

JUL 16 2012

FILED

#

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.

Request of Law Professors for Leave of Supreme Court
to Participate as Amicus Curiae

Robins, Kaplan, Miller & Ciresi L.L.P.

Bruce D. Manning (312289)
Laura E. Nelson (342798)
Jamie R. Kurtz (391792)
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402
T: 612-349-8500
F: 612-339-4181

*Attorneys for Brian Bix, Mary Patricia
Byrn, Dale Carpenter, Marie Failingler,
Claire Hill, Jonathan Kahn, Daniel S.
Kleinberger, Peter Knapp, Mehmet Konar-
Steenberg, Raleigh Levine, Brett
McDonnell, William McGeeveran, Fred
Morrison, Mary Jane Morrison, Myron
Orfield, Mark Osler, Richard Painter, Ted
Sampsell-Jones, and Eileen Scallen.*

To: The Supreme Court of the State of Minnesota:

Applicants are law professors at the University of Minnesota Law School, William Mitchell College of Law, Hamline University Law School, and University of St. Thomas Law School (hereinafter “Law Professors”). Specifically, they are:

- A. Brian Bix** is the Frederick W. Thomas Professor for the Interdisciplinary Study of Law and Language at the University of Minnesota Law School. He teaches and writes in the areas of jurisprudence, family law, and contract law.
- B. Mary Patricia Byrn** is an Associate Professor at William Mitchell College of Law. She teaches, researches and writes in the areas of constitutional law, assisted reproductive technology, sexual orientation, and family law.
- C. Dale Carpenter** is the Earl R. Larson Professor of Civil Rights and Civil Liberties Law at the University of Minnesota Law School. He teaches and writes in the areas of constitutional law. Since 2004 he has served as an editor of *Constitutional Commentary*.
- D. Marie Failinger** is a Professor at Hamline University School of Law and teaches and writes in the areas of constitutional law, law and religion and gender and law. She is the editor-in-chief of the *Journal of Law and Religion*.
- E. Claire Hill** is the James L. Krusemark Chair in Law at the University of Minnesota Law School. She teaches corporate law, mergers and acquisitions, contracts, and a seminar in law and economics. She is the founding director of the Law School’s Institute for Law and Rationality, and the associate director of its Institute for Law and Economics.

- F. Jonathon Kahn** is a Professor at Hamline University School of Law. He teaches and writes on history, politics and law, constitutional law, and bioethics. He also has a Ph.D. in History.
- G. Daniel S. Kleinberger** is a Professor at William Mitchell College of Law. Among other work, Professor Kleinberger has been immersed in legislative drafting projects for more than two decades, and his scholarship and drafting work have been recognized by the National Conference of Commissioners on Uniform State Laws, the American Law Institute, the American Bar Association Committee on Limited Liability Companies, Partnerships and Unincorporated Entities, and the Section on Agency, Partnership, LLCs and Unincorporated Associations of the American Association of Law Schools.
- H. Peter Knapp** is a Professor and Co-Director of clinics at William Mitchell College of Law. He teaches and writes on evidence and advocacy, among other topics.
- I. Mehmet Konar-Steenberg** is an Associate Professor at William Mitchell College of Law. He teaches and writes on constitutional law and administrative law, among other topics.
- J. Raleigh Levine** is a Professor of Law at William Mitchell College of Law. She teaches constitutional law, torts, and media law. She researches and writes in those areas, as well as in election law.
- K. Brett McDonnell** is a Professor of Law at the University of Minnesota Law School and a Solly Robins Distinguished Research Fellow. He teaches and writes in the areas of business associations, corporate finance, law and economics, securities regulations, mergers and acquisitions, contracts, and legislation.

