

December 11, 2008

**VIA MESSENGER**

Secretary of State Mark Ritchie  
100 State Office Building  
75 Rev. Dr. Martin King Jr. Blvd.  
St. Paul, MN 55155

Associate Justice G. Barry Anderson  
Minnesota Supreme Court  
St. Paul, MN 55155

Assistant Chief Judge Edward J. Cleary  
Ramsey County Courthouse  
St. Paul, MN 55102

Chief Judge Kathleen R. Gearin  
Ramsey County Courthouse  
St. Paul, MN 55102

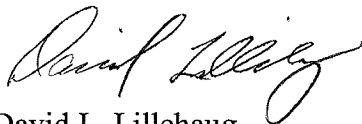
Chief Justice Eric J. Magnuson  
Minnesota Supreme Court  
St. Paul, MN 55155

Re: **2008 United States Senate Election**

Dear Members of the State Canvassing Board:

Enclosed please find the Supplemental Memorandum of the Al Franken for Senate Committee and Al Franken Regarding Uncounted Absentee Ballots and the Summary Affidavit of David L. Lillehaug with attachments.

Very truly yours,



David L. Lillehaug  
*Attorney*  
**Direct Dial:** 612.492.7321  
**Email:** dlillehaug@fredlaw.com

Attorneys & Advisors  
main 612.492.7000  
fax 612.492.7077  
www.fredlaw.com

Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, Minnesota  
55402-1425

DLL:rz

Enclosures

c: Deputy Secretary of State Jim Gelbmann (via messenger)  
AAG Christie Eller (via messenger)  
Fritz Knaak, Esq. (via messenger)  
Tony Trimble, Esq. (via messenger)  
Marc Elias, Esq.  
Kevin Hamilton, Esq.  
William Pentelovitch, Esq.

4476424\_1.DOC

*In Re:* 2008 United States Senate Election

**SUPPLEMENTAL MEMORANDUM OF THE  
AL FRANKEN FOR SENATE COMMITTEE  
AND AL FRANKEN REGARDING  
UNCOUNTED ABSENTEE BALLOTS**

---

**INTRODUCTION**

Over 280,000 Minnesotan citizens who exercised their fundamental right to vote in the November 2008 election did so by submitting absentee ballots.<sup>1</sup> Yet, in this extraordinarily close election, a significant number of those ballots were not counted—and not for any of the four reasons upon which an absentee ballot can be rejected under Minnesota law. Rather, they were left uncounted for “no reason” or because of error on the part of local officials. Such disenfranchisement is both contrary to law and fundamentally unfair.

For the reasons previously stated by Al Franken for Senate (the “Franken Campaign”) and Al Franken, this Board should count all improperly rejected absentee ballots. But even if the Board adheres to the position that it lacks jurisdiction to review all rejected ballots, it undoubtedly has the authority—and the obligation—to count (or to instruct local officials to count) all uncounted absentee ballots that do not fit into one of the four statutory categories for rejection. Ballots that were not rejected by local or county officials for one of the four statutory reasons are not “rejected” ballots under Minnesota law, but rather are “uncounted” ballots. As both clearly established state policy and longstanding case law make clear, the State Canvassing

---

<sup>1</sup> Others voted by mail or pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”). All arguments contained herein apply to mail ballots and UOCAVA ballots, as well as absentee ballots.

Board can, and must, address uncounted ballots and include them in its certified total. State law and the state and federal Constitutions permit no less.

In short, this Board should itself, with the assistance of the Secretary of State, count all uncounted absentee ballots that were not rejected for good statutory reason. Alternatively, it should instruct local officials to count them. “To now hold that the results of this election must be based on the return[s] that everyone concedes [are] erroneous would be a perversion of our whole election process.” *Application of Andersen*, 119 N.W. 2d 1, 10 (Minn. 1962).

## ARGUMENT

### **I. A Significant Number of Absentee Ballots Were Not Rejected within the Meaning of Minnesota Law, but Nevertheless Remain Uncounted.**

Lists furnished by Minnesota counties and cities now show that more than 11,700 absentee ballots were rejected. Minnesota law expressly provides for absentee voting and allows absentee ballots to be rejected only for four specific, enumerated reasons. Election judges *shall accept* an absentee ballot that has been received on or before Election Day if:

- (1) the voter’s name and address on the return envelope are the same as the information provided on the absentee ballot application;
- (2) the voter’s signature on the return envelope is the genuine signature of the individual who made the application for ballots and the certificate has been completed as prescribed in the directions for casting an absentee ballot, except that if a person other than the voter applied for the absentee ballot under applicable Minnesota Rules, the signature is not required to match;
- (3) the voter is registered and eligible to vote in the precinct or has included a properly completed voter registration application in the return envelope; and
- (4) the voter has not already voted at that election, either in person or by absentee ballot.

Minn. Stat. § 203B.12, subd. 2. The statute makes clear that “[t]here is no other reason for rejecting an absentee ballot.” *Id.* Moreover, mere technicalities or irregularities cannot be used

to exclude absentee ballots. *See Application of Andersen*, 119 N.W.2d 1 (Minn. 1962); *In re Contest of School Dist.*, 431 N.W.2d 911 (Minn. App. 1988) (citing *Andersen*, 119 N.W.2d at 8; *Kerrigan v. Vetsch*, 71 N.W.2d 652, 658 (1955)).

The lists of rejected absentee ballots produced by the counties and cities in response to the Franken Campaign's data practices requests make clear that numerous ballots were left uncounted—but were not rejected for one of § 203B.12's four enumerated reasons. For example, the lists of Ramsey, St. Louis, Dakota, and Itasca Counties all refer to ballots rejected at the polls due to election judge or administrative error, or for no reason at all. *See Howell Aff.* ¶¶ 7, 12, 16, 18; App. 1. In recent days, Minneapolis has conceded 171 ballots belong in so-called "Pile 5," and the Ramsey County elections official has stated publicly that 100 ballots were erroneously rejected in that county.

These erroneously rejected ballots were cast by real people. As demonstrated in the attached chart, affidavits, and DVD, numerous voters had their validly cast ballots rejected without statutory reason. For example, eligible Minnesota voters, such as Robert Smith, Mary J. Legris, Andrew Heinen, Richard Goggin, Joe Neal, and Elia S. Nelson had their validly cast ballots rejected for, respectively, "office error" (Smith), "EJ error" (Legris), "Clerical error" (Heinen), "no reason given" (Goggin), "Other reason – ballot delivered to wrong precinct . . . Unable to deliver on time to correct precinct on election night" (Neal), and "other" (Nelson). *See Smith, Legris, Heinen, Goggin, Neal & Nelson Affs.*; *see also* App. 1; Lillehaug Aff.

