

JUN - 8 2012

FILED

STATE OF MINNESOTA
IN SUPREME COURT
Case No. A12-0920

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

Petitioners;

vs.

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

Respondent;

and

87th Minnesota House of Representatives and 87th Minnesota Senate

Applicants for Intervention as Intervenor-Respondents.

**MOTION TO INTERVENE THE BY 87TH MINNESOTA HOUSE OF
REPRESENTATIVES AND THE 87TH MINNESOTA SENATE**

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Dated: June 8, 2012

Counsel for the 87th Minnesota House of Representatives and the 87th Minnesota Senate

TO: The Supreme Court of the State of Minnesota

INTRODUCTION

Pursuant to Minnesota Rule of Civil Procedure 24.01 and Minnesota Statutes § 244B.44, the 87th Minnesota House of Representatives (“House”) and the 87th Minnesota Senate (“Senate”) move the court to intervene in the above-captioned proceedings. This motion is made by the undersigned on behalf of the House and Senate at the direction of Senator Michelle L. Fischbach, President of the Senate, and Representative Kurt Zellers, Speaker of the House, and is contingent upon formal approval of the House’s and Senate’s intervention by the Legislative Coordinating Commission, which is scheduled to meet on June 14, 2012 to take up the matter. If the Legislative Coordinating Commission does not approve the House’s and Senate’s intervention, this motion will be promptly withdrawn and notice provided to the parties and the Court.

FACTUAL BACKGROUND

The House and Senate jointly comprise the legislative department of state government under articles III and IV of the Minnesota Constitution. Article IX of the Minnesota Constitution assigns to the legislative department the sole authority to submit constitutional amendments for ratification by the voters—including specifying the form of ballot questions. Consistent with their sole authority, on April 5, 2012, the House and Senate passed the act that provides for the submission of the proposed constitutional amendment that is the subject of these proceedings. 2012 Minn. Laws, ch. 167, HF2738. The constitutional amendment is set to be on the November 2012 general election ballot.

The House and Senate oppose the petition to enjoin Respondent Mark Ritchie from placing the constitutional amendment on the November general election ballot and seek to intervene in this action. These proceedings implicate the exercise of the legislature's exclusive authority, and the House and Senate (and successor legislatures) have a direct interest in the outcome of these proceedings.

ARGUMENT

I. The House and Senate can intervene in this action as a matter of right.

The House and Senate have the right to intervene in this action. Rule 24.01 of the Minnesota Rules of Civil Procedure provides the framework for intervention as a matter of right and provides that:

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Applying Rule 24.01, this Court has held that, to intervene as of right, a non-party must show: (1) a timely application for intervention; (2) an interest relating to the property or transaction which is the subject of the action; (3) circumstances demonstrating that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest; and (4) a showing that the party is not adequately represented by the existing parties. *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W. 2d 197, 207 (Minn. 1986). Here, because the House and Senate meet all these requirements, they must be permitted to intervene in this action.

A. This Motion is timely.

This Motion is timely under this Court's Order dated and filed on June 1, 2012 (the "Order"). Specifically, the Order requires "[a]ny person or entity wishing to intervene" to file a written motion with the clerk of appellate courts by June 8, 2012.

B. The House and Senate have an interest in the subject matter of this action.

The House and Senate have an interest in the subject matter of this action due to the fact they have the exclusive authority under Article IX of the Minnesota Constitution to submit constitutional amendments for ratification by the voters. Consistent with their authority and responsibilities granted by Article IX, members of the House and Senate drafted the proposed amendment and ballot question and voted to place the question on the ballot for ratification by the voters of Minnesota. The House and Senate have clear and compelling interests in safeguarding their constitutional prerogative to solely determine the terms and method of submitting proposed constitutional amendments to the people.

C. The disposition of the action may impair or impede the House and Senate's ability to protect their interests.

The House and Senate's ability to protect their interests—and constitutional rights and responsibilities—will be impaired or impeded if the Court were to rule in favor of the Petitioners because such a ruling would, in effect, interfere with the constitutionally established framework of proposing and enacting amendments to the constitution under Article IX. A ruling in favor of the Petitioners would not only impede the House and

Senate's interests, but also would potentially infringe on the constitutionally mandated separation of powers.

D. The House and Senate are not adequately represented by existing parties.

The House and Senate's interests are not adequately represented by the existing parties. Indeed, Respondent Ritchie has repeatedly expressed publicly his opposition to the substance of the proposed constitutional amendment and to the legislature submitting it to the people. Due to Respondent Ritchie's public positions on the proposed constitutional amendment, the House and Senate have legitimate concerns that their interests will not be adequately protected by Respondent Ritchie's who, at least outwardly, has expressed interests more aligned with the Petitioners. The House and Senate's interests are so situated to be the most directly affected of any department of state government—in both the short and long run—by the Court's decision in this proceeding and there is no assurance that Respondent Ritchie will adequately represent those interests.

II. Alternatively, the House and Senate seek permissive intervention.

If the House and Senate are denied intervention as a matter of right, the House and Senate alternatively move for permissive intervention. Rule 24.02 of the Minnesota Rules of Civil Procedure allows permissive intervention. If the Court questions the House and Senate's right to intervene under Rule 24.01, the House and Senate request the Court to exercise its discretion to allow the House and Senate to intervene under Rule 24.02.

CONCLUSION

Given the House and Senate's constitutional responsibilities, their passage of the proposed constitutional amendment and ballot question, their interests in safeguarding the constitutional prerogative to solely determine the terms and method of submitting proposed constitutional amendments to the people, and Respondent Ritchie's public positions on the proposed constitutional amendment, the House and Senate have the right to intervene in this action. Accordingly, the House and Senate's motion to intervene should be granted.

Dated: June 8, 2012

WINTHROP & WEINSTINE, P.A.

By:  _____

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

OFFICE OF
APPELLATE COURTS

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STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Deana Lessor, of the City of Corcoran, County of Hennepin, in the State of Minnesota, being duly sworn, says that on the 8th day of June, 2012, she served the following document(s):

**Motion to Intervene by the 87th Minnesota House of Representatives and
the 87th Minnesota Senate**

Upon:

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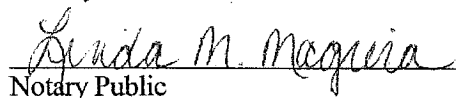
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***ATTORNEYS FOR APPLICANTS SENATOR NEWMAN
AND REPRESENTATIVE KIFFMEYER***

by e-mailing at the e-mail address listed above, and by mailing to said person at the address listed above a true and correct copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at Minneapolis, Minnesota directed to said person at the stated address.


Deana J. Lessor

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


Notary Public



Re: *League of Women Voters Minnesota, et al. v. Mark Ritchie*
Minnesota Supreme Court Case No. A12-0920



ATTORNEYS AND COUNSELORS AT LAW

June 8, 2012

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BY E-MAIL AND U.S. MAIL

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

Re: League of Woman Voters Minnesota, et al. v. Mark Ritchie
Court File No. A12-0920

Dear Clerk of Court:

Enclosed for filing please find the original and 14 copies of a Motion to Intervene by the 87th Minnesota House of Representatives and the 87th Minnesota Senate.

All counsel of record are being served via e-mail and U.S. Mail pursuant to the enclosed Affidavit of Service.

Thank you for your assistance.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

Thomas H. Boyd

THB/djl

Enclosures
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