- L. William McGeeveran** is an Associate Professor and Lampert Fesler Research Fellow at the University of Minnesota Law School where he teaches and writes on intellectual property, data privacy, and election law.
- M. Fred Morrison** is the Popham, Haik, Schnobrich/Lindquist & Vennum Professor of Law at the University of Minnesota Law School. He teaches and writes in the areas of constitutional law, local government, and comparative public law. He has served as the Interim Dean and the Interim Co-Dean at the Law School. He also served as Research Director of the Minnesota Constitutional Study Commission in the early 1970s. That body, chaired by former Governor Elmer Andersen, proposed a number of amendments to the Constitution, as well as the general revision of the Constitution that took effect in 1974.
- N. Mary Jane Morrison** is a Professor at Hamline University School of Law. She teaches analysis of statutes, treaties, and constitutions in courses on the United States Constitution, and state constitutional law, particularly with respect to the Minnesota State Constitution, and seminars on advanced-topics in constitutional law, among other topics. She has authored *The Minnesota State Constitution: A Reference Guide* (2002).
- O. Myron Orfield** is a Professor at the University of Minnesota Law School. He teaches and writes in the fields of civil rights, state and local government, state and local finance, land use, questions of regional governance, and the legislative process. From 1990 to 2000 he served in the Minnesota House of Representatives and, followed by one term in the Minnesota Senate.

P. Mark Osler is a Professor at the University of St. Thomas School of Law. He is a former federal prosecutor and teaches and writes in the areas of criminal law and procedure.

Q. Richard Painter is the S. Walter Richey Professor of Corporate Law at the University of Minnesota Law School. He writes and teaches on securities law, corporate law, and professional ethics. He was, from February 2005 to July 2007 Associate Counsel to the President in the White House Counsel's office, serving as the chief ethics officer for President George W. Bush, White House employees and senior nominees to Senate-confirmed positions in the Executive Branch.

R. Ted Sampsell-Jones is an Associate Professor at William Mitchell College of Law. He teaches criminal law, constitutional criminal procedure, and civil procedure.

S. Eileen Scallen is a Professor of Law at William Mitchell College of Law. She teaches and writes in the areas of evidence, civil and criminal procedure, communication in legal organizations, and argumentation and persuasion theory.

All are residents of Minnesota and registered voters in Minnesota.

The Law Professors respectfully request that the Minnesota Supreme Court grant them leave to participate in this case, as *amicus curiae*, pursuant to Rule 129 of the Minnesota Rules of Civil Appellate Procedure and this Court's July 9, 2012 Order. The Law Professors will support the brief of the Respondents.

I. Statement of Applicants' Interest

The Law Professors' interest is public in nature. They teach, research, and write about state and federal constitutional law, statutory interpretation, the legislative process, election law, and legal history, among other areas. They encompass a broad range of viewpoints on legal, constitutional, jurisprudential, and political issues. They differ among themselves over

who should have access to the status of marriage in Minnesota. The Law Professors have a professional interest in the Court's disposition of the issues presented in this case and, in particular, feel strongly that the Court should reach its conclusion based on a full understanding of the constitutional implications of the present matter and the history and justifications for Minn. Stat. § 204D.15.

II. Statement of Party Supported and Position Taken

The Law Professors support the position of the Respondent. The Law Professors will contend that the title of any proposed constitutional amendment must conform to state law in issuance and appropriateness. As to issuance, a Minnesota statute with a lineage going back to 1919 requires the Secretary of State to provide, and the Attorney General to approve, an "appropriate title." They have properly exercised that statutory authority. As to appropriateness, considerations of text, structure, and precedent insist on a great degree of judicial deference. The title chosen here easily meets the test of appropriateness.

First, the authority and the duty of the Respondents here to select and approve an appropriate ballot title is established by unambiguous state law. That state law has not been challenged constitutionally, or been amended, repealed, or superseded by any valid legislative act. The Governor vetoed the entirety of the bill presented to him, including the Legislature's preferred ballot title. The veto of the ballot title was not overridden and thus that portion of the bill containing ordinary legislation instructing two Executive Branch officers on how to exercise their exclusive and mandatory statutory authority did not become law. The Secretary of State's duty to select a title for the proposed constitutional amendment—drafted by him and approved by the Attorney General—is undisturbed.

Second, neither the Secretary of State nor the Attorney General has exceeded their respective broad discretionary powers under the statute to choose and approve an

appropriate ballot title. As the approved title is one among many potentially “appropriate” titles, the Court should decline to insert itself in this matter.

III. Statement of why Participation of Amicus Curiae is Desirable

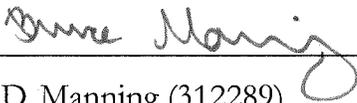
Given their individual and collective expertise in constitutional law, statutory interpretation, elections law and legal history, the Law Professors are uniquely situated to provide insight on the issues raised in this case. The Law Professors provide a historical analysis of the statutes at issue, as well as an ability to place this dispute within a national legal context. Hearing these views will help the Court act in a fully informed manner.

