact, correct?
 10 A. That is correct.
 11 Q. And you gave us a couple reasons, right?
 12 A. However, I think it's important to point out that the
 13 decision as to whether or not this was wrongfully
 14 rejected was made by a county professional, a
 15 full-time staff person, either a county auditor or a
 16 county election official at the county level.
 17 And, again, you may be right, it was placed in
 18 the wrong pile and the county --
 19 Q. Thank you.
 20 MR. LILLEHAUG: Excuse me, could the
 21 witness finish the question? Although Mr. Friedberg
 22 may think he has the answer he wants but the witness
 23 should be allowed to finish.
 24 BY MR. FRIEDBERG:
 25 Q. Go right ahead, Mr. Gelbmann.

1 us the answer on most all of these from their county? 104
 2 A. I would say yes.
 3 Q. You wouldn't have to go below that. The senior
 4 official should have the compendium of knowledge
 5 that's needed to answer the questions about why
 6 ballots are rejected, or once rejected and then
 7 accepted in their own counties, correct?
 8 A. They -- you would have to -- for the ones that were
 9 forwarded to us, the 1,346 absentee ballots that had
 10 been determined by the election professionals at the
 11 county level, you should be able to get from them as
 12 to the reason why they were initially rejected and
 13 subsequently determined that they should be accepted.
 14 As far as the remainder of the 12,000 rejected
 15 absentee ballots, I think you would have to talk to
 16 both the election official and the person who
 17 initially rejected it.
 18 Q. And not only that, would you concede that when these
 19 election officials are looking at these particular --
 20 these certificates on election night and afterwards
 21 that they apply a subjective view to whether they
 22 should accept it or reject it?
 23 MR. LILLEHAUG: Objection as to form and
 24 foundation.
 25 JUDGE REILLY: Overruled.

1 A. Again, a county election professional may have felt 103
 2 that the ballot had been placed in the wrong pile
 3 and, and -- determined that that ballot had been
 4 placed in the wrong pile and should have been
 5 accepted and that's why it was wrongfully rejected
 6 and they forwarded it on to us.
 7 Each one of these rejected absentee ballots has
 8 a story behind it. And you really would have to go
 9 to the local election official that, A, first
 10 determined that it should be rejected, and B, then
 11 potentially looked and did some research, looked at
 12 the voter roster to see if that person had, indeed,
 13 voted on the same day. Looked at the voter roster to
 14 find out that the person had not voted on the same
 15 day and determined that the ballot had been
 16 wrongfully rejected.
 17 But every one of these envelopes has a story
 18 behind it. And to find out that story, you would
 19 have to first talk to the person who initially
 20 rejected the absentee ballot and then talk to the
 21 more senior election official, the county official
 22 responsible for administering the elections at the
 23 local level, to determine why he or she determined
 24 that it had been wrongfully rejected.
 25 Q. Should the senior election official be able to give

1 THE WITNESS: There are -- the only 105
 2 discretion that really is allowed is, as far as the
 3 statute goes, is the one would be whether the
 4 signatures match. That is -- you know, if they are a
 5 registered voter, that's pretty easy to determine by
 6 finding out if, A, they are on the Statewide Voter
 7 Registration System, or, B, registered on election
 8 day. That's pretty easy to determine.
 9 If the ballot is signed, it's pretty easy to
 10 determine yes or no, is the signature there.
 11 The one where they have to exercise some level
 12 of discretion is whether or not the signature is
 13 genuine. And the way that the election officials are
 14 directed to determine whether or not a signature is
 15 genuine is to compare the signature on the
 16 application for the absentee ballot with the
 17 signature on the envelope itself. And there is some
 18 level of discretion that is necessary to determine
 19 whether or not a signature matches.
 20 BY MR. FRIEDBERG:
 21 Q. How about if the voter signs someplace else, like
 22 below the line where he's supposed to sign or
 23 sideways in the margin?
 24 A. Again, you know, some election judges may determine
 25 that that is an invalid signature. Most probably

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1 would say that that should be accepted.

2 Q. All right. Is that discretionary?

3 A. It shouldn't be. Again, the law says that if an

4 envelope is signed, it should be accepted. There

5 really shouldn't be a level of discretion as to

6 whether it was signed in the right place or not,

7 unless it's unclear whether or not that is the

8 original signature. And when someone signs a, a

9 signature, it's always legible.

