STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT
CASE TYPE: CIVIL OTHER

---

Al Franken for Senate,

Plaintiff,

vs.

Ramsey County, Joseph Mansky, and John Does and Jane Does,

Defendants.

Court File No. 62-CV-08-11578

**ORDER FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION**

---

This matter came before the Court on the Motion by Plaintiff for a Temporary Restraining Order and Temporary Injunction. Appearances of counsel are noted in the record.

Based on all 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. Plaintiff Al Franken for Senate Committee (the "Campaign" or "Plaintiff") is the campaign organization through which Al Franken, candidate for United States Senate, conducted his candidacy for that office in the election held on November 4, 2008.

2. Defendant Ramsey County is a political subdivision of the State of Minnesota. Ramsey County administers elections pursuant to Minnesota Election Law, Minn. Stat. Ch. 200-211C (2008).

3. Defendant Joseph Mansky ("Mansky") is the Elections Manager for Ramsey County and is the principal county officer charged with duties relating to elections. Mansky is the individual responsible for the collection, use, and dissemination of any set of data related to the conduct of

elections in Ramsey County pursuant to Minnesota Election Law, Minn. Stat. Ch. 200-211C (2008) and the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (2008) ("MGDPA").

4. Defendants John Doe and Jane Doe are unidentified Defendants who are designated by law or by Ramsey County as an individual responsible for the collection, use, and dissemination of any set of data related to the conduct of elections in Ramsey County.

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

6. Interim vote totals published by Secretary of State's Office show that the two leading candidates in that election, Al Franken and Norm Coleman, are separated by 206 votes in an election contest in which more than 2.9 million votes were cast. Consequently, the total vote margin between these two candidates is less than one one-hundredths of one percent of the almost 2.9 million votes cast for that office.

7. If, as here, the total votes separating the candidates are certified by the state canvassing board to be less than one-half of one percent (0.5%) of the total of all votes cast for the office of United States Senator, Minnesota Election Law directs the Secretary of State to oversee a mandatory manual recount of all votes cast in the State for that office. Minn. Stat. § 204C.35, subd. 1(b)(1).

8. The Secretary of State has scheduled that recount to commence on November 19, 2008.

9. On November 9, 2008, David Lillehaug ("Counsel"), in his capacity as counsel for the Campaign, sent a letter to Mansky, care of Ramsey County Assistant Attorney Darwin Lookingbill ("Lookingbill"), requesting information pursuant to the MGDPA.

10. In the letter, Counsel requested that Mansky produce "the names and addresses of all persons who submitted absentee ballots in connection with the general election of November 4, 2008, but whose absentee ballots were rejected or otherwise not counted." Counsel informed Mansky that

the request was “urgent” and that the Campaign would pay reasonable costs for collecting and copying the information.

11. On November 11, 2008, Counsel provided Ramsey County, through Mr. Lookingbill, with a memorandum entitled “Absentee Ballot Data Practices Request,” which further iterated and explained the Campaign’s earlier request for information related to absentee ballots, and also sought production of the reasons why the absentee ballots were rejected.

12. The memorandum argues that pursuant to the MGDPA and Minn. Stat. § 203B.12, subd. 7, the identity of absentee ballot voters may be made available for public inspection after the close of voting on election day.

13. On November 12, 2008, Ramsey County and Mensky denied the Campaign’s requests, citing Minn. Stat. § 203B.12, subd. 7 as purported justification.

14. The Campaign has requested public information that has been collected and maintained by the Defendants. The requested information has not been classified so as to deny the Campaign access by any statutory section, temporary classification, or provision of federal law, including Minn. Stat. § 203B.12, subd. 7.

15. The Campaign has not been provided access to or copies of the requested information.

16. Plaintiff has satisfied all of the prerequisites for a temporary restraining order and temporary injunction.

17. The preexisting relationship between the parties is based on the Minnesota Government Data Practices Act (MGDPA) and sections the Election Code. Under these provisions, the Plaintiff has a right to access the public data requested. The refusal of defendant to provide the data impermissibly alters the relationship between the parties by infringing on clearly established rights under both election law and the MGDPA.

