

STATE OF MINNESOTA  
COURT

DISTRICT

COUNTY OF ST. LOUIS

DISTRICT

SIXTH JUDICIAL

Case Type: Request for Declaratory

Judgment

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KSTP-TV, KSTC-TV, WDIO-TV,

Court File No.

KAAL-TV, and KSAX-TV,

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Judge

Plaintiffs,

v.

**COMPLAINT**

St. Louis County, a political  
subdivision of the State of  
Minnesota,

Defendant.

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For their cause of action against defendant, plaintiffs state and allege as follows:

**PARTIES**

1. Plaintiffs KSTP-TV, KSTC-TV, WDIO-TV, KAAL-TV, and KSAX-TV are television news organizations headquartered in Minnesota that provide residents of the state with a wide spectrum of news and information about topics of interest to them and to their communities. This includes coverage of political, electoral, and legislative issues.

2. KSTP-TV (Minneapolis-St. Paul) is operated by KSTP-TV, LLC; KSTC-TV (Minneapolis-St. Paul) is operated by KSTC-TV, LLC; WDIO-TV (Duluth) is operated by WDIO-TV, LLC; KAAL-TV (Austin-Rochester) is operated by KAAL-TV, LLC; and KSAX-TV (Alexandria) is operated by KSAX-TV, Inc.

3. Defendant St. Louis County is a political subdivision of the state and a government entity within the meaning of Minnesota Statutes §13.02, subs. 7a and 11. St. Louis County is therefore subject to the provisions of the Minnesota Government Data Practices Act, Minn. Stat., ch.13 (MGDPA).

#### GOVERNING LAW

4. This action arises primarily pursuant to the provisions of the Minnesota Government Data Practices Act. It also involves various portions of state election statutes, including those found in chapters 203B and 204B.

#### SUMMARY OF RELIEF REQUESTED

5. Plaintiffs seek a declaratory judgment establishing that certain information maintained by St. Louis County relating to absentee ballots cast in the 2008 state general election is classified as accessible to the public pursuant to the provisions of the MGDPA. Plaintiffs also request injunctive relief and attorney's fees.

#### RELEVANT FACTS AND LEGAL PRINCIPLES

6. In the course of the 2008 Minnesota general election, several hundred thousand absentee ballots were cast by voters across the state. A large percentage of those ballots were submitted by mail to local election officials (including those in St. Louis County), enclosed in sealed return envelopes.

7. State law imposes certain criteria that must be satisfied before absentee ballots may be considered valid. See Minn. Stat. §203B.12; §203B.24. Those criteria are initially used in scrutinizing the absentee ballot return envelopes—which contain various information—before they are opened. If the information appearing on a return envelope discloses that the statutory criteria have not been satisfied, the absentee ballot is rejected. Consequently, the return envelope is not

opened, and the enclosed ballot is never counted.

8. Most of the absentee ballot return envelopes used in the 2008 general election showed that the statutory criteria had been met, and the envelopes were therefore opened and the ballots counted. However, approximately 12,000 absentee ballots were rejected (including some in St. Louis County). As a result, the return envelopes were never opened, and the enclosed ballots were never counted, even though experience suggests that the vast majority of those ballots were properly completed by the voters.

9. State law requires that election materials (including absentee ballots) are to be retained by local election officials for a minimum of 22 months following an election. See Minn. Stat. §204B.40. Thus the thousands of absentee ballots cast in the 2008 general election which were rejected under the criteria found in Minn. Stat. §203B.12 or §203B.24 and never counted remain in the possession of local election officials, including those in St. Louis County.

10. Plaintiffs through their attorney submitted a letter to St. Louis County in late June, 2009 requesting that they be allowed to inspect and copy “all rejected and therefore uncounted absentee ballots that were received in connection with the November, 2008 Minnesota general election.” Plaintiffs also requested access to certain other data maintained by St. Louis County, including data “that would disclose the reasons why the absentee ballots were rejected.” In support of their request, plaintiffs cited various provisions of the Minnesota Government Data Practices Act.

11. Plaintiffs emphasized in their request letter—and do so again here—that they fully respect the vital principle of voter confidentiality, and do not seek access to any information that would allow determination of the decisions made by identifiable voters. Plaintiffs submit that the Court may grant the relief sought in the Complaint without in any way infringing on voter

confidentiality or impairing the County's obligation to retain election materials.

