

No. A12-1258

OFFICE OF  
APPELLATE COURTS

JUL 19 2012

FILED

---

State of Minnesota  
**In the Supreme Court**

---

**Mary Kiffmeyer, Scott J. Newman, Warren Limmer, Julianne Ortman, Mike Parry, Sean Nienow, David Brown, David Senjem, Bill Ingebrigtsen, Paul Gazelka, Roger Chamberlain, Ray Vandever, Claire Robling**, all individuals, registered voters, and Members of the Minnesota Legislature; **Jeff Davis**, an individual and registered voter; **Dan McGrath**, an individual and a registered voter; **Minnesota Majority, Inc.**, a nonprofit corporation; and **ProtectMyVote.com**, 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**

---

Erick Kaardal (Minn. 229647)\*\*  
MOHRMAN KAARDAL, P.A.  
33 South Sixth Street, Suite 4100  
Minneapolis MN 55402  
Telephone: (612) 341-1074  
Facsimile: (612) 341-1076  
kaardal@mklaw.com

Cleta Mitchell (D.C. 433386)^\*\*  
ACTRIGHT LEGAL FOUNDATION  
2029 K Street NW, Ste 300  
Washington, DC 20006  
Telephone (202) 683-9405  
Facsimile (888) 815-5641  
cmitchell@actright.com

**COUNSEL FOR PETITIONERS**

*\*Pro Hac Vice Motions Pending*

*^ Lead Counsel*

*\*\* Local Counsel*

*(Additional Counsel on Inside Cover)*

Kaylan L. Phillips (Ind. 30405-84)\*

Zachary S. Kester (Ind. 28630-49)\*

Noel H. Johnson (Wisc. 1068004)\*

ACTRIGHT LEGAL FOUNDATION

209 West Main Street

Plainfield, Indiana 46168

Telephone (202) 683-9405

Facsimile (888) 815-5641

[kphillips@actright.com](mailto:kphillips@actright.com)

[zkester@actright.com](mailto:zkester@actright.com)

[njohnson@actright.com](mailto:njohnson@actright.com)

The Petitioners Mary Kiffmeyer, Scott J. Newman, Warren Limmer, and Julianne Ortman, Mike Parry, Sean Nienow, David Brown, David Senjem, Bill Ingebrigtsen, Paul Gazelka, Roger Chamberlain, and Ray Vandever, Claire Robling, all individuals, registered voters, and Members of the Minnesota Legislature; Dan McGrath, an individual and a registered voter; Jeff Davis, an individual and registered voter; Minnesota Majority, Inc., a nonprofit corporation representing registered Minnesota voters; and ProtectMyVote.com (“PMV”), 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, Article VII, Section 1 will be amended to (1) require voters to present valid government-issued photographic identification before receiving a ballot; (2) require the state to provide photographic identification to voters at no charge; (3) require substantially equivalent verification standards for all voters; and (4) allow provisional balloting for voters unable to present photographic identification.

(“the Voter ID Amendment”). See H.F. 2738, ch. 167 §§ 1-2, 87th Leg., Reg. Sess. (Minn. 2012) (“Chapter 167, H.F. 2738”) (Attachment A).

The political and legal battles surrounding the Voter ID Amendment have been numerous, including a challenge to the Voter ID Amendment’s ballot question pending before this Court, filed by opponents of the measure. *League of Women Voters Minnesota, et al. v. Ritchie*, No. A12-0920 (filed May 30, 2012). 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 Voter ID 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 duly-enacted title of the Voter ID Amendment. (Letter of Governor Mark Dayton to Speaker of the House Kurt Zellers (April 9, 2012) (“Governor’s Veto Letter”) (“I am vetoing the amendment and its title[.]”) (Attachment B).) And most recently, on July 3, 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 Voter ID Amendment adopted by the Legislature for a title of his own creation, ignoring the title provided by the Legislature. (Letter of Secretary of State Mark Ritchie to Attorney General Lori Swanson (July 3, 2012) (“SOS Letter”) (Attachment C).) The Attorney

General then approved the Secretary's substitute title. (Letter of Attorney General Lori Swanson to Secretary of State Mark Ritchie (July 6, 2012) ("AG Letter") (Attachment D).) 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 Voter ID 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 Voter ID Amendment containing the title and question 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 Representative Mary Kiffmeyer brings this Petition in her capacity as a duly elected Member of the House of Representatives having served as a chief author of the Voter ID Amendment, and in her individual capacity as a Minnesota resident and registered voter in the State of Minnesota. Representative Kiffmeyer also served as the 20th Minnesota Secretary of State.

