

STATE OF MINNESOTA  
COUNTY OF OLMTED

DISTRICT COURT  
THIRD JUDICIAL DISTRICT  
CASE TYPE: CIVIL OTHER

Coleman for Senate 08,  
Plaintiff,

Case No. \_\_\_\_\_

vs.

**NOTICE OF MOTION AND  
MOTION**

Richard Devlin, Olmsted County Administrator,  
Pam Fuller, Olmsted County Executive  
Assistant and Election Administrator,  
and Olmsted County Canvassing Board,

Defendants.

**NOTICE OF MOTION AND MOTION**

TO: Defendants and their counsel of record, Olmsted County Attorney Mark A. Ostrem,  
Olmsted County Government Center, 151 Fourth Street SE, Rochester, MN 55904.

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that at the earliest available time available with the Court, before a Judge of the District Court and in a courtroom to be determined, Plaintiff will bring the following motion on December 16, 2008 for hearing at the Olmsted County Government Center, 151 Fourth Street SE, Rochester, MN 55904. The motion will be made upon all of the files and records herein, including the memorandum and the affidavit of Plaintiff's counsel submitted herewith.

**MOTION**

Plaintiff moves for an Order as follows:

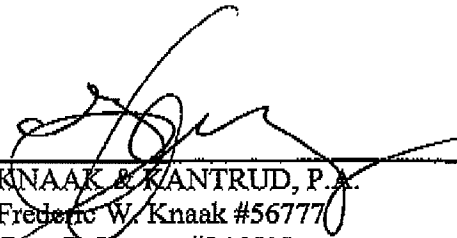
1. Enjoining Defendants, and all persons acting in concert with them, are hereby restrained and enjoined from: (a) opening any envelopes (herein, "Envelopes") containing absentee ballots relative to the November 4, 2008 general election in

Olmsted County, which envelopes were rejected by local election officials and not counted on November 4, 2008 or pursuant to the administrative recount currently underway relative to the election of United States Senator from the State of Minnesota; (b) counting any ballots (herein, "Ballots") contained in such Envelopes; and (c) from preparing and submitting to the MSCB any amended election returns (whether amended summary statements relative to the pending administrative recount or amended report(s) of the Board), until the Minnesota Supreme Court hears and rules on that particular Petition filed Friday, December 12, 2008 by Plaintiff with the Minnesota Supreme Court; or;

2. Alternately, if Defendants engage in the process of sorting the Envelopes, opening the Envelopes and counting the Ballots, ordering Defendants to utilize the following process: (a) Representatives of each campaign shall be permitted to challenge a decision to open an absentee ballot envelope, thereby preserving this issue before an envelope is opened and the ballot commingled with other opened ballots; (b) representatives of each campaign shall be permitted to challenge the declaration of how a previously-rejected absentee ballot that is opened is to be counted, using challenge standards utilized during the prior recount process in the counties; (c) representatives of each campaign shall be given photocopies of the front and back of each and every envelope which is challenged and/or opened, as well as photocopies of the front and back of each and every ballot that is challenged pursuant to the process at (b) above; (d) representatives of each campaign shall be given photocopies of any amended results proposed to be submitted to the Board for approval (whether in the form of amended summary statements, amended canvassing board reports or other format); and (e) all rejected absentee ballot envelopes, and the ballots that correspond to each such envelope (if opened), shall be kept segregated from all ballots previously counted in this recount and preserved for a potential election contest, which segregation shall include a mechanism for tying a particular ballot to an envelope which was previously opened (to enable a potential future challenge to such a vote cast in the event a court determines that the absentee ballot envelope was properly rejected in the first place).

**(SIGNATURE PAGE FOLLOWS)**

Dated: December 15, 2008



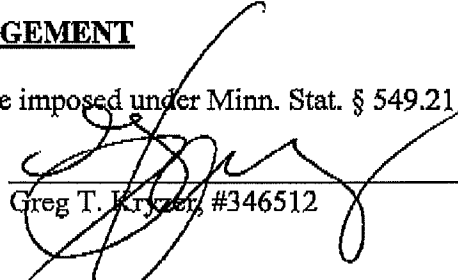

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**ACKNOWLEDGEMENT**

Plaintiff acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.




