

STATE OF MINNESOTA  
IN SUPREME COURT

OFFICE OF  
APPELLATE COURTS

AUG 21 2006

Court File No. A06-1508

**FILED**

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Louis H. Reiter,

Petitioner,

**PETITIONER'S RESPONSIVE  
MEMORANDUM**

vs.

Mary Kiffmeyer, individually and as  
Secretary of State of Minnesota

Respondent.

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Due to the short amount of time between receipt of the responses from Respondent Kiffmeyer and Intervener Gutknecht and the Oral Argument scheduled for August 22, 2006, Petitioner submits the following Responsive Memorandum.

I. TIMELINESS OF RELIEF

This court can timely grant the relief requested by Petitioner. It has done so in several other cases. In Studer v. Kiffmeyer, 712 N.W.2d 552,553 (Minn. 2006) this court ordered candidate Sue Ek's name stricken from the ballot only nine days before the special election. In Fetsch v. Holm, 236 Minn. 158,160, 52N.W.2d 113,114 (1952) this court ordered Dwight D. Eisenhower's name be removed from the ballot on March 7, 1952, eleven days before the March 18, 1952 Republican presidential primary. In Moe v. Alsop, 288 Minn. 323,324 180 N.W.2d 255, 256-57 (1970) this court issued an order to prevent the name of a candidate for state legislature from appearing on the ballot fifteen days before the primary. In Erlandson v. Kiffmeyer, 659 N.W.2d 724, 726-27 (Minn.

2003) replacement ballots for United States Senate were prepared five days before the general election.

Oral argument in this matter is scheduled for 21 days before the primary election. This is less time than this court was afforded in Studer, Fetsch, Moe and Erlandson, when it granted ballot correction petitions. Petitioner's petition can likewise be timely granted.

Respondent has now disclosed that her order to begin printing the primary ballots was issued July 21, 2006<sup>1</sup> that was only three days after filings closed. Once filings closed there was nothing that any party could do to change the facts that Intervener had not paid a filing fee and that his petition contained an insufficient number of timely signed voters. There has been no inconceivable delay. Further there was no prejudice by August 11 filing.

## II. LAWS 1975, CHAPTER 130 AMENDED, NOT SUPERSEDED, LAWS 1975, CHAPTER 5.

In February 1975 the Minnesota legislature adopted (and the Governor signed) a law fixing the requirements for nominating petitions. Laws 1975, Chapter 5, §§ 19-20 (hereinafter "Chapter 5"). In May 1975 the same legislature amended Chapter 5 to include provisions for a petition in lieu of filing fee. Laws 1975, Chapter 130 (hereinafter "Chapter 130").

Chapter 130 must be read to be part of, not a change to, Chapter 5. Between March 1, 1975 (when Chapter 5 took effect) and May 15, 1975 (when Chapter 130 was approved) the legislature consistently connected Chapter 5 and Chapter 130. In the Minnesota State Senate, (SF72) Chapter 130 was amended to allow a petition to serve both as a petition in lieu of filing fee and a nominating petition. The amendment specifically referenced

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<sup>1</sup> In fact her certification is dated July 20 Respondents argument would require Petitioner to have commenced this action on July 19 or (perhaps) July 20 – not a reasonable request.

Chapter 5. A similar bill in the Minnesota State House (HF244) did not allow the filing of joint petitions. The House bill also specifically referenced back to Chapter 5. The House view prevailed and Chapter 130 was approved with the reference to “Chapter 5, Section 19, relative to nominating petitions.” Minn. Chapter 130 was clearly meant to augment, not supersede the nominating petition requirements set forth in Chapter 5.

Since Chapter 5 had already adopted a temporal requirement and that requirement was not deleted by Chapter 130, it must be inferred that Chapter 130 presumed the same temporal requirement. Minn. Stat §645.16 (2), (5) and (7). *County of Hennepin v. County of Houston*, 229 Minn. 418, 39 N.W.2d 858 (1949). See also *Burkstrand v. Burkstrand*, 632 N.W. 2d 207, 210 (2001).

### III. ADMINISTRATIVE RULES REFERENCE TEMPORAL REQUIREMENT

Minnesota Rule §8205.1050 “Verifying Petitions” submitted by Respondent clearly indicates that a temporal signature requirement should be read into the requirements for §204B.11 subd. 2. §8205.1050, sub. 1 states that the rule does not apply to petitions dealing with recalls. Therefore, by inference, the rule applies to all other petitions governed by Chapter §8205. §8205.1050, sub. 2 (C) specifically states (emphasis added): “If the petition satisfies the form requirements in part §8205.1010 and has been signed by the required number of qualified signatories *during the applicable time period*, the filing officer shall notify the person whose name is on the petition receipt that the petition is sufficient.” See e.g. attached letter from Respondent to Intervener dated \_\_\_\_\_ 2006. This Rule clearly implies that all petitions covered by §8205.1050, which is all petitions regarding elections other than recall petitions and proposed recall petitions, do have some temporal requirement for which the date of signature must comply.