As the Secretary of State's Office and the Hennepin County Attorney recently explained, ballots that do not meet one of the four statutory reasons, or ballots where the reason used to reject was not based on factual information, constitute a fifth category of absentee ballots; they do not qualify under any of the statutory categories for rejection. *See Secretary of State, Detailed*

Instructions For Sorting All Currently-Rejected Absentee Ballots Cast In The U.S. Senate Race [hereinafter “Detailed Instructions”]; Email from Jim Gelbmann to County Auditors and County and City Election Officials, Dec. 1, 2008 [hereinafter “Gelbmann email”]; Letter from Michael O. Freeman, Hennepin County Attorney, Nov. 25, 2008. Examples of ballots constituting this fifth pile include (1) those in which the stated reason given is not one of the four listed in Minn. Stat. § 203B.12, subd. 2., *see* Detailed Instructions; Gelbmann email; (2) those in which the voter was initially determined not to be registered to vote in the precinct given, but a subsequent review determines the voter was registered at in that precinct, *see id.*; (3) absentee ballots with respect to which the election judge cannot agree whether it was appropriate or inappropriate to reject them, *see id.*; and (4) absentee ballots that were sent to the wrong precinct on election night and not counted by the election judges at that precinct, *see id.*; Secretary of State, County 2008 Rejected Absentee Ballot Survey Worksheet.<sup>2</sup>

In sum, if an absentee ballot is not rejected for one of the four statutory reasons, or if the reason used to reject the absentee ballot is not based on factual information, the ballot is not a “rejected” ballot within the meaning of Minnesota law; instead, it is simply an “uncounted” ballot.

## **II. The Canvassing Board Has the Authority and Obligation to Count, or Order the Counting of, Uncounted Absentee Ballots that Were Not Rejected for Any of the Four Statutory Reasons.**

As the Franken Campaign has previously argued, the Board has the jurisdiction to review *all* improperly rejected absentee ballots as part of its canvass. At the very least, however, the Board has authority to count, or to instruct local election judges and/or county canvassing boards

---

<sup>2</sup> For numerous examples of ballots improperly rejected because of delivery to the wrong precinct, see generally Appendix 1. *See also, e.g.*, Affs. of Buendorf, Beske, Gitis, Herr, Mohring, Neal, Ramstad.

to count, absentee ballots that were uncounted but not rejected within the meaning of Minnesota law.

State procedure and past practice plainly require that all uncounted ballots that have not been rejected be counted, even if they were previously left uncounted at an earlier stage of the process. Counties are responsible for locating such ballots and counting them. *See, e.g.*, Minn. Stat. § 203C.39 (requiring correction of obvious errors). Counting may continue until the Board certifies the count as correct and signs the certification. To date, during this recount process alone, election officials in numerous locations have counted ballots that they had originally failed to count. Specifically, officials in Becker County, Itasca County, Winona County, Scott County, and the cities of Golden Valley and Crystal have counted validly cast ballots during the recount process that they had inadvertently failed to include in their initial vote totals for the office of United States Senator. Indeed, in an email from counsel Tony P. Trimble, sent on December 4, 2008, the Coleman Campaign advised the Secretary of State's Office that the Scott County ballots should be counted because they were not "rejected" absentee ballots, but were "ballots that were not opened election night and not dissimilar to absentee ballots opened in Itasca, Becker, Golden Valley, etc."

As the Franken Campaign suggested at the Board's hearing on November 18, the Board can itself, with the assistance of the Secretary of State, count all ballots falling within the fifth category—*i.e.*, uncounted but not statutorily rejected absentee ballots—and include those numbers in the canvass. Alternatively, the Board could make clear to the local election officials that they must count the ballots. To fail to count these ballots would contradict past practice and statute, improperly disenfranchise voters, and could allow "the loser to become the winner in spite of the vote of the people." *See Andersen*, 119 N.W. 2d at 12; *see also In re Contest of*

*School District Election*, 431 N.W. 2d 911 (Minn. App. 1988). The results of the election simply may not be based on “[a] return that everyone concedes is erroneous.” *Anderson*, 119 N.W. 2d at 9.<sup>3</sup>

The cases of *O’Ferrall v. Colby*, 2 Minn. 180 (1858), and *Taylor v. Taylor*, 10 Minn. 107 (1865), in no way contradict the well-established principle that uncounted absentee ballots must be counted, nor do they in any way undermine the Board’s authority to include newly counted ballots in its certified count. Notably, such a broad (and incorrect) reading of these cases would draw into question the returns from counties that have, consistent with state law and policy, counted previously uncounted ballots over the last few weeks. *See supra* at 5. Moreover, the cases are inapposite. Both involved a statutory provision not at issue here: former section 43, which provided that “no election returns shall be refused by any auditor for the reason that the same may be returned or delivered to him in any other than the manner directed in this act; nor shall the canvassing board of the county refuse to include any returns in their estimate of votes, for any informality in holding any election or making returns thereof.” Rev. Stat. 50, ch. 5, § 43.

In *O’Ferrall*, for example, the clerk of the board of supervisors received and opened the election returns from the precincts within the county. He refused, however, to treat any of the votes cast in a particular city within the county as valid or to certify the election in accordance with the election returns provided to him. The Minnesota Supreme Court issued a writ of mandamus directing the clerk to accept the election returns and the ballots, holding that, under Rev. Stat. 50, ch. 5, § 43, the clerk had no discretion to reject these returns or the ballots or to render opinions on the validity of certain ballots. Rather, the Court held, the clerk’s obligations

---

<sup>3</sup> Requiring the counting of uncounted but not statutorily rejected absentee ballots is also consistent with the holdings of other state courts in similar circumstances. *See, e.g., Washington State Republican Party v. King County Div. of Records*, 103 P. 3d 725 (Wash. 2004) (concluding, in the context of a recount, that it was proper for a

under § 43 were ministerial: to open the returns and declare the winner. Nonetheless, the Minnesota Supreme Court recognized that the clerk (and the state canvassing board) could “determine whether the returns” furnished to it were “spurious or genuine.” *O’Ferrall*, 2 Minn. at 5. Thus, the teaching, even in this different circumstance and under the distinct statute, was that valid votes should not be rejected on technicalities.

Not only were *O’Ferrall* and *Taylor* about a different factual situation and governed by a different statutory provision, but in the years since those cases were decided the legislature has amended the relevant statutes and expanded the Board’s authority; and the Minnesota courts have made clear that the Board has authority to ensure inclusion of all validly cast ballots. Specifically, the Minnesota Supreme Court has expressly recognized the authority of the canvassing boards to count uncounted ballots, and has emphasized that the overriding concern in interpreting the election laws, including those pertaining to absentee ballots, is enfranchisement of voters. *See Andersen*, 119 N.W. 2d 1; *see also School District*, 431 N.W. 2d 911. Procedural rules, including those pertaining to the canvassing board’s process, cannot be construed to override the principle that all validly cast ballots must be counted to reveal the electorate’s true vote and the expression of its will. *Andersen*, 119 N.W. 2d at 9-10. This is particularly true where, as here, ballots were left uncounted due to clear errors on the part of election officials. As the Minnesota Supreme Court wrote in *Anderson*, “To now hold that the results of this election must be based on the return[s] that everyone concedes [are] erroneous would be a perversion of our whole election process.” *Id.* at 10.

Furthermore, in 1887, following *O’Ferrall* and *Taylor*, the legislature recodified the election laws and imposed a duty on the state canvassing board to certify a “correct” report. *See*

---

canvassing board to reconsider and then to include in election totals 573 ballots that had been erroneously rejected by election officials).

1887 Minn. Laws 21 (now codified at Minn. Stat. § 204C.33, subd. 3). This duty did not exist prior to 1887. And the election laws now include numerous mechanisms for correcting the result at every stage of the process. *See, e.g.*, 1955 Minn. Laws 243 (now codified at Minn. Stat. § 204C.39) (allowing for correction of obvious errors); Minn. Stat. § 204C.35, subd. 3 (providing for a State Canvassing Board recount and determination of the number of votes validly cast for statewide office). In short, neither *O’Ferrall* nor *Taylor* in any way undermines the well-established policy that uncounted ballots must be counted and that the Board has the authority to insist on such counting before each member certifies its report as correct.

