

STATE OF MINNESOTA
IN THE SUPREME COURT

No. A120920

OFFICE OF
APPELLATE COURTS

JUN 13 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,

Petitioners,

vs.

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

Respondent.

**REPLY MEMORANDUM IN SUPPORT OF
MINNESOTA MAJORITY'S MOTION TO INTERVENE**

Proposed Intervenor Minnesota Majority, Inc., moved to intervene as a respondent in the above-captioned case as a matter of right and permissively, pursuant to Minn. R. Civ. P. 24.01 and 24.02, respectively. Petitioners object to Minnesota Majority's motion. Minnesota Majority now files this reply memorandum in support of its Motion to Intervene.

ARGUMENT

I. Minnesota Majority Is Entitled To Intervene as a Matter of Right.

Rule 24.01 entitles a party to intervene where (a) the motion to intervene is filed timely, (b) the party has a substantial and direct interest relating to the property or transaction which is

the subject of the action, (c) the party is situated such that the disposition of the action as a practical matter may impair or impede the party's ability to protect its interest, and (d) the party's interest is not adequately represented by existing parties. *Malmin v. Minn. Mut. Fire & Cas. Co.*, 552 N.W.2d 723, 726 n.3 (Minn. 1996); *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986).

Petitioners object to Minnesota Majority's Motion to Intervene on the grounds that Minnesota Majority has not satisfied elements (b) and (d) of the above test. (Petrs.' Resp. at 7.)

A. Minnesota Majority Has a Substantial and Direct Interest In the Amendment.

With respect to element (b), Petitioners' argument consists of one sentence – “[Minnesota Majority] has not identified any cognizable interest with respect to this matter, within the meaning of Rule 24.” (*Id.*) But Petitioners cite no authority to support this conclusion, and the facts are to the contrary: Minnesota Majority's interests are both substantial and direct. For over 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. (McGrath Aff. ¶ 4-9.) Minnesota Majority played an integral role in the creation and passage of legislation aimed directly at curing voter fraud and improving election integrity by providing expert advice to the Minnesota Legislature. (McGrath Aff. ¶ 10-11.) After Governor Mark Dayton vetoed that legislation, Minnesota Majority played an equally important role in the creation and passage of the Amendment that is the subject of this action. (McGrath Aff. ¶ 12-13.)

Minnesota Majority's interests in the passage of the Amendment are similar to the official proponents of a ballot initiative, who have been found by other courts to have interests sufficient to warrant intervention under similar circumstances. *See Alaskans for a Common*

Language v. Kritz, 3 P.3d 906, 912 (Alaska 2000) (reversing trial court's denial of intervention by proponent committee and holding "initiative committee members[] have a constitutionally based, heightened interest in a lawsuit that will determine whether their successful initiative will be enforced."); *Sportsmen for I-143 v. Fifteenth Judicial Court*, 40 P.3d 400, 403 (Mont. 2002) (Public interest groups that were "authors, sponsors, active supporters and defenders" of initiative had "direct, substantial, legally protectable interest in . . . [an] action challenging the interpretation of [the initiative], and, as such, [were] entitled to intervene as a matter of right."); *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) ("A public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported."). Similarly, Minnesota Majority is a citizens group whose members have an historic and significant interest in the Amendment, which satisfies the test for intervention as a matter of right.

B. If Denied Intervention, Minnesota Majority's Interests Will Not Be Adequately Protected.

Petitioners assert Minnesota Majority has not satisfied element (d) because it failed to explain how its interests will not be adequately protected by the named Respondent or any other potential intervenor, or through participation as an amicus curiae. (Petr.' Resp. at 7.)

As explained more fully in Minnesota Majority's Motion, the named Respondent – Secretary of State Mark Ritchie – is a vocal public opponent of voter identification measures, including the Voter Identification Amendment that is the subject of this matter. Respondent's opposition undermines his ability to adequately defend Petitioners' challenge. It makes little difference that at this point in the litigation the Court will only decide whether the ballot question meets the applicable constitutional standard rather than the deciding the validity of the

underlying enactment. Respondent has made manifestly clear that he opposes both the Amendment itself and the Legislature's submission of the Amendment to the voters.¹

Such opposition has been found by other courts to be sufficient to establish this element of the intervention test. *See Alaskans for a Common Language*, 3 P.3d at 909-10 (The trial court erred in denying intervention by proponents where attorney general's office had raised potential questions regarding the constitutionality of the measure and the governor had personally opposed the measure during the election campaign.); *see also Perry v. Brown*, 52 Cal. 4th 1116, 1165 (Cal. 2011) (official proponents may intervene to defend constitutionality of initiative where public official who ordinarily defends a challenged law declines to do so).

Even Petitioners do not contend that Respondent will actually *defend* the Amendment in this proceeding. In their Response, Petitioners state merely that "there is simply no reason to believe he [Ritchie] cannot, or will not, make whatever arguments there are to be made *with respect to* the ballot question." (Petr. Resp at 6) (emphasis added). Not "in support of" or "in defense of", but "with respect to" the Amendment. This is precisely why Minnesota Majority's intervention should be granted.

