

No. _____

State of Minnesota
In the Supreme Court

Warren Limmer, Steve Gottwalt, Dan Hall, Steve Drazkowski, Sean Nienow, Paul Gazelka, Julianne Ortman, Peggy Scott, Michelle Benson, Ernie Leidiger, Bob Dettmer, Glenn Gruenhagen, Bob Gunther, Joyce Peppin, and Mike Benson, all individuals, registered voters, and Members of the Minnesota Legislature; John Helmberger, an individual and a registered voter; and Minnesota for Marriage, an association of individuals and registered ballot committee,

Petitioners,

vs.

Mark Ritchie, in his official capacity as Secretary of State of the State of Minnesota, and Lori Swanson, in her official capacity as Attorney General of the State of Minnesota.

Respondents.

**PETITION TO CORRECT ERROR OR OMISSION
UNDER MINNESOTA STATUTE § 204B.44**

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The Petitioners, Warren Limmer, Steve Gottwalt, Dan Hall, Steve Drazkowski, Sean Nienow, Paul Gazelka, Julianne Ortman, Peggy Scott, Michelle Benson, Ernie Leidiger, Bob Dettmer, Glenn Gruenhagen, Bob Gunther, Joyce Peppin, and Mike Benson, all individuals, registered voters, and Members of the Minnesota Legislature; John Helmberger, an individual and a registered voter; and Minnesota for Marriage (“MFM”), an association of individuals, and a registered ballot committee (collectively “Petitioners”), through their counsel, and for their Petition seek relief under Minnesota Statute § 204B.44 (Errors or Omissions) against the Respondents, Mark Ritchie, the Minnesota Secretary of State (“Secretary”) and Lori Swanson, the Minnesota Attorney General (“Attorney General”), hereby allege and state the following:

INTRODUCTION

1. Pursuant to its authority under Article IX, section 1 of the Minnesota Constitution, the Minnesota Legislature passed a proposed constitutional amendment to be referred to the people to adopt or reject in the November 2012 general election. If adopted, the Minnesota Constitution will provide that “only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota” (“the Marriage Amendment”). *See* S.F. 1308, ch. 88 §§ 1-2, 87th Leg., Reg. Sess. (Minn. 2011) (“S.F. 1308”) (Attachment A). The political and legal battles surrounding the Marriage Amendment have been numerous. A majority of both houses of the duly-elected members of the Minnesota Legislature have acted in accordance with Article IX, section 1 and all other authority provided to it under the Minnesota Constitution to refer the

Marriage Amendment to the people for their decision. Despite the actions of the Legislature, officers of the Executive Branch have taken various ultra vires actions to thwart the constitutional authority of the Legislature to refer this constitutional amendment to Minnesota citizens. The Governor has attempted to interfere with the referendum process by claiming “veto” authority over the referred Marriage Amendment. (Letter of Governor Mark Dayton to Senate President Michelle Fischbach (May 25, 2011) (Attachment B).) And most recently, on June 28, 2012, the Secretary, who is charged with the ministerial duties of administering elections in Minnesota, announced his intent to “substitute” the ballot title of the Marriage Amendment adopted by the Legislature for a title of his own creation, ignoring the title provided by the Legislature. In attempting this action, the Secretary is acting in a manner not authorized by law and seeks to interfere with the exclusive authority and power of the Legislative Branch of Government. Petitioners seek this Court to determine that the Secretary has committed errors or omissions under Minnesota Statute § 204B.44 in proposing to the Attorney General: that (1) the Legislature’s ballot title for the Marriage Amendment should or can be altered or changed, and (2) he may omit the Legislature’s ballot title and replace it with another of his sole creation. Petitioners seek relief in this Court in the form of an Order requiring the Secretary to prepare ballots for the Marriage Amendment containing the title adopted by the Legislature, and enjoin the Secretary, Attorney General, and all other persons who are agents and representatives of the Executive Branch of Government

from further interfering with or altering to the proposed amendment approved by the Legislature.

PARTIES

2. Petitioner Senator Warren Limmer brings this Petition in his capacity as a duly elected Member of the Minnesota state Senate having served as chief legislative sponsor of the Marriage Amendment, and author of the ballot title of the Marriage Amendment adopted by the Legislature, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

3. Petitioner Representative Steve Gottwalt brings this Petition in his capacity as a duly elected Member of the Minnesota state House of Representatives having served as an author of the Marriage Amendment, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

4. Petitioner Senator Dan Hall brings this Petition in his capacity as a duly elected Member of the Minnesota state Senate having served as an author of the Marriage Amendment, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

5. Petitioner Representative Steve Drazkowski brings this Petition in his capacity as a duly elected Member of the Minnesota state House of Representatives having served as an author of the Marriage Amendment, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

6. Petitioner Senator Sean Nienow brings this Petition in his capacity as a duly elected Member of the Minnesota state Senate having served as an author of the Marriage Amendment, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

7. Petitioner Senator Paul Gazelka brings this Petition in his capacity as a duly elected Member of the Minnesota state Senate, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

8. Petitioner Senator Julianne Ortman brings this Petition in her capacity as a duly elected Member of the Minnesota state Senate, and in her individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