### **III. A Contest is Not the Proper Forum for Addressing Uncounted Ballots in the First Instance.**

An election contest is neither the exclusive forum for addressing uncounted ballots nor the proper forum for addressing them in the first instance. First, the canvassing process—not the contest—is designed to tally and certify the “correct” number of votes. *See* Minn. Stat. § 204C.33, subd. 3. Even if this provision is read to encompass only “accepted” votes, there is no basis for excluding “uncounted” but not “rejected” absentee ballots. It is critical that the certified vote count be as accurate as possible. “No voter should be required to rely on an election contest to ensure his or her vote is counted by the State Canvassing Board.” Detailed Instructions at 1.

Furthermore, Minnesota’s election law is designed to provide several layers of review, all of which supply an essential safeguard. A contest is not an adequate replacement for the canvass, but is rather an additional layer of review. Unlike in the initial count and canvass, the burden of proof in an election contest rests upon the contestants. *See Green v. Independent Consol. School Dist. No. 1*, 89 N.W.2d 12, 16 (Minn. 1958); *Sullivan v. Ebner*, 195 Minn. 232 (1935). Consequently, to require absentee ballots left uncounted without a statutory basis for

rejection to be dealt with in a contest, while scrutinizing all other uncounted ballots in the canvass and recount, would not provide an equal remedy for those voters, causing serious constitutional violations. *See infra* at 9-11. Finally, a contest involves delay and litigation and Minnesota precedent makes clear that the statutory framework aims to achieve “a reasonably prompt determination of the election result,” *School District*, 431 N.W.2d at 915 (*citing Bell v. Gannaway*, 227 N.W.2d 797, 802 (1975)), and to “avoid the necessity of an election contest where possible,” *Andersen*, 119 N.W.2d at 5.

#### **IV. Failure to Count Ballots Left Uncounted without a Statutory Basis for Rejection Would Violate the Federal and State Constitutions.**

Once a state has created the right to vote by absentee ballot and established certain governing rules for the process, it cannot retroactively deprive those voters who have substantially complied with the process of their right to have their ballots counted. In few circumstances is this clearer than in the case of uncounted ballots where officials have identified no statutory basis for rejection. Such arbitrary disenfranchisement would violate both the state and federal constitutions. “It is beyond cavil that voting is of the most fundamental significance under our constitutional structure.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (internal quotation makes omitted). “Other rights, even the most basic, are illusory if the right to vote is undermined.” *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 729 (Minn. 2003) (quoting *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964))); *see also Kahn v. Griffin*, 701 N.W.2d 815, 832 (Minn. 2005) (“It is undisputed that the right to vote is a fundamental right under both the federal and state constitutions.”).

“Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as federal elections.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). But the Constitution protects “more than the initial allocation of the franchise.” *Bush v.*

*Gore*, 531 U.S. 98, 104 (2000). Rather, it is well-settled that the Constitution protects the right of all qualified voters to have their votes counted equally. *Reynolds*, 377 U.S. at 554 (citing *United States v. Mosley*, 238 U.S. 383 (1915)). A contrary rule would make no sense, for the right to vote would be meaningless if votes cast in compliance with law were not counted—or not counted equally. As the United States Supreme Court has repeatedly emphasized, “[t]he 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.” *Bush v. Gore*, 531 U.S. 98, 105 (2000) (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)).

The right to vote, and to have votes counted equally, extends to absentee ballots. Though the state need not create a universal right to vote absentee, once the state has extended to its citizens that right, it cannot refuse to count votes that comply with its own processes. *See Bush*, 531 U.S. at 104 (individual has no federal constitutional right to vote for electors for President but once the state extends that right, it becomes fundamental); *see also School District*, 431 N.W.2d at 915 (citing *Bell v. Gannaway*, 303 Minn. 346, 353, 227 N.W.2d 797, 802 (1975)). Thus, because Minnesota has granted individuals a right to vote absentee, it “may not, by later arbitrary and disparate treatment,” value non-absentee ballots over validly cast absentee ballots. *See Bush v. Gore*, 531 U.S. at 104-105 (citing *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665 (1966)). “[E]qual weight” must be “accorded to each vote”, for “equal dignity [is] owed to each voter.” *Bush*, 531 U.S. at 104; *see also League of Women Voters v. Brunner*, \_\_ F.3d \_\_, 2008 WL 499908 (6th Cir. 2008).

When a regular ballot is cast at the polls and accepted, but then not counted by county officials (for example, due to an overvote or analogous defect), that ballot is subject to review by the State Canvassing Board and at the recount. Pursuant to the Equal Protection Clause of the

United States Constitution, individuals casting absentee ballots are entitled to this same protection—or, at an absolute minimum, to review by the State Canvassing Board after county officials have *already identified the absentee ballot in question* as not triggering any of the statutorily defined grounds for rejection. To ignore documented errors and refuse to address absentee ballots left uncounted without a statutory basis for rejection, while considering and counting similarly situated regularly cast ballots, does “not satisfy the minimum requirement for nonarbitrary treatment of voters necessary to secure the fundamental right.” *Bush*, 531 U.S. at 105. Rather, such “unequal evaluation of ballots” would violate the U.S. Constitution’s basic principle of one-person, one-vote. *Id.* at 106-07; *see also Pierce v. Allegheny Cty. Bd. Of Elecs.*, 324 F. Supp. 2d 684 (W.D. Pa. 2003) (plaintiffs stated equal protection claim by alleging disparate treatment of absentee ballots across the state); *State ex rel. Skaggs v. Brunner*, Slip Op. No. 2008-Ohio-6333, at 16 (citing *Bush v. Gore* and holding that “the secretary of state failed to ensure that the same rules would be applied to each provisional voter of every county in the state”).

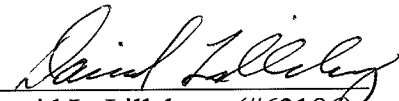
Likewise, the Minnesota Constitution prohibits such disparate treatment. The Minnesota Supreme Court “has recognized that our state constitution embodies principles of equal protection synonymous to the equal protection clause of the Fourteenth Amendment to the United States Constitution.” *State v. Russell*, 477 N.W.2d 886, 889 (Minn. 1991) (citing *State v. Forge*, 262 N.W.2d 341, 347 n. 23 (Minn. 1977)). Indeed, if anything, the state constitution requires even more “stringent” review and a more robust guarantee of equal protection. *See Russell*, 477 N.W. at 889.

## CONCLUSION

For the foregoing reasons, and the reasons stated in prior submissions, the Franken Campaign and Al Franken respectfully request that, before certifying that its report is correct, the State Canvassing Board fulfill its statutory and constitutional obligation to consider and take into account all ballots cast, particularly validly cast absentee ballots that were uncounted without a statutory basis for rejection.