Already, Respondent's inaction suggests he does not intend to defend Petitioners' challenge vigorously. In its June 1 scheduling order, this Court gave all parties an opportunity to contest any genuine issue of fact or facts material to the case, provided they did so by June 8.

¹ *See* News Release; *Secretary of State Mark Ritchie Urges Senate Not to Rush to Pass the Amendment to Eliminate Same-Day Registration*, Mar. 21, 2012 (available at <http://www.sos.state.mn.us/index.aspx?recordid=609&page=10>) ("I urge the Senate to stop this rash drive to pass the proposed Constitutional Amendment that would dismantle Minnesota's election system and eliminate same day voter registration."); Op-Ed., *Swift Action Needed to Save Same Day Registration*, Mar. 28, 2012, (available at <http://www.sos.state.mn.us/index.aspx?recordid=607&page=10>) ("If you believe that same day registration is important you need to act quickly, before legislators make their final decision about this amendment. Please contact your state representative and senator and ask them to vote no on House File 2738 - the constitutional amendment that would end same day registration.").

(Scheduling Order, ¶ 3.) The Respondent contested nothing, implicitly accepting Petitioners' version of the facts and issues. Minnesota Majority disputes many of the facts alleged by Petitioners and will request the opportunity to file its contest to the facts if allowed by the Court to intervene. Thus, it is clear from the outset that Respondent is failing to defend the Amendment.

Intervention by Sen. Newmeyer and Rep. Kiffmeyer or the Minnesota Senate and House of Representatives is also inadequate to protect Minnesota Majority's interests. As Petitioners recognize, those parties' interests are in preserving separation of powers and defending legislative prerogatives, interests that are unique to the legislature. (Petr. Resp. at 5.) Those interests, while compelling, are much different than those of Minnesota Majority. While the Senate and House pass legislation on many different topics, protecting election integrity is one of Minnesota Majority's principle missions. Thus, its interests are direct and substantial with respect to the underlying enactment in this case.²

Therefore, all elements of intervention as a right are satisfied here and Minnesota Majority is entitled to intervene.³

² While Minnesota Majority has a clear interest in seeing the Amendment approved by the voters, it understands that this Court is not currently being asked to decide whether the underlying enactment is valid or good public policy. Any argument provided by Minnesota Majority thus far that implicates the merits of the underlying enactment has been provided merely to establish its compelling interest in the Voter Identification Amendment.

³ Petitioners claim that Minnesota Majority must also show why they cannot assert their interests as an *amicus*. Such a showing is not necessary. Where the elements of intervention as a right are met and Minnesota Majority is *entitled* to intervene.

Nevertheless, providing its arguments via an *amicus curiae* brief is inadequate. *Amicus curiae* are not permitted to participate in oral argument without leave of court. Minn. R. App. P. 129.04. Minnesota Majority's interests, and the arguments it will make, differ substantially from those of the other proposed intervenors. To adequately protect its interests, to ensure the vigorous defense of the Amendment and to provide maximum aid to the Court, Minnesota Majority must be allowed to participate as an intervenor.

II. Minnesota Majority's Permissive Intervention Is Also Appropriate.

The standards for permissive intervention are also satisfied. Minn. R. Civ. P. 24.02. Minnesota Majority's motion is timely; its interests necessarily involves questions of law and fact that are common to questions of law and fact involved in the existing action; and its intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. In fact, Minnesota Majority's participation in this matter as a respondent will substantially aid this Court in its determination as well as protect the voters' vital interest in enacting measures that will safeguard the integrity of Minnesota elections.

CONCLUSION

For the foregoing reasons, Minnesota Majority asks this Court to grants its Motion.

This 13th day of June, 2012.

Respectfully submitted,



Nathan J. Marcusen (#0386875)
Bowman and Brooke LLP
150 South Fifth Street, Suite 3000
Minneapolis, MN 55402
Tel: 612-339-8682
Fax: 612-372-3200
nathan.marcusen@bowmanandbrooke.com
Local Attorney

J. Christian Adams (Va. #42543)
Election Law Center, PLLC
300 N Washington St., Suite 405
Alexandria, VA 2314
Tel: 703-963-8611
Fax: 703-740-1773
Email: adams@electionlawcenter.com
Lead Attorney of Record
Pro Hac Vice Motion Pending

Zachary S. Kester (Ind. #28630-49)
Kaylan L. Phillips (Ind. #30405-84)
Noel H. Johnson (Wisc. #1068004)
ActRight Legal Foundation
2029 K Street NW, Suite 300
Washington, DC 20006
Tel: 202-683-9405
Fax: 888-815-5641
Email: zkester@actright.com
Email: kphillips@actright.com
Email: njohnson@actright.com
Pro Hac Vice Motions Pending

Alan I. Gilbert, Solicitor General
Kristyn Marie Anderson, Asst. Atty. General
OFFICE OF THE MINNESOTA ATTORNEY GENERAL
1400 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101
**Email: kristyn.anderson@ag.state.mn.us and
al.gilbert@ag.state.mn.us**

