

A12-0920

STATE OF MINNESOTA

IN SUPREME COURT

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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; 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.

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**BRIEF OF AMICUS CURIAE HENNEPIN COUNTY  
ATTORNEY'S OFFICE AND APPENDIX**

OFFICE OF THE HENNEPIN  
COUNTY ATTORNEY

MICHAEL O. FREEMAN  
Hennepin County Attorney

By: DAVID C. BROWN  
Senior Assistant County Attorney  
Atty. License No: 18701X  
C-2000 Government Center  
Minneapolis, MN 55487  
Phone: (612) 348-4085  
FAX: (612) 348-6028  
david.brown@co.hennepin.mn.us

**ATTORNEYS FOR AMICUS  
CURIAE HENNEPIN COUNTY  
ATTORNEY'S OFFICE**

MASLON EDELMAN BORMAN &  
BRAND LLP

William Pentelovitch (#85078)  
Richard G. Wilson (#16544X)  
Justin H. Perl (#151397)  
Wayne S. Moskowitz (#17936X)  
Alain M. Baudry (#186685)  
Catherine Ahlin-Halverson (#0350473)  
300 Wells Fargo Center  
90 S. Seventh Street  
Minneapolis, MN 55402-4140  
Phone: (612) 672-8200  
FAX: (612) 672-8397  
bill.pentelovitch@maslon.com

AMERICAN CIVIL LIBERTIES  
UNION OF MINNESOTA

Teresa Nelson (#269736)  
2300 Myrtle Avenue, Suite 180  
St. Paul, MN 55114-1879  
Phone: (612) 645-4097  
tnelson@aclu-mn.org

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION, INC.

M. Laughlin McDonald (Pro Hac Vice)  
John Sherman (Pro Hac Vice)  
230 Peachtree Street, Suite 1440  
Atlanta, GA 30303  
Phone: (404) 523-2721  
FAX: (404) 653-0331  
lmcdonald@aclu.org  
jsherman@aclu.org

**ATTORNEYS FOR PETITIONERS**

OFFICE OF THE MINNESOTA  
SECRETARY OF STATE

Mark Ritchie  
180 State Office Building  
100 Rev. Dr. Martin Luther King Jr.  
Blvd.  
St. Paul, MN 55155-1299  
beth.fraser@state.mn.us  
bert.black@state.mn.us

**RESPONDENT**

WINTHROP & WEINSTINE, P.A.

Robert Weinstine  
Thomas H. Boyd  
Kristopher D. Lee  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Phone: (612) 604-6400  
rweinstine@winthrop.com  
tboyd@winthrop.com  
klee@winthrop.com

**ATTORNEYS FOR  
INTERVENORS 87<sup>TH</sup>  
MINNESOTA HOUSE OF  
REPRESENTATIVES AND 87<sup>TH</sup>  
MINNESOTA SENATE**

**OFFICE OF THE ST. PAUL CITY  
ATTORNEY**

**SARA R. GREWING**  
St. Paul City Attorney

Gerald T. Hendrickson  
Deputy St. Paul City Attorney  
400 City Hall  
15 W. Kellogg Boulevard  
St. Paul, MN 55102  
Phone: (651) 266-8710  
FAX: (651) 298-5619  
sara.grewing@ci.stpaul.mn.us  
jerry.hendrickson@ci.stpaul.mn.us

**ATTORNEYS FOR AMICUS CITY  
OF ST. PAUL**

**MARTIN LAW OFFICE**

Jeffrey Martin  
375 Oxford St. North  
St. Paul, MN 55104  
martinlawoffice@comcast.net

**ATTORNEYS FOR AMICUS  
ST. PAUL BRANCH OF THE  
NAACP**

**LEONARD STREET & DEINARD**

Tim Griffin  
Liz Kramer  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402  
liz.kramer@leonard.com  
timothy.griffin@leonard.com

**AARP FOUNDATION LITIGATION**

Daniel B. Kehrman  
Michael Schuster  
601 E Street N.W.  
Washington, D.C. 20049  
dkehrman@aarp.org