9. Petitioner Representative Peggy Scott brings this Petition in her capacity as a duly elected Member of the Minnesota state House of Representatives having served as an author of the Marriage Amendment, and in her individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

10. Petitioner Senator Michelle Benson brings this Petition in her capacity as a duly elected Member of the Minnesota state Senate, and in her individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

11. Petitioner Representative Ernie Leidiger brings this Petition in his capacity as a duly elected Member of the Minnesota state House of Representatives, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

12. Petitioner Representative Bob Dettmer brings this Petition in his capacity as a duly elected Member of the Minnesota state House of Representatives having served as an author of the Marriage Amendment, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

13. Petitioner Representative Glenn Gruenhagen brings this Petition in his capacity as a duly elected Member of the Minnesota state House of Representatives having served as an author of the Marriage Amendment, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

14. Petitioner Representative Bob Gunther brings this Petition in his capacity as a duly elected Member of the Minnesota state House of Representatives, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

15. Petitioner Representative Joyce Peppin brings this Petition in her capacity as a duly elected Member of the Minnesota state House of Representatives, and in her individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

16. Petitioner Representative Mike Benson brings this Petition in his capacity as a duly elected Member of the Minnesota state House of Representatives having served as an author of the Marriage Amendment, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota

17. Petitioner John Helmberger is an individual Minnesota resident and registered voter, and serves as Chairman and Treasurer of Petitioner MFM. Petitioner Helmberger brings this action in his individual capacity as well as representative of MFM.

18. Petitioner Minnesota for Marriage (www.MinnesotaForMarriage.com) is the ballot issue committee, registered with the Minnesota Campaign Finance and Public Disclosure Board pursuant to Minn. Stat. 10A.14, to promote passage of the Marriage Amendment, and is responsible for reporting the receipts and expenditures related to the campaign in support of the Marriage Amendment. Its principal place of business is in the State of Minnesota. Petitioner MFM is a broad-based association of tens of thousands of Minnesota citizens representing the Democrat-Farmer-Labor and Republican Party, as well as Independents and people of virtually every faith, and no faith, who support the Amendment. MFM is supported by a broad range of individual Minnesotans registered to vote and Petitioner MFM brings this action on behalf of and represents the interests of those individuals. MFM is the leading organization urging adoption of the Marriage Amendment. In that regard, MFM has raised in excess of \$1.5 million from citizens and groups to mount its campaign, has assembled tens of thousands of volunteers, has communicated extensively with the media and the public and is devoting all of its financial and human resources to urge voter adoption of the Marriage Amendment.

19. Respondent Mark Ritchie is the Minnesota Secretary of State. The Secretary is the chief elections official in Minnesota and is responsible for administering

Minnesota's election laws and overseeing the preparation of election ballots. In that capacity, he is responsible for placing an "appropriate title" on each proposed amendment. Minn. Stat. § 204D.15(1). He is sued in his official capacity. The principal place of business of the Elections and Administration section of the Secretary's office is 180 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, MN 55155.

20. Respondent Lori Swanson is the Minnesota Attorney General. Under Minnesota Statutes § 204D.15(1), the Attorney General is charged with approving the appropriate title of a constitutional amendment. The Attorney General is the chief law officer of the state. She "shall appear for the state in all causes in the supreme and federal courts wherein the state is directly interested[.]" Minn. Stat. 8.01. And she "may institute, conduct, and maintain all such actions and proceedings as [s]he deems necessary for the enforcement of the laws of this state, the preservation of order, and the protection of legal right." *Head v. Special School District No. 1*, 288 Minn. 496, 503, 182 N.W.2d 887, 892 (1970), *overruled on other grounds*, *Nyhus v. Civil Service Bd.*, 305 Minn. 184, 232 N.W.2d 779 (1975). She is sued in her official capacity. The principal place of business of the Minnesota Attorney General's Office is 75 Rev. Dr. Martin Luther King, Jr. Boulevard, Saint Paul, Minnesota.

JURISDICTION AND VENUE

21. This Court has original, personal and subject matter jurisdiction as well as venue under Minn. Stat. § 204B.44(a), (b) and (d) because this is a civil action brought to correct:

- (a) An error or omission in the placement or printing of the name or description of a question on an official ballot as provided in Minn. Stat. § 204B.44(a);
- (b) Any other error in preparing or printing any official ballot as provided in Minn. Stat. § 204B.44(b); and
- (c) Any wrongful act, omission, or error of the Respondents who are charged with duties concerning an election as provided in Minn. Stat. § 204B.44(d).

FACTS

22. The Minnesota Legislature is empowered by the Article IX, section 1 of the Minnesota Constitution to propose amendments to the Minnesota Constitution to be “submitted to the people for their approval or rejection at a general election.” Minn. Const. art. IX, § 1. It did just that in passing the Marriage Amendment.

23. Once the Legislature passes a proposed amendment under its Article IX, section 1 power, the people of Minnesota, including the individual Petitioners, have a constitutional right to approve or reject the amendment as proposed by the Legislature.

