

February 7, 2009

The Honorable Harry S. Reid  
Majority Leader  
U.S. Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Senate Republican Leader  
U.S. Senate  
Washington, DC 20510

Dear Senator Reid and Senator McConnell:

It has come to our attention that Senator Reid has stated that "We're going to try to seat Al Franken," and "there's not a question in anyone's mind, an assertion by anyone, that there's been any fraud or wrongdoing in this election."

We write to respectfully suggest that it would be inappropriate, if not illegal, to seat Al Franken in the U.S. Senate at this time.

Since Senator Reid seems not to have so heard, we want to bring to your attention the fact that there is belief, a question in the minds of *many*, an assertion by many, that there has been wrongdoing in this election. (We will concede that whether or not it was intentional is still open for question, but the fact is that it has occurred.)

For example, the Minneapolis Star Tribune has reported that the Minnesota courts determined that the "claim of double-counted ballots is better resolved in a court hearing where evidence can be presented. . . . The order allowed those disputed ballots to remain in the vote totals, at least for now." [*Minneapolis Star Tribune* 12/24/2009]

Canvassing Board Member and Minnesota Supreme Court Justice G. Barry Anderson has been quoted as saying: "I do think it's a real issue, and I think it's a very good likelihood that there is double counting here." [Originally in the *Star Tribune, Pioneer Press* 12/18/2008]

Former Associate Dean, and current University of Minnesota professor, Michael Stokes Paulsen, has made clear his thoughts about wrongdoing in an opinion published in the Wall Street Journal on January 15, 2009. "Minnesota's muck of a process violates the Equal Protection Clause of the U.S. Constitution." [*Wall Street Journal* 1/15/09.]

Professor John Lott, of the University of Maryland, has stated that “the Canvassing Board’s choices will leave long lasting questions about the legitimacy of any win.” [Fox News December 22, 2008]

Under Minnesota law there is no winner, yet. Even the Democrat Secretary of State Mark Ritchie refused earlier this month to issue a certificate of election to Mr. Franken stating: “Neither the governor nor I may sign a certificate of election in the U.S. Senate race until all election contests have reached a final determination.” [Associated Press, 1/13/2009]

We respectfully suggest that it would be inappropriate to seat Al Franken in the U.S. Senate when it is not clear that he has, in fact, been elected as Senator by the people of Minnesota. While we recognize the independent authority of the U.S. Senate to determine the qualifications and elections of its members, we encourage you to wait and seat whoever is judicially determined the Senator from Minnesota. Until after the people of Minnesota, through their lawfully adopted process of determining a winner in a close election, have made a final determination, and those courts with legal authority to review such determinations have completed their reviews, it is premature to seat anyone in that contest. This deference would best reflect the appropriate balance between the states’ authority to select their representatives and the US Senate’s authority under the U.S. Constitution for seating a member in our federal system.

Sincerely,

David Norcross  
Chair  
Republican National  
Lawyers Association

Susan Carleson  
Chairman/CEO  
American Civil Rights  
Union

George Landrith  
President  
Frontiers of Freedom  
Institute

Grover Norquist  
President  
Americans for Tax  
Reform

Curt Levey  
Executive Director  
Committee for Justice

Harvey Tettlebaum  
President  
Lawyers Democracy  
Fund

Gary Marx  
Executive Director  
Judicial Confirmation  
Network

Wendy Wright  
President  
Concerned Women for  
America

Kay Daly  
President  
Coalition for a Fair  
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Ann Stone  
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