10 And if someone signs something up on top of the

11 envelope far away from where the person should have

12 signed the person's name, again, it would be

13 difficult for an election official to determine that

14 that signature, which may not be a hundred percent

15 legible, is, indeed, the voter's signature because it

16 is in the wrong place on the envelope.

17 Again, each individual envelope tells its own

18 story and you really would have to talk to each of

19 the 87 election professionals at the county level to

20 determine why they overruled a local -- made an

21 initial determination that the ballot had been --

22 should be rejected.

23 Q. Well, what about when a person leaves a post office

24 box as an address, is there anything wrong with that?

25 A. The law does require that the person give their legal

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1 personally do all of these. So I can tell you

2 counties that I've done. But I, I did not see -- I

3 have not -- I do not recall personally seeing

4 initialed "Not signed" as a reason for rejection.

5 BY MR. FRIEDBERG:

6 Q. You did not see it personally?

7 A. I did not see it personally. Obviously one of my

8 staff people did.

9 Q. But in any event, it's in now, right?

10 A. That is right.

11 Q. Okay. What about wrong precinct? I see that as a

12 recurring reason. What happens with that?

13 A. That's, that's actually quite common.

14 What happens is the election officials -- these

15 absentee ballots are assembled at the county level.

16 They're mailed to the county auditor, in most cases

17 the county auditor. In some cases, the county

18 elections departments where in some of the larger

19 counties they have an actual election administrator,

20 a full-time election administrator. But they're

21 mailed to the county.

22 And then they're -- on election day they're

23 supposed to be delivered to the precinct where the

24 person actually resides and is obviously voting from.

25 Mistakes are made. They're human beings, and in

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1 residence of an address and not a post office box.

2 Q. Should all those be rejected?

3 A. Again, I'm not --

4 MR. LILLEHAUG: Objection as to form and

5 foundation, asking him to speculate about ballots

6 that are not from Mr. Gelbmann and in which he

7 personally disqualified himself.

8 JUDGE REILLY: Sustained.

9 BY MR. FRIEDBERG:

10 Q. In this election, have you seen ballots declined for

11 that reason, rejected because of a P.O. box for a

12 person?

13 A. I have not personally seen that. I can't say that

14 that does not happen but I have not personally seen

15 that.

16 Q. Now, how about going down a little further on this

17 page, the reason is initialed "Not signature."

18 Is that a recurring problem?

19 MR. LILLEHAUG: Objection calls for a legal

20 conclusion; lack of foundation.

21 JUDGE REILLY: Overruled. He asked if it's

22 a recurring issue.

23 MR. LILLEHAUG: I made a mistake, Your

24 Honor.

25 THE WITNESS: Again, I, I did not

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1 a number of cases the election -- the county election

2 officials forward that absentee ballot to a precinct

3 that is not the appropriate precinct for that voter.

4 And therefore the election judges at the precinct

5 that receive the absentee ballots announce that they

6 have -- that 123 Main Street is not within their

7 precinct. All they can do is reject that absentee

8 ballot because it is not their precinct. There's

9 usually not enough time to return it back to the

10 county auditor and say, this is in the wrong

11 precinct, it should be sent to Precinct 7, not

12 Precinct 6, and so they must reject it.

13 Q. And as you said, that is a recurring problem.

14 A. That is a recurring problem.

15 Q. Well, I'm looking here, and I'm not going to use the

16 gentleman's name, but it's right in the middle of the

17 page, it's Chisago County. It says, "Wrong

18 precinct."

19 And you said that's -- I think it's the second

20 page.

21 A. Okay. I see it.

22 Q. Let's not use his name but it says, "Wrong precinct,"

23 right?