Dated: December 11, 2008

Respectfully submitted,



David L. Lillehaug (#63186)  
Steven Z. Kaplan (#53739)  
FREDRIKSON & BYRON, P.A.  
200 South Sixth Street  
Minneapolis, Minnesota 55402  
Telephone: 612.492.7000  
Facsimile: 612.492.7077

*Attorneys for Al Franken for Senate  
and Al Franken*

William Z. Pentelovitch (#85078)  
MASLON EDELMAN BORMAN  
& BRAND, LLP  
3300 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402-4140  
Telephone: 612.672.8200  
Facsimile: 612.672.8397

*Attorneys for Al Franken for Senate  
and Al Franken*

Marc E. Elias (D.C. Bar # 442007)\*  
Kevin J. Hamilton (WSBA # 15648)\*  
Perkins Coie LLP  
607 Fourteenth Street, NW, Suite 800  
Washington, DC 20005-2011

Telephone: 202.628.6600  
Facsimile: 202.654.9126

*Of Counsel, Al Franken for Senate and Al Franken*  
*\* Pro hac vice motions pending.*

4476408\_1.DOC

FIFTH PILE: IMPROPERLY EXCLUDED ABSENTEE BALLOTS

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
21	Adkins, Ordell	225 Labree Ave. S, Apt 310, Thief River Falls, MN 56701	Pennington	THIEF RIVER FALLS (3B) 0155	"Not registered."	N/A	SOS Authentication Declaration confirms voter registered at this address since October 2004; Voter Declaration confirming the voter registered prior to the November general election.
22	Anderson, Muriel Elaine	946 Conway St., St. Paul, MN 55106	Ramsey	ST. PAUL W-7 P-04 1460	"Incomplete voter registration card."	N/A	SOS Authentication Declaration confirms voter registered in this precinct since November 2004; Voter Declaration states that voter moved from her voter registration address in March 2008 to a new address in the same precinct, and that addresses on absentee ballot application and absentee ballot matched.
23	Begin, Anna	3640 Flag Ave. N, New Hope, MN 55427	Hennepin	NEW HOPE P-03S 2305	"No voter registration card."	N/A	SOS Authentication Declaration confirms voter registered at this address since August 2008.
24	Berquist, Donna	81 Dunbar Way, Mahtomedi, MN 55115	Washington	MAHTOMEDI P-2 0206	"No VR application."	N/A	SOS Authentication Declaration confirms voter registered at this address since February 2008.

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
1	Beske, George	6048 Knox Ave. S. Minneapolis, MN 55419	Hennepin	MINNEAPOLIS W-13 P-09	"At polls— delivered to wrong precinct (10- 8)"	N/A	Voter Declaration attesting to meeting statutory requirements to vote. Voter voted in person on November 3 at the courthouse and deposited ballot with elections officials. SOS Authentication Declaration confirms voter registered at this address since July 2008.
25	Bolter, Burton	11484 Fairfield Rd., #102, Minnetonka, MN 55305	Hennepin	MINNETONKA W-2 P-C 2130	"NR"	Per Minnetonka Clerk, determined rejected because different apartment unit than that on voter registration.	Voter Declaration states that he lives in apartment 102 and has never lived in apartment 112 (his registration address). Voter further states that there is no apartment 112 in his apartment complex. SOS Authentication Declaration confirms that voter is registered at this street address since November 2000 and voted in 2000, 2004 and 2006.
26	Bolter, Jane	11484 Fairfield Rd., #102, Minnetonka, MN 55305	Hennepin	MINNETONKA W-2 P-C 2130	"NR"	Per Minnetonka Clerk, determined rejected because linked to her husband's.	See above.
27	Brickley, Brandi	9606 Park Ave S. Bloomington, MN 55420	Hennepin	BLOOMINGTON W-4 P-06 0130	"no registration card"	N/A	SOS Authentication Declaration confirms voter registered at this address since October 3, 2008.

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
28	Brigham, Catherine	3441 Willow Ave., Apt. 204, White Bear Lake, MN 55110	Ramsey	WHITE BEAR LAKE W-5 P-1 1780	"No voter registration card."	N/A	SOS Authentication Declaration confirms voter is registered at this address.
29	Bruggeman, Emma	1077 Linwood Ave., St. Paul, MN 55105	Ramsey	ST. PAUL W-2 P-01 0680	"No Voter Registration Card."	N/A	SOS Authentication Declaration confirms voter is registered at this address.
30	Buck, Harold	621 E. 134th St. Burnsville, MN 55337	Dakota	BURNSVILLE P-08 1280	"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."	SOS Authentication Declaration confirms voter registered at this address since 1987.
2	Buendorf, Tim	4340 19th Ave S. Minneapolis, MN 55407	Hennepin	MINNEAPOLIS W-12 P-11	"At polls - incorrect address/precinct entered"	N/A	Voter Declaration attesting to meeting statutory requirements to vote. Voter returned ballot by mail. SOS Authentication Declaration confirms voter is registered at this address.
31	Carthen-Watson, Shelley	871 Westview Ct., Shoreview, MN 55126	Ramsey	SHOREVIEW P-4 1610	"Voter not found in registered roster."	N/A	SOS Authentication Declaration confirms voter is registered at this address.
32	Doyscher-Domres, Ann	300 17th Ave N, Sartell, MN 56377	Stearns	SARTELL P-4 0419	"no registration"	N/A	SOS Authentication Declaration confirms voter is registered at this address.

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
33	Epstein, Jay	2904 Keating Circle, Burnsville, MN 55337	Dakota	BURNSVILLE P-10	"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."	SOS Authentication Declaration confirms voter is registered at this address.
34	Freese, John	17123 Chiltern Hills Road, Minnetonka, MN 55345	Hennepin	MINNETONKA W-3 P-H 2180	"Rejected No Registration card—"	N/A	SOS Authentication Declaration confirms voter is registered at this address.
35	Gage, Marisa	4284 Gadwall Court, Eagan, MN 55122	Dakota	EAGAN P-14 1840	"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."	SOS Authentication Declaration confirms voter is registered at this address

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
3	Gitis, Aaron	2743 Matilda St., Roseville, MN	Ramsey	ROSEVILLE P-04	"AB materials for R-2 issued should have been R-4"	N/A	Voter Declaration states that he voted absentee in person at Roseville City Hall, using the ballot provided by a clerk.
4	Gitis, Lorraine	2743 Matilda St., Roseville, MN 55113	Ramsey	ROSEVILLE P-04	"AB materials for R-2 issued should have been R-4"	N/A	Voter Declaration states that she voted absentee in person at Roseville City Hall, using the ballot provided by a clerk.
5	Goggin, Richard	1766 Kennard St. N, Maplewood, MN 55109	Ramsey	MAPLEWOOD P-09	"No valid reason recorded."	N/A	SOS Authentication Declaration confirms voter is registered at this address. Voter Declaration attests to meeting statutory requirements to vote.
36	Gugel, David	10034 Colorado Circle, Bloomington, MN 55438	Hennepin	BLOOMINGTON W-2 P-16 0045	"no registration card"	N/A	SOS Authentication Declaration confirms registered at this address since September 2008
37	Hartley, Nolan	200 1st Ave NE, Apt 816B Austin, MN 55912	Mower	AUSTIN W-1 P-1 0015	"Not registered"	N/A	SOS Authentication Declaration confirms voter registered at this address since July 2008.
38	Heffernan, Angela	10034 Colorado Circle, Bloomington, MN 55438	Hennepin	BLOOMINGTON W-2 P-16 0045	"No registration card"	"NRC per [illegible] on Ballot Envelope	SOS Authentication Declaration confirms registration address as of September 2008
6	Heinen, Andrew	6220 Cody Street, Duluth, MN 55807	St. Louis	DULUTH P-32	"Clerical error"	N/A	Voter Declaration attesting to meeting statutory requirements to vote.