3. Petitioner Senator Scott J. Newman brings this Petition in his capacity as a duly elected Member of the Minnesota state Senate having served as a chief author of the Voter ID Amendment, and in his individual capacity as a Minnesota resident and registered voter in the State of Minnesota.

4. Petitioner Senator Warren Limmer 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.

5. 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.

6. Petitioner Senator Mike Parry 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.

7. Petitioner Senator Sean Nienow 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 David Brown 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.

9. Petitioner Senator David Senjem 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.

10. Petitioner Senator Bill Ingebrigtsen 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.

11. 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.

12. Petitioner Senator Roger Chamberlain 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.

13. Petitioner Senator Ray Vandever 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.

14. Petitioner Senator Claire Robling 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.

15. Petitioner Jeff Davis is an individual Minnesota resident and registered voter, and serves as President of Petitioner Minnesota Majority, Inc. Petitioner Davis

brings this action in his individual capacity as well as a representative of Petitioner Minnesota Majority, Inc.

16. Petitioner Dan McGrath is an individual Minnesota resident and registered voter, and serves as Chairman of Petitioner PMV. Petitioner McGrath brings this action in his individual capacity as well as a representative of Petitioner PMV.

17. Petitioner Minnesota Majority, Inc., is an advocate for election integrity in Minnesota. It is a nonprofit corporation that promotes social welfare, including the protection of the election process. For more than four years, Minnesota Majority has invested significant time and resources into uncovering voter fraud and other voting irregularities and bringing that information to the attention of Minnesota citizens and their elected officials. Minnesota Majority is supported by a broad range of individual Minnesotans registered to vote and Petitioner Minnesota Majority brings this action on behalf of and represents the interests of those individuals.

18. Petitioner ProtectMyVote.com ("PMV") is a ballot issue committee, registered with the Minnesota Campaign Finance and Public Disclosure Board pursuant to Minn. Stat. 10A.14, to promote passage of the Voter ID Amendment. It is responsible for reporting the receipts and expenditures related to the campaign in support of the Voter ID Amendment. Its principal place of business is in the State of Minnesota. PMV is the leading organization urging adoption of the Voter ID Amendment. In that regard, PMV has raised in excess of \$75,000 from citizens and groups to mount its campaign, 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 Voter ID Amendment. PMV is supported by a broad range of individual Minnesotans registered to vote and Petitioner PMV brings this action on behalf of and represents the interests of those individuals.

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. Where the Legislature has not provided one, the Secretary 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 Voter ID 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 April 3, 2012 the 87th Minnesota House passed Chapter 167, House File 2783, an act proposing an amendment to the Minnesota Constitution; amending section 1 of Article VII; requiring voters to present photographic identification; providing photographic identification to voters at no charge; requiring substantially equivalent verification standards for all voters; allowing provisional balloting for voters unable to present photographic identification. The 87th Minnesota Senate passed the same on April 5, 2012. It was filed with the Secretary on April 10, 2012 to be placed on the ballot at the November 2012 general election for voter approval.

25. The entire text of Chapter 167, House File 2738 reads as follows:

*An act proposing an amendment to the Minnesota Constitution, article VII, section 1; requiring voters to present photographic identification; providing photographic identification to voters at no charge; requiring substantially equivalent verification standards for all voters; allowing provisional balloting for voters unable to present photographic identification.*

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, article VII, section 1, will read:

Section 1. (a) Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct. The place of voting by one otherwise qualified who has changed his residence within 30 days preceding the election

shall be prescribed by law. The following persons shall not be entitled or permitted to vote at any election in this state: A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; a person under guardianship, or a person who is insane or not mentally competent.