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Greg T. Kryzer, #346512

STATE OF MINNESOTA  
COUNTY OF OLMSTED

DISTRICT COURT  
THIRD JUDICIAL DISTRICT  
CASE TYPE: CIVIL OTHER

Coleman for Senate 08,

Case No. \_\_\_\_\_

Plaintiff,

vs.

**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

Richard Devlin, Olmsted County Administrator,  
Pam Fuller, Olmsted County Executive  
Assistant and Election Administrator,  
and Olmsted County Canvassing Board,

Defendants.

This Memorandum of Law is submitted by counsel for Plaintiff Coleman for Senate '08 ("Plaintiff") in support of its Motion for Temporary Restraining Order (the "Motion") against Defendants Olmsted County Administrator, Richard Devlin, Olmsted County Executive Assistant and Election Administrator Pam Fuller, and the members of the Olmsted County Canvassing Board (herein, "OCCB"), all in their official capacities as the persons/authorities responsible for overseeing and canvassing the results of elections in Olmsted County, Minnesota. For the reasons described below, Plaintiff requests that the Motion be granted.

This action presents Plaintiff's claims that Plaintiff is entitled to an injunction restraining Defendants from: (a) opening any envelopes (herein, "Rejected Absentee Ballot Envelopes") containing absentee ballots relative to the November 4, 2008 general election in Olmsted County, which Rejected Absentee Ballot Envelopes were rejected by local election officials in Olmsted County (whether election judges or absentee ballot boards) and not counted on or before

election day or pursuant to the administrative recount currently underway relative to the election of United States Senator from the State of Minnesota; (b) counting any ballots (herein, "Rejected Absentee Ballots") contained in such Rejected Absentee Ballot Envelopes; and (c) preparing and submitting to the Minnesota State Canvassing Board (herein, "MSCB") any amended election returns (whether amended summary statements relative to the Recount or amended report(s) of the OCCB), until the Minnesota Supreme Court hears and rules on that particular Petition filed Friday, December 12, 2008 by Plaintiff with the Minnesota Supreme Court.

### **STATEMENT OF FACTS**

The election for United States Senator from the State of Minnesota occurred on Tuesday, November 4, 2008 ("General Election"). The close result of this election triggered an automatic statewide administrative recount under Minn. Stat. § 204C.35 (the "Recount"). During this Recount, the Franken for Senate campaign has made multiple requests for the MSCB and local county canvassing boards (including the OCCB) to open Rejected Absentee Ballot Envelopes rejected by local election officials prior to the General Election, count Rejected Absentee Ballots contained therein and add such totals to the Recount totals. To date, all Minnesota canvassing boards (including OCCB) have repeatedly refused to comply with these repeated requests.

### **Secretary of State Guidance**

On Tuesday, December 2, 2008 and pursuant to further "detailed instructions" on Thursday, December 4, 2008, the Minnesota Secretary of State (purporting to operate under direction from the MSCB) directed *all* Minnesota counties to engage in a process to sort rejected absentee ballots (herein, the "Guidance"). (*See* Exhibits A and B, respectively, to Affidavit of Greg T. Kryzer dated December 15, 2008 and filed contemporaneously herewith ("Kryzer Aff.")). The effect of this directive is to "double-check" the prior rejections – the Secretary of State's "detailed instructions" state (emphasis added):

This task goes beyond a mere listing of the reasons for rejecting an absentee ballot that are listed on the envelope. **It requires the election workers to further document that the reasons listed are accurate.** The integrity of our election system, and the need to make sure every effort is made to count every vote that is legitimately cast by a qualified, registered voter, is dependent upon your voluntary participation in this process. **No voter should be required to rely on an election contest to ensure his or her vote is counted by the State Canvassing Board. If the Board lacks the authority to count absentee ballots that were mistakenly rejected, it is critical that the Board be able to document the number of mistakenly-rejected absentee ballots in its final certification of the election results.**

The "detailed instructions" in the Guidance directed election officials to now consider a Rejected Absentee Ballot as improperly rejected if the signatures do not match or even if there is no signature, but the "transaction was actually handled at your in-person counter and was witnessed by a county or city official." The Guidance also does not acknowledge that absentee ballots should be rejected if the instructions, which require in part that the absentee voter have a witness who is registered to vote in Minnesota, are not followed. These "instructions" have no basis under Minnesota law.

