

A12-1149

No. A12-1258

State of Minnesota

In the Supreme Court

Mary Kiffmeyer, Scott J. Newman, Warren Limmer, Julianne Ortman, Mike Parry, Sean Nienow, David Brown, David Senjem, Bill Ingebrigtsen, Paul Gazelka, Roger Chamberlain, Ray Vandever, Claire Robling, all individuals, registered voters, and Members of the Minnesota Legislature; Jeff Davis, an individual and registered voter; Dan McGrath, an individual and a registered voter; Minnesota Majority, Inc., a nonprofit corporation; and ProtectMyVote.com, 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' REPLY BRIEF AND SUPPLEMENTAL 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).

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION.....	1
ARGUMENT	1
I. Section 204D.15 Does Not Limit the Legislature’s Authority to Title Constitutional Amendments	2
A. The Legislature Has Sole Constitutional Authority to Propose Constitutional Amendments.....	3
B. Respondents Have Acknowledged the Legislature’s Ability to Title Constitutional Amendments	10
II. The Governor’s Symbolic “Veto” Has No Legal Effect on a Proposed Constitutional Amendment	11
III. The Secretary’s Ballot Title Is Not Appropriate Because It Completely Omits Reference to Photographic Identification and Is Misleading	14
CONCLUSION	16
CERTIFICATION OF BRIEF LENGTH.....	19

TABLE OF AUTHORITIES

MINNESOTA CONSTITUTIONAL PROVISIONS

Minn. Const., art. IX, § 1 *passim*

MINNESOTA STATUTES

Minn. Stat. § 3C.01 11 n.8
Minn. Stat. § 204D.15 *passim*
Minn. Stat. § 645.16 8
Minn. Stat. § 645.17 8
Minn. Stat. § 645.26 9

CASES

Bergman v. Mills
988 S.W.2d 84 (Mo. App. 1999) 8 n.6
Bonhiver v. Fugelso, Porter, Simich and Whiteman, Inc.,
355 N.W.2d 138 (Minn. 1984) 9
Brayton v. Pawlenty,
768 N.W.2d 357 (Minn. 2010) 6 n.3, 8
Breza v. Kiffmeyer,
723 N.W.2d 633 (Minn. 2006) 3, 5
Rukavina v. Pawlenty,
684 N.W.2d 525 (2004) 7 n.5
Howard Jarvis Taxpayers Ass'n v. Bowen,
192 Cal. App. 4th 110 (Cal. Ct. App. 2011) 6 n.4
State v. American Family Mut. Ins. Co.,
609 N.W.2d 1 (Minn. App. 2000) 7
State v. Duluth & Northern Minnesota Railway Co.,
102 Minn. 26, 112 N.W. 897 (1907) 6
State ex rel. Marr v. Stearns,
72 Minn. 200, 75 N.W. 210 (1898) 3-4
State v. Philip Morris USA, Inc.,
713 N.W.2d 350 (Minn. 2007) 6
Weiler v. Ritchie,
788 N.W.2d 879 (Minn. 2010) 15 n.11

MISCELLANEOUS

H.F. 2285, ch. 151, 85th Leg., Reg. Sess. (Minn. 2008) 10

H.F. 2461, ch. 88, art. 3, 84th Leg., Reg. Sess. (Minn. 2005)	13 n.10
<i>HF2461 Status in House for Legislative Session 84, available at</i> https://www.revisor.mn.gov/revisor/pages/search_status/status_detail.ph p ?b=House&f=HF2461&ssn=0&y=2005	13 n.10
H.F. 2738, ch. 167, 87th Leg., Reg. Sess. (Minn. 2012)	<i>passim</i>
H.F. 2738 Status in House for Legislative Session 87	13
<i>League of Women Voters, et al., v. Ritchie</i> , No. A12-0920	1 n.1
Mo. Const. art. III, Sec. 31	8 n.6
Mo. Gen. Stat. § 116.160	8 n.6

INTRODUCTION

Article IX, Section 1 of the Minnesota Constitution establishes a two-step process to propose and adopt amendments, a process that involves only the Legislature and the voters. First, “[a] majority of the members elected to each house of the legislature may propose amendments to this constitution.” Second, the amendment is “submitted to the people for their approval or rejection at a general election.” Minn. Const. art. IX, § 1. The constitution gives no role to the Executive Branch in the amendment process. Yet, here, Respondents Secretary of State Mark Ritchie (“Secretary”) and Attorney General Lori Swanson (“Attorney General”) (collectively “Respondents”) are attempting to usurp the Legislature’s prerogative by substituting the ballot title they prefer for the one the Legislature required for the Voter ID Amendment in 2011 Minn. Laws Chapter 167, House File 2738. (*See* Pet’rs’ Br. at 2-3). Respondents are in error.

