

2. I make this Affidavit in support of the accompanying Motion regarding class action treatment of this case.

3. Statewide, approximately 12,000 absentee ballots were rejected and not counted in the November 4, 2008 general election for United States Senator.


4. Petitioners were all (1) alive on election day, (2) were either registered to vote or submitted their registrations with their absentee ballots; and (3) did not otherwise vote. Their claims that their absentee ballots be opened and counted and that their votes for United States Senator be declared and certified "for such use as might be deemed appropriate by the United States Senate or the judges responsible for election contest," are in all material respects identical to the position in which the other several thousand voters throughout the state, whose absentee ballots were also rejected, find themselves. All persons similarly situated should have their ballots judged uniformly, by the same criteria, applied objectively and consistently. Indeed, the criteria of Minn. R. Civ. P. 23 for a class action are met entirely: numerosity; common questions of law and fact; common claims and defenses; avoidance of inconsistent results; avoidance of prejudice to nonparties; predominance of the common questions of law and fact over any questions affecting any individual persons; and the superiority of the class action to multiple individual actions.

5. Accordingly, the Court should order that this case be henceforth handled as a class action in accordance with Minn. R. Civ. P. 23 and other applicable law.

FURTHER AFFIANT SAITH NOT, except only that this Affidavit is made in support of the accompanying Motion.

Dated: January 22, 2009

JOSEPH S. FRIEDBERG, CHARTERED

By 
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*Subscribed and Sworn to
before me on 1-23-09
Dianna L. Breymeier*