Erick Kaardal
William F. Mohrman
Mohrman & Kaardal, P.A.
33 South Sixth Street
Suite 4100
Minneapolis, MN 55402
**Email: kaardal@mklaw.com
mohrman@mklaw.com**

Tim Griffin
Liz Kramer
Leonard, Street and Deinard
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
**Email: liz.kramer@leonard.com
timothy.griffin@leonard.com**

Daniel B. Kohrman
Michael Schuster
AARP Foundation Litigation
601 East Street NW
Washington, D.C. 20049
Email: dkohrman@aarp.org

Thomas E. Boyd
Winthrop Weinstine
Capella Tower, Suite 3500
225 South Sixth Street
Minneapolis, MN 55402-4629
Email: tboyd@withrop.com

ATTORNEY FOR RESPONDENT
Mark Ritchie

**ATTORNEY FOR APPLICANT
INTERVENORS**
*Individual Legislators
State Senator Scott J. Newman and
State Representative Mary Kiffmeyer*

ATTORNEY FOR AMICUS CURIAE
AARP

ATTORNEY FOR AMICUS CURIAE
AARP

**ATTORNEY FOR APPLICANT
INTERVENORS**
*87th Minnesota House of Representatives and
87th Minnesota Senate*

Sara R. Greweing
St. Paul City Attorney
Gerald T. Hendrickson
Deputy St. Paul City Attorney
400 City Hall
15 West Kellogg Boulevard
St. Paul, MN 55102
Email: sara.grewing@ci.stpaul.mn.us
jerry.hendrickson@ci.stpaul.mn.us

ATTORNEYS FOR AMICUS CURIAE
City of St. Paul

Paul A. Banker
Mark A. Jacobson
Kelly G. Laudon
Lindquist & Vennum
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2274
Email: pbanker@lindquist.com
mjacobson@lindquist.com
klaudon@lindquist.com

ATTORNEYS FOR AMICUS CURIAE
Citizens for Election Integrity-Minnesota

Jeffrey Martin
Martin Law Office
375 Oxford St. North
St. Paul, MN 55104
Email: martinlawoffice@comcast.net

ATTORNEYS FOR AMICUS CURIAE
St. Paul Branch of the NAACP

David C. Brown
Senior Assistant County Attorney
C-200 Government Center
300 South Sixth Street
Minneapolis, MN 55487
Email: david.brown@co.hennepin.mn.us

ATTORNEYS FOR AMICUS CURIAE
Hennepin County

Zachary S. Kester
Kaylan L. Phillips
Noel H. Johnson
ActRight Legal Foundation
2029 K Street NW, Suite 300
Email: zkester@actright.com
kphillips@actright.com
njohnson@actright.com

**ATTORNEYS FOR APPLICANT
INTERVENOR**
Minnesota Majority

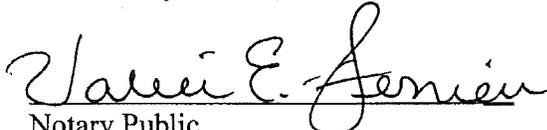
J. Christian Adams
Election Law Center, PLLC
300 North Washington Street, Suite 405
Alexandria, VA 22314
Email: adams@electionlawcenter.com

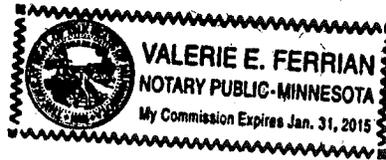
**ATTORNEYS FOR APPLICANT
INTERVENOR**
Minnesota Majority

by emailing a true and correct copy of the foregoing documents to them at their respective email addresses listed above and by depositing a true and correct copy, directed to them at their respective addresses listed above, in the U.S. Mail at 150 South Fifth Street, Minneapolis, Minnesota.


Deborah J. Daninger

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


Notary Public



OFFICE OF
APPELLATE COURTS

JUN 13 2012

FILED

Nathan J. Marcusen

Direct: 612.672.3282

Email: nathan.marcusen@bowmanandbrooke.com

Bowman and Brooke LLP

Attorneys at Law

150 South Fifth Street, Suite 3000

Minneapolis, MN 55402

Phone: 612.339.8682

Fax: 612.672.3200

www.bowmanandbrooke.com

June 13, 2012

VIA EMAIL AND U.S. MAIL

mjcappellateclerkofcourt@courts.state.mn.us

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

Re: *League of Women Voters Minnesota et al. v. Mark Ritchie*
Court File No.: A120920

Dear Clerk:

I enclose for filing in the above-referenced case the original and four (4) copies of the **Reply Memorandum in Support of Minnesota Majority's Motion to Intervene**.

By copy of this letter and its attachments, all counsel of record are hereby served with the same.

Sincerely yours,

BOWMAN AND BROOKE LLP

By 
Nathan J. Marcusen

NJM/djd
Enclosure

Cc: All Counsel of Record on Attached Affidavit of Service (w/enc.)

MINNEAPOLIS

PHOENIX

DETROIT

SAN JOSE

LOS ANGELES

RICHMOND

COLUMBIA

DALLAS

AUSTIN