ARGUMENT

In defending Respondents’ errors and omissions, Respondents and their amici¹ make three critical errors. First, Respondents and their amici improperly elevate the statutorily enacted ministerial duty found in Minnesota Statute § 204D.15 over the Constitutional provisions of Article IX, Section 1. (Resp’ts’ Br. at 5-7; Nonpartisan Organizations and Law Professors’ Amicus Brief (“Amici Br.”) at 7-8). Second, Respondents and their amici improperly give legal effect to the Governor’s public

¹ Amici include 13 Minnesota law professors and three organizations (the American Civil Liberties Union of Minnesota, Common Cause, and Jewish Community Action). In May, two of these organizations launched an attack on the Voter ID Amendment’s ballot question and the Legislature’s authority to provide a ballot title. *League of Women Voters, et al., v. Ritchie*, No. A12-0920 (Filed May 30, 2012).

campaign against the Voter ID Amendment, including his so-called “veto,” despite the Governor’s own admission that he “[does] not have the power to prevent...[the] Constitutional Amendment from appearing on the Minnesota ballot in November.” (Appendix at A-3.) Upon this foundation of sand, the Secretary has unconstitutionally amended the work of the Legislature. Third, and in the alternative, even if the Secretary possessed a role in this matter, Respondents and their amici misrepresent the appropriateness of the Secretary’s chosen title, ignoring its omissions and misleading language. (Resp’ts’ Br. at 13-15; Amici Br. at 3-4).

I. Section 204D.15 Does Not Limit the Legislature’s Authority to Title Constitutional Amendments.

The Minnesota Constitution grants the Legislature two distinct legislative powers: to (1) pass ordinary legislation, subject to the Governor’s veto and (2) to propose constitutional amendments, subject to the People’s approval.² Respondents and their amici fail to acknowledge the important procedural distinctions between these two processes—namely, approval by the Governor versus by the people—and, by confusing and combining the two, attempt to justify their actions in this matter. This case concerns the second power: proposing constitutional amendments to the people as set forth in Article IX, section 1 of the Minnesota Constitution.

The Constitution clearly vests the authority to propose constitutional amendments with the Legislature, and not with the Executive Branch. Minn. Const. art. IX, § 1. According to this Court, because the Constitution is silent on the form and manner of

² (Supplemental Appendix at SA-1, 2).

submitting an act of amendment, such decisions are “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). And the Legislature cannot “propose” and “submit” a constitutional amendment to the people without accompanying language on the ballot. Thus, the Legislature’s power to author the ballot title is part of its constitutional power to “propose” and “submit” amendments.

A. The Legislature’s Exclusive Authority to Propose Constitutional Amendments Includes the Power to Provide Ballot Question Titles.

Respondents do not dispute that the power to propose and submit constitutional amendments to the People for their approval has always resided with the Legislature. (Resp’ts’ Br. at 3-4; Minn. Const. art. IX, § 1.) Yet, they claim the Legislature’s inherent power does not include the authority to propose titles for their submissions to the People. (Resp’ts’ Br. at 5-7.) This contention finds no basis in law and is contrary to this Court’s interpretation of the Legislature’s Article IX power.

This Court recognized in 1898 that “[n]either the form nor the manner of submitting the question of the amendment to the people is prescribed by the constitution.” *Stearns*, 75 N.W. at 218. In light of this silence, the Court held “the form and manner of submitting the question of a constitutional amendment to the people ‘are left to the judgment and discretion of the legislature[.]’” *Breza v. Kiffmeyer*, 723 N.W.2d 633, 636 (Minn. 2006) (quoting *Stearns*, 75 N.W. at 218). In other words, the Legislature’s

constitutional power to propose and submit constitutional amendments to the People includes the power to determine the question for the amendment.

