

AM

FILED
Court Administrator

JAN 29 2009

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

By  Deputy

SECOND JUDICIAL DISTRICT

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,

vs.

Al Franken,

Contestees,

Dennis Peterson, et. al.,

Petitioners,

Supreme Court File No. A09-65

vs.

Mark Ritchie, Minnesota Secretary of State, et. al.,

Respondents.

**AFFIDAVIT OF DAVID J. ZOLL IN SUPPORT OF
PETITIONERS' MOTION FOR SUMMARY JUDGMENT**

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

David J. Zoll, being duly sworn, deposes and states:

1. I am an attorney with the law firm of Lockridge Grindal Nauen P.L.L.P. I represent Petitioners in the above-captioned matter. I submit this affidavit in support of Petitioners' Motion for Summary Judgment.

2. Attached hereto as Exhibit 5-A is a true and correct copy of the Declaration of Shirley Vandyck. The attached Exhibit 5-A corresponds to paragraph 11 and Exhibit 5 to the Affidavit of Charles N. Nauen filed with the Ramsey County District Court on January 21, 2009, in the above referenced matter. This declaration was filed with the Court and served upon all parties on January 22, 2009.

3. Attached hereto as Exhibit 6-D is a true and correct copy of the absentee ballot return envelope for Jeffrey Dustin. The attached Exhibit 6-D corresponds to paragraph 12 and collective Exhibit 6 to the Affidavit of Charles N. Nauen filed with the Ramsey County District Court on January 21, 2009, in the above referenced matter.

4. Attached hereto as Exhibit 7-D is a true and correct copy of the absentee ballot return envelope for Douglas Stange. The attached Exhibit 7-D corresponds to paragraph 13 and collective Exhibit 7 to the Affidavit of Charles N. Nauen filed with the Ramsey County District Court on January 21, 2009, in the above referenced matter.

5. Attached hereto as Exhibit 10-D is a true and correct copy of the absentee ballot return envelope for Harold Buck. The attached Exhibit 10-D corresponds to paragraph 16 and collective Exhibit 10 to the Affidavit of Charles N. Nauen filed with the Ramsey County District Court on January 21, 2009, in the above referenced matter.

6. Attached hereto as Exhibit 26-A is a true and correct copy of the Declaration of Marilyn Borgen which corresponds to paragraph 32 and Exhibit 26 to the Affidavit of Charles N. Nauen filed with the Ramsey County District Court on January 21, 2009, in the above referenced

matter. This declaration was filed with the Court and served upon all parties on January 22, 2009.

7. Attached hereto as Exhibit 38-D is a true and correct copy of the absentee ballot return envelope for Todd Toner. The attached Exhibit 38-D corresponds to paragraph 44 and collective Exhibit 38 to the Affidavit of Charles N. Nauen filed with the Ramsey County District Court on January 21, 2009, in the above referenced matter.

8. Attached here to as Exhibit 43-D is a true and correct copy of correspondence from Laura Auron, Assistant County Attorney for Lake County regarding the absentee ballot application completed by Eila Nelson. The attached Exhibit 43-D corresponds to paragraph 49 and collective Exhibit 43 to the Affidavit of Charles N. Nauen filed with the Ramsey County District Court on January 21, 2009, in the above referenced matter.


9. Attached hereto as Exhibit 43-E is a true and correct copy of the absentee ballot return envelope for Eila Nelson. The attached Exhibit 43-E corresponds to paragraph 49 and collective Exhibit 43 to the Affidavit of Charles N. Nauen filed with the Ramsey County District Court on January 21, 2009, in the above referenced matter.

10. Attached hereto as Exhibit 46-D is a true and correct copy of the absentee ballot return envelope for Judith Conlow. The attached Exhibit 46-D corresponds to paragraph 52 and collective Exhibit 46 to the Affidavit of Charles N. Nauen filed with the Ramsey County District Court on January 21, 2009, in the above referenced matter.