**ATTORNEYS FOR AMICUS  
AARP**

**LINDQUIST & VENNUM**

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

**ATTORNEYS FOR AMICUS  
CITIZENS FOR ELECTION  
INTEGRITY**

**BOWMAN AND BROOKE, LLP**

Nathan J. Marcusen  
150 South Fifth Street, Suite 3000  
Minneapolis, MN 55402  
Phone: (612) 339-8682  
FAX: (612) 372-3200  
nathan.marcusen@bowmanandbrooke.com

**ELECTION LAW CENTER PLLC**

J. Christian Adams (Pro Hac Vice)  
300 N. Washington St., Suite 405  
Alexandria, VA 2314  
Phone: (703) 963-8611  
adams@electionlawcenter.com

**ACTRIGHT LEGAL FOUNDATION**

Zachary S. Kester  
Kaylan L. Phillips  
Noel H. Johnson  
2029 K Street NW, Suite 300  
Washington, DC 20006  
Phone: (202) 683-9405  
FAX: (888) 815-5641  
zkester@actright.com  
kphillips@actright.com  
njohnson@actright.com

**ATTORNEYS FOR AMICUS  
MINNESOTA MAJORITY, INC.**

**MOHRMAN & KAARDAL, P.A.**

Erick G. Kaardal  
William F. Mohrman  
33 South Sixth Street, Suite 4100  
Minneapolis, MN 55402  
kaardal@MKlaw.com  
mohrman@MKlaw.com

**ATTORNEYS FOR AMICUS SEN.  
SCOTT J. NEWMAN AND REP.  
MARY KIFFMEYER**

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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The Hennepin County Attorney's Office submits this amicus curiae brief to provide factual information that will assist the Court in two areas<sup>1</sup>: 1) the date a decision needs to be rendered in this matter in order for ballots to be designed, produced, printed and tested in time for absentee balloting; and 2) the application process for obtaining photo identification as it relates to the narrow question before the Court regarding the use of the word "free" in the proposed ballot question.<sup>2</sup>

- I. **A decision in this matter should be rendered by August 10, 2012 in order to avoid significant additional local costs and in any event not later than August 27, 2012 to avoid significant disruption to the General Election.**

This Court's decision in this matter has the potential to have significant impact on election administration in Hennepin County. If the decision is not rendered in a timely manner, it may cause significant disruption to the General Election. As more specifically set forth below, if this Court's decision is rendered after August 10, 2012, Hennepin County will need to undertake significant additional work and will incur significant additional costs in preparing alternative ballot designs. If this Court's decision is rendered after Monday August 27, it will cause significant disruption to the administration of the November 2012 general election.

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<sup>1</sup> See Request of Hennepin County Attorney's Office For Leave to Participate as Amicus Curiae, filed June 8, 2012, p.2.

<sup>2</sup> Pursuant to Minn. R. Civ. App. P. 129.03, the undersigned counsel hereby certifies that (1) no counsel for a party authored this brief in whole or in part and

Absentee voting for the November 6, 2012 General Election begins Friday, September 21, 2012. In order to have ballots returned from the printer and distributed to the various cities in Hennepin County when absentee voting begins, the ballots must be sent to the printer by Monday, September 10, 2012. Affidavit of Rachel Smith, p.2 Appendix at 2.

In addition, Hennepin County staff must program all of the precinct counters used to tabulate election results and conduct extensive testing of the counters. A prerequisite for the required programming and testing is finalization of ballot layout. In order to complete programming and testing by September 21, 2012, the ballot layout must be complete by August 31, 2012. *Id.*

In order for the ballot layout to be finalized, it must be proofed by and approved by municipalities. This is required because municipalities are responsible for conducting local election contests such as city council and school board races as well as local referenda. Local ballot review and approval is expected to occur from August 29-31, 2012. *Id.* Accordingly, a decision by this Court after August 27, 2012, risks significant disruption of the balloting process.

