

# TRIMBLE & ASSOCIATES, LTD.

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December 31, 2008

**VIA EMAIL ONLY**

Mr. Mark Ritchie / Mr. Jim Gelbmann  
SECRETARY OF STATE OF MINNESOTA  
180 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
Saint Paul, MN 55155-1299

Mr. David L. Lillehaug  
FREDRIKSON & BYRON, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402

Dear Messrs: Ritchie, Gelbmann and Lillehaug:

Without some immediate remedial action, the process we are now engaged in will yield an invalid and unreliable election result. It is evident from the disparate treatment of the wrongly rejected absentee ballots around the state that any result produced without the consistency that is now sorely lacking will produce the inconsistent counting of these ballots. Our Supreme Court recently tasked each of the Franken and Coleman campaigns, and the Secretary of State and our county/city election officials, to cooperate and avoid such a result. What has happened so far guarantees that we will certainly not achieve the mandated result.

All of us have spent countless hours reviewing in excess of 12,000 absentee ballot envelopes. By Christmas Eve an agreement (the "Protocol") was produced expressly requiring the Franken and Coleman campaigns to submit two (2) cooperatively-prepared lists to the Secretary of State and the county/city election officials: (i) one list specifying absentee ballot envelopes to be opened and counted, and (ii) another list specifying absentee ballot envelopes remaining in dispute. (Section 11 and Section 15 of Protocol). The required lists have not resulted.

Instead, a subtle form of political guerilla warfare has arisen. Confusing and inconsistent directives and demands have confounded our county/city election officials. Differing standards of acceptance and rejection has resulted, and will multiply today and Friday unless changed now. Inconsistent ballot review and counting is the injury suffered by Minnesota and our voters. The blatant and baseless wholesale rejection of ballots for political gain is what we are seeing now, and it is not what we are supposed to be doing under the Supreme Court's order.

Presently, the fates of more than 2,000 votes are at risk and "in play". We should all stop what we're doing and wisely play by the rules we all adopted in order to achieve a valid election result. In order to achieve the consistency demanded by the Supreme Court and deserved by Minnesotans, we propose that: the envelopes and supporting materials for any and all absentee ballots identified by the Franken campaign, the Coleman campaign, the Secretary of State and the county and local election officials be sent to the Secretary of State's office by Friday. At that time, the campaigns and the Secretary of State will review the materials and determine pursuant to the Supreme Court's order which absentee ballots were indeed wrongly rejected. Those ballots will then be counted by the Canvassing Board at its scheduled meeting.

Given the small number of ballots identified, this solution is imminently doable. Without this step to ensure consistency and that all similar ballots are treated the same, the result produced by the Canvassing Board will be invalid and unreliable.

We await your prompt reply for when we can confer and resolve. Thank you.

Sincerely,

Tony P. Trimble

cc: Fritz Knaak