STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF OLMSTED | THIRD JUDICIAL DISTRICT
CASE TYPE: CIVIL OTHER

Al Franken for Senate Committee and
Al Franken,

Applicants,

vs.

Olmstead County, including its Auditor
and its County Canvassing Board,

Respondents.

Case No. _____

ORDER FOR CORRECTION OF OBVIOUS ERRORS IN 2008 UNITED STATES SENATE ELECTION

This matter came before the Court on the Application for an Order for Correction of Errors under Minn. Stat. § 204.C.39. Appearances of counsel are noted in the record. Based upon all of the files and proceedings herein, and the argument of counsel, and the Court being duly advised in the premises, the Court makes the following:

FINDINGS OF FACT

1. Applicant Al Franken for Senate is the campaign organization through which applicant Al Franken, candidate for United States Senate, conducted his candidacy for that office in the Minnesota election held on November 4, 2008.

2. Respondent Olmsted County (the "County") is a political subdivision of the state of Minnesota. The County administers elections pursuant to Minnesota election law, Minn. Stat. Ch. 200-211C (2008). Among those through whom the County administers elections are its Auditor and its County Canvassing Board.

3. On November 4, 2008, the state of Minnesota conducted an election for the office of United States Senator.

4. Interim vote totals published by the Secretary of State's Office showed that the two leading candidates in that election, Al Franken and Norm Coleman, were separated by 215 votes in an election in which more than 2.9 million ballots were cast. Consequently, the total vote margin between those two candidates was less than one one-hundredth of one percent of the total ballots cast.

5. That vote margin triggered, in addition to a county and statewide canvassing of all ballots cast, a mandatory statewide recount of those ballots under the supervision of the Secretary of State's Office and the State Canvassing Board pursuant to Minn. Stat. 204C.35. The State Canvassing Board has announced its intention to complete the recount and declare the vote totals for the office of United States Senator by December 19, 2008.

6. The Court finds that election judges in the County made obvious errors in failing to open and count 27 absentee ballots that they had, in fact, accepted. An accurate and correct vote total for the office of United States Senator is not possible unless those 27 ballots are opened, counted, and included in the final election returns from the County to the State Canvassing Board.

CONCLUSIONS OF LAW

7. The Court has jurisdiction and authority to issue this order pursuant to Minn. Stat. §204C.39, the decisions in *In re Application of Andersen v. Donovan*, 119 N.W. 2d 1 (Minn. 1962) and *In re Contest of School District*, 431 N.W. 2d, 1 (Minn App. 1988), and the Equal Protection Clauses of the United States and Minnesota Constitutions.

8. The right to vote and to have one's vote counted, including by absentee ballot, is a fundamental and guaranteed constitutional right of citizenship and of each qualified voter who casts a valid ballot under Minnesota law.

9. The County may not, therefore, refuse to count ballots that were validly cast under the terms of Minnesota election laws.

10. In the general election held on November 4, 2008, County election officials failed to count certain absentee ballots for reasons that were erroneous and impermissible under Minn. Stat. §203B.12, subd. 2. Minnesota election law requires that those ballots be opened, counted, and included in the vote returns that the County submits to the State Canvassing Board. All errors must also be corrected so that neither the voters who cast wrongly rejected absentee ballots nor the candidates for office of United States Senate be deprived of Equal Protection of the Law under the United States and Minnesota Constitutions.

11. With each passing hour that validly cast ballots are not counted and reported, voters whose ballots were not counted are harmed and both U.S. Senate candidates are unlawfully hindered in their efforts to prevail in the general election. It is imperative that these errors be corrected immediately because the State Canvassing Board has announced that it intends to complete its canvassing and recount work by Friday, December 19, 2008.

12. Under Minn. Stat. § 204C.39, *Application of Anderson*, 119 N.W. 2d 1 (Minn. 1962) and *In re Contest of School Dist.*, 431 N.W. 2d 911 (Minn. App. 1988), and the Equal Protection of the Law Clauses of the United States and Minnesota Constitutions, the County Canvassing Board has the right and, in this case, the obligation to reconvene, identify the 27 accepted, uncounted absentee ballots, open and count them, and prepare an addendum to its regular report to the State Canvassing Board so that those ballots will be properly included in the election totals.

ORDER

Based upon the evidence presented and the arguments of counsel, and the Court being fully advised in the premises, **IT IS HEREBY ORDERED THAT:**

1. The County shall open and count the 27 accepted, uncounted absentee ballots identified in the record.

2. On or before Thursday, December 18, 2008, the County Canvassing Board shall reconvene, inspect these 27 ballots, open and count them (taking care to preserve the principle of the secret ballot), and prepare and submit to the County Auditor an addendum to its regular election report.

3. Upon receipt of that addendum, the County Auditor shall submit to the Secretary of State, for the canvass of the State Canvassing Board, a certified copy of the addendum.

4. The Court will retain jurisdiction of this matter until such time as the State Canvassing Board declares the results of the 2008 U.S. Senate election.

Entered this ___ day of December, 2008

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Judge of District Court

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