This Guidance also clearly states that, although candidate representatives may be present during this review and "sorting" process, candidate representatives are *not* entitled to offer any objections or otherwise participate in the process other than mere observation. Accordingly, neither candidate has the ability to verify that a supposedly "improperly rejected" absentee ballot was indeed improperly rejected. The Guidance instructs election officials to place Rejected Absentee Ballot Envelopes determined to have been "wrongfully" or "mistakenly" rejected into a so-called "fifth pile" (herein, "Pile 5"). The Franken campaign has repeatedly demanded that election officials open and count the Rejected Absentee Ballots within Pile 5 and add the vote totals resulting therefrom to the Recount numbers reported to the Minnesota Secretary of State and MSCB. By implication, the MSCB has "recommended" that local counties do the same.

#### **December 12, 2008 State Canvass Board Resolution**

At its December 12, 2008 meeting, the MSCB unanimously passed a resolution (the "Resolution") after much discussion regarding the authority granted to the MSCB that

“recommended” (but did not require) that Minnesota county canvassing boards re-canvass for the purpose of evaluating whether or not any absentee ballot envelopes in a county relating to the 2008 general election were improperly rejected by election judges and/or absentee ballot boards. To date, on information and belief, *no* counties have met, although the OCCB is scheduled to meet on Tuesday, December 16, 2008 at 1:00 p.m. However, the Resolution failed to provide uniform guidance to Minnesota election officials on how to determine whether or not any absentee ballot envelopes in a county relating to the 2008 general election were improperly rejected by election judges and/or absentee ballot boards.

Additionally, absent from the Resolution was any direction to Minnesota election officials with regard to whether Coleman and Franken campaign representatives have an ability to challenge any Rejected Absentee Ballots which are opened utilizing the challenge procedures adopted during for the Recount. To avoid unequal treatment of Rejected Absentee Ballots as compared to ballots counted and subject to challenge during the Recount, such challenges must be permitted if the Rejected Absentee Ballot Envelopes are opened.

Finally, the Resolution failed to issue direction to Minnesota election officials to segregate the Rejected Absentee Ballot Envelopes and Rejected Absentee Ballots from other ballots cast in local jurisdictions, thereby raising the distinct and real possibility that the Rejected Absentee Ballots would be commingled with all other ballots. Such commingling would effectively destroy the utility of these Rejected Absentee Ballots (or the corresponding Rejected Absentee Ballot Envelopes) as evidence in an eventual future election contest under Minnesota Statutes Chapter 209. Otherwise, valuable evidence will be lost forever.

The conflicting and unclear guidance from the MSCB and Minnesota Secretary of State will result in different election officials applying different standards to the Rejected Absentee Ballot Envelopes and the Rejected Absentee Ballots. Although Minnesota law is clear on the grounds upon which absentee ballots may be rejected, a strong likelihood exists that these

standards will be interpreted differently, indeed on an *ad hoc* basis, by each city that engages in this process (including cities that do not engage in the process at all). Just as mistakes may have been made in rejecting absentee ballot envelopes on election night, mistakes will inevitably be made in second-guessing these initial rejections. Every ballot in Pile 5 was originally rejected by county election officials - either an absentee ballot board or at least two (2) election judges, often of different political parties. There can be no presumption that local election officials improperly rejected absentee ballots, and deference should be afforded to these local election officials.

The question of whether absentee ballots were improperly rejected requires a court to take evidence and apply Minnesota law in a consistent and uniform manner, not an *ad hoc* process subject to confusing standards that is engaged in by only a portion of Minnesota election officials. This is not a task the MSCB or any other local election official are equipped to undertake at this late stage in the Recount without wildly disparate and inconsistent results. Accordingly, the proper venue for such a process is within an election contest *following* the Recount, in which a single three-judge panel can apply a uniform statewide standard and rule of law to *all* Rejected Absentee Ballot Envelopes and Rejected Absentee Ballots.

