

Hamilton, Kevin J. (Perkins Coie)

From: Lillehaug, David [dlillehaug@fredlaw.com]
Sent: Thursday, December 18, 2008 9:36 AM
To: Hamilton, Kevin J. (Perkins Coie)
Subject: FW: Duplicate Ballots/Anoka County

From: Tony P. Trimble [mailto:trimblelegals@earthlink.net]
Sent: Friday, November 21, 2008 8:49 AM
To: 'Jim Gelbmann'; Kaplan, Steven; fknaak@klaw.us; 'Gary Poser'; 'Mark Ritchie'; Lillehaug, David; ereese@perkinscoie.com; sauttercom@aol.com
Subject: RE: Duplicate Ballots/Anoka County

Thanks, Jim. I clarified this yesterday afternoon with Gary Poser and our Anoka County Lead Representative. We understand that Anoka County officials had a telephone conference with Gary Poser on this matter and all proceeded according to the Secretary of State's original directions.

Matt

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Trimble & Associates, Ltd.
10201 Wayzata Blvd., Suite 130
Minneapolis, Minnesota 55305
Tel: (952) 797-7477
Fax: (952) 797-5858

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From: Jim Gelbmann [mailto:Jim.Gelbmann@state.mn.us]
Sent: Friday, November 21, 2008 8:40 AM
To: 'Tony P. Trimble'; 'Jim Gelbmann'; 'Kaplan, Steven'; fknaak@klaw.us; 'Gary Poser'; 'Mark Ritchie'; 'Lillehaug, David'; ereese@perkinscoie.com; sauttercom@aol.com
Subject: RE: Duplicate Ballots

Tony:

This is not true. We stand by our instructions as stated in our memo of November 19th. I'm not sure from where the confusion is coming.

12/18/2008

EXHIBIT A

Best!!!

Jim

Jim Gelbmann
Deputy Secretary of State
180 State Office Building
Saint Paul, Minnesota 55155
(651) 201-1344 (office)
(651) 334-4077 (cell)

From: Tony P. Trimble [mailto:trimblelegals@earthlink.net]
Sent: Thursday, November 20, 2008 3:11 PM
To: 'Jim Gelbmann'; 'Kaplan, Steven'; fknaak@klaw.us; 'Gary Poser'; 'Mark Ritchie'; 'Lillehaug, David'; ereese@perkinscoie.com; sauttercom@aol.com
Subject: Duplicate Ballots

Jim:

We have just received word from Anoka County that the Secretary of State is now reversing its course as to originals and duplicates from below, instructing officials to now count originals if no duplicate exists or can be found.

Can you confirm this? If so, how will you address all of the precincts in which the reverse has occurred?

We know of several instances in clear Coleman originals have been rejected by local election officials due to lack of a corresponding duplicate (and likely vice versa) and if the rule is reversed, we request that prior precincts be notified to enable both parties to go back and examine all originals.

Please advise.

Matt

From: Jim Gelbmann [mailto:Jim.Gelbmann@state.mn.us]
Sent: Wednesday, November 19, 2008 3:12 PM
To: 'Tony P. Trimble'; Lillehaug, David; 'Kaplan, Steven'; fknaak@klaw.us
Subject: Duplicate Ballots

Good Afternoon:

This will go to all election officials later today. Call or e-mail if you have concerns. The attached is information Gary Poser sent to all Deputy Recount Officials earlier this morning. It is the opinion of our Office that Rule 9 is clear about the process to be used when duplicate ballots are found during the sorting process. Those ballots are to be removed from the sorting process and placed in a separate pile. If there is an envelope of original ballots, the original ballots should then be sorted. If there are no duplicate ballots found during the sorting process, the canvass board has not authorized the envelope of original ballots to be opened and the original ballots envelope should remain sealed. If no envelope of original ballots exist, the duplicate ballots should then be sorted. While there is no requirement to compare the number of duplicate ballots to the

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number of original ballots, if there is an apparent significant discrepancy in the numbers, the candidates' representatives should attempt to agree on whether to sort the original or duplicate ballots. The Deputy recount official shall note on the incident log if the duplicates rather than original ballots were counted. If the two candidate representatives can not agree, the Deputy Recount Official shall sort and count the original ballots. I hope this provides additional clarity.

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)

From: Elections Dept
Sent: Wednesday, November 19, 2008 9:02 AM
Subject: Additional Information on Duplicate Ballots

elections division

Date: November 19, 2008
To: County Auditors, Election Administrators, and Election Staff
From: Elections Division
Re: Additional Information on Duplicate Ballots

Duplicates:

- * If no ballots marked as duplicates, no reason to go to Original Envelope, there is no way to pull out duplicates to replace with originals.
- * If ballots are marked as duplicated, pull out duplicates, not matched to originals, just sort and count the originals.
- * If obvious difference between number of duplicates & originals, discuss with candidate representatives, noting decision if counted duplicates or originals on the incident log.

