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October 29, 2001

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Alan I. Gilbert, Esq.  
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Suite 1100  
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Re: Susan M. Zachman, et al. v. Mary Kiffmeyer,  
Secretary of State, et al.

Dear Alan:

Thank you for your October 25, 2001 letter, but the comments in the second paragraph compel a response.

Immediately before the October 24, 2001 hearing, I suggested to you that, based on the unique circumstances of this case, the position of the Attorney General in his representation of Secretary of State Kiffmeyer presented an unfairness. On the one hand, the Attorney General apparently declined to follow the Secretary's instructions in regard to the scheduling issue before the Court, something uncommon in an attorney-client relationship, and on the other hand, the Attorney General apparently insisted that there be no contact with Secretary Kiffmeyer by any party. I told you that I wanted to contact Secretary Kiffmeyer directly and you asked why. I explained that she is the most knowledgeable person about the electoral process, and I wanted information from her in that regard. I told you that I would even agree that you would be present at any contact I might have with the Secretary of State whom I have not met. You suggested that I submit written questions to you for her. I thought that unworkable and asked that you think about it.

Your suggestions about partisanship are a bit off the mark. We have a situation where two duly-elected constitutional officers are before the Court in a matter that is important to each of their political parties. Human nature being what it is, each constitutional officer will face politically partisan temptations, but we expect each of them to honor their oaths. The Attorney General will face the same temptation as the Secretary of State.

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From the perspective of the Court in seeking a judicial application of the law, however, it needs to hear from both the Secretary of State and the Attorney General. In the event they disagree, that disagreement should be brought to the attention of the Court, both officers should have their say, and then the Court can make a decision.

Finally, I note your comment about me not having any contact with Attorney General Hatch or any other employee of the Attorney General's office about this proceeding. While we did not discuss it, that is a customary application of the Minnesota rule regarding contact by attorneys for a party with parties opponent who are represented by counsel. I have had no contact with the Attorney General or anybody from your office regarding this matter, other than you and perhaps a discussion with Mr. Leventhal, and will not do so. There is an obvious distinction between that situation and the one with Secretary Kiffmeyer.

Very truly yours,



Timothy D. Kelly

TDK:jh

cc: Secretary of State Mary Kiffmeyer  
Attorney General Mike Hatch  
Honorable Edward Toussaint, Jr.  
Honorable Renee L. Worke  
Honorable Thomas J. Kalitowski  
Honorable Gary J. Pagliaccetti  
Honorable Heidi S. Schellhas  
Counsel of Record