

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

OFFICE OF
APPELLATE COURTS

JUN 13 2012

FILED

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.

**REPLY BY THE 87TH MINNESOTA HOUSE OF REPRESENTATIVES AND
THE 87TH MINNESOTA SENATE TO PETITIONERS' RESPONSE TO THE
MOTIONS TO INTERVENE**

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Dated: June 8, 2012

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

The 87th Minnesota House of Representatives (“House”) and the 87th Minnesota Senate (“Senate”) (collectively, “Minnesota Legislature”) respectfully submit this reply to Petitioners’ Response to the Motions to Intervene of (1) Individual Legislators; (2) the 87th Minnesota Senate and 87th Minnesota House of Representatives; and (3) Minnesota Majority, Inc.

As a threshold matter, Petitioners “support the involvement of all responsible persons and entities in this case” and “believe it is appropriate, and do not object to,” the Minnesota Legislature’s permissive intervention in this action. Petitioners’ Response at 2. Although the Minnesota Legislature has already explained in its Motion to Intervene how it satisfies the requirements for intervention as a matter of right under Minn. R. Civ. P. 24.01, the Court need not reach that issue based on the Petitioners’ consent to the Minnesota Legislature’s permissive intervention. And the Court should not have any hesitation to exercise its discretion under Minn. R. Civ. P. 24.02 to allow the Minnesota Legislature to intervene in this action for the reasons stated in its Motion to Intervene, and for the reasons highlighted below.

Article IX of the Minnesota Constitution vests the House and Senate with sole authority to submit constitutional amendments for ratification by the voters, and this exclusive authority includes specifying the form and manner of submitting the question of a proposed constitutional amendment that will be placed on the ballot. Minn. Const. Art. 9, § 1; *Breza v. Kiffmeyer*, 723 N.W.2d 633. These proceedings go to the very heart of the Minnesota Legislature’s exclusive authority in this regard. Thus, the House and

Senate should be allowed to intervene, so that they may participate fully in the briefing and oral argument in these proceedings.

The fact that the Secretary of State has been named as a party in these proceedings does not mean that he will adequately represent the House and Senate as to its unique and exclusive interests. The Secretary of State's interest and authority as an election official responsible for the administration of elections differs from the interests of the House and Senate which have exclusive authority to determine the form and manner of questions that appear on the ballot. Because their roles and responsibilities differ, it is a very real possibility that the Secretary of State may not adequately represent the interests of the House and Senate—particularly where the very issue relates to the manner in which the House and Senate have phrased the question for the ballot.

Petitioners argue, without any citation or explanation whatsoever, that “there is simply no reason to believe [the Secretary of State] cannot, or will not, make whatever arguments there are to be made with respect to the ballot question.” Petitioners' Response at 6. How can the Petitioners be so sure of this? Petitioners' arguments are cold comfort, indeed, and can hardly be justified as the basis for denying intervention to the very legislative bodies in whom the Minnesota Constitution has entrusted sole and exclusive authority over the very question at issue in this case. And why should the House and Senate have to hope that their arguments will be made by someone else, when they can make sure that their positions are clearly stated and their arguments are actually made by intervening and participating fully as a party to these proceedings. For all of

these reasons, the Minnesota Legislature must be allowed to intervene in these proceedings.

Finally, Petitioners suggest that, in the event the Court grants the pending motions to intervene, the House and Senate must submit a joint brief with the individual legislators who have also moved to intervene. Petitioners' Response at 3. The House and Senate respectfully submit that this is not an appropriate restriction or requirement. By urging the Court to impose this restriction, the Petitioners, in effect, are inviting the Court to intervene in what is essentially an internal legislative matter—that is, the role that two individual legislators play in formulating the legal arguments made on behalf of the entire legislature. Such matters should be left to the legislature itself to determine. While the individual legislators may wish to associate themselves with the brief that will be filed by the House and Senate, that decision should be left to those legislators if they are permitted to intervene. But, in any case, the Minnesota Legislature must have the right to submit a brief on behalf of the House and Senate as legislative bodies—without imposing the requirement that their own arguments and interest must be combined with certain individual legislators.

Based on the foregoing, as well as for those reasons previously set forth in their Motion to Intervene, the House and Senate respectfully request the Court to grant their motion to intervene and permit them to participate fully in the briefing and oral argument of the matters presented in these proceedings without restriction.

Dated: June 13, 2012

WINTHROP & WEINSTINE P.A.


By: *s/Thomas H. Boyd*

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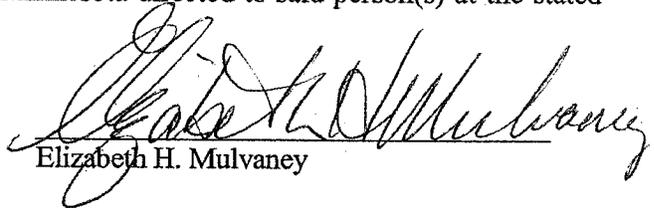
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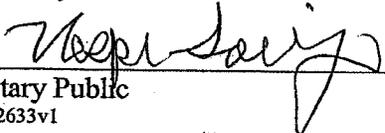
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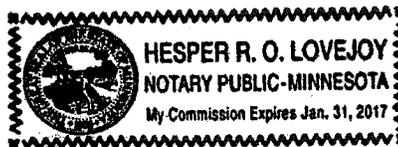
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by e-mailing at the e-mail address(es) listed above, and by mailing to said person(s) at the address(es) listed above a true and correct copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at Minneapolis,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


Elizabeth H. Mulvaney

Subscribed and sworn to before me this
13th day of June 2012.


Notary Public
6982633v1



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



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June 13, 2012

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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 Reply by the 87th Minnesota House of Representatives and the 87th Minnesota Senate to Petitioners' Response to the Motions to Intervene.

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:ehm/Enclosures
6992646v1

cc: All Counsel of Record