

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT  
CASE TYPE: CIVIL OTHER

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Al Franken for Senate,

Case No. \_\_\_\_\_

Plaintiff,

vs.

Ramsey County, Joseph Mansky,  
and John Does and Jane Does,

**SUMMONS**

Defendants.

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THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Plaintiff's attorney an Answer to the Complaint which is herewith served upon you within twenty (20) days after the service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Civil cases are generally subject to alternative dispute processes pursuant to Minnesota law. Alternative dispute resolution includes mediation, arbitration, and other processes as set forth in the district court rules. You may contact the court administrator about resources in your area. If you cannot pay for alternative dispute resolution, assistance may be available to you in some cases in some counties, through a nonprofit provider or a court program.

Dated: November 13, 2008



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David L. Lillehaug (#63186)  
Steven Z. Kaplan (#53739)  
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**ATTORNEYS FOR PLAINTIFF**

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Defendants.

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**COMPLAINT**

Plaintiff Al Franken for Senate, for its Complaint against Defendants Ramsey County, Joseph Mansky, in his official capacity as Ramsey County Election Manager, and John Does and Jane Does, in their official capacities as the responsible authorities for the collection, use, and dissemination of data in Ramsey County, states and alleges as follows:

**INTRODUCTION**

1. Plaintiff Al Franken for Senate (the "Campaign" or "Plaintiff") is the campaign organization through which Al Franken, candidate for United States Senate, conducted his candidacy for that office in the election held on November 4, 2008.

2. Defendant Ramsey County is a political subdivision of the State of Minnesota. Ramsey County administers elections pursuant to Minnesota Election Law, Minn. Stat. Ch. 200-211C (2008).

3. Defendant Joseph Mansky ("Mansky") is the Elections Manager for Ramsey County and is the principal county officer charged with duties relating to elections. Upon information and belief, Mansky is the individual responsible for the collection, use, and

dissemination of any set of data related to the conduct of elections in Ramsey County pursuant to Minnesota Election Law, Minn. Stat. Ch. 200-211C (2008) and the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (2008) (“MGDPA”).

4. Defendants John Doe and Jane Doe are unidentified defendants who are or may be designated by law or by Ramsey County as an individual responsible for the collection, use, and dissemination of any set of data related to the conduct of elections in Ramsey County.

5. This action presents the Campaign’s claims that it is now entitled to inspect or receive, on an expedited basis, documentation and information that it requested from Defendants in accordance with the MGDPA.

6. Venue in this County is proper pursuant to Minn. Stat. § 13.08, Subd. 3.

### **BACKGROUND**

#### **Election and Recount**

7. On November 4, 2008, the State of Minnesota conducted an election for the office of United States Senator.

8. Interim vote totals published by the Secretary of State’s Office show that the two leading candidates in that election, Al Franken and Norm Coleman, are separated by 206 votes in an election contest in which more than 2.9 million votes were cast. Consequently, the total vote margin between these two candidates is less than one one-hundredths of one percent of the almost 2.9 million votes cast for that office.

9. If, as here, the total votes separating the candidates are certified by the State Canvassing Board to be less than one-half of one percent (0.5%) of the total of all votes cast for the office of United States Senator, Minnesota Election Law directs the Secretary of State to

oversee a mandatory manual recount of all votes cast in the State for that office. Minn. Stat. § 204C.35, subd. 1(b)(1).

10. The Secretary of State has scheduled that recount to commence on November 19, 2008.

**Request for and Wrongful Denial of Information under the MGDPA**

11. On November 9, 2008, David Lillehaug (“Counsel”), in his capacity as counsel for the Campaign, sent a letter to Mansky, care of Ramsey County Assistant Attorney Darwin Lookingbill (“Lookingbill”), requesting information pursuant to the MGDPA. A copy of this request is attached as **Exhibit A**.

12. In the letter, Counsel requested that Mansky produce “the names and addresses of all persons who submitted absentee ballots in connection with the general election of November 4, 2008, but whose absentee ballots were rejected or otherwise not counted.” Counsel informed Mansky that the request was “urgent” and that the Campaign would pay reasonable costs for collecting and copying the information.

13. On November 11, 2008, Counsel provided Ramsey County, through Mr. Lookingbill, with a memorandum entitled “Absentee Ballot Data Practices Request,” which further iterated and explained the Campaign’s earlier request for information related to absentee ballots. A copy of this memorandum is attached as **Exhibit B**.

14. The memorandum explains that pursuant to the MGDPA and Minn. Stat. § 203B.12, subd. 7, the identity of absentee ballot voters may be made available for public inspection after the close of voting on election day.

15. Also on November 11, 2008, Coleman requested, pursuant to the MGDPA, that Defendants provide it with the same information related to absentee ballots as requested by the Campaign. A copy of this letter is attached as **Exhibit C**.

16. On November 12, 2008, Ramsey County and Mansky denied the Campaign's requests, citing Minn. Stat. § 203B.12, subd. 7 as purported justification.

