

STATE OF MINNESOTA

IN SUPREME COURT

Court File No. A08-2206

Norm Coleman,

Petitioner,

v.

The Minnesota State Canvassing Board,  
and Michelle DesJardin, Hennepin County  
Elections Manager, Cynthia Reichert,  
Minneapolis Elections Director, and  
Hennepin County Canvassing Board,  
individually and on behalf of all County  
and Local Election Officers and County  
Canvassing Boards,

Respondents.

**RESPONSE OF THE MINNESOTA  
STATE CANVASSING BOARD TO  
PETITION FOR AN ORDER TO  
SHOW CAUSE PURSUANT TO  
MINN. STAT. § 204B.44**

This response is submitted on behalf of the Minnesota State Canvassing Board (“hereinafter “the Board”) to the Petition filed December 19, 2008 seeking the correction of errors, if any, regarding the counting of original and duplicate ballots.

In its December 19, 2008 Order, the court asked the Board to provide a record or whatever documentation is available to inform the Court of the action taken at the Board’s December 19, 2008 meeting with respect to the issue of duplicate and original

ballots. The issue was discussed by the Board in its December 18, 2008 meeting.<sup>1</sup> Thereafter, on December 19, 2008 recognizing, among other things, its limited authority, the five-member Board unanimously adopted the following resolution at its December 19, 2008 meeting: “I would move that we reject all of the challenges based upon duplicates or originals that are not based on voter intent or identifying marks.”<sup>2</sup> See Minnesota Statutes Section 204C.35, subd. 3 (2008) (defining scope of recount); *O’Ferrall v. Colby*, 1858 WL 2544 (Minn. 1858); *Taylor v. Taylor*, 1865 WL 940 (Minn. 1865).

While the Petition seeks to restrain the Board from certifying or finalizing the results of the recount in the election for the United States Senate until the issue surrounding duplicate/original ballots is resolved by local officials, the Board notes that

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<sup>1</sup> See paragraph 11 of the Affidavit of Bert Black of the Office of the Minnesota Secretary of State. No minutes of the December 18, 2008 meeting have yet been prepared by the Secretary of State’s Office, but the video of the meeting is available at:

[http://www.house.leg.state.mn.us/htv/archivessem.asp?ls\\_year=85](http://www.house.leg.state.mn.us/htv/archivessem.asp?ls_year=85)

at the entry for December 18, 2008 labeled State Canvassing Board – Day 3/part 4, commencing at approximately 1:26:00 of that video.

<sup>2</sup> See paragraph 11 of the Affidavit of Bert Black. No minutes of that December 19, 2008 meeting have yet been prepared by the Secretary of State’s Office, but the video if the meeting is available at:

[http://www.house.leg.state.mn.us/htv/archivessem.asp?ls\\_year=85](http://www.house.leg.state.mn.us/htv/archivessem.asp?ls_year=85)

at the entry for December 19, 2008 labeled State Canvassing Board – Day 4/part3, at approximately 45:00 of that video

the remainder of the relief in the Petition is directed at the respective campaigns or local officials acting as recount officials. The Petition seeks that this Court:

1. *Order each campaign to list every precinct in which it believes Duplicate Ballots made on election night to correct damages ballots have not been correctly reconciled with the Original Ballots.* This relief is directed at the respective campaigns.

2. *Order the local canvassing boards to ensure that vote totals are reconciled to correct any errors relating to the Duplicate/Original Issue so that no double-counting of votes occurs and to do so as part of this Court's previously ordered process for finding wrongly rejected absentee ballots. The counties shall then amend their returns by the December 31, 2008 deadline so that accurate results are included in the Board's final certification results.* This relief is directed at local election officials.

3. *In the counties with precincts where all Original Ballots cannot be reconciled with Duplicate Ballots, order those county canvassing boards to amend their returns to the Board and in doing so, count and certify only Original Ballots for which there are corresponding marked duplicates.* This relief is directed at local election officials.

Any errors which exist regarding the counting of original/duplicate ballots discovered by local election officials acting as recount officials and, the local officials

can submit amended recount summaries to the Board, which can consider those corrections in its certification of the final election results for the United States Senate.

Dated: \_\_\_\_\_

Respectfully Submitted,

LORI SWANSON  
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State of Minnesota

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