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Court Administrator

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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.

**PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF
RENEWED MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

On February 10, 2009, this Court issued an order granting in part, and denying in part, Petitioners' motion for summary judgment. This Court held that 24 petitioners had "provided un rebutted evidence that their absentee ballots were legally cast and should be counted." Order, February 10, 2009, at 8. However, the Court concluded that the remaining 37 petitioners "have not provided sufficient evidence to satisfy the Court that the absentee ballots complied with all of

the requirements imposed by Minnesota law or the failure to comply with the law was not due to fault on the part of the voter but due to official error.” *Id* at 10. The Court further stated that “[i]n refusing to grant summary judgment to these Petitioners at this time, the Court makes no determination as to whether they may be entitled to relief under § 204B.44 at a later date upon submission of additional proof in support of their claims.”

Petitioners bring this Renewed Motion for Summary Judgment setting forth individualized evidence establishing that their absentee ballots were legally cast and should be counted. Of the remaining 37 voters, 19 are included in this motion. In addition, Petitioners take this opportunity to clarify four of the ballots in the original group of 24 in light of the Court’s subsequent February 13, 2009 Order.

The facts as they relate to the 19 Petitioners are not in dispute and there is no basis under Minnesota law to refuse to count Petitioners’ properly cast absentee ballots.

II. STATEMENT OF THE ISSUES

1. Whether 20 Petitioners’ absentee ballots cast in the general election held on November 4, 2008, for the purpose of electing a United States Senator from the State of Minnesota should be opened and counted.

III. STATEMENT OF THE RECORD

This motion is based on the following documents

1. Petition by Certain Minnesota Voters to Have Their Votes Counted Pursuant to Minn. Stat. § 204B.44; and
2. Affidavit of Charles N. Nauen dated February 20, 2009 and attached exhibits.

IV. STATEMENT OF UNDISPUTED MATERIAL FACTS

In the interest of economy and avoiding unnecessary repetition, the relevant facts are set forth separately, for each Petitioner, below. These facts are based upon documents, affidavits, or declarations made under penalty of perjury and are not, to Petitioners’ knowledge, disputed.

V. ARGUMENT

As set forth in the following sections, Petitioners' absentee ballots in the November 4, 2008, general election were legally cast and should be accepted, opened, and counted.¹

A. Carlton County Ballot

1. Brenda Rengo

Brenda Rengo completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 1-A (Rengo Decl.). Ms. Rengo's correct name and address appear on her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 1-A (Rengo Decl.); Ex. 1-B (Envelope). Ms. Rengo completed and signed the certificate of eligibility on her absentee ballot return envelope. Nauen Aff. Ex. 1-A (Rengo Decl.); Ex. 1-B (Envelope). Ms. Rengo's genuine signature appears on both her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 1-A (Rengo Decl.). Ms. Rengo's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 1-A (Rengo Decl.); Ex. 1-B (Envelope); Ex. 1-C (SOS Voter Lookup for D. Rengo). Ms. Rengo is registered to vote in the precinct where she resided. Nauen Aff. Ex. Ex. 1-A (Rengo Decl.); Ex. 1-D (SOS Voter Lookup for B. Rengo). Ms. Rengo's absentee ballot is the only ballot she cast in the November 4, 2008 general election. Nauen Aff. Ex. 1-A (Rengo Decl.).

B. Cass County Ballot

1. Shirley VanDyck

Shirley VanDyck directed her daughter to complete an application for an absentee ballot and to sign the application on her behalf. Nauen Aff. Ex. 2-A (S. VanDyck Decl.). Ms. VanDyck suffers from ALS and was physically unable to sign her absentee ballot application. Nauen Aff. Ex. 2-A (S. VanDyck Decl.). Ms. VanDyck's correct name and address appear on

¹ The ballots are organized by County.

