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By  Deputy

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
Case Type: CIVIL OTHER

File No. 62-CV-09-56

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,

Cullen Sheehan and Norm Coleman,

Contestants,

**CONTESTANTS' POSITION ON
THE NUMBER OF REJECTED
ABSENTEE IN ISSUE**

v.

Al Franken,

Contestee.

Given Contestee's repeated attempts to limit this Court's review of rejected absentee ballots, Contestants will reiterate their position: every rejected absentee ballot—some 11,000 of them—is potentially at issue in this contest. Contestants are not limited to 654, to those on which they chose to seek summary judgment, or to those they provided to the Court in response to its specific question regarding ballots provable merely from the face of the envelope. The Notice of Contest put into question which candidate received the highest number of legally cast votes and specified that many rejected absentee ballots should have been counted. It is sufficient, as this Court has already ruled in denying the motion to dismiss, to state a claim.

Contestants grouped some of the rejected absentee ballots at issue into various categories of ballots on the motion for summary judgment because we thought it

provided an efficient means by which the Court could resolve the statutory claim for large groups of ballots that have the same characteristics. Some of those categories reflect strict compliance with the statute and others substantial compliance. Those categories do not include every ballot at issue; they include only ballots for which summary judgment seemed the most appropriate means of determining whether they are indeed legally cast votes. If, however, the Court prefers to address each of those ballots one by one, rather than as categorized groups, Contestants will do so.

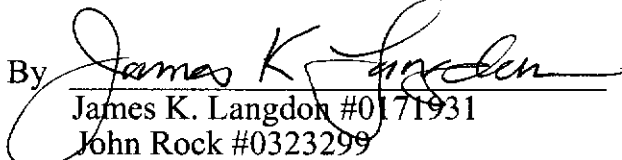
Contestants also told the Court on summary judgment that we believe the rampant inconsistency among counties and, indeed, precincts throughout the state in applying the statutory standard for rejection has created a significant equal protection violation. We believe the only fair remedy for this violation is to accept every rejected absentee ballot cast by a registered voter who was alive on election day and did not vote another time. We have also moved for certification of a class of voters who fit those parameters.

Whether through consideration of the matter on summary judgment, at trial on behalf of a class, or at trial ballot by ballot this Court will be required to determine whether rejected absentee ballots that fall within those parameters, that is, cast by registered voters alive on election day who have not already voted, are legally cast votes. We believe the vast majority of the 11,000 ballots are within those parameters, and we will prove it to the Court's satisfaction.

Dated: January 28, 2009

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