

DEC 22 2008

FILED

STATE OF MINNESOTA
IN SUPREME COURT

Norm Coleman,

Court File No. A08-2206

Petitioner,

v.

The Minnesota State Canvassing Board,

Respondent.

AFFIDAVIT OF DAVID L. LILLEHAUG

1. My name is David Lillehaug. I am an attorney at Fredrikson & Byron, P.A., Minneapolis, Minnesota. I am one of the attorneys for the Al Franken for Senate Committee.

2. The Coleman campaign has challenged 11 original ballots in Minneapolis Precinct 8-7 on the ground that there are not corresponding marked duplicates. The Coleman campaign's contention is that, therefore, 11 votes were double-counted. The facts are entirely to the contrary.

3. The 11 corresponding marked duplicates exist. During a search of the Minneapolis elections warehouse on Friday, December 5, 2008, attended by Fredrikson & Byron lawyer Steven Kaplan, a plastic bag containing 12 UOCAVA ballots from Precinct 8-7 was discovered.

4. On Tuesday, December 9, 2008, I interviewed by telephone the chief election judge for Precinct 8-7, Sara Graffunder. Ms. Graffunder told me that she was familiar with the contents of the plastic bag, as she and her fellow elections officials had put the 12 ballots in the plastic bag. She stated that the 12 UOCAVA ballots consisted of

1 original ballot and 11 duplicate ballots, all left uncounted on election night by mistake. She realized that fact only when her work was finished and the precinct's tally had been reported.

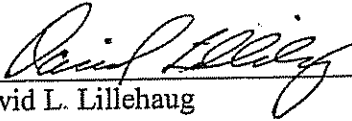
5. Thereafter on election night, according to Ms. Graffunder, she advised Minneapolis elections officials that there were 12 uncounted ballots from Precinct 8-7. She wrote the word "uncounted" on the plastic bag and on a note that she put in the plastic bag. She put the plastic bag with the note inside the bag of unused election materials, and delivered the materials to officials at the Sabathani Community Center.

6. Ms. Graffunder followed up her verbal advice to Minneapolis elections officials with an email. On December 9, 2008, Ms. Graffunder sent an email to Minneapolis Elections Official Cynthia Reichert, a copy of which is attached hereto as Exhibit A.

7. In her email, Ms. Graffunder confirmed that there were 12 ballots "we failed to run through," and that 11 of those were duplicate ballots. She noted that the 11 originals of those duplicated ballots were "in the yellow envelope of originals of ballots to be duplicated, all signed and with the chain of possession clearly intact." Ms. Graffunder stated: "I certainly hope that these ballots get counted. I hate to think that our error deprived 11 or 12 people of their votes."


8. Upon information and belief, the 1 original ballot in the plastic bag remains uncounted. Pursuant to Recount Rule 9, the original ballots corresponding to the 11 duplicate ballots in the plastic bag were, in fact, counted during the recount. It does not appear that there was any double-counting in Precinct 8-7. Indeed, because

of Rule 9, 11 votes not tallied on Election Night were, in fact, counted during the recount,
thereby enfranchising 11 overseas voters.



David L. Lillehaug

Subscribed and sworn to before me
this 21st day of 2008.



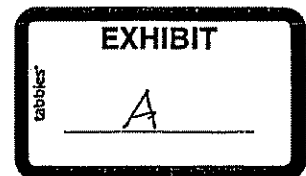
Notary Public



Lillehaug, David

From: Sara Graffunder [sara@acm.org]
Sent: Tuesday, December 09, 2008 7:00 PM
To: Lillehaug, David
Subject: Fwd: Various items regarding our process in Precinct 8-7

>Date: Sun, 9 Nov 2008 20:05:48 -0600
>To: cynthia.reichert@ci.minneapolis.mn.us
>From: Sara Graffunder <sara@acm.org>
>Subject: Various items regarding our process in Precinct 8-7
>Cc: carol.strong@ci.minneapolis.mn.us, nancy@birthlink.net
>Bcc:
>X-Attachments:
>
>Hi, Carol and Cindy,
>
>First, I want to say that, in our precinct, a lot of things went right
>in this election:
>
>Our judges are getting better and better trained.
>Your documentation is getting better and better (thanks for the yellow
>highlighted list of things in the supply folder to go back to the
>drop-off site!!).
>Lonnie, our support person from your office, was calm, friendly, and helpful.
>We took some of Lonnie's ideas about arranging our room.
>Your phone alerts were timely and useful.
>The chair judge training was pointed and useful.
>The greeter materials and instructions were really useful.
>Judy and Cindy did a great job of training.
>We all appreciated your flexibility in letting us get the two extra
>judges at the end of the day.
>The student judges were great.
>All your suggestions about making a plan for a variety of things were useful.
>
>Issues: absentee ballots, location of voting place, receipt counting,
>new judges for general election
>
>1. Absentee ballots
>
>As you know, the absentee-ballot processing in our precinct wasn't as
>smooth we'd have liked. That was not so much due to any problem with
>the instructions as it was with our trying to process them in little
>waves after 5 p.m. and before we received the final delivery at 8 p.m.
>If we ever have to process this number of absentee ballots again, I
>would wait until the polls are closed and set up two or three pairs of
>judges to work on the different kinds of ballots. We'd have empty
>tables set up for just this processing, too. We'd get done later,
>perhaps, but it would be less stressful.
>Of course, everyone is just exhausted when dealing with these
>ballots. Also, by waiting, we could have eliminated the second