her absentee ballot return envelope. Nauen Aff. Ex. 2-A (S. VanDyck Decl.); Ex. 2-B (Envelope). Ms. Vandyck signed the certificate of eligibility on her absentee ballot return envelope. Nauen Aff. Ex. 2-A (S. VanDyck Decl.); Ex. 2-B (Envelope). Ms. VanDyck's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 2-B (Envelope); Ex. 2-C (K. VanDyck Decl.); Ex. 2-D (SOS Voter Lookup for K. VanDyck). Ms. Van Dyck is registered to vote in the precinct where she resided. Nauen Aff. Ex. 2-A (S. VanDyck Decl.); Ex. 2-E (SOS Voter Lookup for S. VanDyck). Ms. VanDyck's absentee ballot is the only ballot she cast in the November 4, 2008 general election. Nauen Aff. Ex. 2-A (S. VanDyck Decl.).

C. Dakota County Ballots

1. Arvid Blackbird

Arvid Blackbird completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 3-A (Blackbird Decl.); 3-B (Ballot Application). Mr. Blackbird's correct name and address appear on his application for an absentee ballot and his absentee ballot return envelope. Nauen Aff. Ex. 3-A (Blackbird Decl.); Ex. 3-B (Ballot Application); Ex. 3-C (Envelope). Mr. Blackbird signed the certificate of eligibility on his absentee ballot return envelope. Nauen Aff. Ex. 3-A (Blackbird Decl.); Ex. 3-C (Envelope). Mr. Blackbird's genuine signature appears on both his application for an absentee ballot and his absentee ballot return envelope. Nauen Aff. Ex. 3-A (Blackbird Decl.); Ex. 3-C (Envelope). Mr. Blackbird's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 3-A (Blackbird Decl.); Ex. 3-C (Envelope). Mr. Blackbird is registered to vote in the precinct where he resided. Nauen Aff. Ex. 3-A (Blackbird Decl.); Ex. 3-D (SOS Voter Lookup for A. Blackbird). Mr. Blackbird's absentee ballot is the only ballot he cast in the November 4, 2008 general election. Nauen Aff. Ex. 3-A (Blackbird Decl.).

2. Laurence Engebretson

Laurence Engebretson completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 4-A (Engebretson Decl.); Ex. 4-B (Ballot Application). Mr. Engebretson's correct name and address appear on his application for an absentee ballot and his absentee ballot return envelope. Ex. 4-A (Engebretson Decl.); Ex. 4-B (Ballot Application); Ex. 4-C (Envelope). Mr. Engebretson completed and signed the certificate of eligibility on his absentee ballot return envelope. Nauen Aff. Ex. 4-A (Engebretson Decl.); Ex. 4-C (Envelope). Mr. Engebretson's genuine signature appears on both his application for an absentee ballot and his absentee ballot return envelope. Nauen Aff. Ex. 4-A (Engebretson Decl.). Mr. Engebretson's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 4-A (Engebretson Decl.); Ex. 4-C (Envelope); Ex. 4-D (SOS Voter Lookup for L. Wurgler). Mr. Engebretson is registered to vote in the precinct where he resided. Nauen Aff. Ex. 4-A (Engebretson Decl.); Ex. 4-E (SOS Voter Lookup for L. Engebretson). Mr. Engebretson's absentee ballot is the only ballot he cast in the November 4, 2008 general election. Nauen Aff. Ex. 4-A (Engebretson Decl.).

3. Caitlin Heinz

Caitlin Heinz completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 5-A (Heinz Decl.); 5-B (Ballot Application). Ms. Heinz's correct name and address appear on her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 5-A (Heinz Decl.); Ex. 5-B (Ballot Application); Ex. 5-C (Envelope). Ms. Heinz signed her application for an absentee ballot and the certificate of eligibility on her absentee ballot return envelope. Nauen Aff. Ex. 5-B (Ballot Application); 5-C (Envelope). Ms. Heinz's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 5-A (Heinz Decl.); Ex. 5-C (Envelope). Ms. Heinz completed a new voter registration

application and enclosed the application with her absentee ballot. Nauen Aff. Ex. 5-A (Heinz Decl.). Ms. Heinz's absentee ballot is the only ballot she cast in the November 4, 2008 general election. Nauen Aff. Ex. 5-A (Heinz Decl.).

