

A12-920

File No. A12-0290

STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

JUN - 8 2012

FILED

League of Women Voters Minnesota;
Common Cause, a District of Columbia
nonprofit corporation; Jewish Community
Action, a Minnesota nonprofit corporation;
Gabriel Herbers; Shannon Doty;
Gretchen Nickence; John Harper Ritten;
and Kathryn Ibur,

MOTION FOR ADMISSION OF
DANIEL B. KOHRMAN
PRO HAC VICE

Petitioners

vs.

Mark Ritchie, in his capacity as
Secretary of State of the State
of Minnesota, and not in his
individual capacity,

Respondent.

Tim Griffin, being sworn/affirmed under oath, states:

I, Tim Griffin, an active member in good standing of the bar of the State of
Minnesota, move that this Court admit pro hac vice Daniel B. Kohrman, an attorney
admitted to practice in the courts of the District of Columbia, the State of New York, and
numerous Federal Courts of Appeals and Federal District Courts, and the U.S. Supreme

Court, but not admitted to the bar of this Court, who will be counsel for *Amicus Curiae* AARP in this case.

I am aware that Rule 5 of the Minnesota General Rules of Practice requires me to (1) sign all pleadings in this case, (2) be present in person or by telephone at the proceeding at which this Motion is heard, and (3) be present in person or by telephone at all subsequent proceedings in this case unless the Court, in its discretion, conducts the proceedings without the presence of Minnesota counsel.

Dated: June 8, 2012



Tim Griffin (MN Bar No. 0285717)
LEONARD, STREET AND DEINARD
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
612-335-1500 (tel.)
612-335-1657 (fax)

JUN - 8 2012

FILED

Affidavit of Proposed Admittee

DISTRICT OF COLUMBIA)
) ss.

Daniel B. Kohrman, being duly sworn, states the following under oath:

I am currently admitted to practice and in good standing in the courts of the following jurisdictions, but not admitted to the bar of this Court:

State/Jurisdiction	License #	Status	Admission Date
District of Columbia	# 394064	Active	March 4, 1986
State of New York	#1979822	Active	April 15, 1985
Supreme Court of the United States		Active	October 16, 1989
U.S. Court of Appeals for the Fourth Circuit		Active	July 29, 1991
U.S. Court of Appeals for the Fifth Circuit		Active	November 23, 2011
U.S. Court of Appeals for the Sixth Circuit		Active	October 7, 2004
U.S. Court of Appeals for the Eighth Circuit		Active	April 10, 1989
U.S. Court of Appeals for the Ninth Circuit		Active	October 1, 2002
U.S. Court of Appeals for the Eleventh Circuit		Active	December 3, 2007
U.S. Court of Appeals for the District of Columbia	#43483	Active	March 29, 1995
U.S. District Court for the District of Columbia		Active	August 10, 2005
U.S. District Court for the District of Maryland	#12912	Active	March 14, 2006
U.S. District Court for the Western District of Pennsylvania		Active	March 30, 1996

I understand that if this Court grants me admission pro hac vice, Rule 5 of the Minnesota General Rules of Practice requires the Minnesota lawyer bringing this Motion to (1) sign all pleadings in this case, (2) be present in person or by telephone at the proceeding at which this

Motion is heard, and (3) be present in person or by telephone at all subsequent proceedings in this case unless the Court, in its discretion, conducts the proceedings without the presence of Minnesota counsel.

I also understand that Rule 5 of the Minnesota General Rules of Practice specifies that by appearing pursuant to that rule I am subject to the disciplinary rules and regulations governing Minnesota lawyers and that by applying to appear or appearing in any action I am subject to the jurisdiction of the Minnesota courts.

Dated: *June 7, 2012*

Signature:

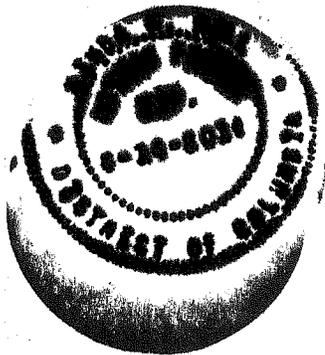


Daniel B. Kohrman
(District of Columbia Attorney License # 394064)
AARP Foundation Litigation
601 E Street, NW, Room B4-454
Washington, DC 20049
Telephone: (202) 434-2064
dkohrman@aarp.org

Subscribed and sworn to before me this *7th* day of *June*, 2012.



