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In the Supreme Court

Warren Limmer, Steve Gottwalt, Dan Hall, Steve Drazkowski, Sean Nienow, Paul Gazelka, Julianne Ortman, Peggy Scott, Michelle Benson, Ernie Leidiger, Bob Dettmer, Glenn Gruenhagen, Bob Gunther, Joyce Peppin, and Mike Benson, all individuals, registered voters, and Members of the Minnesota Legislature; John Helmberger, an individual and a registered voter; and Minnesota for Marriage, an association of individuals and registered ballot committee,

Petitioners,

vs.

Mark Ritchie, in his official capacity as Secretary of State of the State of Minnesota, and Lori Swanson, in her official capacity as Attorney General of the State of Minnesota.

Respondents.

PETITIONERS' BRIEF AND APPENDIX

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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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ISSUES PRESENTED

Article III, section 1 delineates the powers of the three branches of government and bars any branch from assuming or asserting any expressed or inherent powers that properly belong to the others. Article IX, section 1 gives the Legislature expressed authority to propose and refer to the people amendments to the Constitution. The legislature passed the proposed Marriage Amendment with a ballot question title. The Secretary of State unilaterally changed the ballot question title.

- (1) Whether the Secretary of State and the Attorney General exceeded their authority when the Secretary proposed, and the Attorney General approved, a substitution for the Legislature's duly passed and chosen ballot question title of the Marriage Amendment to the Minnesota Constitution.

Apposite Constitution Provisions, Statutes and Cases:

Minn. Const. art. IX, § 1;
Minn. Const. art. III, § 1;
Minn. Stat. § 204B.44;
Irwin v. Surdyk's Liquor, 599 N.W.2d 132, 141 (Minn. 1999).

- (2) If the Secretary did have authority to adopt such a ballot title, whether the title proposed by the Secretary is an "appropriate" title for the Marriage Amendment.

Apposite Constitution Provisions, Statutes and Cases:

Minn. Const. art. IX, § 1;
Minn. Const. art. III, § 1;
Minn. Stat. § 204B.44;
Minn. Stat. § 204D.15;
State ex rel. Marr v. Stearns, 72 Minn. 200, 75 N.W. 210
(Minn. 1898), *rev'd on other grounds*, 179 U.S. 223 (1900).

STATEMENT OF THE CASE

In May 2011, consistent with the codification of marriage in Minnesota Statute §§ 517.01-.03, the Minnesota Legislature passed a proposed Marriage Amendment and with it, as required by Minn. Stat. § 204D.15, a ballot title for that amendment:

“Recognition of Marriage Solely Between One Man and One Woman.” As has been seen from the marriage votes in 32 other states from 1998 to 2012, marriage is not a partisan issue. Rather, marriage has consistently been affirmed in every political, cultural, religious, and geographical section of the United States.¹

Almost 13 months after Governor Dayton’s symbolic “veto” of the Legislature’s act, Respondent Secretary of State Mark Ritchie (“Secretary”) denounced the Legislature’s ballot title for the Marriage Amendment by unilaterally substituting his own version, changing the form and substance of the Legislature’s expressed will and right. Respondent Minnesota Attorney General Lori Swanson (“Attorney General”) agreed with the Secretary and opined to the effect of the Secretary’s action giving him a “legal basis” for which none exists or existed.

However, with the Secretary’s unilateral action to substitute his own version of the Legislature’s ballot question title, he has exceeded his constitutional authority and breached the wall of the separation of powers doctrine. These errors and omissions are

¹ Over a 15-year period, from 1998-2012, the following states (in no particular order) have popularly voted to affirm marriage as the union of one man and one woman: Alaska, Hawai’i, California, Oregon, Arizona, Nevada, Utah, Colorado, Idaho, Montana, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Louisiana, Arkansas, Missouri, Wisconsin, Michigan, Ohio, Kentucky, Tennessee, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Virginia, and Maine.

the cause for the instant Petition under Minnesota Statute § 204B.44. The Petitioners² seek reinstatement of the Legislature's original ballot title to the proposed Marriage Amendment and all other just and equitable relief necessary to ensure the proposed Marriage Amendment reaches the people to adopt or reject as the Legislature has provided under Article IX, section 1.