D. Hennepin County Ballots

1. Donald Applebee

Donald Applebee completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 6-A (Donald Applebee Decl.); 6-B (Ballot Application). Mr. Applebee's correct name and address appear on his application for an absentee ballot and his absentee ballot return envelope. Nauen Aff. Ex. 6-A (Donald Applebee Decl.); Ex. 6-B (Ballot Application); Ex. 6-C (Envelope). Mr. Applebee signed the certificate of eligibility on his absentee ballot return envelope. Nauen Aff. Ex. 6-A (Donald Applebee Decl.); Ex. 6-C (Envelope). Mr. Applebee's genuine signature appears on both his application for an absentee ballot and his absentee ballot return envelope. Nauen Aff. Ex. 6-A (Donald Applebee Decl.). Mr. Applebee's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 6-A (Donald Applebee Decl.); Ex. 6-C (Envelope); Ex. 6-D (SOS Voter Lookup for Donelda Applebee). Mr. Applebee is registered to vote in the precinct where he resided. Nauen Aff. Ex. 6-A (Donald Applebee Decl.); Ex. 6-E (SOS Voter Lookup for Donald Applebee); Ex. 6-F (Polling Place Finder). Mr. Applebee's absentee ballot is the only ballot he cast in the November 4, 2008 general election. Nauen Aff. Ex. 6-A (Donald Applebee Decl.).

2. Donelda Applebee

Donelda Applebee completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 7-A (Donelda Applebee Decl.); 7-B (Ballot Application). Ms. Applebee's correct name and address appear on her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 7-A (Donelda Applebee Decl.); Ex. 7-B (Ballot Application);

Ex. 7-C (Envelope). Ms. Applebee signed the certificate of eligibility on her absentee ballot return envelope. Nauen Aff. Ex. 7-A (Donelda Applebee Decl.); Ex. 7-C (Envelope). Ms. Applebee's genuine signature appears on both her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 7-A (Donelda Applebee Decl.). Ms. Applebee's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 7-A (Donelda Applebee Decl.); Ex. 7-C (Envelope); Ex. 7-D (SOS Voter Lookup for Donald Applebee). Ms. Applebee is registered to vote in the precinct where she resided. Nauen Aff. Ex. 7-A (Donelda Applebee Decl.); Ex. 7-E (SOS Voter Lookup for Donelda Applebee); Ex. 7-F (Polling Place Finder). Mr. Applebee's absentee ballot is the only ballot he cast in the November 4, 2008 general election. Nauen Aff. Ex. 7-A (Donelda Applebee Decl.).

3. Dennis Erickson

Dennis Erickson completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 8-A (Erickson Aff.). Mr. Erickson's correct name and address appear on his application for an absentee ballot and his absentee ballot return envelope. Nauen Aff. Ex. 8-A (Erickson Aff.); Ex. 8-B (Envelope). Mr. Erickson completed and signed the certificate of eligibility on his absentee ballot return envelope. Nauen Aff. Ex. 8-A (Erickson Aff.); 8-B (Envelope). Mr. Erickson's genuine signature appears on both his application for an absentee ballot and his absentee ballot return envelope. Nauen Aff. Ex. 8-A (Erickson Aff.). Mr. Erickson's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 8-A (Erickson Aff.); 8-B (Envelope). Mr. Erickson is registered to vote in the precinct where he resided. Nauen Aff. Ex. 8-A (Erickson Aff.); Ex. 8-C (SOS Voter Lookup for D. Erickson). Mr. Erickson's absentee ballot is the only ballot he cast in the November 4, 2008 general election. Nauen Aff. Ex. 8-A (Erickson Aff.).