(b) All voters voting in person must present valid government-issued photographic identification before receiving a ballot. The state must issue photographic identification at no charge to an eligible voter who does not have a form of identification meeting the requirements of this section. A voter unable to present government-issued photographic identification must be permitted to submit a provisional ballot. A provisional ballot must only be counted if the voter certifies the provisional ballot in the manner provided by law.

(c) All voters, including those not voting in person, must be subject to substantially equivalent identity and eligibility verification prior to a ballot being cast or counted.

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

(a) The proposed amendment must be submitted to the people at the 2012 general election. If approved, the amendment is effective July 1, 2013, for all voting at elections scheduled to be conducted November 5, 2013, and thereafter. The question submitted must be:

"Shall the Minnesota Constitution be amended to require all voters to present valid photo identification to vote and to require the state to provide free identification to eligible voters, effective July 1, 2013?"

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: "Photo Identification Required for Voting."

26. In passing the Voter ID Amendment, the Legislature specified that the ballot title *shall* be: "Photo Identification Required for Voting." Chapter 167, H.F. 2738, § 2(b).

27. Yet, on July 3, 2012, the Secretary sent a letter to the Attorney General explaining that he had chosen a title and that he was submitting his new title —

“CHANGES TO IN-PERSON & ABSENTEE VOTING & VOTER REGISTRATION; PROVISIONAL BALLOTS”—for her approval. (SOS Letter (Attachment C).)

28. Three days later, on July 6, 2012, Attorney General Swanson responded by letter, writing with approval of the Secretary’s proposed substituted title, explaining: “Governor Mark Dayton specifically vetoed the title” contained in the Voter ID Amendment and therefore the Secretary was empowered to provide his own title for the Amendment. (AG Letter (Attachment D).)

29. 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.

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

#### **CAUSE OF ACTION**

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

32. 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 167, House File 2738—the Voter ID 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 Voter ID Amendment, having approved the amendment in its entirety, including the question and title to appear on the 2012 General Election ballot.

33. Specifically, the Voter ID Amendment approved and referred by the Legislature is to appear on the ballot with the title: “Photo Identification Required for Voting.” Chapter 167, H.F. 2738, § 2(b).

34. The Secretary disregarded this title, choosing instead to write his own title: “CHANGES TO IN-PERSON & ABSENTEE VOTING & VOTER REGISTRATION; PROVISIONAL BALLOTS.” The Attorney General erroneously approved this title. The actions of the Secretary and Attorney General are unlawful and exceed their constitutional authority.

35. 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.

36. Therefore, the Petitioners ask this Court to correct all errors or omissions the Secretary has committed in substituting a proposed ballot title for the Voter ID 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 “CHANGES TO IN-PERSON & ABSENTEE VOTING & VOTER REGISTRATION; PROVISIONAL BALLOTS” and an unlawful omission for the Secretary to fail to include on the ballot the duly enacted ballot title “Photo Identification Required for Voting” as instructed in Chapter 167, House File 2738.

#### **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 Voter ID Amendment, Chapter 167, House File 2738, including the title “Photo Identification Required for Voting;” 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 19th day of July, 2012.

Respectfully submitted,



---

Erick Kaardal (Minn. 229647)\*\*  
MOHRMAN KAARDAL, P.A.  
33 South Sixth Street, Suite 4100  
Minneapolis MN 55402  
Telephone: (612) 341-1074  
Facsimile: (612) 341-1076  
kaardal@mklaw.com

Cleta Mitchell (D.C. 433386)^\*  
ACTRIGHT LEGAL FOUNDATION  
2029 K Street NW, Ste 300  
Washington, DC 20006  
Telephone (202) 683-9405  
Facsimile (888) 815-5641  
cmitchell@actright.com

Kaylan L. Phillips (Ind. 30405-84)\*  
Zachary S. Kester (Ind. 28630-49)\*  
Noel H. Johnson (Wisc. 1068004)\*  
ACTRIGHT LEGAL FOUNDATION  
209 West Main Street  
Plainfield, Indiana 46168  
Telephone (202) 683-9405  
Facsimile (888) 815-5641  
kphillips@actright.com  
zkester@actright.com  
njohnson@actright.com

**COUNSEL FOR PETITIONERS**

*\*Pro Hac Vice Motions Pending*

*^ Lead Counsel*

*\*\* Local Counsel*