LINDA M. HILL
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires August 14, 2016



League of Women Voters Minnesota, *et al.*)
)
vs.)
)
Mark Ritchie, in his capacity as)
Secretary of State of)
the State of Minnesota)

AFFIDAVIT
OF MAILING

No. A12-0290

A12-920

OFFICE OF
APPELLATE COURTS

JUN - 8 2012

FILED

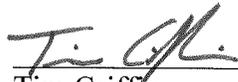
Tim Griffin, being first duly sworn upon oath, deposes and states that he served the true and accurate copies of the foregoing Motion of AARP for Leave to File *Amicus Curiae* Brief Supporting Petitioners, and Motion for Admission of Daniel B. Kohrman, Pro Hac Vice, by placing true and correct copies thereof in envelopes which were duly sealed and mailed by first class postage on the 8th day of June, 2012, addressed as follows:

William Z. Pentelovitch (#85078)
Richard G. Wilson (#16544X)
Justin H. Perl (#151397)
Wayne S. Moskowitz (#17936X)
Alain M. Baudry (#186685)
Catherine Ahlin-Halverson (#0350473)
MASLON EDELMAN BORMAN & BRAND, LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4140
Tel.: (612) 672-8200
Email: bill.pentelovitch@maslon.com

Teresa Nelson (#269736)
AMERICAN CIVIL LIBERTIES UNION
OF MINNESOTA
2300 Myrtle Avenue, Suite 180
St. Paul, MN 55114-1879
Tel.: (651) 645-4097
Email: tnelson@aclu-mn.org

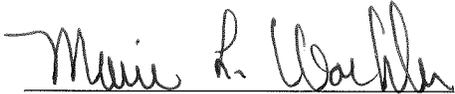
Laughlin McDonald
Jon Sherman
AMERICAN CIVIL LIBERTIES UNION FOUNDATION, INC.
230 Peachtree Street, Suite 1440
Atlanta, GA 30303
Tel.: (404) 523-2721
Email: lmcDonald@aclu.org
jsherman@aclu.org

OFFICE OF MINNESOTA ATTORNEY GENERAL LORI SWANSON
ASSISTANT ATTORNEY GENERAL, KRISTYN ANDERSON
ASSISTANT ATTORNEY GENERAL, ALAN GILBERT
1400 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101
Tel.: (651) 296-3353

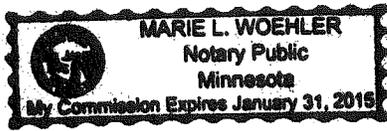


Tim Griffin

Subscribed and sworn to before me this 8th day of June, 2012.



Notary Public



LEONARD
STREET
AND
DEINARD

150 SOUTH FIFTH STREET SUITE 2300
MINNEAPOLIS, MINNESOTA 55402
612-335-1500 MAIN
612-335-1657 FAX

LIZ KRAMER
612-335-1927 DIRECT
LIZ.KRAMER@LEONARD.COM

June 8, 2012

Bridget C. Gernander
Clerk of Minnesota Supreme Court
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

JUN 08 2012 H

FILED

Re: League of Women Voters Minnesota, et al., v. Mark Ritchie
Case Nos: ~~A12-0290 and A12-0291~~ A12-920

Dear Ms. Gernander:

Enclosed for filing are the following documents:

- Motion of AARP for Leave to File *Amicus Curiae* Brief Supporting Petitioners;
- Motion for Admission of Daniel B. Kehrman *Pro Hac Vice*;
- Affidavit of Proposed Admittee; and
- Affidavit of Mailing.

By copy of this letter, counsel of record are being served with the same.

Sincerely,

LEONARD, STREET AND DEINARD



Liz Kramer

ECK:ja

Enclosures

cc: William Z. Pentelovitch w/enclosures
Laughlin McDonald w/enclosures
Kristyn Anderson w/enclosures
Teresa Nelson w/enclosures

A Professional Association

1308 CLAYTON AVENUE IN MINNEAPOLIS • MANKATO • ST. CLOUD • BISMARCK • WASHINGTON, D.C.

WWW.LEONARD.COM

A12-920

CASE NO. A12-0290

STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

JUN - 8 2012

FILED

LEAGUE OF WOMEN VOTERS MINNESOTA, *et al.*,
Petitioners,

vs.