4. Craig Lindquist

Craig Lindquist completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 9-A (Lindquist Decl.); 9-B (Ballot Application). Mr. Lindquist's correct name and address appear on his application for an absentee ballot and his absentee ballot return envelope. Nauen Aff. Ex. 9-A (Lindquist Decl.); 9-B (Ballot Application); 9-C (Envelope). Mr. Lindquist signed the certificate of eligibility on his absentee ballot return envelope. Nauen Aff. Ex. 9-A (Lindquist Decl.); 9-C (Envelope). Mr. Lindquist's genuine signature appears on both his application for an absentee ballot and his absentee ballot return envelope. Nauen Aff. Ex. 9-A (Lindquist Decl.). Mr. Lindquist's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 9-A (Lindquist Decl.); 9-C (Envelope); Ex. D (SOS Voter Lookup for R. Ronholdt). Mr. Lindquist is registered to vote in the precinct where he resided. Nauen Aff. Ex. 9-A (Lindquist Decl.); Ex. 9-E (SOS Voter Lookup for C. Lindquist). Mr. Lindquist's absentee ballot is the only ballot he cast in the November 4, 2008 general election. Nauen Aff. Ex. 9-A (Lindquist Decl.).

5. Todd Toner

Todd Toner completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 10-A (Toner Decl.); Ex. 10-B (Ballot Application). Mr. Toner's correct name and address appear on his application for an absentee ballot and his absentee ballot return envelope. Nauen Aff. Ex. 10-A (Toner Decl.); Ex. 10-B (Ballot Application); Ex. 10-C (Envelope). Mr. Toner signed his absentee ballot application and the certificate of eligibility on his absentee ballot return envelope. Nauen Aff. Ex. 10-B (Ballot Application); Ex. 10-C (Envelope). Mr. Toner's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 10-C (Envelope); 10-D (SOS Voter Lookup for Thomas Toner). Mr. Toner is registered to vote in the precinct where he resided. Nauen Aff. Ex. 10-A (Toner Decl.); Ex. 10-E (SOS

Voter Lookup for Todd Toner). Mr. Toner's absentee ballot is the only ballot he cast in the November 4, 2008 general election. Nauen Aff. Ex. 10-A (Toner Decl.).

E. Lake County Ballots

1. Eila Nelson

Eila Nelson completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 11-A (Nelson Decl.); 11-B (Ballot Application). Ms. Nelson's correct name and address appear on her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 11-A (Nelson Decl.); 11-B (Ballot Application); Ex. 11-C (Envelope). Ms. Nelson signed her absentee ballot application and completed and signed the certificate of eligibility on her absentee ballot return envelope. Nauen Aff. Ex. Ex. 11-B (Ballot Application); 11-B (Envelope). Ms. Nelson's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 11-C (Envelope); Ex. 11-D (SOS Voter Lookup for L. Jussila). Ms. Nelson is registered to vote in the precinct where she resided. Nauen Aff. Ex. 11-A (Nelson Decl.); 11-E (SOS Voter Lookup for E. Nelson). Ms. Nelson's absentee ballot is the only ballot she cast in the November 4, 2008 general election. Nauen Aff. Ex. 11-A (Nelson Decl.).

F. Pine County Ballots

1. Judith Conlow

Judith completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 12-A (Conlow Decl.); Ex. 12-B (Ballot Application). Ms. Conlow's correct name and address appear on her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 12-A (Conlow Decl.); Ex. 12-B (Ballot Application); Ex. 12-C (Envelope). Ms. Conlow signed her absentee ballot application and completed and signed the certificate of eligibility on her absentee ballot return envelope. Nauen Aff. Ex. 12-B (Ballot Application); Ex.

12-C (Envelope). Ms. Conlow's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 12-C (Envelope); Ex. 12-D (SOS Voter Lookup for H. Conlow). Ms. Conlow is registered to vote in the precinct where she resided. Nauen Aff. Ex. 12-A (Conlow Decl.); Ex. 12-E (SOS Voter Lookup for J. Conlow). Ms. Conlow's absentee ballot is the only ballot she cast in the November 4, 2008 general election. Nauen Aff. Ex. 12-A (Conlow Decl.).