24 A. That is correct.

25 Q. And the recurring problem is they sent it to him in

1 the wrong precinct, in all likelihood, and he filled¹¹⁰
 2 it out and he sent it back in, right? We know that.
 3 A. Yes, the voter filled it out and sent it back to
 4 Chisago County. The county official in Chisago
 5 County on election day sent it to the wrong precinct
 6 in Chisago County, so it could not be counted because
 7 they could not find his name on their voter rosters
 8 because it was the wrong precinct.
 9 Q. Okay. It wasn't really the person's fault, but what
 10 happened is it got rejected because of what the
 11 officials apparently did, correct?
 12 A. That is correct.
 13 MR. LILLEHAUG: I object to the lack of
 14 foundation as to that ballot. No foundation laid.
 15 JUDGE REILLY: Well, sustained as to that
 16 ballot.
 17 You can testify in general.
 18 BY MR. FRIEDBERG:
 19 Q. Generally it's because the officials sent it to the
 20 wrong precinct, right?
 21 A. That is right. If it's the wrong precinct it must --
 22 it generally means that it was sent to the wrong
 23 precinct by the county election official.
 24 Q. And then it has to be rejected.
 25 A. The election judges would not be able to verify that

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 1 Q. In fact, hundreds, fair?
 2 A. I haven't counted.
 3 Q. Okay. Yet apparently, according to your prior
 4 testimony, where it says, "No registration" somebody
 5 checked later they were registered and then they were
 6 righteously counted here, correct?
 7 A. That would be correct.
 8 Q. What about no application? Let me ask you, how do
 9 you get one of these without filling out an
 10 application?
 11 A. You generally don't. Generally what happens is that
 12 the applications -- again, because the system is
 13 administered by 30,000 human beings, mostly volunteer
 14 election judges that sit on election day, and they
 15 make mistakes.
 16 And one of the mistakes that is often made is
 17 that the absentee ballots are sent to the precinct
 18 but the applications that were filed with the county
 19 for the absentee ballots, the election official at
 20 the county level forgot to send those applications
 21 with the absentee ballots, so there was no way for
 22 the election judges at the precinct level to compare
 23 the signature on the application with the signature
 24 on the envelope. They were supposed to have sent
 25 those applications and they did not.

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 1 the person was registered because they would not have
 2 the roster because it's not in their precinct. So
 3 yes, it would have to be rejected.
 4 Q. This one, however, has been counted, right?
 5 A. That is correct.
 6 Q. And there's a whole lot more out there that haven't
 7 been counted, correct?
 8 MR. LILLEHAUG: Objection, lack of
 9 foundation.
 10 JUDGE REILLY: Sustained.
 11 BY MR. FRIEDBERG:
 12 Q. Well, you know from your own knowledge that that is a
 13 recurring problem, that it happens with some
 14 frequency, correct?
 15 A. That is correct. However, that is why the canvassing
 16 board had asked the counties to go back and look at
 17 all of their rejected absentee ballots and determine
 18 whether or not a mistake like this or any other
 19 number of mistakes had been made.
 20 Q. And then this one was counted, right?
 21 A. That is correct.
 22 Q. All right. Now, there's a whole run of them. And I
 23 mean, the biggest reason, reasons as we go through
 24 this are no application and no registration, correct?
 25 A. There are a number of them, yes, like that.

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 1 Another reason is that sometimes, again,
 2 mistakes are made at the county level. A number of
 3 situations that I'm familiar with personally is the
 4 county official inadvertently misplaced the
 5 application.
 6 When, upon our request, that they look through
 7 all of these applications and determine which ones,
 8 these absentee ballots that were rejected and the
 9 ones that -- where there was no application, they
 10 looked a little harder and found the application.
 11 But really, there really should be no way that an
 12 individual wouldn't receive an absentee ballot
 13 without first filling out an application.
 14 Q. All right. Unless they stole it, true?
 15 A. Unless, unless they stole it or possibly were given
 16 that -- it was given to them by another individual
 17 who had signed an application and maybe decided they
 18 didn't want to vote and didn't see any reason why
 19 they couldn't just use that ballot.
 20 Q. But as far -- from your experience, the
 21 overwhelmingly biggest reason is they have been
 22 misplaced?
 23 A. Either they got misplaced by the county or the county
 24 failed to send the applications along with the
 25 absentee ballot envelopes on election night.

