

NO. A12-1258

State of Minnesota
In Supreme Court

OFFICE OF
APPELLATE COURTS

JUL 24 2012

FILED

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., ProtectMyVote.com, an association of
individuals and registered ballot committee,

Petitioners,

vs.

Mark Ritchie, in his 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 NONPARTISAN ORGANIZATIONS AND
LAW PROFESSORS FOR LEAVE OF SUPREME COURT
TO PARTICIPATE AS *AMICUS CURIAE***

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Attorney for Respondents

To: The Supreme Court of the State of Minnesota

Applicants are three nonpartisan organizations and thirteen law professors at the University of Minnesota Law School, William Mitchell College of Law, and Hamline University Law School, (hereinafter “Nonpartisan Organizations and Law Professors”).

Specifically, they are:

1. **The American Civil Liberties Union – Minnesota** (“ACLU-MN”) is an affiliate of the American Civil Liberties Union, a nationwide, nonprofit, nonpartisan organization with approximately 300,000 members, about 8,500 of whom are members of the Minnesota affiliate. The ACLU-MN is dedicated to the principles of liberty and equality embodied in the Constitution and our nation’s civil rights laws. Since its founding in 1952, the ACLU-MN has engaged in constitutional and voting rights litigation, both directly and as *amicus curiae*, in a wide variety of cases. In addition the ACLU-MN provided legal counsel to the Petitioners in *League of Women Voters Minnesota et al v. Ritchie*, No. A12-0920, now pending before this Court, in which the Petitioners sought relief relating to both the ballot title and ballot question regarding the proposed constitutional amendment which is the subject of the Petition in the present action. Because of the constitutional issues present in this case, and because of its relationship to the issues in *League of Women Voters v. Ritchie*, the proper resolution of this controversy

is a matter of substantial concern to the ACLU-MN and its members, most of whom are registered voters in the state of Minnesota

2. **Common Cause** is a District of Columbia nonprofit corporation with a Minnesota chapter known as Common Cause Minnesota. Common Cause has more than 10,000 members in the State of Minnesota, the majority of whom are registered voters. Common Cause is a nonpartisan, grassroots organization dedicated to restoring the core values of American democracy, reinventing an open, honest and accountable government that serves the public interest, and empowering ordinary people to make their voices heard in the political process. Common Cause is one of the Petitioners in *League of Women Voters Minnesota v. Ritchie*. Because of the implications of this case for participatory democracy in Minnesota, the proper resolution of this controversy is a matter of substantial concern to Common Cause and its members.
3. **Jewish Community Action** (“JCA”) is a Minnesota nonprofit corporation that has over 700 members, the majority of whom are registered Minnesota voters. The mission of JCA is to bring together Jewish people from diverse traditions and perspectives to promote understanding and take action on social and economic justice issues in Minnesota. JCA brings a distinct Jewish voice to the fight for justice. JCA addresses issues that shape the lives of people throughout the metropolitan area, working to develop specific strategies for addressing key issues. JCA also works with a range of constituency groups, including new Americans from the former Soviet Union, youth, and affiliated and unaffiliated Jews, many of

whom may be disenfranchised by the proposed Voter Identification and Provisional Ballot Amendment. JCA is one of the Petitioners in *League of Women Voters v. Ritchie*. Because of the implications of this case for participatory democracy in Minnesota, the proper resolution of this controversy is a matter of substantial concern to JCA and its members.

4. **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.
5. **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*.
6. **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.
7. **Jonathan 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.

8. **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.
9. **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.
10. **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.
11. **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.
12. **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.

13. **Fred Morrison** is the Popham, Haik, Schnobrich/Lindquist & Venum 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.

14. **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).
15. **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.
16. **Eileen Seallen** 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 Law Professors are residents of Minnesota and registered voters in Minnesota. All Nonpartisan Organizations are active non-profit corporations in Minnesota and in part, their members are comprised of residents of Minnesota and voters registered in Minnesota. The

Nonpartisan Organizations and 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 20, 2012 Order.

I. Statement of Applicants' Interest

The Nonpartisan Organizations and Law Professors' interest is public in nature. The Nonpartisan Organizations are dedicated to protecting the rights and liberties guaranteed to all Minnesotans by the state and federal constitutions. Among these rights and liberties are those of citizens to participate in a fair democratic process leading to the enactment of laws and constitutional amendments that affect the rights and duties of citizens. The Law Professors teach, research, and write about state and federal constitutional law, statutory interpretation, the legislative process, election law, and legal history, among other areas. The Nonpartisan Organizations and Law Professors encompass a broad range of viewpoints on legal, constitutional, jurisprudential, and political issues. They differ among themselves over the merits of the proposed amendment to the Minnesota Constitution regarding voter identification. Yet the Nonpartisan Organizations and Law Professors have public and professional interests in the Court's disposition of the issues presented in this case and, in particular, believe 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 Nonpartisan Organizations and Law Professors support the position of the Respondent. They 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

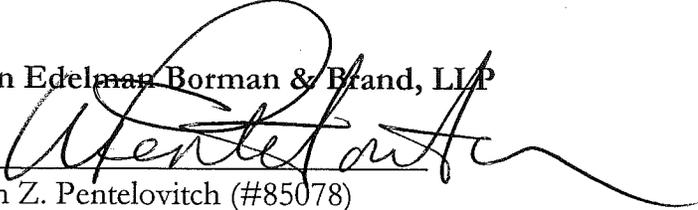
Given their individual and collective expertise in constitutional law, statutory interpretation, elections law and legal history, the Nonpartisan Organizations and Law Professors are uniquely situated to provide insight on the issues raised in this case. The Nonpartisan Organizations and Law Professors 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 Nonpartisan Organizations and Law Professors respectfully request the opportunity to participate in this case as *amicus curiae*, and have attached their proposed brief hereto.

July 24, 2012

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