Conclusion

For all of the above reasons, the Law Professors respectfully request the opportunity to participate in this case as *amicus curiae*, and have attached their proposed brief hereto.

July 16, 2012

Robins, Kaplan, Miller & Ciresi L.L.P.

By: 

Bruce D. Manning (312289)

Laura E. Nelson (342798)

Jamie R. Kurtz (391792)

2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402
T: 612-349-8500
F: 612-339-4181

*Attorneys for Brian Bix, Mary Patricia Byrn, Dale
Carpenter, Marie Failinger, Claire Hill, Jonathan Kahn,
Daniel S. Kleinberger, Peter Knapp, Mehmet Konar-
Steenberg, Raleigh Levine, Brett McDonnell, William
McGeveran, Fred Morrison, Mary Jane Morrison,
Myron Orfield, Mark Osler, Richard Painter, Ted
Sampsell-Jones, and Eileen Scallen.*

JUL 16 2012

FILED

STATE OF MINNESOTA }
 }
 } ss.
COUNTY OF HENNEPIN }

AFFIDAVIT OF SERVICE BY U.S. MAIL AND E-MAIL

Jamie L. Baumgart, being first duly sworn, deposes and says that on the 16th day of July, 2012, she served the attached **Request of Law Professors for Leave of Supreme Court to Participate as Amicus Curiae** via e-mail and by depositing in the United States mail a true and correct copy thereof, properly enveloped, with first class postage prepaid, and addressed to the following individuals. The Compendium, due to size constraints, was not e-mailed.

Counsel for Petitioners:

Erick Kaardal
MOHARMAN, KAARDAL, P.A.
33 south Sixth Street, suite 4100
Minneapolis, MN 55402
kaardal@mklaw.com

Austin R. Nimocks
ALLIANCE DEFENDING FREEDOM
2029 K. Street NW, Suite 200
Washington, DC 20006
animocks@telladf.org

Cleta Mitchell
ACTRIGHT LEGAL FOUNDATION
2029 K Street NW, Suite 300
Washington, DC 20006
cmitchell@actright.com

Kaylan L. Phillips
Eric C. Bohnet
Zachary S. Kester
Noel H. Johnson
ACTRIGHT LEGAL FOUNDATION
209 West Main Street
Plainfield, IN 46168
kphillips@actright.com
ebohnet@actright.com
zkester@actright.com
njohnson@actright.com

**Counsel for Amici Curae in Support of
Petitioners**

Teresa S. Collett
MSL 400
1000 LaSalle Avenue
Minneapolis, MN 55403
teresa.s.collett@gmail.com

James S. Ballentine
80 South Eighth Street, Suite 5120
Minneapolis, MN 55402
jballentine@schwebel.com

Counsel for Respondents

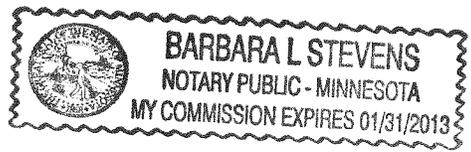
Alan Gilbert
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1100
St. Paul, MN 55101-2131
al.gilbert@ag.state.mn.us

Jamie Baumgart
Jamie L. Baumgart

Subscribed and sworn to before me this
16th day of July, 2012.

Barbara L. Stevens
Notary Public

83219228.1



Bruce D. Manning
BDManning@rkmc.com
612-349-8466

July 16, 2012

Minnesota Supreme Court Administrator
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

HAND DELIVERED

Re: *Warren Limmer, et al. v. Mark Ritchie, et al.*
Supreme Court File No. A12-1149

OFFICE OF
APPELLATE COURTS

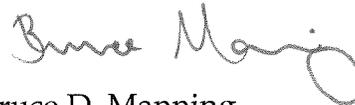
JUL 16 2012

FILED

Dear Court Administrator:

Enclosed for filing in the above-referenced matter, please find 14 copies (12 bound; the original and one copy unbound) of the Request of Law Professors for Leave of Supreme Court to Participate as Amicus Curiae, Brief and Appendix of Amicus Curie, and the Affidavit of Service.

Sincerely,



Bruce D. Manning

Enclosures