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
39	Heins, Lorraine	303 E. Main Street, Dodge Center, MN 55927	Dodge	DODGE CENTER 0030	"Person's name not found on the Roster"	"no registration application -not on roster" (on ballot envelope)	SOS Authentication Declaration confirms voter registered at this address since November 1996.
7	Herr, Bonnie Jo	851 River Mews Ct, Minneapolis, MN 55414	Hennepin	MINNEAPOLIS W-2 P-06	"At polls - delivered to wrong precinct (2-5)"	N/A	Voter Declaration states that she voted by mail. Her first ballot was returned because it lacked her signature. She marked, signed and returned a new ballot by mail that county sent to her. SOS Authentication Declaration confirms voter registered at this address since May 2006.
8	Hjelle, Brette	3814 Boardman St., Minneapolis, MN 55417	Hennepin	MINNEAPOLIS W-12 P-09	"At polls—EJ error, not found on roster."	N/A	SOS Authentication Declaration confirms voter registered at this address since September 2004.
40	Joyce, Patricia	2768 87th St. E, Inver Grove Hts, MN 55076	Dakota	INVER GROVE HTS P-04 2740	"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."	SOS Authentication Declaration confirms voter registered at this address since August 2006.

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
41	Joyce, Thomas	2768 87th St. E, Inver Grove Hts, MN 55076	Dakota	INVER GROVE HTS P-04 2740	"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."	SOS Authentication Declaration confirms voter is registered at this address.
9	Kast, Dawn	18471 Elmwood Rd Nevis, MN 56467	Hubbard	HENRIETTA TWP.	"absentee ballot returned to wrong precinct"	N/A	Voter Declaration states that she returned her absentee ballot by mail in the envelope provided by the county.
42	Kratzke, Barbara	264 Oakview Road, West St. Paul, MN 55118	Dakota	WEST ST PAUL W-3 P-3 4990	"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."	SOS Authentication Declaration confirms voter is registered at this address.

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
10	Langland, James	1014 Oakland Park Rd., Thief River Falls, MN 56701	Pennington	THIEF RIVER FALLS(3B)	"Witnessing problem"	N/A	Voter Declaration states that he voted in person with staff from auditor's office as witness. County Recorder told him on November 13 that he "forgot to sign" as the witness.
11	Legris, Mary	100 Malcolm Ave SE Minneapolis, MN 55414	Hennepin	MINNEAPOLIS W-2 P-05	"At polls - EJ error"	N/A	Voter Declaration attesting to meeting statutory requirements to vote. Voted in person on Nov 3 at City Hall because working for Franken campaign on election day.
43	Liebig, Micheal	701 Marshall Ave St. Paul, MN 55104	Ramsey	ST. PAUL W-1 P-08 0610	"Registration card"	N/A	SOS Authentication Declaration confirms voter is registered at this address.
44	Luna, Erick Garcia	18701 Stratford Rd., No. 142 Minnetonka, MN 55345	Hennepin	MINNETONKA W-4 P-C 2195	"Rejected-no reg"	N/A	SOS Authentication Declaration confirms registration at this address since May 2008.
45	Matthew, Katherine	28 Edgewater Lane Sartell, MN 56377	Stearns	SARTELL P-1 0416	"No VRA"	N/A	SOS Authentication Declaration confirms voter registered at this address since 1978.
46	Miller, Mavis	203 11th Ave SW Austin, MN 55912	Mower	AUSTIN W-2 P-1 0030	"Not registered"	N/A	SOS Authentication Declaration confirms voter registered at this address since 1999.
47	Miller, Raymond	203 11th Ave SW Austin, MN 55912	Mower	AUSTIN W-2 P-1 0030	"Not registered"	N/A	SOS Authentication Declaration confirms voter registered at this address since 1999.

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
48	Misterek, Michael	2880 Irving Avenue S. Minneapolis, MN 55408	Hennepin	MINNEAPOLIS #W-10 P-11 1855	"Non registered voter"	N/A	Voter Declaration indicates that he registered in 2006 then moved next door in 2008. Included a new VRA with his absentee ballot reflecting new address, which is in same precinct as registration address
12	Mohring, Andrew	1425 East River Pkwy, Minneapolis, MN 55414	Hennepin	MINNEAPOLIS W-2 P-06	"At polls— Delivered to wrong precinct (2-5)"	N/A	Voter Declaration attests to following statutory requirements; he voted in person at Minneapolis City Hall and deposited ballot with elections officials. SOS Authentication Declaration.
49	Moriarty, Timothy	800 58th Ave N Brooklyn Center, MN 55430	Hennepin	BROOKLYN CENTER P-02 0205	"No properly completed voter registration application included in return envelope"	N/A	SOS Authentication Declaration confirms voter registered at this address since March 2003.

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
13	Neal, Joe	6915 W. 23rd St. St. Louis Park, MN 55426	Hennepin	ST LOUIS PARK W-4 P-17	"Other reason - ballot delivered to wrong precinct (prec.7). Unable to deliver on time to correct precinct on election night."	N/A	Voter Declaration states that he voted absentee in person at St. Louis Park city hall.
14	Nelson, Eila	1702 10th Ave Two Harbors, MN 55616	Lake	TWO HARBORS W-4	"Other"	N/A	Voter Declaration states that she voted absentee in person at local courthouse.
50	Ottman, Orin	525 Bluff Ave St. Charles, MN 55972	Winona	ST. CHARLES 0110	"Rejected-Not Reg"	N/A	SOS Authentication Declaration confirms voter registered at this address since November 1996.
51	Pettersen, Hans	7513 Landau Curve Bloomington, MN 55438	Hennepin	BLOOMINGTON W-2 P-23 0055	"No registration card"	N/A	SOS Authentication Declaration confirms registration at address since September 2008.
52	Pistonik, Jonathon	1163 Benton Way Arden Hills, MN 55112	Ramsey	ARDEN HILLS P-1 0010	"No voter registration card"	N/A	SOS Authentication Declaration confirms registered at this address since November 2000.

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
15	Ramstad, Marjorie Ann	2316 28th Ave S. Minneapolis, MN 55406	Hennepin	MINNEAPOLIS W-2 P-01	"At polls— Delivered to wrong precinct (8-8)"	N/A	Voter Declaration states that she returned the absentee ballot by mail in the envelope provided. Clerk returned b/c it lacked her signature. She signed and again returned by mail in provided envelope.
53	Revsbeck, Christy	16631 Isosecles Ave, Lakeville, MN 55044	Dakota	LAKEVILLE P-04 2940	"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."	SOS Authentication Declaration confirms voter registered at this address since April 1996.
16	Robertus, John	2700 Rice Creek Rd, No 114 New Brighton MN 55112	Ramsey	NEW BRIGHTON P-4	"No DL # on outer envelope"	N/A	Voter Declaration states that he went to city hall to submit new voter registration application and request AB ballot and vote absentee. Provided documentation to clerk regarding new residence (assisted living). Saw clerk enclose new registration application with ballot.

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
54	Ryan, Michael	130 Kraft Road West, West St. Paul, MN 55118	Dakota	WEST ST. PAUL W-3 P-3 4990	"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."	SOS Authentication Declaration confirms voter registered at this address since November 2004.
55	Schur, Patrick	337 Betty Ln, West St Paul, MN 55118	Dakota	WEST ST PAUL W-3 P-2 4980	"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."	SOS Authentication Declaration confirms voter registered at this address since March 1999.
56	Seeley, Anthony	3946 Hubbard Ave Robbinsdale, MN 55422	Hennepin	ROBBINS-DALE W-3 2665	"No registration card"	N/A	SOS Authentication Declaration confirmed voter registered at this address since October 2004.

