

STATE OF MINNESOTA
Office of the Minnesota Secretary of State
Mark Ritchie

OFFICE OF
APPELLATE COURTS

JUN 25 2012

FILED

June 25, 2012

The Honorable Chief Justice Lorie Gildea
Minnesota Supreme Court
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re. League of Women Voter Minnesota, et al. v. Mark Ritchie
Appellate Case No. A12-0920

Dear Chief Justice Gildea,

The Court asked for the date by which a decision is necessary in order to modify the ballots.

If the court wants to ensure that the ballots used by all voters in the state general election—both absentee and in person—are uniform as to whether and how the proposed Constitutional Amendment appears, it is necessary to have the decision by Monday, August 27, 2012 and would be ideal to have it by Tuesday, August 21, 2012.

Please see the attached affidavit from State Elections Director Gary Poser, which explains the rationale for these dates.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Ritchie".

MARK RITCHIE
Secretary of State

Enclosure

cc: Counsel of Record (via email and U.S. Mail)

4. The decision of whether a Constitutional Amendment appears on a ballot has a significant impact on the layout of the ballot.

5. In accordance with Minnesota Rules 8250.1810, proposed Constitutional Amendments appear after the state legislative races and before local races, which usually places them on the front of the ballot.

6. In 2008, the constitutional amendment took up three column inches on the ballot (not including the section title and instructions to voters).

7. In some jurisdictions, whether or not the constitutional amendment appears on the ballot will determine whether some of the local races that follow are printed on the front or the back of the ballot.

8. In some cases, it may determine whether a longer ballot or even a second ballot will be required. In accordance with Minnesota Statutes, section 204D.11, subd. 6 and Minnesota Rules, section 8250.0375, when there is not enough room for all of the races and questions to be printed on one ballot, the judicial races must be printed on a separate second ballot.

9. County auditors are responsible for laying out the ballots for state elections. They cannot make much progress on the layout of the ballots or the programming of the ballot counters or assistive ballot markers without knowing what will appear, where the races will appear, the length of the ballot, or the number of ballots.

10. County auditors begin the task of laying out the ballots and arranging for the required programming in earnest after the results of the State Primary have been certified by the State Canvassing Board, which will meet on Tuesday, August 21st.

11. Most county auditors finalize their ballots and send them to vendors to be programmed and printed on the day after the period to file a contest in the State Primary ends, which this year will be Monday, August 27, 2012.

12. Absentee ballots may be sent to voters who have applied for them as soon as they are available. They must be sent at least 46 days before the state general election, which in this case will fall on Friday, September 21, 2012. *See* Minn. Stat. § 203B.081 (2010).

13. The State Primary and the date of the State Canvassing Board for the State Primary were moved to August by Minnesota Laws 2010, Chapter 184, so that the State could comply with the federal Military and Overseas Voter Empowerment Act (Subtitle H of the National Defense Authorization Act for Fiscal Year 2010 (H.R. 2647, Pub.L. 111-84, 123 Stat. 2190)), which requires that ballots be sent to military and overseas voters covered by the Uniformed and Overseas Citizens Absentee Voting Act at least 45 days prior to each federal election. States that fail to meet this deadline are subject to oversight and enforcement measures from the U.S. Department of Justice.

14. The ballots and the formula for rotating the candidates' names (in races in which that is required) are provided to a ballot vendor, which then provides proofs for the county auditors to approve. County auditors provide this proof to other local jurisdictions with races and/or questions on the ballot to review and approve. Once county auditors have made any necessary corrections and signed off on the proofs, the vendor or county staff will begin doing the necessary programming for the assistive ballot marking devices and ballot counters, as well as printing the ballots. The ballot vendor who provides

services to the majority of Minnesota counties has informed the Office that this process takes an average of three weeks.

15. Tuesday, August 21, 2012, is the date on which the State Canvassing Board will meet to certify the results of the state primary, thereby providing official guidance on which names must appear on the ballot in nearly all races. For those jurisdictions that will elect officers to hospital district offices this fall, August 21 is also the last day on which candidates can file to run for those offices. August 21 is also the deadline for non-major party candidates to submit petitions to run for president and vice president.

