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December 12, 2008

VIA MESSENGER

Office of the Secretary of State
Mark Ritchie
60 Empire Drive, Suite 100
St Paul, MN 55103

VIA MESSENGER

Scott County Elections Board
Mark Kay Kes, Supervisor
Scott County Government Center
Elections Office
200 4th Avenue West
Shakopee, MN 55379

VIA MESSENGER

State Canvassing Board
Mark Ritchie
60 Empire Drive, Suite 100
St. Paul, MN 55103

VIA MESSENGER

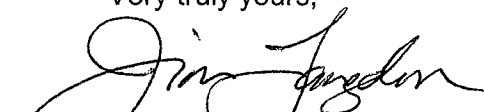
Lori Swanson
1400 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101

Re: Cullen Sheehan, Norm Coleman, Cara Beth Lindell, and John Doe, vs. Mark Ritchie, Minnesota Secretary of State, and the State Canvassing Board and Terry Treichel, Isanti County, individually and on behalf of all County and Local Election Officers and County Canvassing Board

Dear Secretary Ritchie and Election Board:

I enclose and serve upon you in the above-referenced matter is Petition for an Order to Show Cause Pursuant to Minn. Stat. §204B.44.

Very truly yours,


James K. Langdon

JKL:kmh

Enc.

cc: David L. Lillehaug (w/encl.)
William Z. Pentelovitch (w/encl.)

STATE OF MINNESOTA

IN SUPREME COURT

Court File No. _____

Cullen Sheehan, Norm Coleman, Cara
Beth Lindell, and John Doe,

Petitioners,

vs.

Mark Ritchie, Minnesota Secretary of
State, the Minnesota State Canvassing
Board, Isanti County Canvassing Board
and Terry Treichel, Isanti County
Auditor-Treasurer, individually and on
behalf of all County and Local Election
Officers and County Canvassing
Boards,

Respondents.

**AMENDED PETITION FOR
AN ORDER TO SHOW
CAUSE PURSUANT TO
MINN. STAT. §204B.44**

Petitioners state and allege as follows:

JURISDICTION

1. This action is necessary to redress errors and omissions made by the Respondents, and additional errors and omissions about to be made by the Respondents, related to the handling of rejected absentee ballots during the administrative recount in the election of the United States Senator. The Respondents are all persons charged with duties concerning the election. This Court's intervention is necessary to ensure that

consistent standards will be consistently applied and equal protection is afforded to all voters.

2. This Court has jurisdiction over the matters alleged herein under Minn. Stat. § 204B.44.

PARTIES

3. Norm Coleman is a Minnesota resident and United States Senator from the State of Minnesota. Senator Coleman is a registered Minnesota voter who voted in the election and is one of the candidates in the election for office of U.S. Senator.

4. Petitioner Cullen Sheehan (“Sheehan”) is a Minnesota resident qualified as an eligible voter under Minnesota election law. Sheehan submitted an absentee ballot application with the Isanti County Auditor’s office, which application was rejected due to lack of a witness signature. Mr. Sheehan subsequently returned this application with a witness signature.

5. Petitioner Cara Beth Lindell (“Lindell”) is a Minnesota resident qualified as an eligible voter under Minnesota election law.

6. Petitioner John Doe represents all Minnesota residents who will be harmed by Respondents’ errors and omissions.

7. Mark Ritchie is the Minnesota Secretary of State. Mr. Ritchie is the chief election official in Minnesota and is responsible for administration of Minnesota election law. In this capacity, he operates the statewide voter registration system and prepares the official roster of votes for every election conducted in Minnesota, including the general election for United States Senator held on November 4, 2008. His responsibilities

include certifying voting systems, conducting administrative recounts, and training local election officials.

8. The State Canvassing Board is comprised of Minnesota Secretary of State Mark Ritchie, the Honorable Eric J. Magnuson, Chief Justice of the Minnesota Supreme Court, the Honorable G. Barry Anderson, Associate Justice of the Minnesota Supreme Court, the Honorable Kathleen R. Gearin, Chief Judge of the Second Judicial District, and the Honorable Edward J. Cleary, Assistant Chief Judge of the Second Judicial District. The Board is charged with overseeing the statewide administrative recount in the election for the office of United States Senator.