The potential problem with inconsistent results has already occurred, both in Hennepin County, Olmsted County, and throughout Minnesota. For example, to date, some (*but not all*) local election officials have sorted the Rejected Absentee Ballot Envelopes within their jurisdiction into five (5) piles. In Hennepin County, only nineteen (19) cities have sorted the Rejected Absentee Ballot Envelopes within their jurisdiction, while twenty-seven (27) cities have not. (Walstien Aff., Exh. C). Thus, only 41% of the cities in Hennepin County have, to date, followed the Secretary of State's Guidance.

At least one jurisdiction has invented its own standards out of whole cloth. The City of Minnetrista created *its own* piles, believing that the Secretary of State's instructions were

incomplete. An email from Terri Haarstad at the City of Minnetrista dated December 12, 2008 stated: "the on-line survey requested by the MSCB, Minnetrista left Category 5 blank as Categories 1 -4 do not address all legal and valid reasons why an absentee ballot may be properly rejected. As such, Minnetrista created their own categories for ballots rejected under MS§ 203B.08 subd. 4, MS§ 203B.08 subd. 1, MS§ 203B.07 subd. 3, MN Rules 8210.2200 and MN Rules 8210.2500." (See Kryzer Aff., Exh. D.) Thus, Hennepin County has seen inconsistent application of the Secretary of State's standards.

Additionally, at present, fifteen (15) jurisdictions in Minnesota have flatly *refused* to follow the MSCB's "recommendation", four (4) jurisdictions initially agreed but have since canceled, and an additional thirty-two (32) jurisdictions have not scheduled or have provided no response whatsoever. (Kryzer Aff., Exh. C). It would be wholly inequitable for OCCB to open Rejected Absentee Ballot Envelopes and count Rejected Absentee Ballots from some, but not all, cities located within Olmsted County or to open Rejected Absentee Ballot Envelopes and count Rejected Absentee Ballots sorted utilizing different processes and standards. Similarly, it would be wholly inequitable for OCCB to open Rejected Absentee Ballot Envelopes and count Rejected Absentee Ballots (even using a consistent standard throughout Olmsted County) if other counties in Minnesota do not do so or do so using different processes and standards.

#### **Plaintiff's December 12, 2008 Minnesota Supreme Court Petition**

Due to the lack of uniform and objective procedures for reviewing Rejected Absentee Ballot Envelopes, as well as any mechanism to preserve the evidence necessary in an eventual election contest under Minnesota Statutes Chapter 209A, as well as the inconsistencies in application of the Guidance to date, on Friday, December 12, 2008, Plaintiff filed a petition (the "Petition") with the Minnesota Supreme Court seeking an Order either delaying the counting process until an election contest or providing uniform objective statewide standards to be used for such process (which standards include provision for allowing challenges under Recount

Rules and segregation and preservation of Rejected Absentee Ballots and Rejected Absentee Ballot Envelopes for an eventual election contest). (A true and correct copy of the Petition is attached to the Kryzer Affidavit as Exhibit E.)

Plaintiff's counsel was informed by email on Monday, December 15, 2008 that, on Tuesday, December 16, 2008, at 1:00 p.m., the OCCB intends to reconvene for the purpose of counting the fifth pile of rejected absentee ballots. (Kryzer Aff., Exh. F.) On information and belief, the purpose of this meeting is to open the Rejected Absentee Ballot Envelopes, count the Rejected Absentee Ballots located therein, and add the results of such counting to the Recount totals previously submitted by Olmsted County election officials to the Minnesota Secretary of State during the Recount and/or to the canvassing report previously submitted by the OCCB to the MSCB.

Plaintiff has notified Defendants of the Petition and also requested that the MSCB *reconsider* its instructions. (See Kryzer Aff., Exhibit G - email delivered to all local election officials and members of the MSCB on December 12, 2008). Plaintiff's counsel, Greg Kryzer, has spoken directly with Pam Fuller, Olmsted County Executive Assistant and Election Administrator Elections Manager and she indicated that the OCCB would be opening and counting the ballots on December 16, 2008 at 1:00 p.m.