STATEMENT OF FACTS

In 2011, the Minnesota Legislature sought to formalize the state's long-standing statutory definition of marriage in the Minnesota Constitution through a proposed constitutional amendment under Article IX, section 1. The entire text of the Marriage Amendment reads as follows:

An act proposing an amendment to the Minnesota Constitution; adding a section to article XIII; recognizing marriage as only a union between one man and one woman.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. CONSTITUTIONAL AMENDMENT PROPOSED.

An amendment to the Minnesota Constitution is proposed to the people. If the amendment is adopted, a section shall be added to article XIII, to read:

Sec. 13. Only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota.

² "Petitioners" refers collectively to Warren Limmer, Steve Gottwalt, Dan Hall, Steve Draskowski, Sean Nienow, Paul Gazelka, Julianne Ortman, Peggy Scott, Michelle Benson, Ernie Leidiger, Bob Dettmer, Glenn Gruenhagen, Bob Gunther, Joyce Peppin, and Mike Benson, all individuals, registered voters, and Members of the Minnesota Legislature; John Helmberger, an individual and a registered voter; and Minnesota for Marriage, an association of individuals, and a registered ballot committee.

Sec. 2. SUBMISSION TO VOTERS.

(a) The proposed amendment must be submitted to the people at the 2012 general election. The question submitted must be:

“Shall the Minnesota Constitution be amended to provide that only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota?

Yes

No”

(b) The title required under Minnesota Statutes, section 204D.15, subdivision 1, for the question submitted to the people under paragraph (a) shall be “Recognition of Marriage Solely Between One Man and One Woman.”

S.F. 1308, ch. 88, §§ 1-2, 87th Leg., Reg. Sess. (Minn. 2011) (“Chapter 88, Senate File 1308”) (Appendix at A-1). As seen in Section (2)(b), the Legislature specified that the ballot question title “*shall* be ‘Recognition of Marriage Solely Between One Man and One Woman.’” *Id.* (emphasis added).

Although constitutional amendment resolutions are not subject to the governor’s veto powers, Governor Mark Dayton issued what he referred to as a “symbolic veto” of SF 1308 and urged voters to reject the amendment. (Letter of Governor Mark Dayton to Senate President Michelle Fischbach (May 25, 2011) (“Governor’s Veto Letter”) (Appendix at A-2).) None of the governor’s actions or words indicated any form of belief that his “veto” was anything other than symbolic. This “veto” cannot be found in the official record of Chapter 88, Senate File 1308. *See* Minnesota State Legislature, SF1308 Status in House for Legislative Session 87, https://www.revisor.mn.gov/revisor/pages/search_status/status_detail.php?b=House&f=SF1308&ssn=0&y=2012. No legislator,

public official, newspaper, or other Minnesotan ever spoke or indicated anything that reflected a belief that the governor's "symbolic veto" carried any force of law.

Approximately 13 months later, on June 15, 2012, the Secretary sent a letter to the Attorney General requesting approval of his decision to omit the ballot title adopted by the Legislature and to substitute a new title for the Marriage Amendment: "LIMITING THE STATUS OF MARRIAGE TO OPPOSITE SEX COUPLES." (Letter of Secretary of State Mark Ritchie to Attorney General Lori Swanson (June 15, 2012) (Appendix at A-4).)

On June 19, 2012, the Attorney General responded via letter approving the Secretary's proposed new title, explaining: "a veto of a bill containing proposed constitutional amendment together with matters of ordinary legislation is effective as to the legislation, but does not affect the proposed constitutional amendment." (Letter of Attorney General Lori Swanson to Secretary of State Mark Ritchie (June 19, 2012) (Appendix at A-5) ("AG Letter") (citing Op. Atty. Gen. 213-C (March 9, 1994) (Appendix at A-14).)