24. On May 11, 2011 the 87th Minnesota Senate passed Chapter 88, Senate File 1308, an act proposing an amendment to the Minnesota Constitution; adding a section to Article XIII; recognizing marriage as only a union between one man and one woman.¹ The 87th Minnesota House passed the same on May 21, 2011. It was filed with

¹ The entire text of Chapter 88, Senate File 1308 reads as follows:

An act proposing an amendment to the Minnesota Constitution; adding a section to article XIII; recognizing marriage as only a union between one man and one woman.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. CONSTITUTIONAL AMENDMENT PROPOSED.

An amendment to the Minnesota Constitution is proposed to the people. If the amendment is adopted, a section shall be added to article XIII, to read:

Sec. 13. Only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota.

Sec. 2. SUBMISSION TO VOTERS.

(a) The proposed amendment must be submitted to the people at the 2012 general election. The question submitted must be:

“Shall the Minnesota Constitution be amended to provide that only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota?

Yes

No

(b) The title required under Minnesota Statutes, section 204D.15, subdivision 1, for the question submitted to the people under paragraph (a) shall be “Recognition of Marriage Solely Between One Man and One Woman.”

the Secretary on May 25, 2011 to be placed on the ballot at the November 2012 general election for voter approval.

25. In passing the Marriage Amendment, the Legislature specified that the ballot title shall be the “Recognition of Marriage Solely Between One Man and One Woman.” Chapter 88, Senate File 1308 § 2(b).

26. More than 13 months later, on June 15, 2012, the Secretary sent a letter to Attorney General Lori Swanson explaining that he had chosen a title and that he was submitting his new title—“LIMITING THE STATUS OF MARRIAGE TO OPPOSITE SEX COUPLES”—to her for approval. (Letter of Secretary of State Mark Ritchie to Attorney General Lori Swanson (June 15, 2012) (Attachment C).)

27. Four days later, on June 19, 2012, Attorney General Swanson responded by letter, writing with approval of the Secretary’s proposed substituted title, explaining: “a veto of a bill containing proposed constitutional amendment together with matters of ordinary legislation is effective as to the legislation, but does not affect the proposed constitutional amendment.” (Letter of Attorney General Lori Swanson to Secretary of State Mark Ritchie (June 19, 2012) (Attachment D) (citing Op. Atty. Gen. 213-C (March 9, 1994) (Attachment F).) The Attorney General did not cite to any authority for the proposition that a legislative act proposing an amendment to the Minnesota Constitution contains “matters of ordinary legislation” that are materially different from the legislative act required to amend the Minnesota Constitution.

28. The Secretary's letter and the Attorney General's response became public almost two weeks later, on June 28, 2012, less than two months before the ballots are printed. (Letter of Secretary of State Mark Ritchie to Chief Justice Gildea of the Minnesota Supreme Court (June 25, 2012) and Affidavit of Gary Posner, *League of Women Voters Minnesota v. Ritchie*, No. A12-0920 (filed June 25, 2012) (Attachment E).) These Executive Officers of the State of Minnesota have acted in a manner outside the scope of their constitutional authority, and are attempting to unlawfully interfere with the power vested in the Minnesota Legislature to adopt and refer to the people of Minnesota amendments to the Minnesota Constitution. The legislative authority extends to and includes the power to write the language of such referred amendments in their entirety, including the ballot title of referred amendments, without the interference of the Executive Officers of the State of Minnesota.

29. There is no genuine dispute as to any material fact relating to this matter.

CAUSE OF ACTION

30. Petitioners incorporate all previous allegations contained in this Petition as if set forth herein.

31. The process for amending the Minnesota Constitution is set forth in Article IX, section 1 of the Minnesota Constitution, which vests in the Legislature and the people the sole authority to amend the State Constitution. The Legislature acted in accordance with its constitutional authority when it passed Chapter 88, Senate File 1308—the Marriage Amendment. The Constitution vests the Legislature with the sole prerogative to

propose constitutional amendments and provides that proposed amendments are to be submitted to the people for approval at the next general election. The Minnesota Constitution vests no authority in the Executive Branch officers of the State to deny, interfere with or obstruct the power of the Legislature to propose constitutional amendments, or with the power of the citizens to approve or reject proposed amendments. The Legislature has conformed to the requirements of Article IX, section 1 of the Minnesota Constitution in adopting the Marriage Amendment, having approved the amendment in its entirety, including the question and title to appear on the 2012 General Election ballot.

32. Specifically, the Marriage Amendment approved and referred by the Legislature is to appear on the ballot with the title: "Recognition of Marriage Solely Between One Man and One Woman." Ch. 88, SF 1308 § 2(b).

33. The Secretary disregarded this title, choosing instead to write his own title: "LIMITING THE STATUS OF MARRIAGE TO OPPOSITE SEX COUPLES." The Attorney General erroneously approved this title. The actions of the Secretary and Attorney General are unlawful and exceed their constitutional authority.

34. Under Minnesota Statute § 204B.44, any individual may file a petition for the correction of errors, omissions, or wrongful acts which have occurred or are about to occur including (a) an error or omission in the placement or printing of the name of any question on any official ballot, (b) any other error in preparing or printing any official

ballot, or (c) any wrongful act, omission, or error of the secretary of state, or any other individual charged with any duty concerning an election. Minn. Stat. § 204B.44.