Likewise, the Constitution does not prescribe the form or manner of submitting the *title* for the question of the amendment to the People. Contrary to the amici's suggestion, (Amici Br. at 12), there is nothing "materially different" about the title that should cause this Court to deviate from its reasoning in *Stearns* regarding the ballot question.

Minnesota has long considered ballot question titles to be vital aspect of the process of submitting constitutional amendments to the People for their approval or rejection. The title, which appears on the ballot immediately above the question, (*see* Supplemental Appendix at SA-7), provides voters with a succinct description of the question the Legislature has submitted to the People. Thus, together, the question and title make up the Legislature's submission, which the Constitution grants them sole authority to propose. Minn. Const. art. IX, § 1. Therefore, just as the Court expressly found that the Legislature's power to propose and submit constitutional amendments to the People includes the authority to write ballot *questions*, *Stearns*, 75 N.W. at 218, this Court should find that the Legislature's power to propose and submit constitutional amendments includes the power to determine the *titles* for those questions.

Nevertheless, Respondents argue that "[s]ection 204D.15 plainly empowers the Secretary to provide titles for all proposed constitutional ballot questions." (Resp'ts' Br. at 6.) But Respondents argue in a vacuum, failing to acknowledge that the Legislature is the source of that ministerial duty. Because the Legislature's authority is constitutional, it is superior to the Secretary's delegated, ministerial duty. Thus, the Legislature may

exercise its superior power and title amendments itself, instead of delegating that decision to the Secretary of State and the Attorney General under § 204D.15. The Legislature did so with respect to the Voter ID Amendment.

Additionally, the authority relied upon by Respondents for their statement, *Breza v. Kiffmeyer*, 723 N.W.2d 633, is not on point. In *Breza*, the Legislature had not provided a title for the constitutional amendment. Therefore, pursuant to § 204D.15, the Secretary of State provided a title. (See Appendix at A-15.) The Court's mere acknowledgement of the function of § 204D.15 does not support the conclusion that § 204D.15 "plainly empowers" Respondents to title amendments when the Legislature has already exercised its power to provide one.

Respondents' and their amici's argument evinces a belief that the ministerial privilege granted by § 204D.15 completely removes the Legislature's underlying constitutional authority to title ballot questions, unless and until the Legislature can convince the Governor to sign legislation modifying or repealing § 204D.15. (Resp'ts' Br. at 7-9; Amici Br. at 16-17.) Under its own weight, this argument collapses, as the Legislature itself cannot permanently give away or change the pure nature of its own constitutional power.³ According to Respondents, the Legislature that enacted § 204D.15

³ The Legislature retains the authority to exercise its constitutional authority to set the ballot title for any proposed constitutional amendment. If the Respondents insist that the only way the Legislature can do so is by passing a new bill to amend or repeal § 204D.15, subject to veto of the Governor, then § 204D.15 is an unconstitutional delegation of the exclusive authority the Constitution grants solely to the Legislature to propose constitutional amendments. However, this Court does not need to declare § 204D.15 unconstitutional in order to rule in favor of the Petitioners, especially because statutory canons of construction instruct that the Legislature intends to pass constitutional laws.

restricted the ability of the present Legislature (and any subsequent Legislature) to prescribe the form of any proposed constitutional amendment. (Resp'ts' Br. at 7-8.)⁴ But, this Court has held that 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). *Cf. State v. Philip Morris USA, Inc.*, 713 N.W.2d 350, 360 (Minn. 2007) (explaining the limits of the ability for legislatures to bind their successors in the contract context).