The Secretary's letter and the Attorney General's response did not become public until almost two weeks later, on June 28, 2012, less than two months before the ballots are printed. (See Letter of Secretary of State Mark Ritchie to Chief Justice Gildea of the Minnesota Supreme Court (June 25, 2012) and Affidavit of Gary Posner, *League of Women Voters Minnesota v. Ritchie*, No. A12-0920 (filed June 25, 2012) (Appendix at A-7) (explaining that a decision on the constitutionality of a ballot question must be reached by August 27, 2012).) These Executive Officers of the State of Minnesota have

acted in a manner outside the scope of their constitutional authority, and are attempting to unlawfully interfere with the power vested in the Minnesota legislature to adopt and refer to the people of Minnesota amendments to the Minnesota Constitution.

ARGUMENT

Introduction

In 2011, pursuant to Article IX, Section 1 of the Minnesota Constitution, the Minnesota Legislature approved a constitutional amendment to be referred to the voters of Minnesota at the 2012 General Election. This amendment mirrors the statutory definition of marriage, *Laws of Minnesota*, Chapter 441, sec. 1; Minn. Stat. § 517.01. If approved by the People, it would amend the Minnesota Constitution to read that “only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota.” (the “Marriage Amendment”). Chapter 88, Senate File 1308 (Appendix at A-1). Included in the Marriage Amendment to be considered by the voters on November 6, 2012, is the following ballot title as determined by the Legislature: ““Recognition of Marriage Solely Between One Man and One Woman.””

The Minnesota Constitution vests sole authority to amend the State’s constitution in the Legislature and the People, and *not* the Executive Branch. Nevertheless, the Secretary exceeded his authority as a member of the Executive Branch and attempted to impose a ballot title upon the Marriage Amendment different in form and substance than that voted upon and passed by the Legislature. The Secretary unilaterally substituted the Legislature’s ballot question title with his own: “LIMITING THE STATUS OF

MARRIAGE TO OPPOSITE SEX COUPLES.” The Minnesota Attorney General in turn, approved this change.

These Executive Officers have acted in a manner outside the scope of their constitutional authority and are attempting to unlawfully interfere with the power vested in the Minnesota Legislature to adopt and refer to the people amendments to the Minnesota Constitution. Because of the Secretary’s erroneous actions, the Petitioners seek reinstatement of the Legislature’s original ballot title to the Marriage Amendment and an order from this Court directing the Secretary to ensure that the ballots accurately and completely reflect the original language provided by the Legislature in the Marriage Amendment.

I. The Secretary Violated the Separation of Powers Doctrine under Minnesota Constitution, Article III, Section 1, by Attempting to Substitute His Ballot Title in Place of the Ballot Title Adopted by the Legislature.

Pursuant to Minn. Stat. § 204B.44, any individual may file a petition for the correction of errors, omissions, or wrongful acts which have occurred or are about to occur including (a) an error or omission in the placement or printing of the name of any question on any official ballot, (b) any other error in preparing or printing any official ballot, or (c) any wrongful act, omission, or error of the secretary of state, or any other individual charged with any duty concerning an election.

Respondents erred in two respects. First, the Secretary has omitted the ballot title duly enacted by the Legislature and has erred in exercising power he does not possess in attempting to unilaterally substitute a title of his own. The Attorney General is complicit in the Secretary’s theft of legislative power by approving the Secretary’s actions. Second,

even if the Secretary possessed the power to create a ballot title for the Marriage Amendment, he erred by selecting a title that is false as a matter of law and will mislead, prejudice and confuse the voters. Again, the Attorney General has erred in approving the Secretary's false, misleading, prejudicial, and confusing language.

The separation of powers doctrine is familiar with this Court, but bears repeating because of the significance of the doctrine's role in this controversy: "Under the Separation of Powers Clause, no branch may usurp or diminish the role of another branch." *Brayton v. Pawlenty*, 768 N.W.2d 357, 365 (Minn. 2010); see Minn. Const., art. III, § 1. The Minnesota Constitution states in Article III, Section 1 that "[t]he powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise *any* of the powers properly belonging to either of the others except in the instances *expressly* provided in this constitution." (Emphasis added.) Article III bars any department from assuming or asserting any "inherent powers"—powers not "expressly" given—that properly belong to either of the others.