9. The Isanti County Canvassing Board and Terry Treichel, Isanti County Auditor-Treasurer, are nominal respondents and represent all county and local election officials, including county canvassing boards, in each of Minnesota's 87 counties.

RESPONDENTS' ERRORS AND OMISSIONS

10. On December 12, the Minnesota State Canvassing Board ("Board") formally requested that Minnesota county canvassing boards re-canvass for the purpose of evaluating whether or not any absentee ballot envelopes in a county relating to the 2008 general election were improperly rejected by election judges and/or absentee ballot boards.

11. The Board failed to provide uniform guidance to the counties on how to determine whether or not any absentee ballot envelopes in a county relating to the 2008 general election were improperly rejected by election judges and/or absentee ballot boards.

12. The Minnesota Secretary of State's office provided guidance to counties last week on the "sorting" process that was internally inconsistent, contrary to applicable law and confusing. For example, the "detailed instructions" that the counties are now recommended to follow are incomplete and incorrect. See Ex. A. For instance, the "detailed instructions" direct the counties to now consider a rejected absentee ballot as improperly rejected if the signatures do not match or even if there is no signature, but the "transaction was actually handled at your in-person counter and was witnessed by a county or city official." The "detailed instructions" also do not acknowledge that absentee ballots should be rejected if the instructions, which require in part that the absentee voter have a witness who is registered to vote in Minnesota, are not followed.

13. This conflicting and unclear guidance will result in 87 different counties applying 87 different standards as to these ballots. Although Minnesota law is clear on the grounds upon which absentee ballots may be rejected, a strong likelihood exists that these standards will be interpreted differently, indeed on an *ad hoc* basis, by each county that engages in this process (including counties that do not engage in the process at all).

14. Already, counties have adopted differing standards and some counties have refused to engage in the process at all. For example, Isanti County has placed no absentee ballots in "Pile 5", even though some were rejected for lack of only the city in the witness address line. In contrast, Dakota County placed numerous envelopes in "Pile 5", which envelopes were rejected for lack of only the city in the witness address line. Similarly, with respect to the Duluth example proffered by Jim Gelbmann, from the Secretary of State's office, at today's meeting of the Board told of a ballot being rejected

in St. Louis County because it was undated; however there is no evidence that any other county treating a similar absentee ballot in that same manner.

15. At least ten counties have *declined* (on the advice of county attorneys) to participate in this process, including Ramsey County, St. Louis County and Washington County (three rather large counties, comprising approximately 20% of the state's population).

16. Just as mistakes may have been made in rejecting absentee ballot envelopes on election night, mistakes will inevitably be made in second-guessing these initial rejections.

17. It would be wholly inequitable for the Board to "open and count" ballots from some, but not all, Minnesota counties.

18. The lack of procedures for reviewing such ballots—and for preserving the evidence for a likely contest—is precisely the reason these matters should be determined in an election contest and not on an *ad hoc* county-by-county basis.

19. Allowing some counties to decide to count previously rejected absentee ballots during the recount (or having this Board count absentee ballots deemed improperly rejected during the "sorting process") would violate the Equal Protection Clause because there is no uniform procedure governing the acceptance or rejection of absentee ballots during the recount. *See Bush v. Gore*, 531 U.S. 98, 105-106 (2000) (concluding that the recount mechanisms implemented in Florida "do not satisfy the minimum requirement for nonarbitrary treatment of voters necessary to secure the

fundamental right” because the command to consider the “intent of the voter” provided no “specific standards to ensure its equal application”).

20. The votes of absentee voters who met the statutory requirements and the voters who voted at the polls on election day, including those of Petitioners, would be diluted in contravention of the Equal Protection Clause. *See Bush*, 531 U.S. at 105 (“The right of suffrage can be denied by a debasement or the dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”).