G. Ramsey County Ballots

1. Emma Bruggeman

Emma Bruggeman completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 13-A (Bruggeman Decl.); Ex. 13-B (Ballot Application). Ms. Bruggeman's correct name and address appear on her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 13-A (Bruggeman Decl.); Ex. 13-B (Ballot Application); Ex. 13-C (Envelope). Ms. Bruggeman completed and signed the certificate of eligibility on her absentee ballot return envelope. Nauen Aff. Ex. 13-A (Bruggeman Decl.); Ex. 13-C (Envelope). Ms. Bruggeman's genuine signature appears on both her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 13-A (Bruggeman Decl.). Ms. Bruggeman's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 13-A (Bruggeman Decl.); Ex. 13-C (Envelope); Ex. 13-D (SOS Voter Lookup for M. Rothchild). Ms. Bruggeman is registered to vote in the precinct where she resided. Nauen Aff. Ex. 13-A (Bruggeman Decl.); Ex. 13-E (SOS Voter Lookup for E. Bruggman). Ms. Bruggeman's absentee ballot is the only ballot she cast in the November 4, 2008 general election. Nauen Aff. Ex. 13-A (Bruggeman Decl.).

2. Josephine Garcia

Josephine Garcia directed her son to sign her completed application for an absentee ballot on her behalf. Nauen Aff. Ex. 14-A (Garcia Decl.). Ms. Garcia suffers from glaucoma and rheumatoid arthritis and was physically unable to sign her absentee ballot application. Nauen Aff. Ex. 14-A (Garcia Decl.). Ms. Garcia's correct name and address appear on her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 14-A (Garcia Decl.); Ex. 14-B (Ballot Application); Ex. 14-C (Envelope). Ms. Garcia signed the certificate of eligibility on her absentee ballot return envelope. Nauen Aff. Ex. 14-A (Garcia Decl.); Ex. 14-C (Envelope). Ms. Garcia's genuine signature appears on both her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 14-A (Garcia Decl.). Ms. Garcia's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 14-C (Envelope); Ex. 14-D (SOS Voter Lookup for Anthony Garcia). Ms. Garcia is registered to vote in the precinct where she resided. Nauen Aff. Ex. 14-A (Garcia Decl.); Ex. 14-E (SOS Voter Lookup for Josephine Garcia). Ms. Garcia's absentee ballot is the only ballot she cast in the November 4, 2008 general election. Nauen Aff. Ex. 14-A (Garcia Decl.).

3. Sophia Hall

Sophia Hall completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 16-A (Hall Decl.); Ex. 15-B (Ballot Application). Ms. Hall's correct name and address appear on her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 15-A (Hall Decl.); Ex. 15-B (Ballot Application); Ex. 15-C (Envelope). Ms. Hall signed the certificate of eligibility on her absentee ballot return envelope. Nauen Aff. Ex. 15-A (Hall Decl.); Ex. 15-C (Envelope). Ms. Hall's genuine signature appears on both her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 15-A (Hall Decl.). Ms. Hall's absentee ballot return envelope was properly executed by an authorized witness.

Nauen Aff. Ex. 15-A (Hall Decl.); Ex. 15-C (Envelope); Ex. 15-D (SOS Voter Lookup for B. Hall). Ms. Hall is registered to vote in the precinct where she resided. Nauen Aff. Ex. 15-A (Hall Decl.); Ex. 15-E (SOS Voter Lookup for S. Hall). Ms. Hall's absentee ballot is the only ballot she cast in the November 4, 2008 general election. Nauen Aff. Ex. 15-A (Hall Decl.).