Because the separation of powers doctrine is the central principle of Minnesota's state government, this Court has been steadfast in respecting that principle. See *e.g.*, *Irwin v. Surdyk's Liquor*, 599 N.W.2d 132, 141 (Minn. 1999). In *Sharood v. Hatfeld*, this Court struck down as unconstitutional a statute that required attorney registration fees be diverted to the state's general fund based on the separation of powers doctrine: "if it is a judicial function that the legislative act purport to exercise, [this Court] must not hesitate

to preserve what is essentially a judicial function.” 210 N.W.2d 275, 279 (Minn. 1973). Likewise, this Court should preserve what is essentially a legislative function.

Passing a proposed constitutional amendment pursuant to Article IX, section 1 is exclusively a legislative function. Inclusive in the passage of the proposed Marriage Amendment is the Legislature’s determination and command (note the word “shall”) of the ballot question *title*—“Recognition of Marriage Solely Between One Man and One Woman.” With the Secretary’s unilateral substitution of this ballot title for his own and the Attorney General’s approval of the same, they have erroneously injected themselves into the legislative process.

A. The Legislature Has the Exclusive Authority to Propose Constitutional Amendments.

The Legislature’s authority to propose amendments to the Minnesota Constitution is set forth in Article IX, section 1: “A majority of the members elected to each house of the legislature may propose amendments to this constitution. Proposed amendments shall be published with the laws passed at the same session and submitted to the people for their approval or rejection at a general election.”

This provision does not specify the form or manner in which such amendments are to be submitted, but this Court has long understood the power to establish such form and manner to be “left to the judgment and discretion of the legislature, subject only to the implied limitation that they must not be so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.”

State ex rel. Marr v. Stearns, 72 Minn. 200, 218, 75 N.W. 210, 214 (Minn. 1898), *rev'd on other grounds*, 179 U.S. 223 (1900).

In contrast with this constitutionally-granted authority vested in the Legislature, there is no mention of the Executive in Article IX. Instead, any authority held by the Executive Branch regarding the proposing of ballot questions is not constitutional, but purely by the permission of the Legislature in giving the Executive the right to perform a *ministerial* role where the legislature does not exercise this power themselves. For example, Minnesota Statute § 204D.15, provides that the “secretary of state shall provide an appropriate title for each question printed on the pink ballot.” But here, the Legislature itself fulfilled the title requirement found in § 204D.15, which it may do at its discretion and, by so doing, left the Executive Branch with no role in the titling process. The Legislature’s authority to provide a title is constitutional, and the Executive has no authority absent the express and unrevoked permission of the Legislature, which does not exist here.

While the Secretary is authorized by statute to draft a title for amendments, the Minnesota Constitution has reserved the Legislature’s right to exercise its own constitutional authority to determine the ballot title and description of proposed constitutional amendments, as it did in this instance. When the Legislature has given the proposed amendment a title and directed that the title appear on the ballot, there is no authority retained by or vested in the executive to dictate a different title for proposed constitutional amendments.

B. The Secretary's Ministerial Authority to Provide a Title Does Not Authorize Him to Substitute His Judgment for the Legislature's.

The Secretary cannot substitute his own ballot question title in place of the one provided for and passed by the Legislature. Any authority delegated to the Secretary through § 204D.15 cannot include the power to choose a title different from one which was adopted by the Legislature in the proposing legislation. As this Court has explained, “[w]hile the legislature cannot delegate legislative power it may delegate legislative functions which are merely administrative or executive.” *Hassler v. Engberg*, 233 Minn. 487, 515, 48 N.W.2d 343, 359 (Minn. 1951) (citations omitted). This Court has “long recognized that where the constitution commits a matter to one branch of government, the constitution prohibits the other branches from invading that sphere or interfering with the coordinate branch’s exercise of its authority.” *Commitment of Giem*, 742 N.W. 422, 429 (Minn. 2007). Because the Secretary’s ballot title authority is legislatively granted, and not constitutional, the Secretary has only a ministerial authority to propose a ballot title where the Legislature has not exercised that power itself. Here, the Legislature *has* approved a ballot title, the Secretary has erred in attempting to substitute his own ballot title for the Legislature’s adopted title, and the Attorney General has erred in approving the Secretary’s proposed title. For the statute to authorize the Secretary to override the express designation by the Legislature would require an impermissible delegation of legislative power.