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
57	Seeley, Rachel	3946 Hubbard Ave Robbinsdale, MN 55422	Hennepin	ROBBINSDALE W-3 2665	"No registration card"	N/A	SOS Authentication Declaration confirmed voter registered at this address since October 2004.
58	Shad, Harold	6574 156th St. NW Cass Lake, MN 56633	Cass	PIKE BAY TWP 0190	"No voter reg. card"	N/A	SOS Authentication Declaration confirms voter registered at this address since October 2008.
59	Sherry, Emily	3558 Greten Lane, Hastings, MN 55033	Dakota	HASTINGS W-4 P-2 2660	"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."	SOS Authentication Declaration confirms voter is registered at this address.
60	Simonson, Kathryn	14208 96th St. NE Otsego, MN 55330	Wright	OTSEGO 0140	"No registration"	N/A	SOS Authentication Declaration confirms voter registered at this address since 1988.
17	Smith, Robert	808 Fuller Ave. St. Paul, MN 55104	Ramsey	ST. PAUL W-1 P-05	"Other: office error"	N/A	Voter Declaration attesting to meeting statutory requirements to vote; SOS Authentication Declaration.

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
61	Sofio, Frank	1150 Park Court Hastings, MN 55033	Dakota	HASTINGS W-3 P-1	"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."	SOS Authentication Declaration confirms voter is registered at this address.

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
18	Spartz, Rebecca	3155 Coachman Road #408, Eagan, MN 55121	Dakota	EAGAN P-02	"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"	Voter Declaration attesting to meeting statutory requirements to vote; SOS Authentication Declaration confirms voter is registered at this address.
19	Toenjes, Cheryl	2085 Eleanor Avenue St. Paul, MN 55116	Ramsey	ST. PAUL W-3 P-03	"Ballot delivered to wrong precinct"	N/A	Voter Declaration confirms voted absentee at Ramsey County government office.

Exhibit No.	Voter Name	Voter Address	County	Precinct	Reason Given For Excluding Ballot	Additional Explanation	Declaration Summary
62	Wiener-Berkowitz, Maya	4028 Elliot Ave S. Minneapolis, MN 55407	Hennepin	MINNNEAPOLIS W-8 P-08	"NR voter"	N/A	SOS Authentication Declaration confirms voter is registered at this address.
20	Zelesnikar, Robert	812 5th Ave SE Minneapolis, MN 55414	Hennepin	MINNNEAPOLIS W-3 P-02	"At polls – delivered to wrong precinct (3-3)"	N/A	Voter Declaration attesting to meeting statutory requirements to vote; SOS Authentication Declaration confirms voter is registered at this address. .

---

*In Re:* 2008 United States Senate Election

**SUMMARY AFFIDAVIT OF  
DAVID L. LILLEHAUG**

---

David L. Lillehaug, being duly sworn, on oath states and deposes as follows:

I am the lead Minnesota attorney for the Al Franken for Senate Campaign and Al Franken regarding uncounted absentee ballots (“Franken Campaign”). I make this declaration in support of the Franken Campaign’s Supplemental Memorandum Regard Uncounted Absentee Ballots. In the paragraphs that follow, and in the supporting exhibits attached hereto, is information about each absentee voter who had a ballot rejected for a reason other than one of the four enumerated reasons or where strong evidence of error on the part of the election officials has been obtained. This is the so-called “fifth pile.”

1. **George Beske, Hennepin County.** Attached hereto in Exhibit 1 is the Declaration of George Beske confirming he followed the process indicated by the instructions for voting absentee. Mr. Beske voted in person on November 3 at the courthouse, and deposited his ballot directly with elections officials. Mr. Beske voted for Al Franken for U.S. Senate. Also attached in Exhibit 1 is the document the Franken Campaign received from Hennepin County, indicating that Mr. Beske’s ballot had been rejected “at-polls—delivered to wrong precinct (10-8)”. Finally, attached in Exhibit 1 is a Secretary of State Records Authentication Declaration confirming Mr. Beske is registered to vote. Because Mr. Beske completed his absentee ballot in accordance with the instructions and properly deposited it with election officials, his ballot should be counted.
2. **Tim Buendorf, Hennepin County.** Attached hereto in Exhibit 2 is the Declaration of Tim Buendorf confirming he followed the process indicated by the instructions for voting absentee. Mr. Buendorf applied for, received, and voted his absentee ballot as a resident of 4340 19th Ave S., Minneapolis, MN 55407. Mr. Buendorf returned his ballot by U.S. Mail, in the envelope provided with the absentee ballot. Mr. Buendorf voted for Al Franken for U.S. Senate. Also, attached in Exhibit 2 is the document the Franken Campaign received from Hennepin County, indicating that Mr. Buendorf’s ballot had been rejected “At polls—incorrect address/precinct entered.” Finally, attached in Exhibit 2 is a Secretary of State Records Authentication Declaration confirming Mr. Buendorf is registered to vote. Mr. Buendorf’s voter registration address matches the address he

provided on his absentee ballot application and absentee ballot envelope. It appears that the elections officials may have mis-entered his address as 4240 19th Ave S. at some point. Because Mr. Buendorf completed his absentee ballot in accordance with the instructions and properly mailed it to elections officials, his ballot should be counted.

3. **Aaron Gitis, Ramsey County.** Attached hereto in Exhibit 3 is the Declaration of Aaron Gitis confirming he followed the process indicated by the instructions for voting absentee. Mr. Gitis applied for his ballot in person at the Roseville City Hall. He provided the clerk with his correct name and address. The clerk confirmed he was registered and handed Mr. Gitis an absentee ballot. Mr. Gitis completed the ballot and eligibility certificate, signed the ballot and completed the other requirements as indicated by the instructions included with the absentee ballot. After he completed his ballot, he returned it to the clerk. Mr. Gitis voted for Al Franken for U.S. Senate. Also attached in Exhibit 3 is the document the Franken Campaign received from Ramsey County, indicating that Mr. Gitis's ballot had been rejected because "AB materials for R-2 issued should have been R-4." It appears the clerk may have given Mr. Gitis the wrong ballot materials. Finally attached in Exhibit 3 is the Secretary of State Records Authentication Declaration confirming Mr. Gitis is registered to vote. Because Mr. Gitis completed his absentee ballot in accordance with the instructions and properly deposited it with the elections officials, his ballot should be counted.
4. **Loraine Gitis, Ramsey County.** Attached hereto in Exhibit 4 is the Declaration of Loraine Gitis confirming she followed the process indicated by the instructions for voting absentee. Mrs. Gitis applied for her ballot in person at the Roseville City Hall. She provided the clerk with her correct name and address. The clerk confirmed she was registered and handed Mrs. Gitis an absentee ballot. Mrs. Gitis completed the ballot and eligibility certificate, signed the ballot and completed the other requirements as indicated by the instructions included with the absentee ballot. After she completed her ballot, she returned it to the clerk. Mrs. Gitis voted for Al Franken for U.S. Senate. Also attached in Exhibit 4 is the document the Franken Campaign received from Ramsey County, indicating that Mrs. Gitis's ballot had been rejected because "AB materials for R-2 issued should have been R-4." It appears the clerk may have given Mrs. Gitis the wrong ballot materials. Finally attached in Exhibit 4 is the Secretary of State Records Authentication Declaration confirming Ms. Gitis is registered to vote. Because Ms. Gitis completed her absentee ballot in accordance with the instructions and properly deposited it with the elections officials, her ballot should be counted.
5. **Richard Goggin, Ramsey County.** Attached hereto in Exhibit 5 is an Affidavit of Richard Goggin confirming he followed the process indicated by the instructions for voting absentee. Mr. Goggin submitted his absentee ballot in person at a designated Ramsey County government office. Mr. Goggin voted for Al Franken for U.S. Senate. Also attached in Exhibit 5 is the document the Franken Campaign received from Ramsey County indicating that Mr. Goggin's ballot had been rejected for "no valid recorded reason." Mr. Goggin is not aware of any reason for election officials to reject his ballot and refuse to count his vote. Also attached in Exhibit 5 is a Secretary of State Records Authentication Declaration, confirming Mr. Goggin is registered to vote. Because Mr.