11. Attached hereto as Exhibit 46-D is a true and correct copy of the absentee ballot return envelope for Judith Conlow. The attached Exhibit 46-D corresponds to paragraph 52 and collective Exhibit 46 to the Affidavit of Charles N. Nauen filed with the Ramsey County District Court on January 21, 2009, in the above referenced matter.

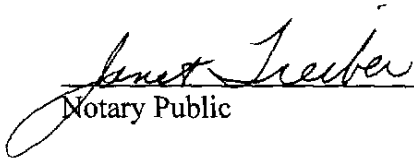
12. Attached hereto as Exhibit 47-E is a true and correct copy of printed results from the Polling Place Finder from the Minnesota Secretary of State's website. The attached exhibit 47-E corresponds to paragraph 53 and collective exhibit 47 to the Affidavit of Charles N. Nauen filed with the Ramsey County District Court on January 21, 2009 in the above-referenced matter.

FURTHER YOUR AFFIANT SAYETH NOT.



David J. Zoll

Signed and sworn to before me
this 29th day of January, 2009



Notary Public



AFFIDAVIT/DECLARATION OF SHIRLEY M. VANDYCK

1. My name is Shirley M. VanDyck. On November 4, 2008, I was eighteen years of age or older, a citizen of the United States, and had maintained a residence in Minnesota for at least thirty days immediately preceding the general election held November 4, 2008. I am providing this declaration because I believe that my November 2008 absentee ballot for that election was improperly rejected because someone determined that the signatures on my absentee ballot application and the certification on the ballot envelope did not match.

2. As of November 4, 2008, I was fully entitled to vote. I was not under court-ordered guardianship in which the court order revoked my right to vote; had not been found by a court to be legally incompetent to vote; and had not been convicted of treason or any other felony that might disqualify me from voting.

3. I was registered to vote for the November 2008 general election. At the time, my permanent residence was 6065 Facility Center Drive NW, Cass Lake, Minnesota in Cass County. I was a resident at this address when I requested, received and voted an absentee ballot in the November 2008 general election.

4. I suffer from Lou Gehrig's disease and, as a result of that illness, I requested my daughter complete an application for an absentee ballot on my behalf. When my daughter signs my name on my behalf and at my direction, I consider that to be my genuine signature.

5. I received an absentee ballot and the ballot was marked in the manner prescribed by the directions sent to me with the ballot. The eligibility certificate printed on the back of the envelope reflects my correct name and address and I signed the certificate with my genuine signature.

6. This ballot is the only ballot I submitted in the November 2008 general election. I did not vote in person on November 4, 2008 or submit any other absentee ballot.

7. If notarized below, this is my Affidavit. If not notarized, it is my declaration under 28 U.S.C. § 1746. I declare under the penalty of perjury that the foregoing is true and correct.


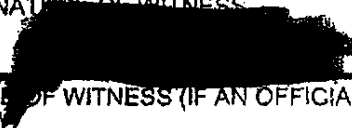
Executed on January 21, 2009.

Sworn and Subscribed before me
on this day of January 2009.

Signature: 
Shirley M. Vandyck

Notary Public

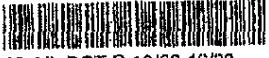
INSERT BALLOT SECRECY ENVELOPE AND SEAL

 255309 STG 11/04/2008 ML PCT R B365968 14 0180 152 MOORHEAD CITY W-2 P-3 JEFFREY JAMES DUSTIN ENV#2 529 MAPLE LN		MN
I certify that on election day I will meet all the legal requirements to vote by absentee ballot.		
VOTER'S SIGNATURE	DATE	
↓ TO BE COMPLETED BY WITNESS ↓		
I certify that the voter <ul style="list-style-type: none"> · showed me the blank ballots before voting; · marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter; and · enclosed and sealed the ballots in the secrecy envelope. 		
NAME OF WITNESS (PLEASE PRINT)		
<i>James M. Justice</i>		
ADDRESS OF NON-NOTARY WITNESS IN MINNESOTA (PLEASE PRINT)		
<i>529 Maple Ln Moorhead MN 58201</i>		
SIGNATURE OF WITNESS		DATE
		<i>10-9-08</i>
TITLE OF WITNESS (IF AN OFFICIAL)		