Hennepin County has already spent significant time preparing for the 2012 General Election. Preparing ballots and the entire election system for the General Election in Hennepin County involves significant coordination with local units of government. There are 405 precincts in Hennepin County. In 2012,

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(2) no other person or entity made a monetary contribution to the preparation or submission of this brief.

approximately 450 ballot styles will be used. There are approximately 215 offices and 450 candidates who will be on ballots in Hennepin County in local, legislative, state and federal offices. *Id.*

Ballots will contain the following offices: President, U.S. Senator, U.S. Representative (3 districts), County Commissioner (5 districts on ballot), Three Rivers Park District (5 districts), Four Soil and Water Offices, State Senator (18 districts), State Representative (33 Districts), 21 Judicial Offices, 38 cities have offices on the ballot (most have two or three offices), 8 school districts have offices on the ballot (most have three or four offices), 7 jurisdictions have potential ballot questions or referendums. *Id.* p.2-3, Appendix at 2-3.

The nature of the challenge to the amendment raises additional deadline issues for Hennepin County. Eliminating voter confusion—and promoting the efficient administration of the election—would be best served by having a single sheet, two-sided, ballot in all precincts. However, in light of the number of races and referendums, almost all precincts are extremely close to requiring a second ballot sheet because everything cannot fit on one ballot (front and back). *Id.* p.3; Appendix at 3.

Absent timely guidance from the Court, Hennepin County will create two sets of ballot designs. One set of 450 ballot styles will be laid out with the photo identification ballot question. The other set of 450 ballot styles will be laid out without this ballot question. The work on the alternative ballot layouts will need

to begin by August 10, 2012. If this Court issues a decision on or before August 10, 2012, the need to create alternative ballot designs will be obviated. *Id.*

A decision after August 10, 2012, will cause Hennepin County to expend significant time and resources creating sets of alternative ballot designs. A decision after August 27, 2012, will cause significant disruption of the election process.

**II. Information regarding the application process for photographic identification and the payment of fees for underlying documents that are outside of the control of the State of Minnesota or its subdivisions.**

One of the issues raised in this matter is the use of the word “free” in the proposed ballot question. Petitioner’s Brief, p.29 n.12; Amicus Curiae Brief of AARP Supporting Petitioners, pp. 5-12. Without taking a position for or against any party, Hennepin County has information regarding the current application process for obtaining photographic identification that may assist the Court in determining whether the State could, in fact, provide free identification to eligible voters.

Currently, Hennepin County operates six service centers that issue Minnesota driver’s licenses, photo identification cards, and permits and provide other services to individuals. The requirements for obtaining a Minnesota driver’s licenses, photo identification cards, and permits for individuals who do not have a current Minnesota driver’s license, identification card, or one that expired in the last five years are found in Minnesota Rules Parts 7410.0100 to 7410.0600.

Affidavit of Bruce Jindra, p.2, Appendix at 6. Those requirements are summarized in the document “*DO YOU HAVE PROPER IDENTIFICATION: Identification Requirements.*” Affidavit of Bruce Jindra, Exhibit A, Appendix at 10. These “first-time” applicants must present one of the primary documents and one of the secondary documents identified in order to obtain a Minnesota driver’s license, identification card, or permit. Examples of primary documents are: certified birth certificates, certified records of birth abroad, certified adoption certificates from a court, unexpired U.S. passports, unexpired military identification, Canadian birth or naturalization records, or unexpired immigration or naturalization documents issued by the federal government. *Id.* Examples of secondary documents include, primary documents, driver’s licenses from other states, certified marriage certificates, certified school records, and government employee identification cards. *Id.*

Many of these required documents, such as passports and social security cards, are issued by the federal government. Other documents such as birth and marriage certificates are issued by other states or countries in which the birth or marriage occurred. Affidavit of Bruce Jindra, p.2, Appendix at 6. Hennepin County Service Center staff are trained to follow the requirements for primary and secondary documents strictly in order to maintain the integrity of the issued driver licenses and identification cards. Service Center employees who do not strictly follow the documentation requirements may be subject to discipline or termination from employment. *Id.*

