

No. A09-64

STATE OF MINNESOTA  
IN SUPREME COURT

OFFICE OF  
APPELLATE COURTS

JAN 14 2009

FILED

Al Franken,

*Petitioner,*

v.

Timothy Pawlenty, as Governor, and Mark Ritchie, as Secretary of State,

*Respondents.*

**MOTION OF NORM COLEMAN TO INTERVENE**

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Attorneys for Norm Coleman

Pursuant to Minn. R. Civ. App. P. 127, Norm Coleman ("Coleman") respectfully moves this Court for leave to intervene in this action. Coleman seeks intervention to protect his interest in a fair and accurate election process and to ensure that his contest action proceeds unfettered as required by Minnesota law. As even petitioner has conceded, the administrative recount process was rife with inconsistencies and inaccuracies, and the totals announced by the Canvassing Board were incomplete at best. This Court has noted that serious claims exist regarding these matters and that those claims should be resolved in a contest action. For petitioner to receive a certificate of election before those inconsistencies and inaccuracies have been addressed and resolved by the contest court would eviscerate the statutory scheme, be a travesty of justice, leave the rights of Minnesotans to have their votes counted in shambles, and result in the State issuing a certificate based on inaccurate and incomplete numbers.

1. Candidates and related parties should be permitted to intervene in proceedings such as that brought by petitioner. *See, e.g., Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 726 (Minn. 2003); *Studer v. Kiffmeyer*, 712 N.W.2d 552, 554 n.3 (Minn. 2006).

2. Coleman has an interest in the relief that is sought in this proceeding, specifically, the issuance of the certificate of election by the Governor and the Secretary of State in connection with the November 4, 2008 election for United States Senator. Coleman is the incumbent candidate for the office of United States Senator for the State of Minnesota.

3. Coleman is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect his interests. Indeed, the Petition threatens to undermine the contest action already underway in accordance with Minn. Stat. § 209.12 and raises grave concerns about petitioner's motives.

4. Coleman's intervention will not interject any new facts and his position will embrace already existing law making plain that a temporary vacancy in the State's United States Senate seat is neither uncommon nor unconstitutional.

5. Intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. It will in fact ensure that the election is resolved fairly—in the statutorily prescribed contest action—and that the State not issue a certificate to seat a United States Senator based on preliminary and, therefore, inaccurate numbers.

6. Coleman has filed this application in a timely manner.

Dated: January 14, 2009

DORSEY & WHITNEY LLP

By 

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January 14, 2009

VIA MESSENGER AND EMAIL

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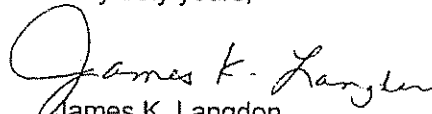
FILED

Re: Al Franken, Petitioner v. Timothy Pawlenty, et al. Respondents

Dear Mr. Grittner:

Enclosed for filing in the above-referenced matter are the original and eight copies of the Motion of Norm Coleman to Intervene. Thank you.

Very truly yours,

  
James K. Langdon

JKL:dfb  
Enc.

cc: Lori Swanson, Esq., Minnesota Attorney General, on behalf of Mark Ritchie,  
Secretary of State, and Governor Timothy Pawlenty (w/ encl. via email)  
David L. Lillehaug (w/encl via email)  
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