H. Saint Louis County Ballots

1. Dennis Peterson

Dennis Peterson voted in person by absentee ballot at the County Auditor's Office in Virginia, Minnesota. Nauen Aff. Ex. 16-A (Peterson Aff.). Mr. Peterson signed and dated and submitted an application for an absentee ballot under his correct name and address. Nauen Aff. Ex. 16-A (Peterson Aff.). Nauen Aff. Ex. 16-A (Peterson Decl.). Mr. Peterson filled in his name on the eligibility certificate printed on the back of his absentee ballot return envelope as instructed by the Deputy Auditor and signed the certificate with his genuine signature. Nauen Aff. Ex. 16-A (Peterson Aff.); Ex. 16-B (Envelope). Mr. Peterson's genuine signature appears on both his application for an absentee ballot and his absentee ballot return envelope. Nauen Aff. Ex. 16-A (Peterson Aff.). The Deputy Auditor witnessed Mr. Peterson's absentee ballot return envelope and wrote a seven-digit number in the address section of the eligibility certificate. Nauen Aff. Ex. 16-A (Peterson Aff.); Ex. 16-B (Envelope). This seven-digit number is Mr. Peterson's Voter Identification Number and appears to be a shorthand reference to his address as reflected in his voter registration records. Nauen Aff. Ex. 16-B (Envelope); Ex. 16-C (SOS Voter Lookup for D. Peterson). Peterson is registered to vote in the precinct where he resided. Nauen Aff. Ex. 16-A (Peterson Aff.); Ex. 16-C (SOS Voter Lookup for D. Peterson). Mr. Peterson's absentee ballot is the only ballot he cast in the November 4, 2008 general election. Nauen Aff. Ex. 16-A (Peterson Aff.).

Petitioners are mindful of the Court's February 13, 2009 Order stating that "[a]n absentee ballot submitted by a voter in an absentee ballot return envelope on which the voter's address is not the same as on the absentee ballot application" is not legally cast. Notwithstanding, Mr. Peterson's absentee ballot should not be rejected because Mr. Peterson followed the directions of the local election official and the alleged non-compliance is the result of the local election official's apparent determination that writing Mr. Peterson's seven-digit Voter Identification Number was the equivalent of writing his address on the face of the return envelope. *See* Order at 10 (indicating that a ballot may be legally cast were any non-compliance with the absentee voting requirements "was not due to fault on the part of the voter but due to official error.").

2. June Srok

June Srok completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 17-A (Srok Decl.); Ex. 17-B (Ballot Application). June Srok's correct name and address appear on her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 17-A (Srok Decl.); Ex. 17-B (Ballot Application); Ex. 17-C (Envelope). Ms. Srok completed and signed the certificate of eligibility on her absentee ballot return envelope. Nauen Aff. Ex. 17-A (Srok Decl.); Ex. 17-C (Envelope). Ms. Srok's genuine signature appears on both her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 17-A (Srok Decl.). Ms. Srok's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 17-A (Srok Decl.); Ex. 17-C (Envelope); Ex. 17-D (SOS Voter Lookup for A. Smith). Ms. Srok is registered to vote in the precinct where she resided. Nauen Aff. Ex. 17-A (Srok Decl.); Ex. 17-E (SOS Voter Lookup for J. Srok). Ms. Srok's absentee ballot is the only ballot she cast in the November 4, 2008 general election. Nauen Aff. Ex. 17-A (Srok Decl.).

I. Stearns County Ballots

1. Lora West

Lora completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 18-A (West Decl.); Ex. 18-B (Ballot Application). Ms. West's correct name and address appear on her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 18-A (West Decl.); Ex. 18-B (Ballot Application); Ex. 18-C (Envelope). Ms. West completed and signed the certificate of eligibility on her absentee ballot return envelope. Nauen Aff. Ex. 18-A (West Decl.); Ex. 18-C (Envelope). Ms. West's genuine signature appears on both her application for an absentee ballot and her absentee ballot return envelope. Nauen Aff. Ex. 18-A (West Decl.). Ms. West's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 18-A (West Decl.); Ex. 18-C (Envelope); Ex. 18-D (SOS Voter Lookup for A. West). Ms. West is registered to vote in the precinct where she resided. Nauen Aff. Ex. 18-A (West Decl.); Ex. 18-E (SOS Voter Lookup for L. West). Ms. West's absentee ballot is the only ballot she cast in the November 4, 2008 general election. Nauen Aff. Ex. 18-A (West Decl.); Ex. 18-F (Polling Place Register).