If the OCCB reconvenes and opens the Rejected Absentee Ballot Envelopes and/or counts the Rejected Absentee Ballots, Plaintiff will suffer irreparable harm as described more fully below. Accordingly, Plaintiff has no choice but to file the instant Motion for Temporary Restraining Order (the "Motion"). As a result of Defendants' apparent refusal to delay opening the Rejected Absentee Ballot Envelopes and counting of the Rejected Absentee Ballots until the Minnesota Supreme Court rules on Plaintiff's Motion, Plaintiff has no other alternative than to seek relief directly from this Court in the form of either a temporary injunction *or* a writ of mandamus directing Defendants' actions.

Finally, on December 15, 2008 the Minnesota Supreme Court filed an Order stating “any county election official or canvassing board that opens any previously rejected absentee ballots prior to a ruling by this court on petitioners’ request for interim relief shall implement a system by which a reviewing authority may identify and locate the specific ballot that was removed from a particular set of return and ball envelopes.” (Minnesota Supreme Court Order dated December 15, 2008, attached as Exhibit I, Aff. Kryzer).

## ARGUMENT

### I. THE STANDARD FOR A TEMPORARY RESTRAINING ORDER.

A temporary restraining order (“TRO”) is available under Minnesota Rules of Civil Procedure (“MRCP”) Rule 65.01 to preserve the status quo until a hearing on an application for temporary injunction can be conducted. The standard for a TRO is the same as that for a temporary injunction. *See M.G.M. Liquor Warehouse Int’l, Inc. v. Forsland*, 371 N.W.2d 75, 77 (Minn. Ct. App. 1985)

A court is to weigh five factors when determining whether it should issue a TRO or a temporary injunction:

1. The nature and background of the relationship between the parties preexisting the dispute.
2. The harm to be suffered by plaintiff if relief is denied as compared to that inflicted on defendant if it is granted pending trial.
3. The likelihood that one party or the other will prevail on the merits.
4. The aspects of the fact situation, if any, which permit or require consideration of public policy.
5. The administrative burdens involved in judicial supervision and enforcement.

*Metropolitan Sports Facilities Commission v. Minnesota Twins Partnership*, 638 N.W.2d 214, 221 (Minn. Ct. App.2002), *review denied* (Feb. 4, 2002) *citing Dahlberg Bros v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965).

## **II. PLAINTIFF IS ENTITLED TO A TEMPORARY RESTRAINING ORDER.**

### **A. Preexisting Relationship.**

The preexisting relationship between the parties to be preserved is the uniform application of objective, statewide standards in determining what constitutes a valid vote in the General Election and/or during the Recount. To maintain this standard, the OCCB must stay well within its powers under the law. The threat of the OCCB to overstep these boundaries by prematurely opening the Rejected Absentee Ballot Envelopes and counting the Rejected Absentee Ballots therein impermissibly alters circumstances to the great detriment of Plaintiff, including potential dilution of votes in violation of the Equal Protection Clause of the United States Constitution as well as the effective destruction of evidence likely needed in an eventual election contest under Minnesota Statutes Chapter 209A.

### **B. Balance of Harms.**

The conflicting and absent Guidance relative to the MSCB's and Minnesota Secretary of State's "sorting process" makes it quite clear that an Equal Protection violation has likely already occurred. Accordingly, Plaintiff has petitioned the Minnesota Supreme Court for a uniform, objective statewide remedy that would be equally applicable to all cities within Hennepin County as well as all counties throughout Minnesota. The serious constitutional concerns caused by the Resolution and Secretary of State Guidance must be remedied and address statewide in a uniform manner, to preserve the integrity of the General Election and the Recount.

By contrast, Defendants will suffer no harm from waiting for the Minnesota Supreme Court to rule on this matter; in fact, to avoid prejudice to Plaintiff in the Petition process, justice demands that Defendants wait until such a ruling. The election occurred on November 4, 2008.

One example of this can be demonstrated by the actions taken by the Hennepin County Canvassing Board (herein after "HCCB"). On the November 11, 2008 meeting of the HCCB, Defendants' counsel requested the HCCB to engage in the opening and counting of the Rejected Absentee Ballots, which request was deemed by the Hennepin County Attorney's Office to be improper and outside of the HCCB's statutory authority. This request was denied by unanimous vote of the HCCB. There simply is no prejudice to in waiting further until the Minnesota Supreme Court makes a decision.