1 Q. Well, once these ballots -- once it was agreed by ¹¹⁴
 2 both campaigns that they could be counted, they got
 3 in, right?
 4 A. That is correct.
 5 Q. Whether the application was found or not.
 6 A. Well, in most cases, I can't say for certain that in
 7 all cases, but in most cases the candidates, when
 8 they were looking at the absentee -- rejected
 9 absentee ballot, the most -- I, I didn't -- I
 10 wouldn't say, I wouldn't -- you know, you can't say
 11 never say never or --
 12 Q. Never at all.
 13 A. -- always say all. But in probably 99.9 percent of
 14 these cases there was shown the application. In
 15 other words, the application was either found or the
 16 application always existed but just hadn't been sent
 17 to the election judges on election night.
 18 But when -- in this process of trying to
 19 determine whether or not these absentee ballots were
 20 wrongfully rejected, the county officials, in
 21 probably all of these cases, found the application
 22 and showed it to the two candidates and said, the
 23 application got -- did exist, look for yourself,
 24 compare the signatures on the envelope with the
 25 signature on the application. This one was

1 would be the same situation as sent to the wrong ¹¹⁶
 2 precinct.
 3 Q. All right. And if it was sent to the wrong precinct,
 4 you said that that is the reason for rejecting it.
 5 But now it's in, correct?
 6 A. That is correct.
 7 Q. Does that mean that they're both, for precinct-wide
 8 offices, were counted in the wrong precinct or did
 9 they compensate for that in some way?
 10 A. Once again, you really would need to ask the
 11 officials from Moorhead, from Clay County, and also
 12 the election officials in the City of Moorhead and
 13 election officials that initially rejected this.
 14 Again, you know, it's -- you ask about
 15 discretion of election judges. Some election judges
 16 would say -- receive an absentee ballot that's from
 17 123 Main Street and recognize that 123 Main Street
 18 was not in their precinct and would write, not in our
 19 precinct, not in -- wrong precinct.
 20 Other election judges would probably say that
 21 person lives in North Moorhead. This isn't North
 22 Moorhead. It was sent to -- this precinct doesn't
 23 cover North Moorhead and would write, lives in North
 24 Moorhead.
 25 Q. All right. Is the wrong precinct one of the most

1 wrongfully rejected because we failed to send the ¹¹⁵
 2 application to the local election officials on
 3 election night, or we had temporarily misplaced the
 4 application. But in the meantime between
 5 November 4th and the time in which these candidates
 6 were being asked to determine whether or not they
 7 agreed that these absentee ballots had been
 8 wrongfully rejected, we found the application and
 9 here it is.
 10 I would venture to say on all of these I don't
 11 think both candidates would have agreed that that
 12 ballot would have been wrongfully rejected without
 13 seeing that application.
 14 Q. All right. Turning over to Clay County, which I
 15 think is probably the next page.
 16 A. Yes.
 17 Q. It may be two pages, but Clay County's at the top of
 18 the page?
 19 A. Yes.
 20 Q. Okay. I see that there's two of them apparently
 21 related, probably a husband and wife. And the reason
 22 for rejection is that they live in North Moorhead. I
 23 assume that actually is Moorhead.
 24 What is that reason, what does that mean?
 25 A. I can only speculate, but I believe that probably

1 recurring problems that you have? ¹¹⁷
 2 A. I, I can't say. I -- it's very common, but whether
 3 it's most, I, I've not done a statistical analysis of
 4 this.
 5 Q. Now, there's three in a row here from Crow Wing
 6 County, "Voter signature," "Signatures do not match,"
 7 and "Witness signature." And this is on the same
 8 Page 3, I believe, although they're not numbered.
 9 Now, voter signature means what?
 10 A. It could mean a number of things. It could mean the
 11 voter's signature does not match. It could mean that
 12 there is no voter signature. But those would be the
 13 two most probable means.
 14 But, again, you have to ask the person who wrote
 15 that on the envelope to -- as to why they wrote it on
 16 the envelope.
 17 Q. All right. If there was no voter signature, is there
 18 any conceivable way that it's a lawful ballot that
 19 should be counted?
 20 A. The only absentee ballots that do not require a voter
 21 signature, I believe -- and again, I've only been
 22 with the Secretary of State's office seven months --
 23 are absentee ballots that come UOCAVA, what I would
 24 call UOCAVA absentee ballots from overseas.
 25 Q. All right. So if there was no voter signature and it

1 wasn't a UOCAVA ballot, if the two campaigns agreed,¹¹⁸
 2 the ballot got counted, correct?
 3 A. That's correct.
 4 Q. Signatures not match, that's obvious. That's the
 5 signature on the outside of the envelope, and they
 6 compare it to the application.
 7 That's the only thing they have to compare it
 8 to, isn't it?
 9 A. That's the most -- yes, that is what they're
 10 instructed to compare it to, is the signature on the
 11 application with the signature on the, on the
 12 envelope.
 13 In some cases, they may have the signature on
 14 the initial registration card to compare it to as
 15 well, but in most cases what they're instructed to do
 16 is compare the signatures from -- on the application
 17 with the signature on the envelope.
 18 Q. Well, somebody made a decision here, the election
 19 judges originally, that the signatures didn't match,
 20 correct?
 21 A. It would appear so.
 22 Q. All right. And then some other people looked at it
 23 and determined that was probably wrong, apparently
 24 that's how they redid their own work and rechecked
 25 themselves and then sent this in, correct?

