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December 12, 2008

Dear Minnesota Election Officials:

This letter is written regarding the request of the Minnesota State Canvassing Board ("Board") today that Minnesota county canvassing boards recanvass for the purpose of evaluating whether or not any absentee ballot envelopes in county relating to the 2008 general election were improperly rejected by election judges and/or absentee ballot boards in your county. We note that this request is merely a request; your county is under no legal obligation whatsoever to comply with this request (a point made quite clear by the Minnesota Attorney General and the members of the Board during its discussions prior to passing the resolution approving this request).

**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 applying eighty-seven (87) different standards as to these ballots. Although Minnesota law is clear in 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).** Our experience with the "sorting" process to date has borne this out, as counties have adopted differing standards and some counties have refused to engage in the process at all.

Additionally, just as mistakes may have been made in rejecting absentee ballot envelopes on election night, mistakes will inevitably be made in second-guessing these initial rejections. Because it appears quite likely that the results of this election will be subject to an election contest following the Board's eventual certification, all rejected absentee ballot envelopes in your county, and the corresponding ballots therein, must be preserved and kept segregated in a manner permitting the ballot to be linked to the envelopes in the future (whether or not your county decides to recanvass and/or add any additional votes to the vote totals previously reported by your office in this recount), as these materials will all likely constitute evidence in an election contest.

Accordingly, if your county canvassing board intends to reconvene, we request that our office be notified ***immediately*** as to the date, time and location at which you anticipate such a reconvening to occur. Under the Minnesota open meeting law, the public (including representatives of each campaign) *must* be permitted to view this process and basic fairness demands adequate notice of such a meeting.

Additionally, if your county intends to open and count any previously-rejected absentee ballots, to preserve the rights of each United States Senate candidate relative to the recount currently underway, as well as to preserve evidence likely to be of extreme importance in an election contest, we request that representatives of each campaign be permitted to participate in the counting process as follows:

- i. Representatives of each campaign should be permitted to challenge a decision to open an absentee ballot envelope, thereby preserving this issue before an envelope is opened and the ballot commingled with other opened ballots.
- ii. Representatives of each campaign should be permitted to challenge the declaration of how a previously-rejected absentee ballot that is opened is to be counted, using challenge standards utilized during the prior recount process in your county.
- iii. Representatives of each campaign should be given photocopies of the front and back of each and every envelope which is challenged and/or opened, as well as photocopies of the front and back of each and every ballot that is challenged pursuant to the process at (ii) above.
- iv. Representatives of each campaign should be given photocopies of any amended results proposed to be submitted to the Board for approval (whether in the form of amended summary statements, amended canvassing board reports or other format).
- v. All rejected absentee ballot envelopes, and the ballots that correspond to each such envelope (if opened), must be kept segregated from all ballots previously counted in this recount and preserved for a potential election contest. This segregation includes a mechanism for tying a particular ballot to an envelope which was previously opened (to enable a potential future challenge to such a vote cast in the event a court determines that the absentee ballot envelope was properly rejected in the first place).

We have raised the foregoing concerns with the Minnesota Secretary of State's Office, as well as the members of the Minnesota State Canvassing Board, and we hope that a uniform process incorporating all of the foregoing can be followed by all Minnesota counties. The interests of fairness and uniformity demand no less. As such, we also request that, if your county desires or intends to reconvene its canvassing board, that such a meeting not be held until uniform guidance can be agreed to by all campaign representatives.

If you intend to proceed on parameters other than as outlined above, we request that you notify the undersigned *immediately* (which notification must include the date, time and location of any meeting of the canvassing board or additional handling by your county of any matters relating to the 2008 election for United States Senator). Thank you.

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.)  
Secretary of State Mark Ritchie  
Members of Minnesota State Canvassing Board