21. The Equal Protection Clause requires that the question of whether absentee ballots were improperly rejected is one for a court to take evidence and witnesses to be examined and cross-examined, all while following the rules of evidence. This is not a task the Board is equipped to undertake; nor is it given statutory authority to do so. Instead, it should await a contest, where one three-judge panel can rule on all allegedly improperly rejected absentee ballots.

22. In any event, the Board has no authority or discretion to consider these rejected absentee ballots in this recount, as they do not comprise “ballots cast in the election” *and* are not part of the “summary statements.”

23. Unless this Court grants the relief requested below, Respondents will take the unlawful and improper steps outlined above.

CLAIM FOR RELIEF

WHEREFORE, Petitioners respectfully pray for an Order of the Court:

A. Given the errors and omissions that have already occurred and the irreparable harm that may result from them, the Court should order that the county election officials, and county canvassing boards, take no additional actions related to the rejected absentee ballots until further order from the Court. Such an order will maintain the status quo, ensuring that all voters' rights are protected on an equal basis and that no evidence is lost or destroyed.

B. Directing all counties, county canvassing boards, the Secretary of State and the State Canvassing Board that no rejected absentee ballots be counted in the administrative recount and all issues regarding such ballots are to be raised, if any party so chooses, in a contest pursuant to Minn. Stat. Ch. 209.

C. All rejected absentee ballot envelopes, and the corresponding ballots therein, shall be preserved and kept segregated in a manner permitting the ballot to be linked to the envelopes in the future as these materials will all likely constitute evidence in an election contest.

D. In the alternative, to the extent this Court ultimately directs any county canvassing board to open and count any previously-rejected absentee ballots, to preserve the rights of each United States Senate candidate relative to the recount currently underway, as well as to preserve evidence likely to be of extreme importance in an election contest, representatives of each campaign shall be permitted to participate in the counting process as follows:

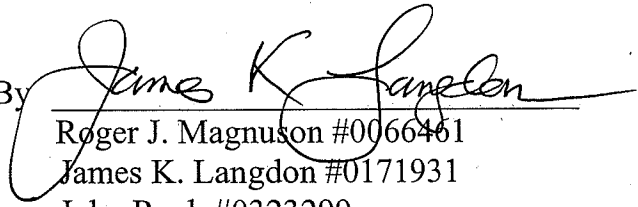
- i. Representatives of each campaign shall be permitted to challenge a decision to open an absentee ballot envelope, thereby preserving this

issue before an envelope is opened and the ballot commingled with other opened ballots.

- ii. Representatives of each campaign shall be permitted to challenge the declaration of how a previously-rejected absentee ballot that is opened is to be counted, using challenge standards utilized during the prior recount process in the counties.
- iii. Representatives of each campaign shall be given photocopies of the front and back of each and every envelope which is challenged and/or opened, as well as photocopies of the front and back of each and every ballot that is challenged pursuant to the process at (ii) above.
- iv. Representatives of each campaign shall be given photocopies of any amended results proposed to be submitted to the Board for approval (whether in the form of amended summary statements, amended canvassing board reports or other format).
- v. All rejected absentee ballot envelopes, and the ballots that correspond to each such envelope (if opened), shall be kept segregated from all ballots previously counted in this recount and preserved for a potential election contest. This segregation includes a mechanism for tying a particular ballot to an envelope which was previously opened (to enable a potential future challenge to such a vote cast in the event a court determines that the absentee ballot envelope was properly rejected in the first place).

Dated: December 12, 2008

Dorsey & Whitney LLP

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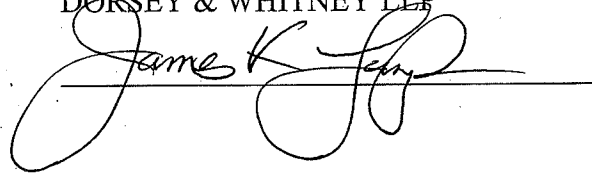
Minnetonka, MN 55305

(952) 797-7477

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under
Minn. Stat. § 549.211.

DORSEY & WHITNEY LLP

A handwritten signature in cursive script, appearing to read "James K. Ferry", is written over a horizontal line. The signature is fluid and stylized, with large loops and a long tail.