35. Therefore, the Petitioners petition the Court to correct all errors or omissions the Secretary has committed by substituting a proposed ballot title for the Marriage Amendment provided for and approved by the Legislature. Specifically, it is unlawful error for the Secretary to utilize, and the Attorney General to approve, the title “LIMITING THE STATUS OF MARRIAGE TO OPPOSITE SEX COUPLES” and an unlawful omission for the Secretary to fail to include on the ballot the duly enacted ballot title “Recognition of Marriage Solely Between One Man and One Woman” as instructed in Chapter 88, Senate File 1308.

PRAYER FOR RELIEF

WHEREFORE, Petitioners request this Court for an entry of judgment in their favor and against Secretary of State Mark Ritchie in his official capacity as the chief election official of the State of Minnesota and Lori Swanson, the Attorney General of the State of Minnesota, finding that they erred in substituting and approving the proposed ballot title, respectively; ordering the Secretary to print the ballot as specified in the Marriage Amendment, Chapter 88, Senate File 1308, including the title “Recognition of Marriage Solely Between One Man and One Woman;” and any and all other such relief as may be just and equitable, including awarding Petitioners’ attorneys fees, expenses, and costs to the extent allowed by law.

Dated this 9th day of July, 2012.

Respectfully submitted,



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* *Pro Hac Vice Pending*

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COUNSEL FOR PETITIONERS

**Pro Hac Vice Motions Pending*

^ Lead Counsel

*** Local Counsel*

Attachment A

CHAPTER 88—S.F.No. 1308

An act proposing an amendment to the Minnesota Constitution; adding a section to article XIII; recognizing marriage as only a union between one man and one woman.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **CONSTITUTIONAL AMENDMENT PROPOSED.**

An amendment to the Minnesota Constitution is proposed to the people. If the amendment is adopted, a section shall be added to article XIII, to read:

Sec. 13. Only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota.

Sec. 2. **SUBMISSION TO VOTERS.**

(a) The proposed amendment must be submitted to the people at the 2012 general election. The question submitted must be:

"Shall the Minnesota Constitution be amended to provide that only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota?"

Yes

No"

(b) The title required under Minnesota Statutes, section 204D.15, subdivision 1, for the question submitted to the people under paragraph (a) shall be "Recognition of Marriage Solely Between One Man and One Woman."

Filed with the Secretary of State May 25, 2011

Attachment B



STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

May 25, 2011

The Honorable Michelle L. Fischbach
President of the Senate
226 State Capitol
St. Paul, Minnesota 55155

Dear Madam President:

I have vetoed and am returning Chapter 88, Senate File 1308, an act proposing an amendment to the Minnesota Constitution; adding a section to article XIII; recognizing marriage as only a union between one man and one woman.

Although I do not have the power to prevent this divisive and destructive Constitutional Amendment from appearing on the Minnesota ballot in November 2012, the Legislature sent it to me in the form of a bill. Thus, symbolic as it may be, I am exercising my legal responsibility to either sign it or veto it. Without question, I am vetoing it; and I urge Minnesotans to reject this mean-spirited, divisive, un-Minnesotan and un-American amendment.

One of the founding principles of our country, embodied in the First Amendment of the United States Constitution, is the separation of church and state. Therefore, the religious definition of marriage should be the province of each established religion, without interference from government.

However, the civil, or legal, realm of marriage is the province of government; and it must conform to the protections and guarantees afforded every American citizen under our Constitution. The Fourteenth Amendment says, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . nor deny to any person within its jurisdiction the equal protection of the laws."

In other words, all American citizens are entitled to equal rights and protections under the law. That would clearly include the right of a citizen to marry legally the person he or she loves.

The path of social progress in this country has been to expand our founding principles to everyone. Even before the writing of the Constitution, even before their freedom was won, this country's founders established the core principle of our


The Honorable Michelle L. Fischbach
May 25, 2011
Page 2

democracy: "We hold these truths to be self-evident, that all men (and women) are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted"

The authors and signers of the Declaration of Independence thus intended that governments be formed to secure every citizen's rights, not to selectively deny them or take them away. Of course, they overlooked women, African Americans, and others in their application of those equal rights. The path of social progress has been to include everyone, fully and equally.

This path of social progress, of human compassion and understanding, would be tragically reversed by this amendment. Minnesota is better than this. Minnesotans are better than this. I urge Minnesotans to reject this amendment.

Sincerely,



Mark Dayton
Governor

cc: Senator Amy T. Koch, Majority Leader
Senator Thomas M. Bakk, Minority Leader
Senator Warren Limmer
Representative Kurt Zellers, Speaker of the House
Representative Paul Thissen, Minority Leader
Representative Steve Gottwalt
The Honorable Mark Ritchie, Secretary of State
Mr. Cal R. Ludeman, Secretary of the Senate
Mr. Albin A. Mathiowetz, Chief Clerk of the House of Representatives

Attachment C



STATE OF MINNESOTA
Office of the Minnesota Secretary of State
Mark Ritchie

June 15, 2012

The Honorable Lori Swanson
Attorney General
102 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Dear Attorney General Swanson,

A constitutional amendment related to marriage will appear on the November ballot as a result of the Legislature's passage of Laws 2011, chapter 88.