#### IV. EQUAL PROTECTION NOT DISPARATE TREATMENT IS REQUIRED

As the result of Respondent's changing interpretations of the statutes at issue, Minnesota candidates receive disparate treatment from her. Intervener, for example, receives special treatment. See. e.g. Exhibit C (letter from Respondent to Intervener dated July 14, 2000) attached to Affidavit of Mike McCarthy compared to attached Affidavit of Mary Murphy. The electorate must not be treated disparately in the interpretation of state election law. Bush v. Gore, 531 U.S. 98 (2002). Equal protection applies to restrictions on candidates access to the ballot; candidates must have equal access. Anderson v. Celebrezze, 460 U.S. 780, 103 S.Ct. 1564 (1983); Clements v. Fashing, 457 U.S. 957, 102 S.Ct. 2836 (1982). Contrary to Respondent and Intervener's claims, the Secretary of State's office is giving special treatment to Intervener in at least two ways:

First, Respondent accepted Intervener's nominating petition in lieu of filing fee but told two Democratic-Farmer-Labor Party ("DFL") candidates on multiple occasions that nominating petitions in lieu of filing fee must be signed within the filing window (July 4, 2006 to July 18, 2006). Kerry Greeley of candidate Tim Walz's campaign for the United States House of Representatives was told on at least two occasions that nominating petitions in lieu of filing fee must be signed between July 4, 2006 and July 18, 2006. Greeley Affidavit. Likewise, Respondent also twice told Mary Murphy, a DFL member of the Minnesota House of Representatives from Legislative District 06B, that nominating petitions in lieu of filing fee that she wanted to submit must be signed during the two week filing period, beginning July 5, 2006. Murphy Affidavit (attached)

Second, Respondent gave Intervener preferential treatment in 2000 when she returned his \$300 filing fee after he had filed both a filing fee and a nominating petition in lieu of filing fee. Attached Exhibit C to Mike Murphy Affidavit. In contrast, Respondent told Representative Mary Murphy that if she paid the filing fee, she could not thereafter receive a refund even if she subsequently secured the required signatures on a nominating petition in lieu of filing within the filing window.

Respondent has consistently given disparate treatment to candidates based on political affiliation. Respondent unconstitutionally fails to consistently enforce election laws by giving preferential treatment to Intervener's petitions in lieu of filing fee. The open ended signing period for which she contends runs the risk of even greater disparities.

Respectfully submitted,

August \_\_, 2006

/s/ Alan W. Weinblatt

Alan W. Weinblatt, Atty. Reg. No. 115332

Luke M. Kuhl, Atty. Reg. No. 0337316

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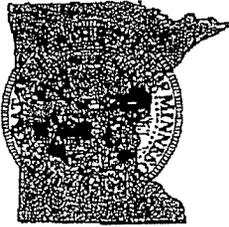
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**ATTORNEYS FOR PETITIONER**



Mary Kiffmeyer

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## MINNESOTA SECRETARY OF STATE

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July 14, 2000

Representative Gil Gutknecht  
3421 16<sup>th</sup> Avenue SW  
Rochester, MN 55901

Dear Representative Gutknecht:

I am pleased to inform you that this office has finished reviewing your petition in lieu of the filing fee in place of paying a \$300 filing fee for the office of United States Representative, District one. Since the petition has at least 1000 signatures, in my opinion, it meets the requirements for Minnesota Statutes 204B.11, subd. 2. The filing requirement with this office has now been satisfied. Please find enclosed a copy of your affidavit of candidacy, and your original check for \$300.

If we can be of further assistance, please contact my office at (651) 215-1440.

Sincerely,

J. Bradley King  
Elections Division Director

Enc.

STATE OF MINNESOTA

IN SUPREME COURT

Court File No. A06-1508

Louis H. Reiter,

Petitioner,

vs.

AFFIDAVIT OF  
MARY MURPHY

Mary Kiffmeyer, individually and as  
Secretary of State of Minnesota

Respondent.

STATE OF MINNESOTA)  
COUNTY OF ST. LOUIS)

Mary Murphy being first sworn, deposes and says:

1. I am a member of the Minnesota House of Representatives representing District 06B. I run as a major party (Democratic-Farmer-Labor Party) candidate.
2. This year I am seeking re-election to that office and considered the possibility of submitting petition signatures in lieu of paying the filing fee.
3. To that end, on June 22<sup>nd</sup> or 23<sup>rd</sup>, I went to the elections office of the Minnesota Secretary of State to pick up the filing forms in case I decided to file by U.S.mail. Then
4. I specifically asked the woman who waited on me when the signatures on the filing fee petition had to be signed. She told me that they had to be signed during the two week filing period, beginning July 5, 2006.
5. I actually filed in person by submitting my affidavit of candidacy and filing fee on July 6, 2006. At that time I again asked the person at the counter about filing fee petitions. Specifically, I asked if I could still go out, get the needed signatures and then get my filing fee returned.
6. This second person, a man, told me that I couldn't get the fee back. In response to my specific question about when the signatures had to be secured, he, too, told me that they had to be secured during the two week filing period.

Further Affiant sayeth not.

*Mary Murphy*  
Mary Murphy

Subscribed and sworn to before me  
this 17<sup>th</sup> day of August, 2006.

*Mary E. Lunke*  
Notary Public

