

Exhibit 3

From: Jim Gelbmann [Jim.Gelbmann@state.mn.us]
Sent: Tuesday, December 02, 2008 9:41 AM
To: 'Lillehaug, David'; Jim Gelbmann
Cc: Stephanie Schriock; Marc Elias; Hamilton, Kevin J. (Perkins Coie); Bill Pentelovitch; 'Tony Trimble'; fknaak@klaw.us
Subject: RE: Data Practices Request
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. Lillehaug:

The communication that was sent to all county and city election officials is copied below:

Dear County Auditors and County and City Election Officials:

Once again I would like to thank you for helping the Secretary of State's Office conduct a hand recount of the ballots cast in the U.S. Senate contest. I know this task has required much more work than anyone originally anticipated, and we are very grateful for your assistance. I have attached a transcript of comments made by Canvassing Board Member Chief Judge Kathleen Gearin (Second Judicial District) last week relative to the professional assistance you have provided for the state. Subsequent to those comments, the Board unanimously approved a motion thanking you. I've said it before, and I'll say it again, without your assistance, the professionalism under which this recount has been conducted would never have been possible.

At last week's meeting of the State Canvassing Board, the Board members expressed an interest in knowing the number of Absentee Ballots that may have been mistakenly rejected. In other words, the Board has heard anecdotal evidence of absentee ballots being rejected, even though the facts surrounding the ballot did not meet one of the four reasons stated in statute upon which an absentee ballot may be rejected. For example, if an absentee ballot was sent to the wrong precinct on election night and rejected by the election judges at that precinct, it could be argued that ballot does not meet one of the four statutory reasons.

The purpose of this e-mail is to once again ask for your assistance. We need your help in reviewing all previously-rejected absentee ballots and determining the number of ballots that were rejected for each of the following four statutory reasons:

The ballot was rejected because the voter's name and address on the return envelope are not the same as the information provided on the absentee ballot application.

2. The voter's signature on the return envelope is not the genuine signature of the individual who made the application for the ballot and the signature is required under applicable Minnesota law, or the certificate has not been completed as prescribed in the directions for casting an absentee ballot.

3. The voter was not registered and eligible to vote in the precinct or has not included a properly completed voter registration application. Elections personnel shall use available voter rosters to determine whether the voter was registered.

4. The voter had already voted at the election, either in person or by absentee ballot. Elections personnel shall use available voter rosters to determine whether the voter had already voted.

In addition, please create a fifth category of rejected absentee ballots as described below:

5. If the rejected absentee ballot does not meet one of these four reasons, or if the reason used to reject the absentee ballot is not based on factual information (e.g. the voter was initially determined not to be registered to vote at the address given, but a subsequent review determines the voter was registered at that address), that ballot should be counted as part of a fifth category of previously-rejected absentee ballots - absentee ballots that were mistakenly rejected on or before election day.

If the election judges do not agree into which of the first four categories the ballot should be placed (e.g. because it was appropriately rejected for more than one reason), simply assign the ballot to one of the appropriate categories at random. If the election judges disagree as to whether the ballot was appropriately or inappropriately rejected, please assign the ballot to the fifth category. Please note the disagreement on a sticky note and attach it onto white space on the envelope.

The State Canvassing Board is primarily interested in determining how many ballots throughout the state would be included in this fifth category of rejected absentee ballots. **At this time we are not asking you to open or count the votes contained in any of the five categories of rejected absentee ballots, nor are we asking you to compile a list of names and addresses of the absentee voters who have their ballots placed in any of these five categories.** We simply are looking for the number of rejected absentee ballots that were legitimately rejected for one of the four statutory reasons and the number of rejected absentee ballots that were mistakenly rejected by a County Absentee Ballot Board and/or election judges at the individual precincts.

We understand that this will require a significant amount of work on your part. This review should be done with the assistance of two election judges of different parties and you or a member of your staff. It must be done in a public setting where the public and representatives of the two campaigns would be allowed to observe, but not participate in the review nor question the election judges' decision into which category each previously-rejected absentee ballot is placed. In other words, candidates are not to be given the opportunity to challenge the decisions relative to the category into which each previously-rejected absentee ballot is placed.

Throughout the process, you should keep the previously-rejected absentee ballots with their precinct supply box. At the end of the process, you may keep the five categories of previously-rejected absentee ballots segregated using rubber bands or paper clips, but must store them securely in the appropriate precinct supply box.

If you are willing to assist us in this process, the State will reimburse you for the cost of hiring two election judges (or additional election judges if you intend to operate more than one table) plus an amount 0.25 for each rejected absentee ballot reviewed. Since many counties had a minimal number of rejected absentee ballots, every county that participates will receive a minimum of \$25.00 for their effort. We would ask that this task be completed no later than close of business on Thursday, December 18. Additional details about the specific process to be used will be forthcoming. **However, I would appreciate it if you would complete the following survey and return it to me as soon as possible.**

_____ Yes we would be willing to assist with this process

_____ No we are not willing to assist with this process, but would make our rejected absentee ballots available to representatives of the Secretary of State's Office or other County or City election officials

from neighboring jurisdictions so the task can be completed.

If you are willing to participate in this process, please identify a date, time and location when you would begin sorting the rejected absentee ballots. Please forward this email to any municipal clerks in your county if they maintain possession of the rejected absentee ballots.

Please do not begin any earlier than Monday, December 8 and plan to complete the review and submit the

numbers of rejected absentee ballots for each of the five categories forwarded to the Secretary of State's Office by 5:00 p.m., Thursday, December 18.

Date When We Will Begin Sorting Rejected Absentee Ballots: _____

Time When We Will Begin Sorting Rejected Absentee Ballots: _____

Location Where We Will Begin Sorting Rejected Absentee Ballots:

My best regards!!!

Sincerely,

Jim

Jim Gelbmann

Deputy Secretary of State

180 State Office Building

Saint Paul, Minnesota 55155

(651) 201-1344 (office)

(651) 334-4077 (cell)

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From: Lillehaug, David [mailto:dlillehaug@fredlaw.com]

Sent: Tuesday, December 02, 2008 7:51 AM

To: Jim Gelbmann

Cc: Stephanie Schriock; Marc Elias; Hamilton, Kevin J. (Perkins Coie); Bill Pentelovitch

Subject: Data Practices Request

Dear Mr. Gelbmann -- I understand that, late yesterday, the Secretary of State's office sent a communication to county auditors and other local election officials regarding absentee ballots. Pursuant to the Minnesota Government Data Practices Act, I request a copy of that communication. As the Franken campaign considers this matter time-sensitive, I would appreciate your office's prompt response to this request.

David Lillehaug
Fredrikson & Byron, P.A.
612-492-7321

NOTICE: E-mail correspondence to and from the Office of the Secretary of State of Minnesota may be public data subject to the Minnesota Data Practices Act and/or may be disclosed to third parties