An analogous situation may be found in the relationship between the Legislature and the Court in the making of procedural rules. Since 1956, the power to enact court

rules lies solely in the judiciary whereas such power was previously granted to the Legislature. *State v. Johnson*, 514 N.W.2d 551, 553-554 (Minn. 1994). But when the Legislature had constitutional authority, this Court still had an “inherent power to establish rules of procedure” which “was exercised where the legislature had not provided necessary procedures.” *Id.* at 554 n. 4. And since the amendment which transferred constitutional authority to the judiciary, this Court has still allowed statutory rules to stand “in an area not already governed by a rule.” *Id.* at 554 n. 5. Such must be the relationship created by § 204D.15. The Legislature must retain its constitutional powers to title ballot measures, and any authority granted to the Secretary to provide such a title must be limited to situations where the Legislature has not dictated its own title.

C. Any Authority Vested in the Secretary to Title an Amendment Was Superseded By the Legislature When It Titled The Marriage Amendment.

The general power granted under Minnesota Statute § 204D.15 is necessarily superseded by the Legislature’s specific act in drafting and approving its own title for the Marriage Amendment. As this Court has recognized, one Legislature cannot bind its successors in prescribing the form and substance of questions submitted to the populace. *State v. Duluth & Northern Minnesota Railway Co.*, 102 Minn. 26, 30, 112 N.W. 897, 898 (Minn. 1907). Such impermissible binding would occur if this Court were to read § 204D.15 as authorizing the Secretary to override and to deliberately omit from the ballot the title which the Legislature designated for the proposed amendment as the Secretary is attempting to do here. Reading the statute in this manner would mean that the Legislature that enacted the statute has effectively restricted the ability of the present

Legislature (and any subsequent Legislature) to prescribe the form of any proposed constitutional amendment, something this Court has previously rejected.

Because § 204D.15 would be constitutionally problematic if read to override the Legislature's continuing power to create the titles of its own choosing for proposed constitutional amendments, this Court should instead seek to construe the statute narrowly in order to avoid the constitutional question. *E.g. Matter of Welfare of RAV*, 464 N.W.2d 507 (Minn. 1991). Such questions can be avoided if the statute is read as retaining the Legislature's inherent authority to dictate a title to the Secretary and thereby removing any discretion the Secretary might otherwise have to draft his own title. It could also be accomplished by simply recognizing that when the Legislature dictates a title, that title is the only one which is "appropriate," and hence the only one which the Secretary can include on the ballot.

Minnesota Statute § 204D.15 must be read as providing the Secretary with no discretion but to use the title provided by the Legislature in the preparation of the pink ballot, where the Legislature has seen fit to exercise its authority and thereby vested its authority to dictate the ballot title of proposed constitutional amendments.

D. The Governor's Symbolic "Veto" Has No Legal Effect on a Proposed Constitutional Amendment and Does Not Transfer Power from the Legislature to Another Executive Branch Official.

In approving the Secretary's ballot title, the Attorney General's office indicated that rejecting the Legislature's title was permissible because Governor Dayton had "vetoed" Chapter 88, Senate File 1308, the Marriage Amendment. (AG Letter, Appendix at A-5.) But in fact, the Governor *did not veto* any part of the Legislature's act. Despite

acknowledging that a governor has no veto authority over a proposed constitutional amendment, the Attorney General nonetheless claims, wrongly, that the purported “veto” had the legal effect of ‘vetoing’ the Legislature’s ballot title. Relying on a 1994 Attorney General’s Opinion which held that the veto of a bill containing both a proposed constitutional amendment and matters of ordinary legislation would be effective as to the legislation but would not affect the amendment, the Attorney General has apparently treated the ballot title of the Marriage Amendment as “ordinary legislation.” *See Op. Atty. Gen. 213-C (March 9, 1994) (Appendix at A-17)*. Since the Governor did not exercise any veto authority in this instance, the Attorney General’s opinion relied upon is not only inapplicable, but has no legal basis.

