

2. In my capacity as Deputy Secretary of State, I have been involved with the recount for United States Senate and with the compliance of the Office of the Secretary of State with paragraph 3 of the Order of the Supreme Court in *Coleman et al v. Ritchie et al*, Case A08-2169, dated December 18, 2008, as well as with paragraph 2 of the Modified Order of the Supreme Court in that case dated December 24, 2008.

3. I submitted an affidavit on January 23, 2009 with respect to the roster of voters whose votes were opened and counted on January 3, 2009 pursuant to the order of the Supreme Court in *Coleman et al v. Ritchie et al*, case A08-2169. Paragraph 14 of that affidavit states:

The Office of the Secretary of State has compared the list of persons whose absentee ballots were counted on January 3, 2009 with the list of voters in Exhibit A cited in paragraph 5 above as well as the list of proposed intervenors listed in the Notice of Intervention filed January 22, 2009 and available at:

http://www.mncourts.gov/Documents/2/Public/Civil/coleman/Notice_of_intervention.pdf

and to the best of my knowledge and belief Ms. Koehnen is the only person in that universe of voters whose vote was counted on January 3, 2009.

4. Since the submission of that affidavit I have reviewed the records and concluded that in addition to Evelyn Koehnen, that the absentee return envelopes of two additional voters named in documents filed in *Peterson et al v. Ritchie et al*, A09-0065 were opened and counted on January 3, 2009.

5. Brian Johnson, a voter in Dakota County is a named plaintiff in *Peterson, et al v. Ritchie, et al*, see the Petition of Certain Voters to Have Their Votes Counted Pursuant to 204B.44, caption and Exhibit A, voter 41.

6. Paragraph E-7 of the Petitioners Memorandum of Law in Support of Motion for Summary Judgment, at pages 9-10, states:

“Dakota County initially stated that it rejected Brian Johnson’s ballot because there was no absentee ballot application. Nauen Aff. Ex. 14-A (Envelope). Later, Dakota County indicated that it had rejected Mr. Johnson’s absentee ballot because he did not satisfy the requirements of Minn. Stat. 203B12, subd. 2(3). Nauen Aff. Ex. 14-B (Dakota County Rejected Absentee Ballots). Mr. Johnson voted by absentee ballot, in person, at the Dakota County Government Center in Apple Valley, MN. Nauen Aff. Ex. 14-A (Envelope). Mr. Johnson completed, signed, and dated an absentee ballot and the certification on the return envelope on October 31, 2009. Nauen Aff. Ex. 14-C (Ballot Application). Mr. Johnson resided at 1980 Timber Wolf Trail (sic), Eagan, MN at the time of the November 4, 2008, general election. This is the same address that appears in Mr. Johnson’s voter registration records with the Minnesota Secretary of State. Nauen Aff. Ex. 14-D (SOS Voter Lookup). Mr. Johnson was not required to provide a new voter registration card because he was registered to vote in the precinct where he resided at the time of the November 4, 2008 general election. Minn. Stat. 203B.12, subd. 2(3). Mr. Johnson’s ballot complies with the requirements established in Minn. Stat. 203B.12

7. Mr. Johnson’s wrongfully rejected absentee ballot return envelope and the contents thereof were sent to the Office of the Secretary of State by Dakota County for counting on January 3, 2009 by the Office of the Secretary of State pursuant to paragraph 2 of the Supreme Court Order dated December 24, 2008 in *Coleman, et. al. v Ritchie, et. al.*, Case A08-2169, presumably after the counting of that envelope and contents had been agreed to by the Dakota County Auditor and the Coleman and Franken representatives.

8. Mr. Johnson’s return envelope was opened and the ballot within the envelope counted on January 3, 2008 in Room 10 of the State Office Building. After the opening and counting process, the return envelope was retained by the Office of the Secretary of State in secure storage under lock and key in the resealed box in which Dakota County had originally sent the wrongfully rejected absentee ballots from that county.

9. Upon the request of representatives of the Coleman campaign and agreement of representatives of the Franken campaign, all of the wrongfully rejected absentee ballot return

envelopes were brought from their secure storage area to the conference room at the Office of the Secretary of State in the State Office Building, at 1:30 p.m. on Tuesday, January 20, 2009, for the purpose of recording in electronic spreadsheet format, the names of the voters whose ballots had been opened and counted on January 3, 2009.

