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FILED
Court Administrator

STATE OF MINNESOTA
COUNTY OF RAMSEY

FEB 6 - 2009

DISTRICT COURT
SECOND JUDICIAL DISTRICT

By CNC Deputy

In the Matter of the Contest of General Election
held on November 4, 2008, for the purpose of
electing a United States Senator for the State of
Minnesota

District Court File No. 62-CV-09-56

Cullen Sheehan and Norm Coleman,

Contestants,

**ORDER ON MOTION FOR LEAVE
TO INTERVENE**

vs.

Al Franken,

Contestees,

The above-entitled matter came on for hearing before the Court on January 30, 2009,
upon motion for leave to intervene in this election contest filed by seven voters. Appearances
were noted for the record. The Court having heard and read the arguments of counsel, and based
upon the files, records, and proceedings herein, makes the following:

ORDER

1. The Motion for Leave to Intervene is DENIED.
2. Any other relief not specifically ordered herein is DENIED.
3. The attached Memorandum is incorporated as if fully set forth herein

Dated: February 6, 2009

Elizabeth A. Hayden
Elizabeth A. Hayden
Judge, District Court

Dated: 2/6/09

Kurt J. Marben
Kurt J. Marben
Judge, District Court

Dated: 2/6/09

Denise D. Reilly
Denise D. Reilly
Judge, District Court

MEMORANDUM

Before the Court is a request to intervene in the election contest begun by Contestants on January 6, 2009 brought by seven voters¹ who cast absentee ballots in the November 4, 2008 general election for United States Senator from Minnesota. These voters filed their Notice of Intervention in this election contest on January 21, 2009 seeking to intervene under Minnesota Rule of Civil Procedure 24.01 and 24.02. On January 30, 2009, Contestee filed an opposition to the intervention of the seven voters. The voters have now moved this Court for an order granting leave to intervene in this election contest.

Chapter 209 of the Minnesota Statutes, which imposes a strict and expedited timeline for filing an election contest, governs election contests in Minnesota. Section 209.02 specifically provides that an election contest must be filed “in the manner provided in this chapter.” Minn. Stat. § 209.02. Section 209.021 goes on to provide that “[n]otice [of election contest] must be served and filed . . . within seven days after the canvass is completed in the case of a special or general election.” Minn. Stat. § 209.021 (emphasis added); *see also* Minn. Stat. § 209.065 (requiring trial in an election contest to begin 20 days from the date of the filing of the Notice of Contest). The strict time limits in Chapter 209 are in line with Minnesota’s “strong public policy in favor of finality in elections.” *McNamara v. Office of Strategic & Long Range Planning*, 628 N.W.2d 620, 631 (Minn. Ct. App. 2001) (citing *Greenly v. Indep. Sch. Dist. No. 316*, 395 N.W.2d 86, 91 (Minn. Court. App. 1986)). These statutory and policy principles compel this Court to deny the voters’ request to intervene in this election contest.

By seeking to intervene in this election contest, the seven voters seek to avoid the strict deadline imposed by § 209.021 and be permitted to join an ongoing election contest even though

¹ The voters moving for leave to intervene in this matter are Paul Happe, Eugene C. Markman, Sharon Cook, Joel Gregory Uldrych, Claudia Bernstein, Michael J. Hall and Schwah Maggie Philips.

they were statutorily barred from bringing such a contest themselves at the time they sought to intervene. Minn. Stat. § 209.021 (requiring a notice of contest to be filed within 7 days of the completion of the canvass). The Court refuses to permit these voters to ignore the statutory mandate for an expedited election contest process by filing a notice of intervention after the deadline for beginning an election contest has passed. While the Minnesota Rules of Civil Procedure generally permit parties to intervene in ongoing actions by filing a Notice of Intervention, the Court determines that applying this general intervention rule is not practicable to the present election contest proceeding. *See* Minn. Stat. § 209.065 (recognizing that the Rules of Civil Procedure apply to election contests only insofar as practicable), Minn. R. Civ. P. 81.01 & App. A (recognizing that the Rules of Civil Procedure do not govern pleadings, practice and procedure in proceedings identified in Appendix A, including election contest proceedings under Chapter 209). Accordingly, the Court will not permit these voters to circumvent the timeline imposed by § 209.021 through intervention under the Rules of Civil Procedure. The Court believes that this determination is necessary to ensure that this proceeding is not unnecessarily elongated from serial interventions by voters who failed to timely file an election contest in accordance with the requirements of Chapter 209.

The Court notes that other provisions of Minnesota Election Law provide a procedure for the seven voters to protect their right to suffrage. Specifically, the Court notes that these voters could file a petition for correcting errors and omissions in the conduct of the election pursuant to Minnesota Statute § 204B.44, which provides:

Any individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions, or wrongful acts which have occurred or are about to occur:

- (a) an error or omission in the placement or printing of the name or description of any candidate or any question on any official ballot;

- (b) any other error in preparing or printing any official ballot;
- (c) failure of the chair or secretary of the proper committee of a major political party to execute or file a certificate of nomination;
- (d) any wrongful act, omission, or error of any election judge, municipal clerk, county auditor, canvassing board or any of its members, the secretary of state, or any other individual charged with any duty concerning an election.

The petition shall describe the error, omission, or wrongful act and the correction sought by the petitioner. The petition shall be filed with any judge of the Supreme Court in the case of an election for state or federal office

Minn. Stat. § 204B.44. The Court notes that this process has already been invoked by other voters in the November 4, 2008 general election for United States Senator who filed a Petition under § 204B.44 with the Supreme Court on January 13, 2009. This Petition was subsequently referred to this Court for consideration and decision within this election contest. The Court notes that the procedure under § 204B.44 remains open and available to the seven voters who seek to intervene in this election contest.