17. The Campaign has requested public information that has been collected and maintained by the Defendants. The requested information has not been classified so as to deny the Campaign access by any statutory section, temporary classification, or provision of federal law, including Minn. Stat. § 203B.12, subd. 7.

18. As of November 13, 2008, the Campaign has been denied access to or copies of the requested information.

19. Defendants' denials of the Campaign's requests have prevented the Campaign from developing a complete record upon which to enforce its rights under the canvass, recount, and contest procedures provided in Minnesota Election Law.

20. Plaintiff incorporates the foregoing allegations into each of the following counts as though fully set forth therein.

**FIRST CAUSE OF ACTION**

**Injunction  
Minnesota Government Data Practices Act  
Minn. Stat. § 13.08, Subd. 2**

21. Defendants' refusal to provide the names and addresses of absentee voters whose ballots were rejected or otherwise not counted violates Minn. Stat. 13.03, subd. 3(a), and, thus, Defendants have wrongfully prevented Plaintiff from receiving public data to which it is entitled under Minnesota law.

22. Because Defendants have violated and are continuing to violate the MGDPA, the Court should enjoin them, under Minn. Stat. § 13.08, subd. 2, from using or employing any practices which violate the MGDPA.

**SECOND CAUSE OF ACTION**

**Action to Compel Compliance  
Minnesota Government Data Practices Act  
Minn. Stat. 13.08, Subd. 4**

23. Defendants' refusal to provide the names and addresses of absentee voters whose ballots were rejected or otherwise not counted violates Minn. Stat. § 13.03, subd. 3(a) and, thus, Defendants have wrongfully prevented Plaintiff from receiving public data to which it is entitled under Minnesota law.

24. Because Defendants have violated and are continuing to violate the MGDPA, the Court should enter an order to compel their compliance under Minn. Stat. § 13.08, subd. 4.

**THIRD CAUSE OF ACTION**

**Declaratory Relief  
Minnesota Declaratory Judgment Act  
Minn. Stat. § 555**

25. Plaintiff is entitled, under Minn. Stat. § 555.02, *et. seq.*, the Declaratory Judgment Act (DJA), to a judicial decree of its rights under the MGDPA. The DJA is applicable to this dispute and was enacted to enable the Plaintiff to assert its rights and remedy Defendants' wrongs, as provided by Minn. Stat. § 555.12.

26. Plaintiff's rights to obtain the requested data kept by Defendants under the provisions of the MGDPA have been prejudiced by reason of Defendants' refusal to supply the requested data to Plaintiff.

27. The parties disagree about Plaintiff's rights to access the requested data under the MGDPA.

28. The Court should settle this controversy and afford relief from uncertainty and insecurity with respect to Plaintiff's rights by granting a judicial decree stating that Defendants are required to grant Plaintiff immediate access to the requested data.

**FOURTH CAUSE OF ACTION**

**Mandamus  
Minn. Stat. § 586.01 et seq.**

29. Minnesota Statute § 586.01, *et seq.*, permits the Court to issue a writ of mandamus to compel a political subdivision, including county officials, to take action to avoid arbitrary and capricious results.

30. The Court also has equitable authority to issue a mandatory injunction requiring the Defendants in this case to take action to comply with the MGDPA.

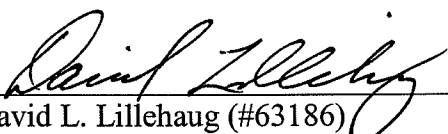
31. Defendants have, in violation of law and arbitrarily and capriciously, refused to approve Plaintiff's request for information under the MGDPA, and have otherwise refused access to or copies of the requested information.

32. Plaintiff is entitled to a writ of mandamus and a mandatory injunction compelling Defendants to produce the requested information pursuant to the MGDPA.

WHEREFORE, Plaintiff respectfully requests the Court enter judgment in Plaintiff's favor, including, but not limited to:

1. An order determining and declaring that Plaintiff has a statutory right to obtain or access all public data requested, according to the provisions of the MGDPA;
2. Enjoining Defendants from refusing to provide all public data Plaintiff has a right to receive under the MGDPA;
3. Compelling Defendants to disclose the requested data immediately at a fee fairly representing Defendants' reasonable production costs;
4. Ordering all other equitable and legal relief to which Plaintiff may be entitled.

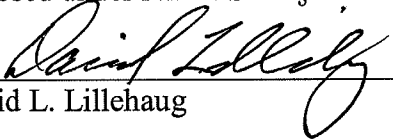
Dated: November 13, 2008

  
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**ATTORNEYS FOR PLAINTIFF**

**ACKNOWLEDGMENT**

Plaintiff acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

  
\_\_\_\_\_  
David L. Lillehaug

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# EXHIBIT A

**FREDRIKSON & BYRON, P.A.**  
200 South Sixth Street  
Minneapolis, MN 55402

November 9, 2008

**VIA EMAIL**

Elections Manager Joe Mansky  
c/o Assistant County Attorney Darwin Lookingbill  
Ramsey County Elections Office  
90 West Plato Boulevard  
St. Paul, MN

**Re: Urgent -- Data Practices Request**

Dear Mr. Mansky:

Pursuant to the Minnesota Government Data Practices Act, we request copies of the following:

The names and addresses of all persons who submitted absentee ballots in connection with the general election of November 4, 2008, but whose absentee ballots were rejected or otherwise not counted.