The Attorney General’s reasoning is inherently flawed and erroneous. The Legislature’s approved title of a constitutional amendment ballot measure is not “ordinary legislation,” but is part and parcel of the ballot measure itself. The Governor, therefore, has no authority to ‘veto’ any part of the proposed amendment. The Governor himself understood that his veto was purely symbolic and would not prevent the Marriage Amendment from being placed on the ballot. (Governor’s Veto Letter, Appendix at A-2.) As discussed herein, the constitutional authority to refer to the voters amendments to the constitution is vested solely in the Legislature without any role for the governor or other officers of the Executive Branch. Minn. Const. Art. III, Sec. 1. That authority has long been interpreted as including the power to set the form and manner in which such amendments are submitted. *Stearns*, 72 Minn. at 218, 75 N.W. at 214. As this Court has observed, “a practical construction of the constitution, which has been adopted and

followed in good faith by the legislature and people for many years, is always entitled to receive great consideration from the courts.” *Clark v. Pawlenty*, 755 N.W.2d 293, 306 (Minn. 2008).

While Minnesota courts have not directly confronted the impact of a gubernatorial veto of a proposed amendment, the same Attorney General opinion cited by the Attorney General’s letter also noted that “the approval or disapproval of the governor would have no bearing upon submission of the amendments to the people.” Op. Atty. Gen. 213-C (Appendix at A-19) (citing Op. Atty. Gen. 86-a). Moreover, this Court has explained that the power of the Legislature in “prescribing the form and substance of the question to be submitted” is vested in individual legislatures. *See Duluth & Northern Minnesota Railway*, 102 Minn. at 30, 112 N.W. at 898. The Legislature itself cannot bind its successors’ use of this authority, and even the courts cannot intervene unless “the question is so framed as to be a palpable evasion of the constitution.” *Id.* These limitations would be rendered meaningless if this constitutionally-mandated function could be voided by a gubernatorial veto.

There is no basis for treating the Legislature’s approved title for a ballot measure as “ordinary legislation.” The title is simply a component of the ballot description which has long been held to be within the Legislature’s exclusive purview. There is no constitutional distinction between the title of a proposed constitutional amendment and the rest of the ballot description. Had § 204D.15 not been enacted, the Legislature would still be vested with the sole power to propose constitutional amendments, including the titles thereof.

Allowing a gubernatorial veto of ballot language to reverse a decision of the legislature is tantamount to allowing a gubernatorial veto of the proposed amendment itself, in direct contravention of the constitutional construct of the State of Minnesota. There is no authority whatsoever to support this new scheme attempted to be put in place by the Executive Branch officers to thwart the Legislature's authority to propose constitutional amendments and, in this case, the Marriage Amendment. This Court has never articulated any such authority for a gubernatorial veto to trump the Legislature's ability to refer to the people a ballot measure constitutional amendment. To now allow such a veto would vest in the governor the power in the constitutional amendment process that simply does not exist in the state's constitution. Such an interpretation conflicts with the constitutional structure of ballot measures described in this Court's prior opinions, and has never before been recognized.

This Court should disregard the governor's veto as a purely symbolic gesture and must not allow the Secretary and the Attorney General to somehow give legal weight to this well-known symbolic act. The Court should require the Secretary to correct his error, and to reinstate the amendment title which was given to it by the Legislature.

II. The Secretary's Ballot Title Is Not Appropriate Because He Misstates or Ignores the Recognition of Marriage in Minnesota.

Alternatively, whenever the Secretary may propose a ballot title, he has a statutory duty to propose an *appropriate* title. Here, not only has the Secretary usurped the constitutional authority of the Legislature by omitting the Legislature's title and creating one of his own, but the title the Secretary has proposed to substitute is not appropriate.

