STATE OF MINNESOTA DISTRICT COURT

COUNTY OF OLMSTED THIRD JUDICIAL DISTRICT
CASE TYPE: CIVIL OTHER

---

Al Franken for Senate Committee and
Al Franken, Case No. _____

Applicants,

vs.

**AFFIDAVIT OF**
Olmstead County, including its Auditor **STEVEN Z. KAPLAN**
and its County Canvassing Board,

Respondents.

---

Steven Z. Kaplan, having been duly sworn, deposes and states as follows:

1. I am one of the attorneys for Al Franken and Al Franken for Senate ("Applicants") and, as such, have knowledge of the following.

2. Attached as Exhibit 1 collectively are copies of the absentee ballot envelopes that the Olmsted County Director of Elections sent to David L. Lillehaug, Esq., also counsel for the Applicants.

3. Attached as Exhibit 2 is a copy of Mr. Lillehaug's December 11, 2008 letter to Mark Krupski, Ms. Pamela Fuller, and Brent Walz.

4. Attached as Exhibit 3 is a copy of Mr. Canan's December 12, 2008 letter to Messrs. Lillehaug and Trimble.

5. Attached as Exhibit 4 is a copy of Mr. Lillehaug's December 12, 2008 letter to the Olmstead County Canvassing Board.

6. Mr. Lillehaug has advised me that, in his December 15, 2008 conversation with James Gelbmann of the Secretary of State's Office, Mr. Gelbmann stated that he had

not agreed with Olmsted County that it should forward the accepted, uncounted absentee ballots to the Secretary State's Office for inclusion with the challenged ballots that the State Canvassing Board will consider this week.

7. On December 15, 2008, the County Canvassing Board announced an emergency public meeting on December 16, 2008 at 1:00 p.m. I understood that the purpose of that meeting was to open and count absentee ballots. On December 16, 2008, the County Canvassing Board postponed that meeting "until further notice."

_____
Steven Z. Kaplan

Subscribed and sworn to before me
this 16th day of December, 2008.

_____
Notary Public

4478275_1.DOC