12. On approximately July 3, 2009, Governor Tim Pawlenty signed an election certificate establishing that Al Franken had been elected to Minnesota's open United States Senate seat, thus ending the election contest between Franken and Norm Coleman which had been underway since shortly after election day in November, 2008.

13. By letter dated July 7, 2009 from the office of the St. Louis County attorney, plaintiffs were informed that their request for access to the unopened and uncounted absentee ballots was denied.

14. The Minnesota Government Data Practices Act "regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities [and] establishes a presumption that government data are public and are accessible by the public for both inspection and copying, unless there is a federal law, a state statute, or a temporary classification of data that provides that certain data are not public." Minn. Stat. §13.01, subd. 3.

15. "Government data" is defined as "all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use." Minn. Stat. §13.02, subd. 7. Absentee ballots and the associated return envelopes are therefore government data, whether accepted or rejected, opened or unopened.

16. The foregoing statutory provisions establish that all Minnesota government agency records, including absentee ballot materials, are presumptively accessible to the public unless there exists a specific legal basis for restricting such access. Plaintiffs allege that there is no such legal basis permitting St. Louis County to refuse public access to the data described in plaintiffs' letter submitted to the County in June.

17. Under Minn. Stat. §13.03, subd. 3, a government entity is required to allow any person to inspect and copy public government data at reasonable times and places, and “may not charge for separating public from not public data.”

18. Minn. Stat. §13.08, subd. 4, provides that “any aggrieved person seeking to enforce the person’s rights under this chapter or obtain access to data may bring an action in district court to compel compliance with this chapter, and may recover costs and disbursements, including reasonable attorney’s fees, as determined by the court.”

19. Minnesota’s Uniform Declaratory Judgments Act, Minn. Stat., ch. 555, states that any person “whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relationships thereunder.” Minn. Stat. §555.02.

20. Although Mr. Franken has taken his seat in the United States Senate and the election contest between him and former Sen. Coleman has been concluded, there continues to be widespread debate and concern in Minnesota about how the state’s election laws functioned with respect to the 2008 general election, including concern about tabulation of the absentee ballots cast in the election. For example, the League of Women Voters Minnesota has expressed “outrage that 12,000 voters who cast their ballots in good faith did not have their ballots counted due to violations of Minnesota’s complicated absentee ballot laws.”

21. It seems likely that when the next session of the Minnesota Legislature convenes, the issues and concerns described above will be actively debated. The character of that debate and the identification of effective options for addressing the concerns will depend on the availability of detailed and accurate information about the problems that were experienced around the state in

conjunction with the 2008 general election. Some of that information cannot be obtained unless public access is permitted to the materials sought by plaintiffs.

COUNT I. VIOLATION OF DATA PRACTICES ACT

22. Plaintiffs incorporate by reference the facts and allegations set forth above.

23. By refusing to permit public access to the rejected and uncounted absentee ballots cast in the 2008 Minnesota general election (along with certain other information relating to those ballots) in response to plaintiffs' request, defendant has violated the Minnesota Government Data Practices Act, in particular, Minn. Stat. §13.03, subd. 3.

DEMAND FOR RELIEF

WHEREFORE, plaintiffs request the following relief:

1. For a judgment declaring that the rejected and uncounted absentee ballots in the possession of St. Louis County are public government data.
2. For a judgment declaring that certain other information requested by plaintiffs relating to the rejected and uncounted absentee ballots is public government data.
3. For an injunction prohibiting defendant from refusing to allow plaintiffs the opportunity to inspect and copy the rejected and uncounted absentee ballots, along with other public government data maintained by defendant relating to the ballots.
4. For an award to plaintiffs of their reasonable attorney's fees incurred in pursuing this action, along with their costs and disbursements, pursuant to Minn. Stat. §13.08, subd. 4.
5. For such additional relief as the Court may conclude is equitable and appropriate.

DATED: August \_\_\_\_\_, 2009

BY:

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney's and witness fees may be awarded pursuant to Minnesota Statutes, Section 549.211, to the party against whom the allegations in this pleading are asserted.

DATED: August \_\_\_\_, 2009

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