1 the boards -- there's a board of individuals, and I'm¹²⁰
 2 not sure if it's -- how those boards are comprised.
 3 But in some -- like I say, in some counties they have
 4 an absentee ballot board that determines whether the
 5 signatures matches.
 6 In other counties that don't utilize an absentee
 7 ballot board, that determination is made at the
 8 precinct level by the two election judges.
 9 Q. And then at some point, pursuant to order, these
 10 local officials looked at it at it again and
 11 determined a mistake had been made, true?
 12 A. That appears to be what happened.
 13 Q. Okay. So here we have a difference of agreement
 14 between the first person who made the decision and
 15 the second people that made the decision correct?
 16 A. That's correct. And if you recall in my earlier
 17 testimony, the matching of the signatures is probably
 18 where the most discretion is allowed in determining
 19 whether or not a ballot should be counted.
 20 In some cases, an election judge at the precinct
 21 level may have determined that if the ballot was
 22 signed James Richard Gelbmann and the ballot envelope
 23 was signed James R. Gelbmann, they may determine that
 24 that's not a match.
 25 Q. All right. Whereas another official in another

1 MR. LILLEHAUG: Objection as to foundation¹¹⁹
 2 if the question relates to a particular ballot.
 3 JUDGE REILLY: Are you asking about this
 4 particular ballot, Mr. Friedberg?
 5 MR. FRIEDBERG: I'm asking about this
 6 particular ballot and I'll ask a different question.
 7 JUDGE REILLY: Thank you.
 8 BY MR. FRIEDBERG:
 9 Q. The way all these ballots got there is the local
 10 officials determined they were wrongfully rejected,
 11 correct?
 12 A. The local election official, the professional
 13 determined that they were wrongfully rejected and the
 14 two candidates agreed.
 15 Q. Okay. Well, the originally the big pile was just the
 16 local election officials, and then the candidates
 17 looked at them and the ones they agreed on got
 18 counted, right?
 19 A. That's correct.
 20 Q. All right. So originally the original work was done
 21 generally by two election judges who determined that
 22 in their opinion these signatures didn't match.
 23 That's how it's supposed to work, right?
 24 A. Either -- in some counties they have what is known as
 25 an absentee ballot board. And in that -- those cases

1 county might decide that is a match.¹²¹
 2 A. That's correct.
 3 Q. So it depends on who's looking at it, right?
 4 A. And, again, I said earlier that the matching of the
 5 signatures is the one area where there is a level of
 6 discretion allowed by the election officials.
 7 Q. Now, when you go down, you're going to see another
 8 reason here that says, "Voter is not voter
 9 signature." Right below what we were talking about.
 10 Do you see that?
 11 A. Uh-huh.
 12 Q. So apparently somebody just made a definite statement
 13 when looking at this originally and writing this is
 14 not the signature of the voter, correct?
 15 MR. LILLEHAUG: Objection as to form.
 16 Are we talking about a particular ballot?
 17 MR. FRIEDBERG: We're talking about --
 18 MR. LILLEHAUG: And, Your Honor, I wonder
 19 if Mr. Friedberg could be instructed to distinguish
 20 between general questions and those with respect to a
 21 particular ballot.
 22 MR. FRIEDBERG: Fine.
 23 JUDGE REILLY: Let's talk about general, in
 24 general. I don't think this witness has testified
 25 that he's familiar with each and every one of these

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1 instances.

2 BY MR. FRIEDBERG:

3 Q. Have you seen the reason that's written on this

4 ballot written on any other ballots ever, voter is

5 not voter signature.

6 A. I -- no, I haven't.

7 And then on this ballot, I did not do Crow Wing

8 County, so I did not see this one either.

9 Q. But you would agree that "Voter is not voter

10 signature" is a definite statement, correct?