Goggin completed his absentee ballot in accordance with the instructions and properly deposited it with the elections officials, his ballot should be counted.

6. **Andrew Heinen, St. Louis County.** Attached hereto in Exhibit 6 is the Declaration of Andrew Heinen confirming he followed the process indicated by the instructions for voting absentee. Mr. Heinen voted for Al Franken for U.S. Senate. Mr. Heinen had his ballot rejected for “clerical error.” Mr. Heinen is not aware of any reason for election officials to reject his ballot and refuse to count his vote. Also attached in Exhibit 6 is a Secretary of State Records Authentication Declaration confirming Mr. Heinen is registered to vote. Because Mr. Heinein completed his absentee ballot in accordance with the instructions and properly deposited it with the elections officials, his ballot should be counted.
7. **Bonnie Jo Herr, Hennepin County.** Attached hereto in Exhibit 7 is the Declaration of Bonnie Jo Herr, confirming that she followed the process indicated by the instructions for voting absentee. Ms. Herr voted for Al Franken for U.S. Senate. According to the document provided by elections officials, Ms. Herr’s ballot was rejected for the following reason: “at polls—delivered to wrong precinct (2-5).” Ms. Herr voted by mail. Her first ballot was returned because she had failed to sign it. She completed a new ballot sent to her by the county and signed and returned it in the envelope provided to her with the ballot. Ms. Herr is not aware of any reason for election officials to reject her ballot and refuse to count her vote. Also attached in Exhibit 7 is a Secretary of State Records Authentication Declaration confirming Ms. Herr is registered to vote. Because Ms. Herr completed her absentee ballot in accordance with the instructions and properly deposited it with the elections officials, her ballot should be counted.
8. **Brette Hjelle, Hennepin County.** Attached hereto in Exhibit 8 is a Secretary of State Records Authentication Declaration, confirming Mr. Hjelle is registered to vote. Also attached in Exhibit 8 is a document indicating the reason given for Mr. Hjelle’s ballot to be rejected: “At polls—EJ error, not found on roster.” Mr. Hjelle voted for Al Franken for U.S. Senate. Because Mr. Hjelle was in fact registered to vote, his ballot should be counted.
9. **Dawn Kast, Hubbard County.** Attached hereto in Exhibit 9 is the Declaration of Dawn Kast, indicating that she followed the process for voting absentee and that she returned her ballot by mail in the envelope provided with her absentee ballot. According to the document provided to the Franken Campaign by the elections officials, her ballot was rejected because “absentee ballot returned to wrong precinct.” That document is also attached in Exhibit 9. Ms. Kast voted for Al Franken for U.S. Senate. Finally attached hereto in Exhibit 9 is the Secretary of State Records Authentication Declaration confirming Ms. Kast is registered to vote. Because Ms. Kast completed her absentee ballot in accordance with the instructions and properly deposited it with the elections officials, her ballot should be counted.
10. **James Langland, Pennington County.** Attached hereto in Exhibit 10 is the Affidavit of James Langland, indicating he voted in person in front of staff at the auditor’s office. The auditor’s office staff was supposed to witness. On November 13, the County

Recorder told Mr. Langland he “forgot to sign the envelope.” Mr. Langland’s absentee ballot was rejected for a “witnessing problem.” Finally Mr. Langland’s registration is confirmed through the Secretary of State Records Authentication Declaration attached hereto in Exhibit 10. Mr. Langland voted for Al Franken. Because Mr. Langland’s ballot was rejected through no fault of his own, his ballot should be counted.

11. **Mary Legris, Hennepin County.** Attached hereto in Exhibit 11 is the Declaration of Mary Legris, confirming she followed the process for voting absentee in accordance with the instructions provided with her ballot. She voted in person on November 3 at City Hall, because she was volunteering for the Franken Campaign on election day. Also attached in Exhibit 11 is the document indicating the reason her ballot was rejected: “at polls-EJ error.” Finally attached in Exhibit 11 is the Secretary of State Records Authentication Declaration confirming that Ms. Legris is registered to vote. Because Ms. Legris completed her absentee ballot in accordance with the instructions and properly deposited it with the elections officials, her ballot should be counted.
12. **Andrew Mohring, Hennepin County.** Attached hereto in Exhibit 12 is the Declaration of Andrew Mohring confirming he followed the process indicated by the instructions for voting absentee. Mr. Mohring voted in person at Minneapolis City Hall, and deposited his ballot directly with elections officials. Mr. Mohring voted for Al Franken for U.S. Senate. Also attached in Exhibit 12 is the document the Franken Campaign received from Minneapolis, indicating that Mr. Mohring’s ballot had been rejected “at-polls—delivered to wrong precinct (2-5)”. Finally, attached in Exhibit 12 is a Secretary of State Records Authentication Declaration confirming Mr. Mohring is registered to vote. Because Mr. Mohring completed his absentee ballot in accordance with the instructions and properly deposited it with elections officials, his ballot should be counted.
13. **Joe Neal, Hennepin County.** Attached hereto in Exhibit 13 is the Declaration of Joe Neal, indicating he voted in person at St. Louis Park City Hall and followed the instructions accompanying his ballot. Mr. Neal voted for Al Franken for U.S. Senate. Also attached in Exhibit 13 is the document the Franken Campaign received indicating that Mr. Neal’s ballot had been rejected for “other reason—ballot delivered to wrong precinct (prec. 7). Unable to deliver on time to correct precinct on election night.” Finally attached in Exhibit 13 is a Secretary of State Records Authentication Declaration confirming Mr. Neal is registered to vote. Because Mr. Neal completed his absentee ballot in accordance with the instructions and properly deposited it with elections officials, his ballot should be counted.
14. **Eila Nelson, Lake County.** Attached hereto in Exhibit 14 is the Declaration of Eila Nelson, indicating she voted absentee in person at the local courthouse and followed the procedures prescribed by the instructions for voting absentee. Ms. Nelson’s ballot was rejected, according to Lake County, for “Other.” Exhibit 14. Also attached in Exhibit 14 is a Secretary of State Records Authentication Declaration confirming Ms. Nelson is registered to vote. Ms. Nelson voted for Al Franken. Because Ms. Nelson completed her absentee ballot in accordance with the instructions and properly deposited it with elections officials, her ballot should be counted.