Minnesota Statutes, section 204D.15, Subd. 1 states:

Subdivision 1. Titles for constitutional amendments. The secretary of state shall provide an appropriate title for each question printed on the pink ballot. The title shall be approved by the attorney general, and shall consist of not more than one printed line above the question to which it refers. At the top of the ballot just below the heading, a conspicuous notice shall be printed stating that a voter's failure to vote on a constitutional amendment has the effect of a negative vote.

The title I have chosen to appear and which I hereby submit to you for your approval is:

LIMITING THE STATUS OF MARRIAGE TO OPPOSITE SEX COUPLES

Please review this title and respond with your determination at your earliest convenience.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Ritchie".

MARK RITCHIE
Secretary of State

Attachment D



LORI SWANSON
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

June 19, 2012

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445 MINNESOTA STREET
ST. PAUL, MN 55101-2134
TELEPHONE: (651) 297-2040

The Honorable Mark Ritchie
Secretary of State
180 State Office Building
100 Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1299

Re: Title for Constitutional Amendment - Chapter 88 - Senate File 1308, 2011
Minn. Laws 364

Dear Secretary Ritchie:

In your letter dated June 15, 2012, a copy of which is attached, you state that you have chosen a title for a proposed constitutional amendment that will appear on the pink ballot at the November 2012 general election pursuant to chapter 88 - Senate File No. 1308, 2011 Minn. Laws 364.

Minnesota Statute section 204D.15 (2012) provides that the Secretary of State "shall provide an appropriate title" for each constitutional amendment and further provides that "the title shall be approved by the attorney general." Chapter 88 - Senate File 1308, 2011 Minn. Laws 364 provides, in pertinent part, as follows:

(b) The title required under Minnesota Statutes, section 204D.15, subdivision 1, for the question submitted to the people . . . shall be "Recognition of Marriage Solely Between One Man and One Woman."

By letter dated May 25, 2011, Governor Mark Dayton vetoed and returned chapter 88, Senate File 1308.

According to a 1994 Attorney General Opinion, a veto of a bill containing a proposed constitutional amendment together with matters of ordinary legislation is effective as to the legislation, but it does not affect the proposed constitutional amendment. Op. Atty. Gen. 213-C (March 9, 1994).

The title you have chosen pursuant to Minn. Stat. § 204D.15 is "LIMITING THE STATUS OF MARRIAGE TO OPPOSITE SEX COUPLES."

The Honorable Mark Ritchie
June 19, 2012
Page 2

On behalf of the Attorney General's Office, your proposed title is hereby approved.

Very truly yours,



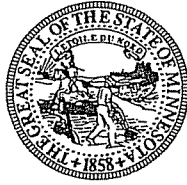
CHRISTIE B. ELLER
Deputy Attorney General

(651) 757-1440 (Voice)
(651) 297-1235 (Fax)

Enclosure

AG: #3031849-v1

Attachment E



STATE OF MINNESOTA
Office of the Minnesota Secretary of State
Mark Ritchie

June 25, 2012

The Honorable Chief Justice Lorie Gildea
Minnesota Supreme Court
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re. League of Women Voter Minnesota, et al. v. Mark Ritchie
Appellate Case No. A12-0920

Dear Chief Justice Gildea,

The Court asked for the date by which a decision is necessary in order to modify the ballots.

If the court wants to ensure that the ballots used by all voters in the state general election—both absentee and in person—are uniform as to whether and how the proposed Constitutional Amendment appears, it is necessary to have the decision by Monday, August 27, 2012 and would be ideal to have it by Tuesday, August 21, 2012.

Please see the attached affidavit from State Elections Director Gary Poser, which explains the rationale for these dates.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Ritchie".

MARK RITCHIE
Secretary of State

Enclosure

cc: Counsel of Record (via email and U.S. Mail)

STATE OF MINNESOTA

IN SUPREME COURT

No. A12-0920

In re League of Women Voters Minnesota,
et al. v. Ritchie

AFFIDAVIT OF GARY POSER

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Gary Poser, being first duly sworn, deposes and says the following:

1. I am Director of Elections for the State of Minnesota in the Elections Division of the Office of the Secretary of State. I have held this position since January 2007. I also have extensive prior experience in election administration, having served as the supervisor responsible for elections in Washington County from 1988 to 1995, as the supervisor responsible for elections in Anoka County from 1995 to 2005, and with the Hennepin County Elections Division in 2006 before assuming my current position.

2. My current duties include supervising all election administration duties of the Office of the Secretary of State. In my past positions, my duties included the oversight of elections in the counties of Washington and Anoka.

3. As a result of my current position and previous county positions, I am very familiar with the steps entailed in the process of preparing ballots.

4. The decision of whether a Constitutional Amendment appears on a ballot has a significant impact on the layout of the ballot.

5. In accordance with Minnesota Rules 8250.1810, proposed Constitutional Amendments appear after the state legislative races and before local races, which usually places them on the front of the ballot.

6. In 2008, the constitutional amendment took up three column inches on the ballot (not including the section title and instructions to voters).