11 MR. LILLEHAUG: Objection as to form.

12 JUDGE REILLY: Sustained.

13 BY MR. FRIEDBERG:

14 Q. This ballot has now been counted, has it not?

15 A. That is correct.

16 Q. And it wasn't going to get counted unless the two

17 candidates agreed it was wrongfully rejected,

18 correct?

19 A. That is correct. And, again, I go back to my

20 statement, that each one of these ballots has a story

21 to be told. And that story -- when the candidate

22 representatives went to Crow Wing County and you

23 looked at all of these rejected absentee ballots that

24 the local official are saying, you know, this one was

25 wrongfully rejected, that local official usually told

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1 not the Crow Wing County attorney, the Crow Wing

2 County auditor and ask the story behind this.

3 Q. Have you dealt with -- in the course of dealing with

4 these ballots, have you seen ballots where the

5 sticker covered the signature line?

6 A. I personally have not.

7 Q. You have never seen that?

8 A. I personally have not, no.

9 Q. Have you seen it where the sticker covered the

10 instruction about what the voter should do?

11 A. It's possible that I have seen that, yes. The

12 sticker is not always placed in the exact same place.

13 Q. Well, it's placed there by a human being and he could

14 obscure or not obscure, correct?

15 A. That's possible.

16 Q. Okay. What does "Delivered to wrong city" mean?

17 Well, I guess, that's self-explanatory.

18 Does that mean that the -- if you know, does

19 that mean that the envelope was delivered to the

20 wrong city or --

21 A. In some 100 counties in greater Minnesota, I'm not

22 sure where it says delivered to wrong city. But that

23 would be very similar to being delivered to wrong

24 precinct.

25 Q. Delivered to wrong precinct, okay.

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1 that story as to why this ballot was improperly

2 rejected.

3 And the Court would really have to listen to

4 these individual stories on each one of these

5 rejected absentee ballots that were subsequently

6 accepted by both campaigns as to why they were

7 wrongfully rejected in the first place.

8 Q. What does "Label mismatch" mean, if you know?

9 MR. LILLEHAUG: Same objection.

10 I wonder if the Court could instruct

11 Mr. Friedberg to be more specific.

12 JUDGE REILLY: Overruled.

13 You can answer if you can.

14 THE WITNESS: Again, I did not review the

15 Crow Wing County -- I did not go through the Crow

16 Wing County envelopes. I can only guess as to the

17 fact that the label on the envelope does not match

18 the name that is written on the envelope. But that's

19 only a supposition.

20 BY MR. FRIEDBERG:

21 Q. Well, if that, in fact, is the case, it's just an

22 unlawful ballot, isn't it?

23 A. Again, I cannot answer that because I don't know the

24 story behind this ballot. I would have to call the

25 Crow Wing County attorney and ask specifically -- or

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1 A. In some cases, an entire city would be a single

2 precinct.

3 Q. Now, you've got the proof of residence, which is

4 essentially also proof of identification and it can

5 be done by a driver's license, correct?

6 A. That's correct.

7 Q. Does the driver's license have to be valid?

8 A. That I cannot answer. I mean, I, I don't know how an

9 individual would determine if a driver's license was

10 valid or not.

11 Q. Well, this Dakota County ballot was rejected

12 apparently because it was an invalid Minnesota

13 driver's license.

14 You've never heard of that before?

15 A. Again, I personally have never heard of that before.

16 One of the things I know has been happening is

17 that the Minnesota Department of Public Safety is in

18 the process of changing the numbering system on

19 driver's licenses, and in some cases you're looking

20 at a driver's license number that has just recently

21 been changed from the driver's license number that is

22 in the Voter Registration System. In other words,

23 the Voter Registration System may have an old

24 driver's license number in it, and the person who has

25 recently applied for a new driver's license has been

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1 given a totally new number.
 2 I don't know if anyone here has recently applied
 3 for a new driver's license at the --
 4 Q. So it doesn't look like a driver's license number?
 5 A. It doesn't look like the same driver's license number
 6 that is in the Voter Registration System because
 7 they're in the process of redoing their numbering
 8 system.
 9 Q. All right. Turning over to another page of Dakota
 10 County, there seems to be in Dakota County just a ton
 11 of wrong precincts.
 12 Again, are there particular problems, based on
 13 your observations and your --
 14 MR. FRIEDBERG: Your Honor, could we
 15 approach the bench?
 16 JUDGE REILLY: You may.
 17 (Whereupon, a discussion was held at
 18 the bench off the record.)
 19 JUDGE REILLY: It's almost 4:30 in the
 20 afternoon, and we said that we were going to break
 21 at 4:30. So why don't we take our afternoon break
 22 and we'll be back at 9 in the morning.
 23 And could we see the attorneys just to talk
 24 about scheduling for tomorrow and we'll see you in
 25 the room?