16. State statute limits changes to the ballot information after this date to the following circumstances:

- i. if non-major party presidential candidates petitions are certified, their names would need to be added;
- ii. if there is a recount or an election contest in a primary race, one of the names on the ballot could change;
- iii. if a candidate for hospital district board member withdraws from office, there may be fewer candidates; and
- iv. the names of the major political party nominees for president and vice president are not required to be certified until Monday, August 27, 2012.

17. However, all of the circumstances listed above that could require changes to the ballot after Tuesday, August 21, 2012, would have only a minor effect as to the layout of the ballot. Even if the names of the major party presidential candidates have not been certified, county auditors will reserve space on the ballots for them. Even if there is a

recount or contest in a primary race, it may determine which name appears on the ballot, but is unlikely to change the amount of space needed for that race. Even if a candidate for hospital district board member withdraws, it will only have a minor impact the amount of space required for that race, which regardless comes towards the end of the ballot, and therefore would not have a large “ripple effect” as to where other races are placed on the ballot.

18. As of the close of business on Monday, August 27, 2012, county auditors will almost certainly have all of the information that they need to finalize the ballot layout.

19. When there was a recount of a primary contest in 2008, election officials conducted the recount so that the results could be certified by the State Canvassing Board for the State Primary on the day before the end of the contest period (the analogous date in 2012 would be Sunday, August 26th).

20. While it is possible for an election contest to be filed on a State Primary race, such an occurrence would be highly unusual. To my knowledge, since 1959 there have only been two such reported cases: one in 1996 and one in 1983.

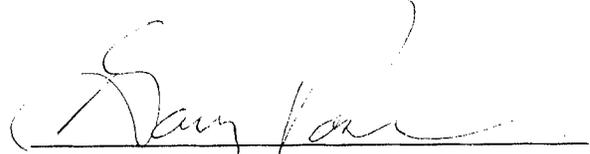
21. As such, it would be preferable to have a decision about the proposed constitutional amendment by Tuesday, August 21, 2012. It is necessary to have such a decision by the close of business on Monday, August 27, 2012, so that county auditors can proceed with the printing of the ballots.

22. If the Court decides to grant the petitioner’s motion after the ballots have been printed with the proposed question about the Constitutional Amendment on them, voters

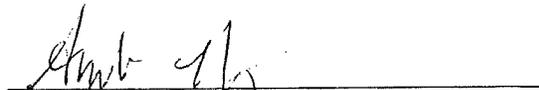
would have the opportunity to mark their ballots, but local election officials could be ordered by the court not to tabulate the votes in this contest.

Further your affiant saith not:

Dated: June 25, 2012


GARY POSER

Subscribed and sworn to before me on this 25th day of June, 2012.


NOTARY PUBLIC



AFFIDAVIT OF SERVICE BY ELECTRONIC MAIL AND U.S. MAIL

Re: *League of Women Voters Minnesota; et al. v., Mark Ritchie, et al.*
Case Number A12-0920

OFFICE OF
APPELLATE COURTS

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STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Amber Helbling, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, she caused to be served and filed true and correct copies of a letter from Secretary of State Mark Ritchie dated June 25, 2012 and an affidavit from Gary Poser upon the following parties by electronic mail and U.S. Mail on June 25, 2012 at the addresses shown below:

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Amber Helbling
AMBER HELBLING

Subscribed and sworn to before me on
this 25th day of June 2012.

Kathleen Donnelly Kostohryz
NOTARY PUBLIC



League of Women Voters Minnesota, et al. v. Mark Ritchie
Case No. A-12-0920

Service List
(as of June 14, 2012)

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Mark Ritchie

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Via e-mail and United States Mail

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St. Paul, MN 55155

Re. League of Women Voter Minnesota, et al. v. Mark Ritchie
Appellate Case No. A12-0920

Dear Clerk:

Enclosed for filing in the above-referenced matter are an original and 14 copies of 1) letter of Mark Ritchie, dated June 25, 2012; and 2) Affidavit of Gary Poser. Also enclosed is an Affidavit of Service. By copy of this letter, counsel for the parties are hereby served.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth Fraser".

BETH FRASER
Office of the Secretary of State

Enclosures

cc: See Attached Service List