

# Coleman **Recount** UPDATE

## **AS TRIAL ENDS, COLEMAN POISED TO BE RE-ELECTED**

Norm Coleman is poised on two tracks to be sworn into the U.S. Senate as a result of the election contest now finishing up in Ramsey County District Court.

The first track is if the three judges embrace the Minnesota tradition of enfranchising voters and agree to open and count the wrongly rejected absentee ballots. In that case, Norm Coleman stands in excellent position to gain the lead. Far more ballots from precincts won by Al Franken were included in the Canvassing Board recount; far more ballots from precincts won by Norm Coleman remain among the wrongly rejected absentees that have still not been opened and counted.

But if the judges take a more restrictive approach to counting votes than local election officials did in Minnesota on Election Day, their decision to create new rules will create fatal inconsistencies in the process including:

**“Illegal” Votes in the Count:** The Judges will be including votes they themselves have defined as “illegal” in the candidates’ totals. Their February 13 (“Friday the 13<sup>th</sup>”) ruling declares that certain ballots are “illegal” under Minnesota law. The problem is that testimony and evidence at the trial shows that hundreds and likely thousands of votes now defined as “illegal” by the Friday the 13<sup>th</sup> ruling were counted as legal votes by local election officials and are currently included in the Election Day and Canvassing Board totals. The judges’ mandate under Minnesota law is to determine the number of “legally cast votes” for each candidate, and that cannot be done given their definitions in their Friday the 13<sup>th</sup> ruling. The solution is to review the still rejected absentee ballots under the standards actually used by the counties on Election Day and by the Canvassing Board, and to open the thousands that pass muster. Imposing different standards for allowing ballots in the contest than for the ballots counted on Election Day and the recount is unsupported by Minnesota precedent, fundamental fairness or logic.

**Changing the Rules of the Game After It’s Been Played:** This basic tenet of constitutional due process protection is violated by the Court’s Friday the 13<sup>th</sup> contest counting rules since trial testimony and evidence show that virtually every county and city used rules different from the Court’s to count their ballots on Election Day. The Friday the 13<sup>th</sup> rules are even different from those used in the Canvassing Board recount. For example, contrary to the Friday the 13<sup>th</sup> ruling, the election day and Canvassing Board totals include ballots that were not signed by the voter, where the witness was not registered in Minnesota, where the voter’s application was either not found or not completely filled out, where the signature on the ballot did not match the signature on the voter’s application, where a voter who moved within a precinct or an apartment building did not re-register, or where ballots witnessed by a notary public did not contain the official stamp.

**Equal Protection:** Different treatment by different counties and cities for virtually the same ballots created wholesale equal protection violations that saw some ballots counted while identical ballots were disenfranchised simply because of the jurisdiction in which the voter lived. Examples of different counties interpreting the same state statutes differently to either enfranchise or disenfranchise voters include whether: the witness was registered; a strict or lenient standard was applied to judge signature mismatches between the ballot and application; a jurisdiction allowed a ballot if all the voter and/or witness information was not completed; an official’s error contributed to the ballot or application being incomplete; the application of a voter sent a registered voter’s ballot could not be found by a county/city after the election; a voter re-registered after moving within a county, precinct or even an apartment building; and a notary witness used an official stamp on the ballot.

**Shifting Standards; Unreliable State Database:** Senator Coleman’s case began on January 26. It was not until February 10 that the Court set any guidelines for what it considered sufficient proof of a valid vote and not until Feb. 13 – more than half-way through the Coleman case -- that the Court announced some standards for what it considered an “illegal” vote. Compounding matters, it was only on March 2 that the Minnesota Secretary of State’s office acknowledged that its database used to show whether voters and witnesses were registered was not yet complete for the 2008 election. Further investigation showed that hundreds, and probably well over 1,000, of Minnesota’s 4,000 precincts had not updated their data by the start of Coleman’s case, and that “over 600” were still incomplete as of March 9. Testimony from Director of Elections Gary Poser, Ramsey County Elections Director Joe Mansky and numerous county officials also revealed the unreliability of the Statewide Voter Registration System in determining the accuracy of registration information in an election as narrow as the 2008 Senate election.

**Double Counting of Votes -- Duplicate/Originals:** There are more votes than voters in at least 25 precincts due to the double counting of original and duplicate ballots in the recount, testimony and evidence at trial showed. The double counting occurred when damaged ballots could not be read by the voting machines. In that case, state statute calls for election officials to make a duplicate ballot with a written code that links it to the original. The duplicate is then counted and the original put aside in a special envelope. The system fell apart Election Night when, in the crush of business, some judges neglected to mark the duplicate ballots as required. During the recount, officials, believing the law to have been followed, agreed to count the originals. However, the unmarked duplicates were also counted, as the results from 25 precincts with more votes than voters show. The solution now is for the Court to recount those identified precincts, count the duplicates rather than the originals, and reconcile the number of votes with the number of voters shown on the Election Day rosters and other precinct sign-in information. Failing to recognize the inaccuracy of the Canvassing Board counts because local election officials did not follow state law will cast doubt on the election’s accuracy.

**Missing Ballots:** The election count is permeated with “missing” and “found” ballots in numerous precincts, making it impossible to determine the number of “legally cast” votes each candidate received. The most egregious example is in Minneapolis 3-1, where an envelope supposedly containing ballots is missing. An accurate count cannot include phantom ballots. A recount must count ballots that are actually there – otherwise it’s a “re-guess” and not a “recount”. There is no Minnesota statute or case permitting a “re-guess” rather than a “recount”.

For these reasons, unless all the wrongly rejected absentee ballots are opened and counted as similar ballots were by the counties on Election Day and by the Canvassing Board during the recount – not just those pared down by the Court’s Friday the 13<sup>th</sup> rules and other post-election day decisions – the outcome of this election will remain in doubt.

Paid for by Coleman for Senate