Whether the Secretary's chosen title is "appropriate" should be weighed according to a preponderance of the evidence standard. *See Weiler v. Ritchie*, 788 N.W.2d 879, 883 (Minn. 2010).³

Comparing the title provided by the Legislature—"Recognition of Marriage Solely Between One Man and One Woman"—with the Secretary's proposed title—LIMITING THE STATUS OF MARRIAGE TO OPPOSITE SEX COUPLES—highlights the latter's inappropriateness. The underlying amendment states that: "Only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota." The Legislature's title, using the very key words found in the Marriage Amendment, accurately and appropriately describes it. In contrast, the Secretary's title uses words and phrases not found in the Marriage Amendment itself, such as "limiting," "status," and "opposite sex couples." These words do not accurately and appropriately describe the Marriage Amendment.

Fundamentally, the Secretary's use of the word "limiting" in his proposed title renders his proposed title inappropriate because it falsely indicates that the Marriage Amendment will limit the existing understanding of marriage. But the Marriage Amendment will do nothing to "limit" marriage. Rather, the Marriage Amendment will

³ While prior cases analyzing the propriety of ballot language have imposed a much higher burden for petitioners; *see, e.g., Breza v. Kiffmeyer*, 723 N.W.2d 633, 636; this Court in those cases gave broad deference to the "judgment and discretion of the legislature," because it holds the constitutional authority to determine "the form and manner of submitting the question of a constitutional amendment to the people." *Breza*, 723 N.W.2d at 636 (*quoting Stearns*, 72 Minn. at 218, 75 N.W. at 214). Such deference is inapplicable to the Secretary's actions as he has only statutory authority to provide an "appropriate" title.

maintain the definition of marriage as it has always existed in Minnesota, as the union of one man and one woman.

The Marriage Amendment seeks to amend the Constitution to reflect the pre-existing statutory and judicial construction of marriage in Minnesota. In 1971, the Minnesota Supreme Court held that defining marriage as it has always been understood was constitutional. *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971). The Court found that the statute “which governs ‘marriage,’ employs that term as one of common usage, meaning the state of union between persons of the opposite sex. It is unrealistic to think that the original draftsmen of our marriage statutes, which date from territorial days, would have used the term in any different sense.” *Id.*

Five years later, in 1976, the Minnesota Legislature codified what the Minnesota Supreme Court had confirmed, amending Minnesota Statutes to read “Marriage, so far as its validity in law is concerned, is a civil contract between a man and a woman.” *Laws of Minnesota*, Chapter 441, sec. 1; Minn. Stat. § 517.01.

In 1997, the Legislature followed Congress’ lead and enacted its own version of the Defense of Marriage Act (“DOMA”), *Laws of Minnesota 1997*, Chapter 203, Article 10, which clarified that “lawful marriage may be contracted only between persons of the opposite sex.” Minn. Stat. § 517.03. Since then, all legislative efforts to alter the definition of marriage have failed.

Thus, throughout its history, Minnesota’s elected representatives’ have remained committed to the fundamental understanding and legal definition of marriage as existing validly only between one man and one woman. However, the Secretary’s title denies this

fact. It falsely implies that the current definition of marriage is somehow broader than that proposed by the Marriage Amendment, and that the Amendment will “limit” the current definition of marriage.

The Secretary’s title is not just inappropriate; it is misleading, if not false, and politically motivated. Therefore, it does not comply with the statutory requirement that all ballot titles be “appropriate.” Thus, the Secretary erred in proposing this title, and the Attorney General erred in approving it.

CONCLUSION

Petitioners respectfully request an entry of judgment in their favor and against Secretary of State Mark Ritchie in his official capacity as the chief election official of the State of Minnesota and Lori Swanson, the Attorney General of the State of Minnesota, finding that they erred in substituting and approving the proposed ballot title, respectively; Ordering the Secretary to print the ballot as specified in the Marriage Amendment, Chapter 88, Senate File 1308, including the title “Recognition of Marriage Solely Between One Man and One Woman;” and any and all other such relief as may be just and equitable.

This 9th day of July, 2012.

Respectfully submitted,



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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, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 5,007 words. This brief was prepared using Microsoft Word 2010.

Dated: July 9, 2012

Respectfully submitted,



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