MARK RITCHIE,
In his capacity as Secretary of State of the State of Minnesota,
Respondent.

MOTION OF AARP
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
SUPPORTING PETITIONERS

Tim Griffin (MN Bar No. 0285717)
Liz Kramer (MN Bar No. 0325089)
LEONARD, STREET AND DEINARD
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
612-335-1500 (tel.)
612-335-1657 (fax)

Daniel B. Kehrman *
AARP FOUNDATION LITIGATION
Michael Schuster (MN Bar No. 0098048)
AARP
601 E Street, NW
Washington DC 20049
Tel.: (202) 434-2060
Fax: (202) 434-6424
Email: dkohrman@aarp.org

Attorneys for *Amicus Curiae* AARP
*Application for admission *pro hac vice* pending

Applicant AARP respectfully requests leave, pursuant to Rule 129 of the Minnesota Rules of Civil Appellate Procedure, to participate in this case as an *amicus curiae* supporting Petitioners.

I. STATEMENT OF APPLICANT’S INTEREST.

The Applicant’s interest is public.

AARP is a nonpartisan, nonprofit organization dedicated to assuring that older Americans have independence, choice and control in ways beneficial and affordable to them and to society as a whole. AARP conducts advocacy for such public policies including in state and federal courts.

AARP policy specifically declares that “states should not impose unreasonable identification requirements that discourage or prevent citizens from voting.” As a result, AARP has filed *amicus* briefs challenging “photo ID” voting laws in the states of Missouri, Michigan and Indiana. As trial and appellate co-counsel, AARP Foundation Litigation also has opposed such laws in the states of Georgia and Arizona.

In addition, AARP has long advocated “election day registration,” such as the system currently in place in the State of Minnesota, as an effective approach to encourage exercise of the franchise.

AARP believes that the Voter Identification and Provisional Ballot Amendment (the “Amendment”), which the Minnesota Legislature recently approved for placement on the ballot in Minnesota in November 2012, threatens to undermine these longstanding policies and advocacy positions. That is, AARP believes that if the Amendment is

adopted, the State of Minnesota will proceed to enact photographic voter ID requirements likely to “discourage and prevent citizens from voting.” AARP also is concerned that approval of the Amendment will result in action by the State dismantling or damaging the current system of election day registration.

Most importantly for purposes of this case, the ballot language approved by the Minnesota Legislature for submission to the voters in regard to approval or disapproval of the Amendment is highly misleading.

These harms are likely to affect a large proportion of the voting public in Minnesota.¹ AARP is especially troubled that many Minnesota voters likely to be harmed, including many thousands of AARP members, are older voters.

II. STATEMENT OF PARTY TO BE SUPPORTED AND POSITION TO BE TAKEN BY APPLICANT.

Applicant AARP supports the position of the Petitioners.

As an *amicus curiae*, AARP will contend that Chapter 167, House File 2738, 2012 Session Laws, of the State of Minnesota, violates Article IX, section 1 of the Minnesota Constitution, and that this violation is within the Court’s jurisdiction to remedy, pursuant to Minn. State § 204B.44 (2012).

In particular, applicant AARP proposes to argue that in the following respects, the Amendment is “so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote,” *Breza v. Kiffmeyer*, 723 N.W2d 633, 636 (Minn. 2006) (quoting *State ex rel. Marr v. Stearns*, 72 Minn. 200, 218,

¹ In 2008 nearly one-fifth of (more than 540,000) Minnesota voters registered and voted on election day. Petitioners’ Brief and Addendum (“Pet. Br.”) at 17-18.

75 N.W. 210, 214 (1898), *rev'd on other grounds, Stearns v. Minnesota*, 179 U.S. 223 (1900)):

First, the ballot language asks the voters whether to amend the State Constitution, *inter alia*, “to provide *free* identification to [all] eligible voters, effective July 1, 2013” (emphasis supplied). (Petitioners’ Addendum at 1.) Yet the underlying legislation does no more than require the State to “issue photographic identification at no charge to an eligible voter who does not have” the necessary “form of identification.” In particular, the legislation does not indicate what documents will be required to be produced in order to obtain a “free” ID. At present, all that is required to verify a voter’s identity is a utility bill with their address on it.