↓ FOR OFFICE USE ONLY ↓	
<input type="checkbox"/> ACCEPTED	
<input checked="" type="checkbox"/> REJECTED <i>Voted AT Polls</i>	
Reason: _____	

INSERT BALLOT SECRECY ENVELOPE AND SEAL

COT 20 08

↓ TO BE COMPLETED BY VOTER ↓	
VOTER'S I	 360364 STG ML PCT R 10/23 10/23 362019
VOTER'S I	18 0007 181 BAXTER P2E DOUGLAS WAYNE STANGE 13294 TIMBERLANE DR APP MN
I certify that on election day I will meet all the legal requirements to vote by absentee ballot.	
VOTER'S SIGNATURE	DATE
<i>Doug Stange</i>	<i>10/24/08</i>
↓ TO BE COMPLETED BY WITNESS ↓	
I certify that the voter <ul style="list-style-type: none"> • showed me the blank ballots before voting; • marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter; and • enclosed and sealed the ballots in the secrecy envelope. 	
NAME OF WITNESS (PLEASE PRINT)	
<i>Stephen P. Quinn</i>	
ADDRESS OF NON-NOTARY WITNESS IN MINNESOTA (PLEASE PRINT)	
<i>1704 S. 7th St Brainerd, MN 56401</i> MN	
SIGNATURE OF WITNESS	DATE
<i>Stephen P. Quinn</i>	<i>10/24/08</i>
TITLE OF WITNESS (IF AN OFFICIAL)	

↓ FOR OFFICE USE ONLY ↓	
<input type="checkbox"/> ACCEPTED	
<input checked="" type="checkbox"/> REJECTED	Reason: <i>signature</i> <i>10-31-08</i> <i>SM</i>

IMPORTANT!

Insert Ballot Secrecy Envelope, and then seal this flap.

RECEIVED OCT 27 2008

TO BE COMPLETED BY VOTER	
VOTER'S NAME (PLEASE PRINT) HAROLD E. BUCK	
VOTER'S MINNESOTA ADDRESS (PLEASE PRINT) 621 E 134TH ST. BURNSVILLE MN	
I certify that on election day I will meet all the legal requirements to vote by absentee ballot.	
VOTER'S SIGNATURE Harold E. Buck	DATE 10/26/08
TO BE COMPLETED BY WITNESS	
I certify that the voter	
<ul style="list-style-type: none"> • showed me the blank ballots before voting; • marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter; and • enclosed and sealed the ballots in the secrecy envelope. 	
NAME OF WITNESS (PLEASE PRINT) MARCIA A. BUCK	
ADDRESS OF NON-NOTARY WITNESS IN MINNESOTA (PLEASE PRINT) 621 E. 134TH ST. BURNSVILLE, MN 55337 MN	
SIGNATURE OF WITNESS Marcia Buck	DATE
TITLE OF WITNESS (IF AN OFFICIAL)	

FOR OFFICE USE ONLY	
<input type="checkbox"/> ACCEPTED	
<input checked="" type="checkbox"/> REJECTED	<i>No signed application JH Otze</i> Reason

AFFIDAVIT/DECLARATION OF MARILYN BORGEN

1. My name is Marilyn Borgen. On November 4, 2008, I was eighteen years of age or older, a citizen of the United States, and had maintained a residence in Minnesota for at least thirty days immediately preceding the general election held November 4, 2008. I am providing this declaration because I believe that my November 2008 absentee ballot for that election was improperly rejected because someone determined that my absentee ballot application was not signed.

2. As of November 4, 2008, I was fully entitled to vote. I was not under court-ordered guardianship in which the court order revoked my right to vote; had not been found by a court to be legally incompetent to vote; and had not been convicted of treason or any other felony that might disqualify me from voting.

3. I was registered to vote for the November 2008 general election. At the time, my permanent residence was 8766 Cottonwood Lane North, Maple Grove, MN, in Hennepin County. I was a resident at this address when I requested, received and voted an absentee ballot in the November 2008 general election.