Moreover, even if the Minnesota Supreme Court determines that this process should not occur during the Recount, no prejudice will occur to any absentee voters because the election contest statute, Minnesota Statutes Chapter 209, provides a complete and adequate remedy and venue for counting Rejected Absentee Ballots contained within Rejected Absentee Ballot Envelopes deemed by a court to have been improperly rejected by local election officials. The very purpose of the election contest is to correct any such errors of law made during an election or a recount. However, if the Rejected Absentee Ballot Envelopes are opened and the Rejected Absentee Ballots are counted before the Minnesota Supreme Court makes a decision, a constitutional violation may occur *and* valuable evidence needed in an election contest will be forever destroyed. The balance of harms therefore clearly favors Plaintiff.

**C. Plaintiff Is Likely to Prevail on the Merits.**

One fact is without dispute: the MSCB's recommendation resolution and the Secretary of State's confusing Guidance have created an Equal Protection quagmire that can only be resolved through imposition of a uniform, objective statewide standard.

If some (but not all) cities in Olmsted County decide to count the Rejected Absentee Ballots within their cities, or if the OCCB decides to count the Rejected Absentee Ballots while dozens of other jurisdictions do not, such activity would clearly violate the Equal Protection Clause to the United State Constitution because no uniform procedure has been provided *or*

*followed* governing the acceptance or rejection of absentee ballots during the recount. *See Bush v. Gore*, 531 U.S. 98, 105-106 (2000) (concluding that the recount mechanisms implemented in Florida “do not satisfy the minimum requirement for nonarbitrary treatment of voters necessary to secure the fundamental right” because the command to consider the “intent of the voter” provided no “specific standards to ensure its equal application”).

Moreover, the votes of absentee voters who met the statutory requirements and the voters who voted at the polls on election day would be diluted in contravention of the Equal Protection Clause. *See Bush*, 531 U.S. at 105 (“The right of suffrage can be denied by a debasement or the dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”).

The lack of uniform guidelines and likely inconsistency in application of sorting and counting standards, as well as likely inconsistent and incorrect interpretation of Minnesota law as to rejected absentee ballots violates the Equal Protection Clause of the United States Constitution.

Accordingly, on Friday, December 12, 2008, Plaintiff filed with the Minnesota Supreme Court an “errors and omissions petition” requesting the Minnesota Supreme Court to either halt the counting process (preserving the issue for an election contest under Minnesota Statutes Chapter 209) *or* adopting uniform and objective standards relative to the opening of the Rejected Absentee Ballot Envelopes and counting of the Rejected Absentee Ballots therein (including, without limitation, segregating and preserving the Rejected Absentee Ballot Envelopes and Rejected Absentee Ballots for future identification in an election contest).

**D. Public Policy Imperatives Demand the Issuance of a TRO.**

Public policy requires the court to hold for Plaintiffs, thereby preserving this issue for uniform statewide determination by the Minnesota Supreme Court. Public policy demands that

the OCCB be held to its constitutional powers and authority. The Equal Protection Clause to the United States Constitution demands no less.


**E. Burden on the Court.**

There are no judicial or administrative burdens in enforcing Plaintiff's request.

**CONCLUSION**

For all of these reasons, Plaintiff's Motion should be granted. A proposed order is submitted herewith.

Dated: December 15, 2008



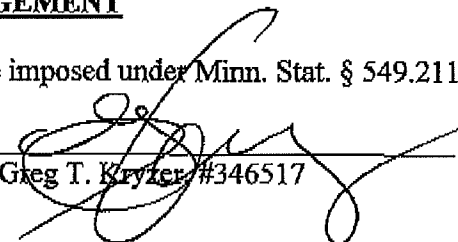

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*Attorneys for Plaintiff Norm Coleman for  
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**ACKNOWLEDGEMENT**

Plaintiff acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.




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Greg T. Kryzer #346517

STATE OF MINNESOTA  
COUNTY OF OLMTSED

DISTRICT COURT  
THIRD JUDICIAL DISTRICT  
CASE TYPE: CIVIL OTHER

Coleman for Senate 08,  
Plaintiff,

Case No. \_\_\_\_\_

vs.