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1 notification either to us or to the Court that new
 2 names are being pulled into this process, and we
 3 could not object in more strenuous terms to this.
 4 This is a constant game of shuffling the deck. We
 5 object.
 6 We believe, as we said before, that the statute
 7 requires notification in the Notice of Contest when
 8 plead, and it can't change. But certainly it can't
 9 continue to change and evolve during the trial. And
 10 so we wanted to make our objection clear, alert the
 11 Court to this.
 12 I won't call it subterfuge, but I'll call it a
 13 shuffling of the deck as the case progresses.
 14 There's something going on wrong here and we object.
 15 JUDGE REILLY: So I'm clear, are you saying
 16 that there were 500 names in the summary judgment
 17 motion that are now gone and replaced by different
 18 names?
 19 MR. HAMILTON: That is correct.
 20 JUDGE REILLY: The numbers have stayed
 21 essentially the same?
 22 MR. HAMILTON: That is correct. There were
 23 5,000 names connected with the summary judgment
 24 motion drawn from the 12,000.
 25 Now, in this list that was generated and

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1 MR. HAMILTON: Your Honor, I have one issue
 2 that we'd like to raise and I think it might be best
 3 to raise this on the record.
 4 JUDGE REILLY: I'm going to excuse this
 5 witness.
 6 MR. HAMILTON: Absolutely.
 7 JUDGE REILLY: You're excused for the day,
 8 Mr. Gelbmann.
 9 MR. HAMILTON: Thank you, Your Honor.
 10 Pursuant to the Court's instruction, last night we
 11 exchanged lists -- or yesterday we exchanged lists of
 12 the specific ballots that are in issue. I believe
 13 the Court was trying to get a clarification.
 14 We spent the day analyzing the list received
 15 from the opposing side and discovered 500 additional
 16 names. This is the universe of 5,000, that was
 17 12,000 and is now 5,000, has changed even from the
 18 opposition from the summary judgment that was filed
 19 with this Court last week by the Coleman campaign.
 20 They have continued to refine their lists, swap
 21 out names. These are new names that were never
 22 contained in the Notice of Contest or even contained
 23 in the list of 5,000 that was presented to the Court
 24 in connection with the summary judgment motion and
 25 have just been dropped in now silently without any

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1 produced either yesterday or this morning, 500 names
 2 have been swapped out. That's disturbing, Your
 3 Honor, and we don't think it's appropriate.
 4 JUDGE REILLY: Does someone from the
 5 Coleman side want to address that?
 6 MR. FRIEDBERG: Well, we can start. I
 7 don't know anything about it. We certainly will look
 8 into it.
 9 And I just asked Mr. Langdon and neither does
 10 he. And we will -- presuming they can tell us what
 11 the 500 names are, that would make it a lot quicker.
 12 But can you?
 13 MR. HAMILTON: Well, I don't know. I'll
 14 check with our data people.
 15 This is not random. This appears to be
 16 cherry-picked. I mean, they're refining data as they
 17 go.
 18 JUDGE HAYDEN: How did you determine 500?
 19 MR. HAMILTON: By comparing the lists. We
 20 have two different Excel spread sheets and they then
 21 matched them up.
 22 JUDGE HAYDEN: But you also determined that
 23 it was 500 different names.
 24 MR. HAMILTON: Approximately, yes.
 25 Correct.

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JUDGE HAYDEN: Can you not then go back to ¹³⁰
the same way you identified the numbers.

MR. HAMILTON: I believe so. I believe we
can. I just -- I don't want to promise but I'll
check with our data people and find out.

MR. FRIEDBERG: We'll find out.

JUDGE REILLY: Thank you.

We'll see counsel back in the chambers to talk
about witnesses for tomorrow and that sort of thing.
We'll be in recess.

THE CLERK: All rise. The Court is in
recess.

(The trial was adjourned.)

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