4. On October 31, 2008, I submitted an application for an absentee ballot at the Maple Grove Government Center. I applied under my correct name and address. I displayed my identification to the city employee who accepted my application. The city employee did not inform me that I was required to sign the application for an absentee ballot when applying in person. I relied upon the city employee to bring any omissions on the application to my attention.

5. I received an absentee ballot and marked the ballot in the manner prescribed by the directions included with the ballot. In addition to marking the ballot, I completed the eligibility certificate printed on the back of the envelope and signed the certificate with my genuine signature. I returned my completed ballot, enclosed in the secrecy envelope and the return envelope, to the city employee who had provided the ballot to me. The city employee completed the witness section on the return envelope.

6. This ballot is the only ballot I submitted in the November 2008 general election. I did not vote in person on November 4, 2008 or submit any other absentee ballot.

7. If notarized below, this is my Affidavit. If not notarized, it is my declaration under 28 U.S.C. § 1746. I declare under the penalty of perjury that the foregoing is true and correct.

Executed on January 22, 2009.


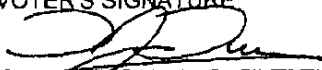

Sworn and Subscribed before me
on this ___ day of January 2009.

Signature: Marilyn Borgen
Marilyn Borgen


Notary Public

INSERT BALLOT SECRECY ENVELOPE AND SEAL

1-2

TO BE COMPLETED BY VOTER	
V TONER TODD J 3423 Taylor St NE	1-2
V MINNEAPOLIS, MN 55418	(CITY)
	MN
I certify that on election day I will meet all the legal requirements to vote by absentee ballot.	
VOTER'S SIGNATURE 	DATE 10/11/2008
TO BE COMPLETED BY WITNESS	
I certify that the voter	
• showed me the blank ballots before voting;	
• marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter; and	
• enclosed and sealed the ballots in the secrecy envelope.	
NAME OF WITNESS (PLEASE PRINT) Thomas J. Toner	
ADDRESS OF NON-NOTARY WITNESS IN MINNESOTA (PLEASE PRINT) 19053 Inman Tr Lakeville, mn. 55044 MN	
SIGNATURE OF WITNESS 	DATE 10/11/2008
TITLE OF WITNESS (IF AN OFFICIAL)	

*Rejected
Voted in Person
mt*

FOR OFFICE USE ONLY	
<input checked="" type="checkbox"/> ACCEPTED 	
Reason	

REGISTERED

ELECTION DATE 11/4/2008

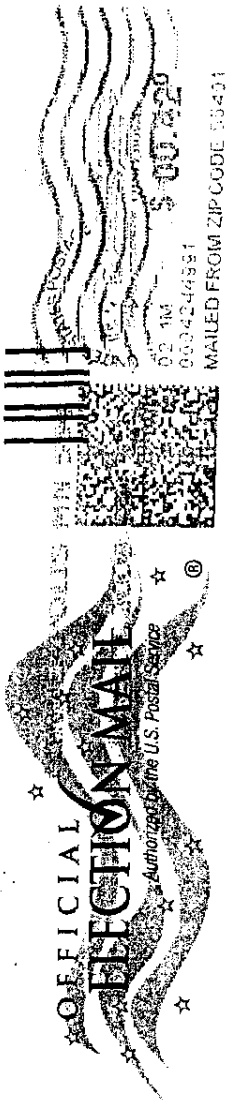
ENERGY GRAPHICS PRERR

2

PRECINCT

1

WARD



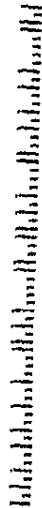
02 1M
0034244551
\$00.320
MAILED FROM ZIP CODE 55401

ABSENTEE BALLOT RETURN ENVELOPE

NO POSTAGE STAMP NECESSARY
POSTAGE HAS BEEN PREPAID BY

Minneapolis Elections Office
350 South 5th Street Room 1B
Minneapolis MN 55415-1396

5541551396



LARRY J. SAUR
COURT ADMINISTRATOR
LAKE COUNTY COURTHOUSE
601 THIRD AVENUE
TWO HARBORS MN 55616
PHONE: 218-834-8330
FAX: 218-834-8397