**AFFIDAVIT OF GREG T. KRYZER**

Richard Devlin, Olmsted County Administrator,  
Pam Fuller, Olmsted County Executive  
Assistant and Election Administrator,  
and Olmsted County Canvassing Board,  
Defendants.

**AFFIDAVIT OF GREG T. KRYZER**

Greg T. Kryzer, first being duly sworn and upon oath, deposes and states as follows:

1. Attached hereto as Exhibit A is a true and correct copy of an email dated December 2, 2008 from Jim Gelbmann, Deputy Secretary of State, relating to sorting of "previously-rejected absentee ballots".
2. Attached hereto as Exhibit B is a true and correct copy of "Detailed Instructions for Sorting All Currently-Rejected Absentee Ballots Cast in the U.S. Senate Race" received from Jim Gelbmann, Deputy Secretary of State, on December 4, 2008.
3. Attached hereto as Exhibit C is a true and correct copy of a schedule with all information available as of December 15, 2008 setting forth the names of all jurisdictions that: (i) have completed sorting to date; (ii) have scheduled a date for public sorting to date or are sorting December 15, 2008; (iii) have not scheduled or have not otherwise provided information as to scheduling of public sorting to date; (iv) have either refused to sort or to publicly sort to date; (v)

have cancelled previously scheduled public sorting to date; and (vi) are currently listed on the Minnesota Secretary of State website as "TBD" relative to scheduling of public sorting.

4. Attached hereto as Exhibit D is a true and correct copy of an email from Terri Haarstad at the City of Minnetrista dated December 12, 2008 stated: "the on-line survey requested by the Canvassing Board, Minnetrista left Category 5 blank as Categories 1 -4 do not address all legal and valid reasons why an absentee ballot may be properly rejected. As such, Minnetrista created their own categories for ballots rejected under MS§ 203B.08 subd. 4, MS§ 203B.08 subd. 1, MS§ 203B.07 subd. 3, MN Rules 8210.2200 and MN Rules 8210.2500."

5. Attached hereto as Exhibit E is a true and correct copy of the Petition filed on Friday, December 12, 2008 by Cullen Sheehan and Norm Coleman with the Minnesota Supreme Court seeking an Order either delaying the counting process until an election contest or providing uniform objective statewide standards to be used for such process (which standards include provision for allowing challenges under Recount Rules and segregation and preservation of Ballots and Envelopes for an eventual election contest).

6. Attached hereto as Exhibit F is a true and correct copy of the email received from Jill Alverson on Friday, December 12, 2008 stating that on Monday, December 15, 2008, at 4:00 p.m., the Hennepin County Canvassing Board intends to reconvene for the purpose of discussing the "recommendation" of the Minnesota State Canvassing Board.

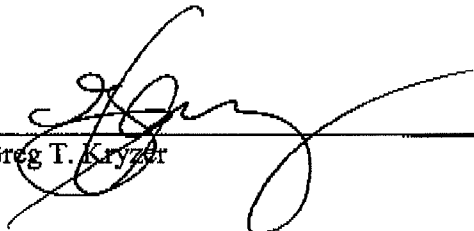
7. Attached hereto as Exhibit G is a true and correct copy of the email delivered by Trimble & Associates, Ltd. to all local election officials and members of the Minnesota State Canvassing Board on December 12, 2008.

8. Attached as Exhibit H is a true and correct copy of an email and an emergency notice from Pam Fuller, Olmsted County Executive Assistant and Election Administrator.

9. Attached hereto as Exhibit I is a true and correct copy of an order filed by the Minnesota Supreme Court on December 15, 2008 ordering in part:

9. Without taking a position regarding the merits of the petition or the request for an order for interim relief pending a final decision of this court, and county election official or canvassing board that opens any previously rejected absentee ballots prior to a ruling by this court on petitioners' request for interim relief shall implement a system by which a reviewing authority may identify and locate the specific ballot what was removed from a particular set of return and ballot envelops.

FURTHER YOUR AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Greg T. Kryzer

Subscribed and sworn to before me this 15th day of December 2008.

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