7. In some jurisdictions, whether or not the constitutional amendment appears on the ballot will determine whether some of the local races that follow are printed on the front or the back of the ballot.

8. In some cases, it may determine whether a longer ballot or even a second ballot will be required. In accordance with Minnesota Statutes, section 204D.11, subd. 6 and Minnesota Rules, section 8250.0375, when there is not enough room for all of the races and questions to be printed on one ballot, the judicial races must be printed on a separate second ballot.

9. County auditors are responsible for laying out the ballots for state elections. They cannot make much progress on the layout of the ballots or the programming of the ballot counters or assistive ballot markers without knowing what will appear, where the races will appear, the length of the ballot, or the number of ballots.

10. County auditors begin the task of laying out the ballots and arranging for the required programming in earnest after the results of the State Primary have been certified by the State Canvassing Board, which will meet on Tuesday, August 21st.

11. Most county auditors finalize their ballots and send them to vendors to be programmed and printed on the day after the period to file a contest in the State Primary ends, which this year will be Monday, August 27, 2012.

12. Absentee ballots may be sent to voters who have applied for them as soon as they are available. They must be sent at least 46 days before the state general election, which in this case will fall on Friday, September 21, 2012. *See* Minn. Stat. § 203B.081 (2010).

13. The State Primary and the date of the State Canvassing Board for the State Primary were moved to August by Minnesota Laws 2010, Chapter 184, so that the State could comply with the federal Military and Overseas Voter Empowerment Act (Subtitle H of the National Defense Authorization Act for Fiscal Year 2010 (H.R. 2647, Pub.L. 111-84, 123 Stat. 2190)), which requires that ballots be sent to military and overseas voters covered by the Uniformed and Overseas Citizens Absentee Voting Act at least 45 days prior to each federal election. States that fail to meet this deadline are subject to oversight and enforcement measures from the U.S. Department of Justice.

14. The ballots and the formula for rotating the candidates' names (in races in which that is required) are provided to a ballot vendor, which then provides proofs for the county auditors to approve. County auditors provide this proof to other local jurisdictions with races and/or questions on the ballot to review and approve. Once county auditors have made any necessary corrections and signed off on the proofs, the vendor or county staff will begin doing the necessary programming for the assistive ballot marking devices and ballot counters, as well as printing the ballots. The ballot vendor who provides

services to the majority of Minnesota counties has informed the Office that this process takes an average of three weeks.

15. Tuesday, August 21, 2012, is the date on which the State Canvassing Board will meet to certify the results of the state primary, thereby providing official guidance on which names must appear on the ballot in nearly all races. For those jurisdictions that will elect officers to hospital district offices this fall, August 21 is also the last day on which candidates can file to run for those offices. August 21 is also the deadline for non-major party candidates to submit petitions to run for president and vice president.

16. State statute limits changes to the ballot information after this date to the following circumstances:

- i. if non-major party presidential candidates petitions are certified, their names would need to be added;
- ii. if there is a recount or an election contest in a primary race, one of the names on the ballot could change;
- iii. if a candidate for hospital district board member withdraws from office, there may be fewer candidates; and
- iv. the names of the major political party nominees for president and vice president are not required to be certified until Monday, August 27, 2012.

17. However, all of the circumstances listed above that could require changes to the ballot after Tuesday, August 21, 2012, would have only a minor effect as to the layout of the ballot. Even if the names of the major party presidential candidates have not been certified, county auditors will reserve space on the ballots for them. Even if there is a

recount or contest in a primary race, it may determine which name appears on the ballot, but is unlikely to change the amount of space needed for that race. Even if a candidate for hospital district board member withdraws, it will only have a minor impact the amount of space required for that race, which regardless comes towards the end of the ballot, and therefore would not have a large “ripple effect” as to where other races are placed on the ballot.

18. As of the close of business on Monday, August 27, 2012, county auditors will almost certainly have all of the information that they need to finalize the ballot layout.

19. When there was a recount of a primary contest in 2008, election officials conducted the recount so that the results could be certified by the State Canvassing Board for the State Primary on the day before the end of the contest period (the analogous date in 2012 would be Sunday, August 26th).

20. While it is possible for an election contest to be filed on a State Primary race, such an occurrence would be highly unusual. To my knowledge, since 1959 there have only been two such reported cases: one in 1996 and one in 1983.

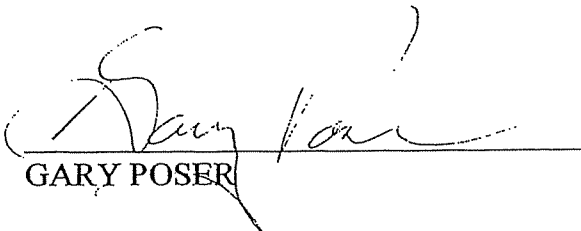
21. As such, it would be preferable to have a decision about the proposed constitutional amendment by Tuesday, August 21, 2012. It is necessary to have such a decision by the close of business on Monday, August 27, 2012, so that county auditors can proceed with the printing of the ballots.