Accepting Respondents' argument also would mean that the Executive Branch could perpetuate the Legislature's delegation of power to the Respondents to title ballot questions by vetoing any bill aimed at modifying or repealing § 204D.15, or any bill that provided a title for a specific proposed amendment. This would result in a gross violation of the separation of powers. The Governor cannot deny or limit the Legislature's constitutional authority to propose constitutional amendments, which includes the process

Brayton v. Pawlenty, 781 N.W.2d 357, 364 (2010) (referencing Minn. Stat. § 645.17(3)). This Court can find that the Legislature retains the power to set the ballot titles for proposed constitutional amendments, and that it can exercise it whenever it proposes a constitutional amendment, as it did here and with the Legacy Amendment. The Governor cannot veto or approve the Legislature's exercise of that authority. When the Legislature chooses not to declare the ballot title, then the Secretary of State and the Attorney General are free to act within the delegated grant of authority under § 204D.15.

⁴ Also, Respondents' amici improperly rely on *Howard Jarvis Taxpayers Ass'n v. Bowen*, 192 Cal. App. 4th 110 (Cal. Ct. App. 2011). In that case, the Legislature had delegated authority to the Attorney General to provide ballot question titles, among other things, while at the same time enacting statutory barriers to its own ability to provide titles, as well as ballot labels and summaries. *Howard Jarvis*, 192 Cal. Appl. 4th at 127 ("The Legislature can take over those functions only if it obtains the approval of the electorate to do so prior to placement of the measure on the ballot."). No such barriers exist in this case to the Minnesota Legislature's power to provide a ballot question title as part of its plenary authority to propose amendments.

of conferring the proposals to the voters for their approval or rejection. The Legislature retains its power to propose amendments to the voters and to write the titles that will appear on the ballot, notwithstanding § 204D.15. That statute gives a reservoir of delegated authority to the Secretary and the Attorney General when the Legislature decides not to write the ballot title to a constitutional amendment question it proposes and submits to the People.

In other words, when the Legislature itself does not fully “propose” the matter to the people, it has designated the Secretary to complete the portions of the “proposal” that it did not complete. But in the instant case, the Legislature itself fully “proposed” the matter to the people, leaving the Secretary with no power to exercise. In and of itself, § 204D.15 is merely a vehicle for the exercise of power *if and when that power must necessarily be exercised*. See e.g., *Rukavina v. Pawlenty*, 684 N.W.2d 525, 535 (2004).⁵ When the Legislature has fully exercised its constitutional power and fully “proposed” the matter to the people, it is not necessary for the Secretary to exercise his § 204D.15 duties.

⁵ An analogous scheme to that at issue here was discussed in *Ruckavina v. Pawlenty*. In that case, the Court recognized that under Article XI, § 1 of the Minnesota Constitution, appropriation of money is the sole responsibility of the Legislature. *Id.* at 535. However, the Legislature had, by statute, “authorized the executive branch to avoid, or reduce, a budget shortfall in any given biennium.” *Id.* (citing Minn. Stat. 16A.152) The executive branch was given a power normally reserved to the Legislature—to adjust appropriations—but such a power was triggered *only* when an anticipated budget shortfall existed. *Id.* The executive branch cannot adjust appropriations absent that triggering event because that power is reserved to the Legislature by the constitution. The same is true here. The Secretary of State is authorized to provide a ballot question title *only* where the Legislature does not provide a title itself, as part of its constitutional power to propose amendments.

Further, Respondents and amici do not point to, and Petitioners have not found, any indication that the Legislature intended § 204D.15 to give the Secretary exclusive authority over choosing ballot titles. *See State v. American Family Mut. Ins. Co.*, 609 N.W. 2d 1, 7 (Minn. App. 2000) (“If the Legislature has intended that [the Executive official] have exclusive authority, it could have stated this explicitly.”)⁶

When interpreting a statute the court must “ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2008). The Court is to be guided by the presumption that “the legislature does not intend to violate the Constitution of the United States or of this state.” *Brayton*, 781 N.W.2d at 364 (citing Minn. Stat. § 645.17(3)).