15. **Marjorie Ann Ramstad, Hennepin County.** Attached hereto in Exhibit 15 is the Declaration of Marjorie Ramstad confirming she followed the process indicated by the instructions for voting absentee. Ms. Ramstad returned her ballot in the envelope provided. Ms. Ramstad voted for Al Franken for U.S. Senate. Also attached in Exhibit 15 is the document the Franken Campaign received from Minneapolis, indicating that Ms. Ramstad's ballot had been rejected "at-polls—delivered to wrong precinct (8-8)". Finally, attached in Exhibit 15 is a Secretary of State Records Authentication Declaration confirming Ms. Ramstad is registered to vote. Because Ms. Ramstad completed her absentee ballot in accordance with the instructions and properly deposited it with election officials by mailing it back in the envelope provided, her ballot should be counted.
16. **John Robertus, Ramsey County.** Attached hereto in Exhibit 16 is the Declaration of John Robertus, confirming he went to city hall to submit a new voter registration application and request an absentee ballot and to vote absentee. His ballot was rejected because "No DL # on outer envelope." Exhibit 16. Finally attached in Exhibit 16 is a Secretary of State Records Authentication Declaration confirming Mr. Robertus is registered to vote. Mr. Robertus voted for Al Franken. Mr. Robertus's ballot should be counted.
17. **Robert Smith, Ramsey County.** Attached hereto in Exhibit 17 is the Declaration of Robert Smith, confirming he followed the instructions for voting absentee. Also attached in Exhibit 17 is the document received by Ramsey County indicating that his ballot was rejected for "other: office error." Finally attached in Exhibit 17 is the Secretary of State Records Authentication Declaration confirming that Mr. Smith is registered to vote. Mr. Smith voted for Al Franken. Mr. Smith's ballot should be counted.
18. **Rebecca Spartz, Dakota County.** Attached hereto in Exhibit 18 is the Declaration of Rebecca Spartz, confirming she followed the instructions for voting absentee. Also attached in Exhibit 18 is the document received by Dakota County indicating that her ballot was rejected for reason "5," which is any other reason besides one of the four authorized statutory ones. Ms. Spartz returned her ballot by US Mail in the envelope provided with the ballot. Finally attached in Exhibit 18 is the Secretary of State Records Authentication Declaration confirming Ms. Spartz is registered to vote. Ms. Spartz voted for Al Franken. Ms. Spartz's ballot should be counted.
19. **Cheryl Toenjes, Ramsey County.** Attached hereto in Exhibit 19 is the Declaration of Cheryl Toenjes confirming she followed the process indicated by the instructions for voting absentee. Ms. Toenjes voted in person at a Ramsey County government office, and deposited her ballot directly with elections officials. Ms. Toenjes voted for Al Franken for U.S. Senate. Also attached in Exhibit 19 is the document the Franken Campaign received from Ramsey County, indicating that Ms. Toenjes's ballot had been rejected because "ballot delivered to wrong precinct." Finally, attached in Exhibit 19 is a Secretary of State Records Authentication Declaration confirming Ms. Toenjes is registered to vote. Because Ms. Toenjes completed her absentee ballot in accordance with the instructions and properly deposited it with election officials, her ballot should be counted.

20. **Robert Zelesnikar, Hennepin County.** Attached hereto in Exhibit 20 is the Declaration of Robert Zelesnikar confirming he followed the process indicated by the instructions for voting absentee. Mr. Zelesnikar voted for Al Franken for U.S. Senate. Also attached in Exhibit 20 is the document the Franken Campaign received from Minneapolis, indicating that Mr. Zelesnikar's ballot had been rejected "at-polls—delivered to wrong precinct (3-3)". Finally, attached in Exhibit 20 is a Secretary of State Records Authentication Declaration confirming Mr. Zelesnikar is registered to vote. Because Mr. Zelesnikar completed his absentee ballot in accordance with the instructions and properly deposited it with election officials, his ballot should be counted.
21. The following individuals were registered to vote, but were erroneously rejected by elections officials for not being registered. Each exhibit contains the Secretary of State Records Authentication Declaration confirming that the voter was, in fact, registered to vote. Each exhibit also contains the reason provided by the elections officials for each ballot's rejection. "Reason 3" in the documents refers to the alleged lack of registration.

Ordell Adkins, Pennington County, Exhibit 21.

Muriel Anderson, Ramsey County, Exhibit 22.

Anna Begin, Hennepin County, Exhibit 23.

Donna Berquist, Washington County, Exhibit 24.

Burton Bolter, Hennepin County, Exhibit 25.

Jane Bolter, Hennepin County, Exhibit 26.

Brandi Brickley, Hennepin County, Exhibit 27.

Catherine Brigham, Ramsey County, Exhibit 28.

Emma Bruggeman, Ramsey County, Exhibit 29.

Harold Buck, Dakota County, Exhibit 30.

Shelley Carthen-Watson, Ramsey County, Exhibit 31.

Ann Domres-Doyscher, Stearns County, Exhibit 32.

Jay Epstein, Dakota County, Exhibit 33.

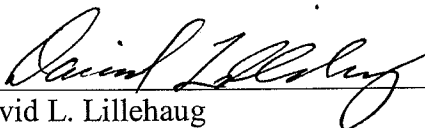
John Freese, Hennepin County, Exhibit 34.

Marisa Gage, Dakota County, Exhibit 35.

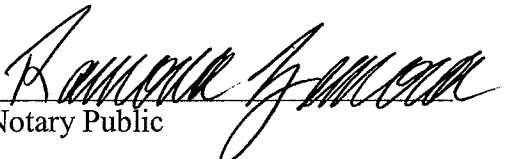
David Gugel, Hennepin County, Exhibit 36.

Nolan Hartley, Mower County, Exhibit 37.

Angela Heffernan, Hennepin County, Exhibit 38.  
Loraine Heins, Dodge County, Exhibit 39.  
Patricia Joyce, Dakota County, Exhibit 40.  
Thomas Joyce, Dakota County, Exhibit 41.  
Barbara Kratzke, Dakota County, Exhibit 42.  
Micheal Liebig, Ramsey County, Exhibit 43.  
Erick Garcia Luna, Hennepin County, Exhibit 44.  
Katherine Matthew, Stearns County, Exhibit 45.  
Mavis Miller, Mower County, Exhibit 46.  
Raymond Miller, Mower County, Exhibit 47.  
Michael Misterek, Hennepin County, Exhibit 48.  
Timothy Moriary, Hennepin County, Exhibit 49.  
Orin Ottman, Winona County, Exhibit 50.  
Hans Petterson, Hennepin County, Exhibit 51.  
Jonathon Pistonik, Ramsey County, Exhibit 52.  
Christy Revsbeck, Dakota County, Exhibit 53.  
Michael Ryan, Dakota County, Exhibit 54.  
Patrick Schur, Dakota County, Exhibit 55.  
Anthony Seeley, Hennepin County, Exhibit 56.  
Rachel Seeley, Hennepin County, Exhibit 57.  
Harold Shad, Cass County, Exhibit 58.  
Emily Sherry, Dakota County, Exhibit 59.  
Kathryn Simonson, Wright County, Exhibit 60.  
Frank Sofio, Dakota County, Exhibit 61.  
Maya Wiener-Berkowitz, Exhibit 62.

  
David L. Lillehaug

Subscribed and sworn to before me  
this 11 day of December, 2008.

  
Notary Public

4476306\_1.DOC