J. Winona County Ballots

1. Orin Ottman

Orin Ottman completed, signed, and dated an application for an absentee ballot. Nauen Aff. Ex. 19-A (Ottman Decl.); Ex. 19-B (Ballot Application). Mr. Ottman's correct name and address appear on his application for an absentee ballot and his absentee ballot return envelope. Nauen Aff. Ex. 19-A (Ottman Decl.); Ex. 19-B (Ballot Application); Ex. 19-C (Envelope). Mr. Ottman completed and signed the certificate of eligibility on his absentee ballot return envelope. Nauen Aff. Ex. 19-A (Ottman Decl.); Ex. 19-C (Envelope). Mr. Ottman's genuine signature appears on both his application for an absentee ballot and his absentee ballot return envelope.

Nauen Aff. Ex. 19-A (Ottman Decl.). Mr. Ottman's absentee ballot return envelope was properly executed by an authorized witness. Nauen Aff. Ex. 19-A (Ottman Decl.); Ex. 19-C (Envelope); Ex. 19-D (SOS Voter Lookup for D. Ottman). Mr. Ottman is registered to vote in the precinct where he resided. Nauen Aff. Ex. 19-A (Ottman Decl.); Ex. 19-E (SOS Voter Lookup for O. Ottman). Mr. Ottman's absentee ballot is the only ballot he cast in the November 4, 2008 general election. Nauen Aff. Ex. 19-A (Ottman Decl.).

VI. CLARIFICATION OF THE RECORD AND OTHER MATTERS

A. Absentee Ballot Cast by Hannah Gorski.

On February 10, 2009, this Court ordered that the absentee ballot cast by Hannah Gorski in Hennepin County shall be opened in counted. Order, February 10, 2009, at 2. Since the date of the Order, additional information related to Ms. Gorski's absentee ballot has come to light which Petitioners now present to the Court.

Ms. Gorski voted, for the first time, in the November 2008 general election. Nauen Aff. Ex. 20-A (Supp. Gorski Aff.). Because she attends school in St. Augustine, Florida, Ms. Gorski could not vote in person on election day and decided to vote by absentee ballot. *Id.* Prior to leaving for school in the fall, Ms. Gorski went to Bloomington City Hall with her mother, Anne Brown, to obtain an absentee ballot. Since she was not registered to vote, Ms. Gorski completed, signed, and submitted a voter registration application while she was at the Bloomington City Hall. *Id.*

However, Ms. Gorski was unable to complete the absentee ballot application, at that time, because she did not know her dorm room address where she would request that her absentee ballot be sent. *Id.* The Bloomington city clerk informed Ms. Gorski and her mother that they could take the application home and, once Ms. Gorski learned her dorm room address, return the completed application by facsimile. *Id.* Once Ms. Gorski arrived at school and learned her dorm

room address, she contacted her mother and asked her to complete the absentee ballot application on Ms. Gorski's behalf. Id. Ms. Gorski's mother later informed her that the absentee ballot application must be signed and Ms. Gorski specifically authorized her mother to sign the application on her behalf. Id. Ms. Gorski's mother signed the application and returned it to Bloomington City Hall. Id.; see also Nauen Aff. Ex. 20-B (Ballot Application).

Ms. Gorski subsequently received an absentee ballot and marked the ballot according to the directions provided. Nauen Aff. Ex. 20-A (Supp. Gorski Aff.). Ms. Gorski completed the eligibility certificate printed on the back of the envelope and had it witnessed by a notary. Id.; see also Nauen Aff. Ex. 20-C (Envelope).

On December 16, 2008, Ms. Gorski signed an affidavit stating that she "signed and submitted an application for an absentee ballot" and that she "used by [sic] genuine signature." Nauen Aff. Ex. 20-D (Gorski Aff.). At the time that she reviewed and signed the December 16, 2008 affidavit, Ms. Gorski mistakenly understood this to be a reference to her voter registration application which she in fact signed with her genuine signature. Nauen Aff. Ex. 20-A (Supp. Gorski Aff.).

B. Ballots Cast by Richard Haefner and Roxanna Saad.

On February 10, 2009, this Court ordered that the absentee ballot cast by Richard Haefner in Olmsted County shall be opened and counted. Order, February 10, 2009, at 2. Mr. Haefner moved shortly before the November 2008 general election. See Nauen Affidavit in Support of Petitioners' Motion for Summary Judgment Ex. 45-B (Haefner Aff.). Mr. Haefner stated that he visited his local courthouse to complete a new voter registration application in conjunction with his submission of an absentee ballot. Id. Mr. Haefner stated that he provided the voter registration application to a clerk at the courthouse. Id.