In order for § 204D.15 to adhere to Minn. Const. art. IX, § 1, it must be read as a limited delegation of authority to the Secretary of State. The legislative intent and proper interpretation of § 204D.15 is to delegate to the executive branch the authority to title

⁶ The Respondents’ reliance on the Missouri Court of Appeals case, *Bergman v. Mills*, 988 S.W.2d 84 (Mo. App. 1999), is misguided. In Missouri, legislation is adopted one of three ways: (1) through the Legislature and then presented to the Governor; (2) through the Legislature and presented to the people; or (3) the people may prepare and place initiatives on the ballot through a specific ballot initiative process. Mo. Const. art. III, Sec. 31, 49-53. In the context of this constitutional scheme, the Missouri Legislature developed an extensive process by which various executive branch officials would prepare “true and impartial” official summaries, fiscal notes, fiscal note summaries, as well as ballot questions and titles for both legislatively referred legislation and popularly referred referenda. *See* Mo. Gen. Stat. § 116.160 et seq. Therefore, in 1999, when the Missouri Legislature presented *legislation* (not a constitutional amendment) to the people regarding concealed firearms, the Missouri Legislature was bound by this complex statutory scheme and various executive officials were required to prepare the notes, summaries, as well as the ballot question and title, all in a specific process designed to be an independent check on the Missouri legislative process. *Bergman*, 988 S.W.2d at 91. Unlike the Missouri Legislature, which had bound itself to a rather complex statutory scheme, the Minnesota Legislature’s power to propose constitutional amendments is plenary notwithstanding the fact that it has delegated the ability to prepare ballot titles in some cases, it has retained its inherent Constitutional authority to draft ballot titles.

untitled constitutional amendments. Contrary to the interpretation proposed by Respondents' amici, (Amici Br. at 15), this is the default rule because § 204D.15 extends legislative power that comes from Legislature's constitutional power to propose constitutional amendments, not from its power to enact legislation.

Moreover, the Legislature cannot surrender its right to make amendment proposals to the voters. If the Legislature intended for § 204D.15 to give the Secretary of State exclusive authority, such a grant would be unconstitutional, as the Legislature can no more permanently yield its constitutional duties as this Court can yield its function to the Governor.

Further, when the Legislature passes a provision specifically mandating how the ballot title must read, that action supersedes any role the Secretary may have absent the Legislature exercising its prerogative. Minn. Stat. § 645.26, subd. 1, provides that:

When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions be irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such general provision shall prevail.

Id. (emphasis added.); *see, e.g., Bonhiver v. Fugelso, Porter, Simich and Whiteman, Inc.*, 355 N.W.2d 138, 141 (Minn. 1984) (finding that a specific provision applies over a general provision.) Accordingly, the Legislature's act of entitling the Voter ID Amendment is a specific exercise of its constitutional authority, and if this exercise is somehow in conflict with § 204D.15, the provisions should be read together to give effect to both. The Legislature's title, therefore, must be given effect.

Respondents' amici have inverted the proper constitutional and statutory analysis in asking whether the "titling law" should be construed "so as to abrogate Respondents' legal duties." (Amici Br. at 15). The correct question is whether the Legislature has plenary control over proposing an amendment to the voters. Because proposing an amendment is completely the prerogative of the Legislature, as explained *supra* at I.A., and also done relatively infrequently, it is clear when the Legislature intends to provide the title and when it intends to delegate that authority. Amici admit that, from time to time, the Legislature has dictated terms that would otherwise be at the discretion of the Secretary, including the title of the Legacy Amendment. (Amici Br. at 11). Continuing that practice in titling the Voter ID Amendment is no "abrogation" of Respondents' "legal duties"; it is merely a valid exercise of the Legislature's constitutional authority in proposing amendments.

B. Respondents Have Acknowledged the Legislature's Ability to Title Constitutional Amendments.

In 2008, the Legislature (then controlled by the Democratic-Farmer-Labor party) provided a mandatory title for a constitutional amendment, Chapter 151, H.F. 2285, ch. 151, 85th Leg., Reg. Sess. (Minn. 2008) ("Legacy Amendment"). (*See* Appendix at A-12.) The very same Secretary involved here put that title on the ballot exactly as it was proposed by the Legislature. (*See* Petrs' Br. at 14; Supplemental Appendix at SA-7, 8.) Respondents argue the Secretary did so because the Governor did not veto the Legacy Amendment as he did with the Voter ID Amendment. (Resp'ts' Br. at 9 n.8.) But whether the Governor vetoed the Legacy Amendment is immaterial because the Secretary's

position is that § 204D.15 *requires* him to provide a title for all amendments. (*Id.* at 5.) Yet, Petitioners found no indication that the Secretary submitted the Legislature’s title to the Attorney General, or that the Attorney General approved it, prior to it being placed on the ballot. In fact, in response to counsel for Petitioners’ formal requests for documents pertaining to the Secretary and Attorney General’s actions concerning the title for the 2008 Legacy Amendment, the Secretary’s office explained, “The Office has no data that are responsive to your requests.”⁷ (Supplemental Appendix at SA-5.) The Secretary and Attorney General did not exercise the ministerial duty under § 204D.15 because by providing a title, the Legislature made such an exercise unnecessary.

