

January 2, 2009

The Honorable Mary Mullarkey  
2 E. 14<sup>th</sup> Avenue, Fourth Floor  
Denver, Colorado 80203

Dear Chief Justice Mullarkey,

The first session of the 67<sup>th</sup> General Assembly begins in only a few days. Amidst swearing-in ceremonies and the Governor's State of the State address, we are looking forward to your presentation of the State of the Judiciary. The role of the Court is to interpret – not write – the law. Through impartial jurisprudence, the Judiciary must confine itself to this role of interpretation, and not lower the Court to favoritism according to political party, ideological preference or results-oriented judging. During your remarks to the General Assembly we ask that you address the following matter. We are growing increasingly concerned that your Court is acting in an overtly partisan manner. The State of the Judiciary speech is an appropriate time to address this concern.

Over the past several years, decisions have been handed down (or delayed) by your Court that defy any reasonable understanding of the law. Most recently, the partisan double standard could be seen in the placement of Amendment 59 on the 2008 ballot. Amendment 59, as you know, amended parts of the Colorado Constitution, including TABOR, Bird-Arveschough, and Amendment 23's automatic annual education funding increase. Yet in 2006, your Court struck down Initiative 55, stating it violated the single subject rule.

In December, your Court issued an order pertaining to Governor Ritter's "Mill Levy Freeze", allowing it to go forward, even though it allows local property taxes to grow and changes state tax policy without a vote of the people. No reason or opinion was released with the order – it simply allowed the collection of revenues that might have to be returned to taxpayers if your court affirms the lower court's decision. With a new General Assembly facing a \$600 million revenue shortfall, your Court has yet to issue a decision. This delay has created major uncertainty in state budgeting and planning; the price of the "Mill Levy Freeze" increases every day.

In June, the Colorado Supreme Court issued an opinion that many have dubbed the Colorado Kelo case. In your decision, the Court granted home-rule cities the right to condemn land outside their boundaries on any public pre-text. This decision is absolutely devastating to private property rights.

And, in 2003, your Court led a redistricting effort that re-shaped the Colorado election landscape. By entering a realm constitutionally reserved for the legislature, the Court re-defined itself as part of the legislative branch.

We look forward to hearing your explanation and reasoning behind the appearance of partisan manipulation at the Colorado Supreme Court.

Sincerely,

Senator Dave Schultheis

Representative Cory Gardner

Senator Ted Harvey

Representative Jim Kerr

Representative Frank McNulty

Representative Jerry Sonnenberg

Representative Kevin Lundberg

Representative Ken Summers

Representative Larry Liston

Representative-Elect Randy Baumgardner

Representative-Elect Kevin Priola

Representative-Elect Scott Tipton