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FILED  
Court Administrator

STATE OF MINNESOTA	FEB 18 2009	DISTRICT COURT
COUNTY OF RAMSEY	By <u>CNC</u> 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 from the State of Minnesota,

**ORDER ON CONTESTEE'S  
MOTION IN LIMINE TO  
EXCLUDE TESTIMONY OF  
KING BANAIAAN**

Cullen Sheehan and Norm Coleman,

Contestants,

Ct. File No. 62-CV-09-56

vs.

Al Franken,

Contestee.

The above-entitled matter came on for hearing before the Court on February 12, 2009 upon a Motion in Limine by Contestee to Exclude Testimony of King Banaian. Counsel noted their appearances on 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. Contestee's Motion in Limine to Exclude Testimony of King Banaian is GRANTED.
2. Any other relief not specifically provided herein is DENIED.
3. The attached Memorandum is incorporated herein by reference.

Elizabeth A. Hayden  
Judge of District Court

BY THE COURT:

Kurt J. Marben  
Judge of District Court

Denise D. Reilly  
Judge of District Court

Dated: 2/18/09

## MEMORANDUM

### I. Factual Background

Contestants Cullen Sheehan and Norm Coleman (“Contestants”) filed a Notice of Contest with the Ramsey County District Court on Tuesday, January 6, 2009 contesting the general election of November 4, 2008 pursuant to Minnesota Statute 209.021. On January 27, 2009, Contestants filed their witness list for trial. Professor King Banaian (“Banaian”) is on Contestants’ witness list as an expert witness on statistical analysis. Contestants claim that Banaian will testify that based upon the application of established statistical methods, the rejection rate in some counties is higher than can be explained by chance. This matter is now before the Court upon Contestee Al Franken’s (“Contestee”) Motion to Exclude Testimony of King Banaian on grounds that the testimony is irrelevant, Banaian is not qualified as an expert on the subject to which he will testify, the subject of Banaian’s testimony is one in which expert testimony is not necessary, and that disclosure of Banaian as a witness was untimely.

### II. Legal Standard

Evidentiary rulings, including a decision to exclude expert testimony, lie within the sound discretion of the trial court. *Benson v. N. Gopher Enters., Inc.*, 455 N.W.2d 444, 445 (Minn. 1990). Minnesota Rule of Evidence 702 provides:

If scientific, technical or otherwise specialized knowledge will assist the trier of fact to understand the evidence or to determine the fact in issue, a witness qualified as an expert by knowledge, skills, experience, training or education, may testify thereto.

Evidence which is not relevant is not admissible. 50 M.S.A., Rules of Evid., 402.

### III. Analysis

The only question that can be decided in an election contest is which party received the highest number of legally cast votes, and therefore is entitled to receive the certificate of election. Minn. Stat. § 209.12. The Court will be reviewing all ballots presented according to the uniform standard contained in Minnesota Statutes Chapter 203B. It is irrelevant whether there were irregularities between the counties in applying Minnesota Statutes § 203B.12, subd. 2. prior to this election contest. The Court does not believe Banaian's testimony would assist in determining the issues properly before it.