II. The Governor’s Symbolic “Veto” Has No Legal Effect on a Proposed Constitutional Amendment.

Respondents and their amici improperly see legal significance in the Governor’s public relations campaign against the amendment, particularly his so-called “veto” of the Voter ID Amendment. (Resp’ts’ Br. at 2, 6; Amici Br. at 19-20). This argument is contradicted by the Governor himself, who understood that the so-called “veto” was symbolic, strictly for public relations, and has no force of law. The argument is also contradicted by the conclusion reached by the Legislature and the Revisor of Statutes.⁸

⁷ Petitioners made requests to the Secretary of State and Attorney General’s offices by fax and e-mail. (Supplemental Appendix at SA-3, 4.) The Secretary’s office responded via e-mail on July 19, (Supplemental Appendix at SA-5), after Petitioners had filed their Petition. The Attorney General’s office has not yet responded.

⁸ The Revisor of Statutes is a creature of Statute. The Revisor is responsible for drafting, publishing and distributing the Laws of Minnesota. See Minn. Stat. § 3C.01 et seq.

Nevertheless, Respondents and their amici point to the symbolic “veto” as the basis for their power to alter the title. (Resp’ts’ Br. at 8-9, Amici Br. at 17-20).⁹

Respondents fail to appreciate the distinctions between the Legislature’s roles in passing ordinary legislation versus proposing constitutional amendments. Practically speaking, with ordinary legislation, the Governor serves as a check on the Legislature’s actions by either signing or vetoing the legislation before it is enacted.

Here, the people of Minnesota must affirmatively approve the Voter ID Amendment before it becomes part of the Constitution—a process which, by design, is devoid of substantive involvement by the Executive Branch. The people, not the Governor, provide the check on the Legislature’s actions. Given that the Constitution vests the Legislature with the exclusive authority to propose amendments, the Executive Branch does not play a role in the process. Because of this, the House Clerks and Senate Registrar process proposed amendments differently than ordinary legislation. (Resp’ts’ Add. at 1) (clerk noting the bill was delivered to the Governor “for your information”)

Likewise, the House Chief Clerk, Senate Registrar, and Secretary process the Governor’s symbolic “veto” differently than they do a veto that carries the force of law. For example, in his April 9 letter to the Revisor of Statutes, the House Chief Clerk indicates that the Governor had vetoed and returned Chapter 167, H.F. 2738, yet he

⁹ Notably, Respondents and their amici fail to explain whether, if, as they say, the Governor’s “veto” nullifies the Legislature’s title and imposes upon the Secretary the duty to provide a title, the Governor signing the proposed amendment would then validate the Legislatively-given title and remove any authority under § 204D.15. Nor do they explain what effect a legislative override of the Governor’s veto—assuming that veto had legal effect—would have on the Secretary’s alleged *mandatory* duty to provide a title.

immediately instructs the Revisor to “deposit it with the Office of Secretary of State so that it may be properly placed on the November 2012 general election ballot.” (Resp’ts’. Add. at 7.) That is because he recognized the Governor’s “veto” has no legal effect on any portion of the Voter ID Amendment: “The Minnesota Constitution grants the power to propose constitutional amendments to the voters to a majority of the members of each house of the legislature with *no role for the governor.*” (*Id.*) (emphasis added). And he made clear that such power is “exclusive.” (*Id.*)