10. The ballot envelope of Brian Johnson was within that group of return envelopes and his name was added to the spreadsheet.

11. The total votes counted on January 3, 2009 were reported to the State Canvassing Board on January 5, 2009, and were included in the final recount report of the State Canvassing Board.

12. Thus, it would appear that the vote of Brian Johnson has been counted despite the apparent initial rejection of his absentee ballot due to having been alleged not to have had an absentee ballot application on file, nor to be registered as a voter.

13. Robert Girtz, a voter in Morrison County is listed in Exhibit A of the Petition of Certain Voters to Have Their Votes Counted Pursuant to 204B.44 as voter 9 in *Peterson, et. al. v. Ritchie, et. al.* In the caption to this action he is listed as Robin Girtz. There is no record of the ballot of a Robin Girtz having been opened and counted in the manner described in paragraph 15.

14. Paragraph J-1 of the Petitioners Memorandum of Law in Support of Motion for Summary Judgment, at pages 9-10, states:

Morrison County rejected Robert Girtz' absentee ballot on the ground that he allegedly had already voted in the election. Nauen Aff. Ex 44-A (Envelope). However, Mr. Girtz signed a declaration under the penalty of perjury stating that his absentee ballot was the only ballot he cast at the November 4, 2008, general election. Nauen Aff. Ex. 44-B (Girtz Declaration). Mr. Girtz's absentee ballot satisfies the four requirements set forth in Minn. Stat. 203B.12.

15. Mr. Girtz's wrongfully rejected absentee ballot return envelope and the contents thereof were sent to the Office of the Secretary of State by Morrison County for counting on January 3, 2009 by the Office of the Secretary of State pursuant to paragraph 2 of the Supreme Court Order dated December 24, 2008 in *Coleman, et. al. v Ritchie, et. al.*, Case A08-2169, presumably after the counting of that envelope and contents had been agreed to by the Morrison County Auditor and the Coleman and Franken representatives.

16. Mr. Girtz's return envelope was opened and the ballot within the envelope counted on January 3, 2008 in Room 10 of the State Office Building. After the opening and counting process, the return envelope was retained by the Office of the Secretary of State in secure storage under lock and key in the resealed envelope in which Morrison County had originally sent the wrongfully rejected absentee ballots from that county.

17. Upon the request of representatives of the Coleman campaign and agreement of representatives of the Franken campaign, all of the wrongfully rejected absentee ballot return envelopes were brought from their secure storage area to the conference room at the Office of the Secretary of State in the State Office Building, at 1:30 p.m. on Tuesday, January 20, 2009, for the purpose of recording in electronic spreadsheet format, the names of the voters whose ballots had been opened and counted on January 3, 2009.

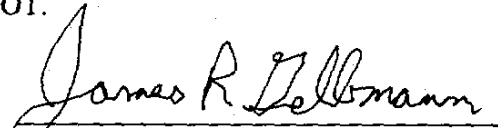
18. The ballot envelope of Robert Girtz was within that group of return envelopes and his name was added to the spreadsheet.

19. The total votes counted on January 3, 2009 were reported to the State Canvassing Board on January 5, 2009, and were included in the final recount report of the State Canvassing Board.


20. Thus, it would appear that the vote of Robert Girtz has been counted despite the apparent initial rejection of his absentee ballot due to having been alleged not to have had an absentee ballot application on file, nor to be registered as a voter.

21. The Office of the Secretary of State provided information on the status of an absentee ballot to those voters whose absentee ballots local election officials had identified as having been wrongfully rejected, but whose return envelopes were not sent to the Secretary of State for counting on January 3, 2009 due to objections by one of the campaigns. However, the Office of the Secretary of State did not and has not provided status information to those voters whose absentee ballot return envelopes and ballots were opened and counted on January 3, 2009.

FURTHER YOUR AFFIANT SAYETH NOT.


JAMES R. GELBMANN

Subscribed and sworn to before me
on this January 26, 2009.


Catherine Mohn
Notary Public