On February 19, 2009, Pamela Fuller, election administrator for Olmstead County, testified in the election contest that her staff believed Mr. Haefner's voter registration application was enclosed with his ballot in the secrecy envelope. This new information, that the voter registration application may be enclosed in the secrecy envelope, makes Mr. Haefner's absentee ballot similar to the absentee ballot cast by Roxana Saad in Dakota County. Ms. Saad stated in her declaration that she enclosed her voter registration application in the secrecy envelope as explained to her by the local election officials. On February 10, 2009, this Court ordered that Ms. Saad's absentee ballot secrecy envelope shall be opened and, in the event that a complete voter registration application is found within the secrecy envelope, Ms. Saad's absentee ballot shall be opened and counted. Petitioners are calling the similarity of Mr. Haefner's and Ms. Saad's absentee ballots to the Court's attention for such action as the Court deems just and proper.

C. Ballots Cast by Kim Falde and Charles Quinn.

On February 10, 2009, this Court ordered that the absentee ballots cast by Kim Falde and Charles Quinn in Dakota County shall be opened and counted. Order, February 10, 2009, at 2. Both Ms. Falde and Mr. Quinn voted by absentee ballot in person at the Apple Valley City Hall, followed the instructions of the city election official who provided their ballots, and had their absentee ballots witnessed by the city election official. *See* Nauen Affidavit in Support of Petitioners' Motion for Summary Judgment Ex. 12-B (Falde Decl.) and Ex. 19-B (Quinn Decl.). Neither Ms. Falde nor Mr. Quinn signed the certificate of eligibility printed on their absentee ballot return envelopes. *Id.* Both Ms. Falde and Mr. Quinn relied upon the city election official who witnessed their ballots to call any errors or omissions to their attention. *Id.*; *see also*, Minn. R. 8210.2200, subp. 2.

In its February 13, 2009, Order, this Court stated that an absentee ballot is not legally cast where the voter failed to sign the certificate of eligibility printed on the back of the absentee ballot return envelope. Order, February 13, 2009, at 3. Petitioners are calling this matter to the Court's attention for such action as the Court deems just and proper.

VII. CONCLUSION

Because there are no disputed issues of material fact, Petitioners respectfully asks this Court to enter an order directing that Petitioners' absentee ballots in the November 4, 2008, general election shall be opened and counted.

Date: February 20, 2009

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

By: _____



Charles N. Nauen, #121216

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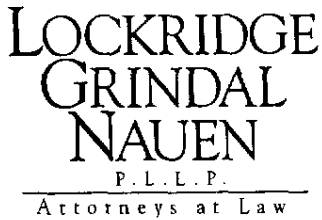
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REPLY TO MINNEAPOLIS

February 20, 2009

TO ALL COUNSEL AND PARTIES ON THE ATTACHED LIST

RE: *Cullen Sheehan and Norm Coleman v. Al Franken*
Ramsey County Court File No. 62-CV-09-56

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

Dear Counsel and Parties:

Enclosed and served upon you by e-mail and U.S. Mail are copies of the following in the above-referenced matters:

1. Petitioners' Notice of Motion and Renewed Motion for Summary Judgment;
2. Petitioners' Memorandum of Law in Support of Renewed Motion for Summary Judgment;
3. Affidavit of Charles N. Nauen in Support of Petitioners' Renewed Motion for Summary Judgment; and
4. Proposed Order.

Please feel free to contact me with any questions. Thank you.

Very truly yours,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.


Charles N. Nauen

Enclosures

c: William A. Gengler
David J. Zoll

**Minnesota Supreme Court File No. A09-0065
and
Ramsey County Court File No. 62-CV-09-56**

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**Minnesota Supreme Court File No. A09-0065
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**Minnesota Supreme Court File No. A09-0065
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