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December 12, 2008

Minnesota Secretary of State  
180 State Office Building  
100 Rev. Martin Luther King Jr. Blvd.  
Saint Paul, MN 55155

Minnesota Judicial Center  
Associate Justice G. Barry Anderson  
25 Rev. Martin Luther King Jr. Blvd.  
Saint Paul, MN 55155

Ramsey County Courthouse  
Assistant Chief Judge Edward J. Cleary  
15 W Kellogg Blvd. Room 1550  
Saint Paul, MN 55102

Minnesota Judicial Center  
Chief Justice Eric J. Magnuson  
25 Rev. Martin Luther King Jr. Blvd.  
Saint Paul, MN 55155

Ramsey County Courthouse  
Chief Judge Kathleen R. Gearin  
15 W Kellogg Blvd. Room 1210  
Saint Paul, MN 55102

Dear Members of Minnesota State Canvassing Board: ("Board"):

This letter is written as a follow-up to the resolution approved at the Board meeting today recommending that all Minnesota county canvassing boards reconvene for the ostensible purpose of sorting and counting absentee ballot envelopes alleged to have been improperly rejected by election judges and/or absentee ballot boards on election day.

**We have grave concerns that the Board's failure to provide uniform guidance, coupled with the Minnesota Secretary of State's confusing guidance last week on the "sorting" process, will result (even if unintentional) in eighty-seven (87) different counties and numerous cities applying different standards to these ballots. Additionally, the very real risk exists that crucial evidence needed for an election contest will be lost or destroyed due to commingling with other ballots or separation of an absentee ballot from the envelope from which it originated.**

Please find attached a letter we have forwarded to all Minnesota election officials raising these concerns and proposing uniform procedures that must be followed to preserve evidence for an election contest and to ensure that equal and uniform standards be applied to all ballots contained within absentee ballot envelopes rejected by local election officials. The lack of such procedures

is precisely the reason these matters should be determined in an election contest and not on an *ad hoc* county-by-county basis. We have also raised these concerns directly with the Minnesota Secretary of State's Office.

Although Minnesota law is clear on the grounds upon which absentee ballots may be rejected, a strong likelihood exists that these standards will be interpreted differently by each county that engages in this process (including counties that do not engage in the process at all). As such, comments by Board members at the hearing today that "Pile 5 may not be "Pile 5" are wholly correct. Our experience with the "sorting" process to date indicates that counties have adopted differing standards and some counties have refused to engage in the process at all.

As just one example, Scott County has placed no absentee ballots in "Pile 5", even though some were rejected for lack of only the city in the witness address line. By contrast, Dakota County placed numerous envelopes in "Pile 5", which envelopes were rejected for lack of only the city in the witness address line. Similarly, with respect to the Duluth example proffered by Jim Gelbmann at today's hearing (rejecting because the ballot is undated), we know of *no* other county which placed envelopes in "Pile 5" for this reason. Clearly, the sorting process is proceeding under differing standards and causing similarly-situated absentee voters to be treated differently.

We respectfully submit that these concerns could have been comprehensively addressed had representatives of each campaign been permitted to speak to the Board's proposed resolution today. The practicalities and details involved in the Board's seemingly simple "recommendation" are, in fact, quite complex. Although Tony Trimble raised these concerns with Bert Black and Gary Poser following the meeting, absolutely no assurance exists that these concerns will be addressed. (We raised many concerns prior to the "detailed guidance" forwarded last week by the Minnesota Secretary of State, which concerns went unaddressed and unheeded). Input from each campaign's counsel could have easily addressed these complexities and saved the lengthy legal process that we fear now appears inevitable.

We therefore request that the Board *reconsider* its recommendation due to the practical reality that the effect of the recommendation is to create unequal application of Minnesota election law across the state. The Equal Protection clause of the United States Constitution demands no less. We thank you in advance for your careful consideration of these matters.

Sincerely,

A handwritten signature in cursive script, reading "Frederic W. Knaak". The signature is written in dark ink and is positioned above the typed name.

Frederic W. Knaak, Esq.

cc: David L. Lillehaug, Esq. (w/encl.)  
Tony P. Trimble, Trimble & Associates, Ltd. (w/encl.)