22. If the Court decides to grant the petitioner’s motion after the ballots have been printed with the proposed question about the Constitutional Amendment on them, voters

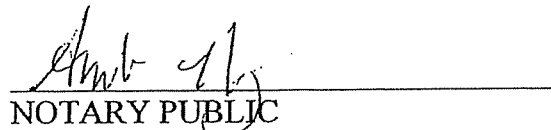
would have the opportunity to mark their ballots, but local election officials could be ordered by the court not to tabulate the votes in this contest.

Further your affiant saith not:

Dated: June 25, 2012


GARY POSER

Subscribed and sworn to before me on
this 25th day of June, 2012.


NOTARY PUBLIC



Attachment F

Minn. Op. Atty. Gen. 213-C, 1994 WL 80906 (Minn.A.G.)

Office of the Attorney General
State of Minnesota

213-C (Cr. Ref. 86-a)

March 9, 1994

GOVERNOR: LEGISLATION: CONSTITUTIONAL AMENDMENTS:

Amendments proposed by legislative action are not subject to gubernatorial approval or veto. Minn. Const. art. IV, §§ 23, 24; art. IX, § 1.

The Honorable Arne H. Carlson
130 State Capitol
75 Constitution Avenue
St. Paul, MN 55155

Dear Governor Carlson:

In your letter to our office you ask substantially the following questions:

QUESTION I.

Must proposed amendments to the Minnesota Constitution be presented to the governor for signature or veto?

OPINION

We answer your question in the negative. Minn. Const. art. IX, § 1, provides:

A majority of the members elected to each house of the legislature may propose amendments to this constitution. Proposed amendments shall be published with the laws passed at the same session and submitted to the people for their approval or rejection at a general election. If a majority of all the electors voting at the election vote to ratify an amendment, it becomes a part of this constitution. If two or more amendments are submitted at the same time, voters shall vote for or against each separately.

The plain wording of this section indicates that amendments may be proposed by “a majority of the members elected to each house” and submitted to the “people” for approval. This provision makes no mention of the governor. However, as you note, Minn. Const. art. IV, § 23, provides in part:

Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it, deposit it in the office of the secretary of state and notify the house in which it originated of that fact. If he **veto**s a bill, he shall return it with his objections to the house in which it originated. His objections shall be entered in the journal.... Any bill not returned by the governor within three days (Sundays excepted) after it is presented to him becomes a law as if he had signed it, unless the legislature by adjournment within that time prevents its return. Any bill passed during the last three days of a session may be presented to the governor during the three days following the day of final adjournment and becomes law if the governor signs and deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature. Any bill passed during the last three days of the session which is not signed and deposited within 14 days after adjournment does not become a law.

If a bill presented to the governor contains several items of appropriation of money, he may **veto** one or more of the items while approving the bill.

Section 24 provides:

Each order, resolution or vote requiring the concurrence of the two houses except such as relate to the business or adjournment of the legislature shall be presented to the governor and is subject to his **veto** as prescribed in case of a bill.

*2 You are concerned with the issue of whether one or both of these “presentment” clauses applies so as to require that proposed constitutional amendments per se be presented to the governor and subjected to gubernatorial approval or **veto**. While we are not aware of any Minnesota court case directly on point, our office has previously considered the question and concluded that proposed constitutional amendments are not subject to approval or **veto** by the governor. See, e.g., Ops.Atty.Gen. 86a, November 12, 1946; 213-c, April 1, 1922, and March 10, 1947 (copies attached). As pointed out in the 1946 opinion, the U.S. Supreme Court in 1878 determined that constitutional amendments proposed by Congress are not subject to presidential **veto**, despite language of Article 1, Section 7, in the U.S. Constitution [FN1] which is similar to that contained in Article IV, Sections 23 and 24, of the Minnesota Constitution quoted above. Rather “the negative of the president applies only to ordinary cases of legislation; he has nothing to do with the proposition or adoption of amendments to the Constitution.” See Hollingsworth v. Virginia, 3 U.S. (3 Dall.) 378, 380 (1798); See also Consumer Energy Council of America v. F.E.R.C., 673 F.2d 425 (D.C.Cir.1982). The majority of authorities in other states also appear to conclude that presentment language such as that contained in our constitution does not apply to constitutional

amendments proposed by the legislature for approval by vote of the people. See, e.g., Opinion of the Justices, 261 A.2d 53 (Me.1970); Op. (Arkansas) Atty.Gen. 93-068, March 19, 1993; Op. (Nebraska) Atty.Gen. 87072, May 12, 1987; Op. (Pennsylvania) Ag. 84-3, December 28, 1984.

There is a case to the contrary in which the Supreme Court of Montana held presentment language similar to that in our constitution to be unambiguous and mandatory; subject only to the exceptions contained in the presentment section for such things as adjournment and internal business matters of the two houses. Consequently, the court invalidated a purported amendment proposal which had not been presented to the governor. As noted above, however, that result appears to be in the minority. Furthermore, in an analogous situation, our Supreme Court declined to hold the presentment language unambiguous and all-inclusive. In State ex rel. Gardner v. Holm, 241 Minn. 125, 62 N.W.2d 52 (1954) the court held that action of the "legislature" in fixing judicial salaries in accordance with Article VI, Section 6 of the Minnesota Constitution, [FN2] was not subject to approval or veto by the governor. While acknowledging the broad implications of the presentment provisions of the constitution, the court concluded nonetheless:

[I]t is clear that not all acts of the legislature must be submitted to the governor. As an example, regents of the University of Minnesota are appointed pursuant to R.S.1851, c. 28. State ex rel. Peterson v. Quinlivan, 198 Minn. 65, 268 N.W. 858. The selection of regents must be made by the vote of the joint session of the legislature, but the governor has no control over such selection.

