

November 24, 2008

**VIA EMAIL**

The Honorable Mark Ritchie  
Secretary of State  
State Office Building  
St. Paul, MN 55155

**Re: U.S. Senate Recount -- Missing Ballots**

Dear Secretary of State Ritchie:

As you know, we represent the Al Franken for Senate Committee. As I am sure you are aware, the 2008 U.S. Senate election appears likely to be the closest Senate race in our nation's history and our electoral system has been, and will continue to be, subject to intense scrutiny. It is critical that, in conducting this recount, our process operates transparently, fairly, and consistently.

Unfortunately, however, we have received information from a variety of sources suggesting the alarming possibility of missing ballots in numerous precincts throughout the state. In some cases, after we, the Coleman campaign, or the press have raised these issues, local county officials have investigated the issue and – to their credit – located the ballots and counted them. Disturbingly, however, in some instances local officials serving as Deputy Recount Officials have refused to investigate and have instead brushed aside those concerns.

For a hand count of ballots to be accurate, all ballots counted must be made available for review. In some instances, the ballots counted in the recount are fewer than the number of persons who voted (as reported by your office as having voted in that precinct). In an election this close, and with accuracy and transparency paramount, these differences are a serious matter.

For example, according to the data posted on the Secretary of State's website, there are numerous instances in which the number of recorded *voters* does not equal the number of *ballots* considered in the recount. Instead, it appears that there were numerous ballots that were counted on election day, but that are no longer available for consideration during the recount. This is a matter of profound concern and apparently a violation of the Franken campaign's right (and the Coleman campaign's right) to review every ballot cast on election night.

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For example, in Clay County, Oakport Township, the total number of persons voting as reported on your website in the Election Abstract for the 2008 General Election is: 1,074. During the recount, however, only 1,069 ballots were available for consideration. Five ballots appear to be missing.

Similarly, in St. Louis County, Duluth Precinct No. 9, the total number of persons voting as reported on your website in the Election Abstract for the 2008 General Election is: 1,649. During the recount, however, only 1,646 ballots were available for consideration (again, according to data from your website). Three ballots appear to have been lost between the original tabulation of the ballots and the recounting of the ballots.

Finally, in Washington County, Oak Park Heights, Precinct 2, the total number of persons voting as reported on your website in the Election Abstract for the 2008 General Election is: 1,462. During the recount, however, only 1,449 ballots were available for consideration. Thirteen ballots appear to have been misplaced, lost or otherwise made unavailable during the recount.

In an election this close, these discrepancies should be cause for serious concern to every Minnesota voter.

Accordingly, the Franken campaign requests that your Office commence an immediate investigation to determine whether ballots are missing and, if so, to conduct a thorough search to locate them so that they may be promptly included as part of the recount of this important election. As part of that investigation, we specifically request that your Office direct Deputy Recount Officials to conduct an immediate, thorough search for any and all missing ballots. This search should include all offices, premises, machines, and storage areas under local election officials' jurisdiction and authority. We understand from recount observers and the press that, thus far in the recount, ballots have been found in machine trays, desk drawers, unmarked envelopes, and envelopes for other precincts.

So that the Coleman and Franken campaigns may assist your office in its investigation, we request that you order local elections officials to locate, review, and make copies available to the two campaigns the following documents, whether in paper or electronic form, with respect to all precincts in which the hand count has identified fewer ballots than the machine count or in the precinct book (plus accepted absentee ballots):

1. Precinct books and logs.
2. Absentee and mail voter lists.
3. Election abstracts.
4. Optical scan machine tapes.
5. Election night incident reports.
6. Election judge certifications of votes cast.

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7. Precinct vote total summary statements submitted to the county auditor;
8. Voter registration applications;
9. All other documents that reflect or reference the number of ballots cast or ballots counted; and
10. All other documents that bear on the matter of the missing ballots.

As indicated by recent order of the District Court, Second Judicial District, documents such as those listed above are public data under the Minnesota Government Data Practices Act. To avoid further delay, we request that you order them to provide these documents to both campaigns. Obviously, copying should be performed in such a fashion as not to endanger the security or integrity of the original documents.

Finally, we request that you direct the local officials to furnish written reports (with copies to the Coleman and Franken campaigns), on or before Monday, December 1, that set forth the locations they searched, the ballots that have been found, the ballots that are still missing, and the steps they have taken to locate, review, and copy the documents identified above.

Sincerely,



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