By way of example only, this request includes the names and address of persons whose absentee ballots were rejected by reason of:

- \* Signatures not matching; or
- \* No registration on file.

We are prepared to pay reasonable costs for the collecting and copying of this data, as provided by the Act.

This is an **urgent** request and is time-sensitive under Minnesota's election laws. Accordingly, we respectfully submit that the response hereto should be expedited. Please call me at 612-492-7321 if you have any questions.


Very truly yours,

David L. Lillehaug

# EXHIBIT B

MEMO

**TO:** County/Municipal Election Officials and Attorneys

**FROM:** David Lillehaug 

**DATE:** November 11, 2008

**RE:** Absentee Ballot Data Practices Request

We represent Franken for Senate. We appreciate the long hours county and municipal officials have been investing in this historic election. We write concerning one important issue that is very time-sensitive.

The Franken campaign has submitted to your election unit a Minnesota Government Data Practices Act ("MGDPA") request for (a) the names and addresses of individuals who submitted absentee ballots for the November 4 general election, and (b) the names and addresses of individuals whose absentee ballots were rejected (and the reasons in each instance for the rejection). We write to remind you that, as a matter of law, this information is public data and must be produced.

The MGDPA creates a presumption that, unless otherwise provided by law, all government data are public. See Minn. Stat. § 13.03, subd. 1. It is difficult to imagine an area in which the need for transparency is greater than in the administration of our electoral system. Indeed, public confidence and trust in our elections depend to a great degree upon public participation in the process and public access to information about the administration of the electoral system. See *Purcell v. Gonzalez*, 549 U.S. 1, 7 (2006) ("Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy."); see also, e.g., Minn. R. 8235.0600 (requiring that the process of recounting ballots be "accessible to the public").

The MGDPA deals specifically with absentee voters by link to the election code. Minn. Stat. § 13.607, subd. 7, provides: "Disclosure of names of voters submitting absentee ballots is governed by section 203B.12, subdivision 7."

Section 203B.12, subd. 7, in turn, states that: "The names of voters who have submitted an absentee ballot return envelope to the county auditor or municipal clerk may not be made available for public inspection *until the close of voting on election day.*" (Emphasis added). The identity of absentee ballot voters is not public data until the close of voting, but becomes public immediately thereafter. There is no other plausible reading of the explicit terms of the statute. The Franken campaign has requested this data and I would respectfully submit that it must be produced immediately.

This conclusion is entirely consistent with the rest of Minnesota election law, which provides that the name, address, year of birth, and voting history of each registered voter in the county is part of a "public information list" available for inspection. See Minn. Stat. § 201.091, subd. 4.

# EXHIBIT C

# TRIMBLE & ASSOCIATES, LTD.

*Attorneys at Law*

10201 Wayzata Boulevard  
Suite 130  
Minneapolis, Minnesota 55305

Telephone: 952-797-7477  
Facsimile: 952-797-5858  
Email: trimblelegals@earthlink.net

November 11, 2008

Dear County Auditor:

As you are aware, we represent Coleman for Senate 08. This correspondence is a request for access to public data relating the 2008 general election in your county under the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes, Chapter 13. As you know, Minnesota Statutes section 15.17, the Official Records Act, requires all government entities to make and maintain all records that are necessary to a full and accurate knowledge of their official activities. Section 13.03, subdivision 1, of the MGDPA requires government entities to keep records that contain government data in a way (or ways) that makes the data easily accessible for convenient use.

Because this information relates to the election and upcoming statewide recount, we request that this information be provided immediately and on an expedited basis. Please let us know whether you need any assistance to expedite this request.

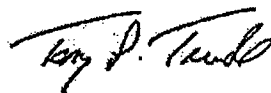
We hereby request the following information immediately relative to the 2008 general election:

- Total number of rejected absentee ballots in your county and the reasons for such rejections.
- Total number of accepted absentee ballots in your county
- All information you have provided to the Al Franken campaign or its counsel or other representatives relative to absentee ballot applications, absentee ballots and/or absentee voters in your county

**If possible, please provide this information via email if you desire to [trimblelegals@earthlink.net](mailto:trimblelegals@earthlink.net) or via facsimile to 952-797-5858. Due to time sensitivities, if you cannot provide this information electronically (email or facsimile, please contact the undersigned at 952-797-7477 to arrange pick-up of the same.**

Please make this information available to the undersigned for copying immediately. Thank you.

Sincerely,



Tony P. Trimble  
Matthew W. Haapoja  
/jm

cc: Mr. David L. Lillehaug, Esq. (via facsimile, email and U.S. mail)  
Mr. Fritz Knaak, Esq.