18. The harm that Plaintiff would suffer absent a temporary restraining order and temporary injunction far outweighs any harm to Defendant. With each passing hour, the Franken Campaign is irreparably harmed in its efforts to ensure that each valid vote is properly counted and to prepare for the procedures that will decide this election. By contrast, the County of Ramsey will suffer no harm from providing information that, even absent plaintiff's request, it must organize and maintain.

19. Plaintiff is likely to prevail on the merits. The MGDPA creates a presumption that, unless otherwise provided by law, all government data are public. *See* Minn. Stat. § 13.03, subd. 1. The MGDPA deals specifically with certain aspects of absentee ballots by link to the election code. *See* Minn. Stat. § 13.607, subd. 7 ("Disclosure of names of voters submitting absentee ballots is governed by section 203B.12, subdivision 7."). Section 203B.12, subd. 7, in turn, states that: "The names of voters who have submitted an absentee ballot return envelope to the county auditor or municipal clerk may not be made available for public inspection until the close of voting on election day." This provision keeps the names of absentee voters private until the close of voting, at which time the general rule set forth in Minn. Stat. § 13.03, subd. 1 again applies, and the data are no longer classified as anything other than public data.

20. Public policy militates in favor of a temporary restraining order and temporary injunction. The MGDPA represents a fundamental commitment to making the operations of our public institutions open to the public, and courts must construe the MGDPA in favor of public access.

21. The administrative burdens would be minimal. Plaintiff does not seek a remedy that would require significant Court administration. Governmental entities routinely provide information of this nature, and this request imposes no significant burden.

## CONCLUSIONS OF LAW

1. That certain of the data requested by Plaintiff is public data, the production of which is required by the MGDPA.

2. Defendants' refusal to produce public data requested by Plaintiff is in violation of Minn. Stat. § 13.03, subd. 3(a), and has prevented Plaintiff from receiving public data as required by Minnesota law.

3. Plaintiff has met all of the requirements of, and is entitled to receive, a temporary restraining order and temporary injunction as follows.

## ORDER

1. Plaintiff has the right to obtain or access all public data, according to the provisions of the MGDPA. The Court finds that the following is public data that must be produced for inspection and or copying:

   i. Names of voters who have submitted an absentee ballot return envelope. Minn. Stat. 203B.12, Subd. 7.

   ii. The envelopes of absentee ballots that have not been opened by an election judge.

   iii. Data already compiled in written form or routinely compiled by election officials, regarding the number of absentee votes, absentee voters, etc.

   iv. Existing written information regarding the reason for accepting or rejecting an absentee ballot must be produced. However, there has been no authority cited to this court that would make the unwritten reasoning process of election officials public, government data. The MGDPA applies to written data only. Accordingly, Plaintiff is not entitled to orally query election

officials regarding their reasoning. However, if that reasoning has been reduced to written form it is public data and must be produced.

2. Defendants, and all persons acting in concert with them, are hereby restrained and enjoined from refusing to provide the public data Plaintiff has requested under the MGDPA.

3. Defendants must produce by the close of business on this date the requested public data at a fee fairly representing Defendants' reasonable production costs.

4. This Order shall be immediately effective, the Plaintiff having filed with the Court a bond in the sum of $ 2000 or tendering a check to the Clerk of the Court to hold in lieu of a bond in the sum of $ 2000, for the payment of such costs and damages as may be incurred or suffered by such party who is found to have wrongfully enjoined or restrained.

5. Service of this Order on Defendants may be made by delivery or facsimile transmission to the Office of the Ramsey County Attorney and counsel for other defendants, and shall be deemed sufficient service for all purposes.

SO ORDERED:

BY THE COURT:

Dated:

Dale B. Lindman
Judge of District Court