CONFIDENTIAL

To: Chris Stafford Fax: 612-492-7077
From: Laura Aurn Date: 1-22-09
Re: Coleman v. Franken Pages: 3 (Including Cover Sheet)
CC:

- Urgent For Review Please Comment Please Reply Hard Copy to Follow

SHOULD YOU HAVE ANY PROBLEMS RECEIVING THIS COPY, PLEASE CALL (218)834-8330

COMMENTS:

CC : Bryan Keane 612-340-2868
David Zoll 612-339-0981

THANK YOU FOR YOUR ASSISTANCE.

CONFIDENTIAL NOTICE

The document (s) accompanying this cover sheet may contain confidential information which is legally protected. The information is intended only for the use of the intended recipient named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information by you is strictly prohibited and may result in a criminal penalty. If you have received this fax in error, please notify us immediately by telephone to arrange for the return of the documents to us.

CONFIDENTIAL

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601 Third Avenue
Two Harbors, Minnesota 55616

Facsimile (218) 834-8397

www.co.lake.mn.us

RUSS CONROW
County Attorney
(218) 834-8375

LAURA AURON
Assistant County Attorney
(218) 834-8350

PATTY WHEELER
Victim Witness Coordinator
(218) 834-8345

January 22, 2009

Mr. Christopher A. Stafford
Fredrickson and Byron, P.A.
Suite 4000
200 South Sixth Street
Minneapolis, MN 55402-1425

Re: Cullen Sheehan & Norm Coleman v. Al Franken
Court File No. 62-CV-09-56

Dennis Peterson, et al., v. Mark Ritchie, Minnesota Secretary of State, et al.
Court File No. A09-0065

Dear Mr. Stafford,

Lake County Auditor Steven McMahon informed me that the absentee ballot application completed by Eila Nelson was located on today's date. It is my understanding that Mr. McMahon and Deputy Auditor Tadd Bolen located the application misfiled in a ballot box for Silver Bay Precinct 2. Attached is a copy of the application.

Ms. Nelson's absentee ballot envelope was rejected because there was no absentee ballot application located in which to compare the signature with that on the absentee ballot envelope. Tomorrow, Friday, January 23, 2009, I will ask Mr. McMahon complete an affidavit setting forth the facts leading to the discovery of the absentee ballot application for Ms. Nelson. Mr. McMahon will also prepare an amended Written Response to Deposition on Written Questions pursuant to Rule 31 of the Rules of Civil Procedure. These documents will be faxed to you as soon as completed.

At this time, the Lake County Auditor will take no action regarding the rejected absentee ballot envelope of Ms. Nelson. We will await further direction from the court.

Please do not hesitate to contact me if you have further questions.

Sincerely,

Laura M. Auron
Assistant Lake County Attorney

Cc: Bryan Keane, esq.
David Zoll, esq.

Absentee Ballot Application

Read instructions on back before completing.



Office of the Minnesota Secretary of State

Return this application as soon as possible, ballots must be returned by Election Day to be counted.

I hereby apply for an absentee ballot for: (check one)		I will need an absentee ballot for the following reason: (check one)	
<input type="checkbox"/> Both primary and general elections	<input checked="" type="checkbox"/> Absence from the precinct	<input type="checkbox"/> Illness or disability	<input type="checkbox"/> Religious discipline or observance of religious holiday
<input type="checkbox"/> Primary only	<input type="checkbox"/> Service as election judge in another precinct	<input type="checkbox"/> Eligible emergency declared by the governor or quarantine declared by federal or state government	
<input checked="" type="checkbox"/> General election only			
<input type="checkbox"/> Special election (date) <u>11</u>			
<input type="checkbox"/> Special general (date) <u>11</u>			
<input type="checkbox"/> Other (date) <u>11</u>			

Name (please print)
 here: Eila S. Nelson

Date of birth: [REDACTED] Phone number: 834--3224


My legal residence address is:

Street Address	Apt. No.	City	State	Zip Code
<u>1702-10th Ave</u>		<u>Two Harbors</u>	<u>MN</u>	<u>55616</u>