*3 It is also clear that there is a vital distinction between the exercise of the lawmaking function and the exercise of those other functions delegated to the legislature which are not strictly speaking lawmaking.

That the framers of our constitution did not intend to grant to the governor a veto over all acts of the legislature is apparent from an examination of art. 5, § 4, dealing with the powers and duties of the governor. With respect to the veto power, this section reads:

**** He [the governor] shall have a negative upon all laws passed by the legislature, under such rules and limitations as are in this Constitution prescribed." (Italics supplied.)

Implicit in this language is an exception in those cases where the constitution itself provides that the legislature, quite aside from the exercise of the lawmaking function, shall act without the concurrence of the governor. That, it appears to us, is the situation here.

Id. at 131, 62 N.W.2d at 56-57. [FN3]

We believe that similar reasoning would be applied in the case of proposed constitutional amendments. For the foregoing reasons, we conclude that proposed amendments to the constitution are not required, as a matter of law, to be presented to the governor nor are they subject to his approval

or veto. [FN4]

QUESTION II

In the case of a proposed constitutional amendment which is part of a larger bill containing statutory changes and/or appropriations what is the effect of a governor's veto of that bill.

OPINION

In our opinion, a veto of a bill containing a proposed constitutional amendment together with matters of ordinary legislation would be effective as to the legislation contained in the bill and the provisions so vetoed would not become law unless the veto were overridden. However, as noted in response to Question I above, the veto would not affect the proposed constitutional amendment which must be voted upon at the next general election in accordance with Minn. Const. art. IX, § 1, and Minn.Stat. § 3.20 (1992).

In Wass v. Anderson, 312 Minn. 394, 252 N.W.2d 131 (1977), our Supreme Court addressed a claim that a proposal for a constitutional amendment was a "subject" in and of itself and thus could not be contained in a bill with other legislative action without violating the "single subject" rule. [FN5] There the court said:

Plaintiffs concede that the constitution imposes no requirement as to the form a proposed constitutional amendment must take. That it might be preferable for the legislature to propose amendments separately rather than to include them in bills containing other provisions is a matter addressed to legislative discretion and not judicially cognizable.

Id. at 399, 252 N.W.2d at 135. Thus, it seems clear that a constitutional amendment may legitimately be proposed by the legislature in the context of a "bill" which also contains ordinary legislation.

We see no reason, however, that the inclusion of a proposed constitutional amendment should, in any manner, interfere with the constitutional authority of the governor to approve or veto either the bill itself or items of appropriations therein to the extent that it contains ordinary legislation. Minn. Const. art. IV, § 23, clearly gives the governor authority to veto bills and items of appropriation contained within bills. While we conclude above that a constitutional amendment proposed by the members of the legislature is to be presented to the people for adoption without respect to gubernatorial action, the rationale and authorities supporting that result also clearly recognize the authority of the governor to review and approve or veto ordinary legislation which is not to be presented to the people for approval. Indeed, we can conceive of no rational basis upon which to conclude the constitutional drafters would have intended to permit the legislature to insulate general legislation from exposure to veto simply by including it in a bill containing an amendment

proposal.

*4 Consequently, we conclude that the governor retains authority to review and approve or **veto** a bill containing general legislation presented by the legislature as well as items of appropriation, where appropriate, notwithstanding that the bill may also contain a proposed amendment. The effect of that action would be that the legislation contained in the vetoed bill or the vetoed appropriation items would not become law unless the **veto** is overridden in accordance with Article IV, Section 23, of the Constitution, but the proposed amendment will be presented for a vote of the people and, if approved by them, become part of the Constitution.

Very truly yours,
Hubert H. Humphrey III

John R. Tunheim
Chief Deputy
Attorney General

[FN1]. That section provides in part:

Every bill which shall have passed the house of representatives and the senate shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it... If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return; in which case it shall not be a law. Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States, and, before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

[FN2]. The applicable language is now contained in Minnesota Constitution Article VI, § 5.

[FN3]. The quoted language from Article V, section 4, was deleted in the 1974 "structure style and form" amendment to the Constitution. However, that amendment was not intended to have any consequential changes in legal effect. See Act of April 10, 1974, §§ 2-3, 1974 Minn.Laws at 819-20.

[FN4]. It is our understanding, however, that bills proposing constitutional amendments have generally been presented to and approved by the governor in the past. As noted in Op. Atty. Gen. 86-a, November 12, 1946, however, the approval or disapproval of the governor would have no bearing upon submission of the amendments to the people.

[FN5]. Minn. Const. art. IV, § 17, provides: "No law shall embrace more than one subject, which shall be expressed in its title."

Minn. Op. Atty. Gen. 213-C, 1994 WL 80906 (Minn.A.G.)

END OF DOCUMENT