Most states that have adopted voter ID laws have required voters without photo ID to produce other ID to obtain a “free” ID: *e.g.*, a birth certificate and for women who have changed their name from the name on their birth certificate, a marriage license. Birth certificates and marriage licenses are not provided “free of charge.” And for voters born or married out-of-state, no state is able to guarantee that another state will provide “free of charge” ID needed to earn a “free” photo ID. Such issues have been especially difficult for older voters, whose records, if they can be found, issued long ago and may be quite costly to recover.

Thus, the ballot language is likely to mislead older voters by telling them that they will receive photo ID for “free,” while this may not in fact be the case.

Second, the ballot language asks whether to amend the State Constitution, *inter alia*, “to require all voters to present valid photo identification to vote . . . ,” (Pet. Add. at

1), even though the underlying legislation requires more than that for those voting in person: *i.e.*, it requires voters to “present *government-issued* photographic identification . . .” (emphasis supplied). Various states that have adopted voter ID laws have imposed a similar requirement. In turn, such a requirement has posed particular problems for older voters. For instance, older voters are disproportionately likely to have “government-issued” photo ID that is “valid” in the sense that it legitimately identifies who they are, but which is not “valid” in the sense that it has expired due to its owner’s lapsed need for it. Examples of this include an expired driver’s license owned by an older voter no longer able to drive and an expired passport owned by an older voter no longer inclined (or able) to travel abroad.

Once again, the ballot language is likely to mislead older voters by indicating to them that they have the necessary “valid” photo ID “to vote,” while this may not be so, depending on what kind of “government-issued” photo ID the State ultimately decides is “valid” and satisfies the Amendment.

Third, the Amendment requires all voters to be “subject to substantially equivalent identity and eligibility verification prior to a ballot being cast or counted,” and further, requires the State to develop a “provisional ballot” regime. Petitioners assert that these requirements together pose a serious danger of rendering unlawful Minnesota’s current election day registration system. Pet. Br. at 26. The “substantially equivalent” requirement also might require elimination of absentee voting, *id.*, or mandate presentation of a photo ID in order to submit an absentee ballot. Either of the latter outcomes would disadvantage disproportionate numbers of older voters, including those

with disabilities, for whom voting in person, or securing a photo ID, can be very difficult or impossible.

Absentee voting (without a photo ID requirement) and election day registration, are sound policies that favor greater electoral participation, including by older voters. The proposed ballot language, however, omits the “substantially equivalent” clause, and thus gives voters no notion that such measures are at risk.

III. STATEMENT WHY PARTICIPATION OF APPLICANT AARP AS AN *AMICUS CURIAE* IS DESIRABLE.

An *amicus curiae* brief by applicant AARP would be desirable because of AARP’s unique viewpoint. As an advocate of the needs and interests of persons age 50 and over, AARP represents an important portion of the electorate that typically is the age cohort with the highest rate of electoral participation.

AARP’s participation as an *amicus curiae* also would be desirable because AARP proposes to address different issues than Petitioners, such as the promise of a “free” photo ID. In the rest of its brief, AARP intends to elaborate and offer different perspectives on several questions touched on by Petitioners.

Finally, an AARP *amicus* brief would be desirable because AARP has an extensive background of participation in prior litigation regarding the validity and impact of requirements that voters produce photo ID in order to vote. This experience informs whether and the extent to which the proposed ballot language is misleading.

IV. PROPOSED FILING DATE FOR *AMICUS CURIAE* BRIEF.

This Court's Order of June 1, 2012 directs respondent to submit its brief by June 25, 2012. Accordingly, applicant AARP proposes to file its *amicus curiae* brief supporting petitioners on June 19, 2012.

V. CONCLUSION.

For the foregoing reasons, Applicant AARP requests the opportunity to participate in this case as an *amicus curiae*.

Respectfully submitted,



Tim Griffith (MN Bar No. 0285717)
Liz Kramer (MN Bar No. 0325089)
LEONARD, STREET AND DEINARD
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
612-335-1500 (tel.)
612-335-1657 (fax)

Daniel B. Kohrman*
AARP FOUNDATION LITIGATION
Michael Schuster (MN Bar No. 0098048)
AARP
601 E Street, NW
Washington DC 20049
Tel.: (202) 434-2060
Fax: (202) 434-6424
Email: dkohrman@aarp.org

Attorneys for *Amicus Curiae* AARP
*Application for admission *pro hac vice*
pending