Mail my absentee ballot to me at the following address:

Street Address	Apt. No.	Rural/Box No.	City/Township	State	Zip Code

Date: 11-3-08 Signature X: Eila S. Nelson

Name here: 
 411724 STG IP PCT R 11/03 11/03 413429
 38 Q105 381-05 TWO HARBORS W-4
 EILA S NELSON
 1702 10TH AVE APP

COPY

Other Use Only					
REG <input checked="" type="checkbox"/>	Received Date <u>11-3-08</u>	Ballots Issued Date <u>11-3-08</u>	Type M C HCF	School District #	Precinct
NON REG <input type="checkbox"/>	Ballots	Ballots Issued Date			<u>CTH W4</u>

▼ TO BE COMPLETED BY VOTER ▼

VOTER'S NAME (PLEASE PRINT)
E. Ila S. Nelson

VOTER'S MINNESOTA ADDRESS (PLEASE PRINT)
1702 - 10th Ave.
Two Harbors, MN

I certify that on election day I will meet all the legal requirements to vote by absentee ballot.

VOTER'S SIGNATURE DATE
Eila S. Nelson 11-3-08

▼ TO BE COMPLETED BY WITNESS ▼

I certify that the voter:
• showed me the blank ballots before voting;
• marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter; and
• enclosed and sealed the ballots in the secrecy envelope.

NAME OF WITNESS (PLEASE PRINT)
Linda Jussila

ADDRESS OF NON-NOTARY WITNESS IN MINNESOTA (PLEASE PRINT)
528-14th Ave
Two Harbors MN 55712

SIGNATURE OF WITNESS DATE
Linda Jussila 11-3-08

TITLE OF WITNESS (IF AN OFFICIAL)

▼ FOR OFFICE USE ONLY ▼

ACCEPTED REJECTED
Reason: No absentee ballot application

#5

Wrong Precinct

S/B City of Sturgeon Lake

▼ TO BE COMPLETED BY VOTER ▼	
VOTER'S NAME (PLEASE PRINT) <i>Judith Conlow</i>	
VOTER'S MINNESOTA ADDRESS (PLEASE PRINT) <i>3175 Laketown Rd. Sturgeon Lake, MN 55783 MN</i>	
I certify that on election day I will meet all the legal requirements to vote by absentee ballot.	
VOTER'S SIGNATURE <i>Judith Conlow</i>	DATE <i>10/14/08</i>
▼ TO BE COMPLETED BY WITNESS ▼	
I certify that the voter: • showed me the blank ballots before voting; • marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter; and • enclosed and sealed the ballots in the secrecy envelope.	
NAME OF WITNESS (PLEASE PRINT) <i>HAROLD T. CONLOW</i>	
ADDRESS OF NON-NOTARY WITNESS IN MINNESOTA (PLEASE PRINT) <i>3175 LAKE TOWN RD STURGEON LAKE 55783 MN</i>	
SIGNATURE OF WITNESS <i>Harold T. Conlow</i>	DATE <i>14 Oct 08</i>
TITLE OF WITNESS (IF AN OFFICIAL)	
▼ FOR OFFICE USE ONLY ▼	
<input type="checkbox"/> ACCEPTED <input checked="" type="checkbox"/> REJECTED	
Reason <i>LD 10</i>	

Polling Place Finder

If your house number is between:

2 and 727

and your street address is:

5TH ST SE

and your Zip Code is:

56334

and your City/Township is:

GLENWOOD

You vote at:

**GLENWOOD CITY HALL-P1
137 MINNESOTA AVE E
GLENWOOD MN 56334**

Your School District Polling Place may differ.
Contact your County or School District
Office for more information.

[Click Here For Maps to Polling Place](#) 

Precinct Name: **GLENWOOD P-1**

Precinct Code: **0045**

Districts for this address:

Congressional: **07**

Judicial: **08**

MN Senate: **13**

School: **MINNEWASKA**

MN House: **13A**

(2149)

County Commissioner: **02**

County: **Pope**