Hennepin County Service Center staff estimates that every business day in Hennepin County, approximately 75-100 “first-time” applicants seek to apply for a Minnesota driver’s license, identification card, or permit. Affidavit of Bruce Jindra, p.3, Appendix at 7. These individuals must have a primary and secondary document identified in Exhibit A to apply. Many of the documents presented are from jurisdictions other than in Minnesota. For example, on June 22, 2012 at the Hennepin County Midtown Service Center, 80 people submitted “first-time” applications for a driver’s license, photo identification card or permit. *Id.* p.4, Appendix at 8. Of the 80 primary documents presented, 66 were issued by the federal government or jurisdictions outside of Minnesota. Of the 80 secondary documents presented, at least 75 were issued by the federal government or jurisdictions outside of Minnesota. *Id.*<sup>3</sup>

Of the 75-100 individuals applying each business day, approximately 15 individuals are sent away because they do not have the appropriate documents and need to obtain them before an application can be accepted.<sup>4</sup> *Id.* For those individuals who do not already possess the necessary primary or secondary documents, they may be obtained for a fee from Minnesota service centers such as

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<sup>3</sup> These numbers only apply to people who possessed the necessary documentation. It does not apply to any applicants who were turned away.

<sup>4</sup> The Minnesota Commissioner of Public Safety may grant a variance from the requirements identified in Minnesota Rules 7410.0400 subject to meeting all of the required conditions. Minnesota Rules 7410.0600. The Hennepin County Attorney’s Office has no information on how many variances have been applied for or granted.

those in Hennepin County. *Id.* p.4-5, Appendix at 8-9. For example, in Hennepin County a certified birth certificate costs \$26 and a certified marriage certificate costs \$9. *Id.* Most of the other primary and secondary documents must be obtained from authorities outside of the jurisdiction of the State of Minnesota. Minnesota Rules 7410.0400. A common supporting document used in applying for identification at the Hennepin County Service Centers is a U.S. Passport. While a citizen may apply in Hennepin County for a passport, with a fee of \$135 for regular service and \$195 for expedited service, the passport is issued by the United States Government.<sup>5</sup> *Id.* Other primary and secondary documents may be obtained from schools, other states, U.S. courts, and foreign governments. Minnesota Rules 7410.0400. The imposition of fees to obtain these primary and secondary documents from other states, the federal government, other countries, and private entities is outside of the authority of the staff at the Hennepin County Service Centers and the State of Minnesota and thus may be relevant to the Court in determining whether the ballot question is misleading in indicating that free

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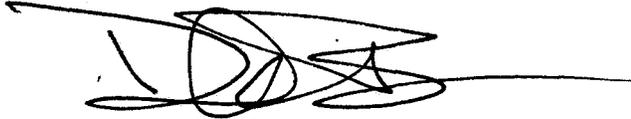
<sup>5</sup> As a result of recent federal regulations, a single location cannot process applications for U.S. Passports and first time driver's licenses, photo identification cards, or permits. Accordingly, five of the six Hennepin County service centers are authorized to accept applications for U.S. Passports and these locations cannot accept applications for first time driver's licenses, identification cards, or permits. The Hennepin County Service Center located in south Minneapolis in the Midtown area ("Midtown Service Center") is the only Hennepin County Service Center that accepts applications for first-time Minnesota driver's licenses, identification cards, and permits. There are other non-Hennepin County locations within Hennepin County that also accept applications for these documents pursuant to agreement with the Minnesota Department of Public Safety.

identification will be available to eligible voters.

DATED: July 25, 2012

Respectfully submitted,

MICHAEL O. FREEMAN  
Hennepin County Attorney

A handwritten signature in black ink, appearing to read 'D. C. BROWN', with a long horizontal line extending to the right.

By: DAVID C. BROWN  
Senior Assistant County Attorney  
Attorney License No. 18701X  
C-2000 Government Center  
Minneapolis, MN 55487  
Telephone: (612) 348-4085  
FAX: (612) 348-6028

ATTORNEYS FOR AMICUS  
HENNEPIN COUNTY ATTORNEY'S  
OFFICE

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**CERTIFICATION OF BRIEF  
LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. R.  
Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font.  
The length of this brief is 2,289 words. This brief was prepared using Microsoft  
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DAVID C. BROWN  
Senior Assistant County Attorney  
Attorney License No. 018701X  
C-2000 Government Center  
Minneapolis, MN 55487  
Phone: (612) 348-4085  
FAX: (612) 348-6028