If you have administrative questions during the recount, please call 651-201-1338.
Elections Division
Office of Minnesota Secretary of State

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12/18/2008

Hamilton, Kevin J. (Perkins Coie)

From: Lillehaug, David [dlillehaug@fredlaw.com]
Sent: Thursday, December 18, 2008 9:35 AM
To: Hamilton, Kevin J. (Perkins Coie)
Subject: FW: Duplicate Ballots

From: Tony P. Trimble [mailto:trimblelegals@earthlink.net]
Sent: Wednesday, November 19, 2008 12:36 PM
To: Kaplan, Steven; 'Jim Gelbmann'; Lillehaug, David
Cc: 'Gary Poser'; 'Mark Ritchie'; 'Beth Fraser'; Christie.Eller@state.mn.us; 'Gilbert, Al'; 'Raschke, Ken'; fknaak@klaw.us; 'Marc Elias'; 'Ezra Reese'; csheehan@colemanforsenate.com; khamilton@perkinscoie.com
Subject: RE: Duplicate Ballots

We believe that duplicate ballots should be counted if no corresponding original can be found, as this was a ballot cast on election night. A challenge to a duplicate ballot for which no original can be found is a frivolous challenge, because it does not relate to voter intent. Any challenge to a duplicate ballot should be made within an election contest and is not within the limited jurisdiction of an administrative recount. We will request the Minnesota State Canvassing Board to reject any challenges to duplicate ballots as groundless and frivolous (if the same are brought to the Canvassing Board).

Tony Trimble

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From: Kaplan, Steven [mailto:skaplan@fredlaw.com]
Sent: Wednesday, November 19, 2008 12:19 PM
To: Jim Gelbmann; Lillehaug, David; Tony P. Trimble
Cc: Gary Poser; Mark Ritchie; Beth Fraser; Christie.Eller@state.mn.us; Gilbert, Al; Raschke, Ken; fknaak@klaw.us; Marc Elias; Ezra Reese; csheehan@colemanforsenate.com; khamilton@perkinscoie.com
Subject: RE: Duplicate Ballots

EXHIBIT B

Jim: The Franken Campaign objects to the counting of any duplicate ballot for which a corresponding original has not been kept and cannot be viewed during the recount. See, in particular, MN Rule 8230.3850. Only originals are legally valid ballots and where the originals don't exist, the duplicate cannot be deemed a validly cast ballot. Steve

Steven Z. Kaplan
Fredrikson & Byron
200 South Sixth Street
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Minneapolis, MN 55402-1425
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(612) 492-7077 - Fax

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From: Jim Gelbmann [mailto:Jim.Gelbmann@state.mn.us]
Sent: Wednesday, November 19, 2008 11:47 AM
To: Lillehaug, David; Tony P. Trimble; Jim Gelbmann
Cc: Gary Poser; Mark Ritchie; Beth Fraser; Christie.Eller@state.mn.us; Gilbert, Al; Raschke, Ken; fknaak@klaw.us; Kaplan, Steven; Marc Elias; Ezra Reese; csheehan@colemanforsenate.com
Subject: RE: Duplicate Ballots

We will wait for the Franken Campaign to respond before ruling. We ask the Franken campaign to respond within the next half hour.

Jim Gelbmann
Deputy Secretary of State
180 State Office Building
Saint Paul, Minnesota 55155
(651) 201-1344 (office)
(651) 334-4077 (cell)

From: Lillehaug, David [mailto:dlillehaug@fredlaw.com]
Sent: Wednesday, November 19, 2008 11:37 AM
To: Tony P. Trimble; Jim Gelbmann
Cc: Gary Poser; Mark Ritchie; Beth Fraser; Christie.Eller@state.mn.us; Gilbert, Al; Raschke, Ken; fknaak@klaw.us; Kaplan, Steven; Marc Elias; Ezra Reese; csheehan@colemanforsenate.com
Subject: RE: Duplicate Ballots

12/18/2008

Dear Mr. Gelbmann -- This may be an important issue. Before the SoS office issues any direction, the Franken campaign would like a little time to review our analysis and then be heard. In the meantime, I would appreciate it if the Trimble office would identify the location(s) in which it believes this issue has arisen.

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

From: Tony P. Trimble [mailto:trimblelegals@earthlink.net]
Sent: Wednesday, November 19, 2008 11:28 AM
To: 'Jim Gelbmann'
Cc: 'Gary Poser'; 'Mark Ritchie'; 'Beth Fraser'; Christie.Eller@state.mn.us; 'Gilbert, Al'; 'Raschke, Ken'; Lillehaug, David; fknaak@klaw.us; Kaplan, Steven; 'Marc Elias'; 'Ezra Reese'; csheehan@colemanforsenate.com
Subject: Duplicate Ballots

Jim:

Can you please clarify the rule if a "DUPLICATE" ballot exists, but no corresponding original can be found? Will such a "DUPLICATE" be wholly discarded or counted? If an election official does not count it, can an observer nevertheless challenge it?

Matt

From: Tony P. Trimble [mailto:trimblelegals@earthlink.net]
Sent: Wednesday, November 19, 2008 10:53 AM
To: 'Jim Gelbmann'
Cc: 'Gary Poser'; 'Mark Ritchie'; 'Beth Fraser'; 'Christie.Eller@state.mn.us'; 'Gilbert, Al'; 'Raschke, Ken'; 'Lillehaug, David'; 'fknaak@klaw.us'; 'Kaplan, Steven'; 'Marc Elias'; 'Ezra Reese'; 'csheehan@colemanforsenate.com'
Subject: Kandiyohi County

Jim:

The Kandiyohi County Attorney has indicated that the back of the ballot is not a proper matter for consideration in the recount. We disagree, as an identifying mark may exist on the back of a ballot. Our Lead Representative has twice requested the Kandiyohi County Attorney to call your office but he has apparently refused, stating that he is right and doesn't need to ask anyone.

Can you confirm our understanding that the back of the ballot may be reviewed in the recount, and also advise the Kandiyohi County Attorney as to the same?

Thanks,

Matt

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10201 Wayzata Blvd., Suite 130
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12/18/2008

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