>setr of identical instructions that came with the second delivery,
>which was possibly part of our confusion.

>

>I did have one further thought after my talk with Cindy on Saturday
>morning, and that is that 11 of the 12 ballots we failed to run through
>the ballot counter were duplicated ballots. The originals of those
>ballots are in the yellow envelope for originals of ballots to be
>duplicated, all signed and with the chain of possession clearly intact.
>I assume that someone will challenge the chain of possession for the
>duplicated 11 ballots and the 1 that was not duplicated, because, on
>instructions from downtown, we put them in the plastic bag for the
>remainder of absentee ballot materials.
>That bag wasn't sealed with signatures across it. I certainly hope that
>these ballots get counted. I hate to think that our error deprived 11
>or 12 people of their votes.

>

>As I told Cindy, I would be glad to have more absentee-ballot training.
>I would also be glad to be a tester of the instructions.
>I noted in my two calls downtown for help that I believe there was a
>typo in the instructions about what to do with the ABS stamp on the
>election-day registration forms that came in with absentee ballots.
>The white space was in the form space 15, I believe, but the
>instructions said "8." I hate to say it, but little problems like
>this, when we were so tired, probably contributed to our other
>confusion. For example, the other judge and I failed to initial the
>absentee ballots, other than the ones we duplicated. Both of us
>handled all the processing, except that we watched other judges feed in
>the ballots.

>

>I suppose this is minor, but the regular absentee and same-day
>registration ballots should really be delivered in separate bags or
>envelopes as the different kind of UOCAVA ballots are..

>

>Finally, I wish for all of us that the deadline for getting absentee
>ballots in were 5 p.m. the day before election day AND that no one was
>urging absentee voting as a kind of early voting option. Of course, I
>have no idea what percentage of our absentee voters could have made it
>in on election day.... Maybe election day should be a forced work
>holiday!

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>2. Location of precinct

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>Having our precinct in the same building as another precinct is
>terribly confusing to our voters (and our judges). I personally
>escorted 3 voters over to the other precinct after they had stood in
>both lines and been sent to us in error by the other precinct. I
>suspect we made the same error. We need to have enough judges in the
>two precincts to have one or two advance greeter judges to manage the
>kinds of line we had at 7 a.m. Better still, we might do
>better with having the precincts in different buildings. We
>tried, with mixed success, to be very aggressive about our greeter
>work, as you advised. I think some of our greeters just didn't get how

>much easier their work made it for those judges inside the room.
>Again, emphasizing during training of all the judges that the greeter
>is about ensuring accuracy and not just about crowd control could
>perhaps help us.

>
>3. Receipt counting

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>Receipt counting and making sure the machine count agrees was really
>pretty easy in the primary. But it was impossible in the general
>election. I had one guy insist that his ballot had not been
>counted--that the count had not incremented. Since we were way off in
>our receipt count, I couldn't use that to reassure him. We were
>letting people in a few at a time, but we were still overwhelmed.
>Any ideas you have and can emphasize in training to help with this
>problem will be great.

>
>4. New judges for general election

>
>We had two judges, plus the students, for the general election who
>didn't come to the primary. We needed every one of them. However, we
>put a couple of them together early in the day, and they hadn't had a
>chance to work out the kinds that we had worked out in the primary.
>Next time, I'd pair a primary judge with a new judge.
>But I'd rather have more judges, even if for only part of the day, at
>the primary, to get the experience. Failing that, some sort of warning
>about not doing this kind of pairing would be useful on the Chair judge
>instructions.

>
>I will be out of the country and unavailable until December 10. If you
>need additional information about the absentee ballots, please get in
>touch with Nancy Birth, our assistant chair judge. She didn't,
>however, process absentee ballots, although she can attest to the chain
>of possession from precinct to drop-off point. Dorsey Keesey was the
>judge who processed absentee ballots with me.

>
>Sara K. Graffunder