Indeed, in his letter to the Speaker of the House, dated April 9, 2011, the Governor conceded that he “do[es] not have the power to prevent this...Constitutional Amendment from appearing on the Minnesota ballot in November[.]” (Appendix at A-3.)¹⁰ Yet, the Governor stated he was “exercising my legal responsibility to either sign or veto the amendment.” (*Id.*) This “veto” appears nowhere in the official legislative record. *See* Office of the Revisor of Statutes, HF2738 Status in House for Legislative Session 87, https://www.revisor.mn.gov/revisor/pages/search_status/status_detail.php?b=House&f=HF2738&ssn=0&y=2011 (last visited July 23, 2012). Because it is not a part of the official record, the Legislature lacks a mechanism to have the “vetoed” amendment returned to

¹⁰ *See also*, Letter from Gov. Pawlenty to Speaker Sviggum (May 19, 2005) (Appendix at A-25) (explaining that his veto applies to the ordinary legislation but noting that the constitutional amendment provision “will go forward notwithstanding my veto because constitutional amendments are not subject to veto.”). The Governor’s veto of the ordinary legislation was noted in the record. Office of the Revisor of Statutes, *HF2461 Status in House for Legislative Session 84*, available at https://www.revisor.mn.gov/revisor/pages/search_status/status_detail.php?b=House&f=HF2461&ssn=0&y=2005 (last visited July 25, 2012). As is explained in Petitioners’ Brief (Petr’s Br. at 19-21) and contrary to amici’s assertions (Amici Br. at 1-2), the Governor’s “veto” of the Voter ID Amendment did not affect any “ordinary legislation” (as there was none in the bill). If it had, the clerk’s report would have referenced the veto as it did in 2005.

the Legislature in order to override the purported “veto,” even if it had meaning. Further, Section 2(b) of the Voter ID Amendment did not amend or repeal § 204D.15, but rather, it was an exercise of the Legislature’s constitutional authority to propose amendments.

Oddly enough, Respondents recognize that “[t]he title...was not even properly presented to the Governor by the Legislature for the...purpose of allowing the Governor to exercise his veto authority.” (Resp’ts’. Br. at 9 n.6.) That is because “proposed amendments to the constitution are not required, as a matter of law, to be presented to the governor[.]” (Appendix at A-21.) The Revisor of Statutes sent the Voter ID Amendment to the Governor simply as a courtesy. (Resp’ts’. Add. at 1.) The Revisor understood that the Governor could not veto and return the Amendment, instructing him to “deposit the original document with the Secretary of State” following his review. (*Id.*)

The Governor’s symbolic “veto” having no legal effect, the Voter ID Amendment should be submitted to the people in its entirety pursuant to Article IX, Sec. 1 of the Minnesota Constitution.

III. The Secretary’s Ballot Title Is Not Appropriate Because It Completely Omits Reference to Photographic Identification and Is Misleading.

Alternatively, even if the Secretary has the authority to provide a title, the title he has chosen, and that the Attorney General has approved, is not “appropriate.” *See* § 214D.15. Specifically, the Secretary’s title, “CHANGES TO IN-PERSON & ABSENTEE VOTING & VOTER REGISTRATION; PROVISIONAL BALLOTS” is

significantly misleading because it is completely void of any reference to photo identification, the Amendment's core purpose and effect.¹¹

Respondents and their amici ignore the Secretary's glaring omission. They believe the Secretary's vague reference to "CHANGES TO IN-PERSON & ABSENTEE VOTING," accurately reflects the Amendment's language because the Amendment, if adopted, will make "changes" to existing voting law. (Resp'ts' Br. at 13-14; Amici Br. at 5-6.) But how any voter could determine from that vague language what "changes" will be made Respondents and their amici do not explain—perhaps, because it cannot be explained. It is simply impossible for the voters to determine from the Secretary's title that the Amendment will require voters to present photo identification prior to voting. It is insufficient and inappropriate to omit reference to photo identification, especially when voters on both sides of the issue will naturally be looking for a title on Election Day that reflects the voter identification requirements that have dominated the debate surrounding the Amendment.

Respondents and their amici do not address Petitioners' argument that the Secretary's title also incorrectly indicates that "changes" will be made to "voting." (Pet'rs' Br. at 26.) In fact, Respondents all but concede the point, admitting, "changes would impact in-person voters." (Resp'ts' Br. at 13) (emphasis added). Respondents' are

¹¹ The Legislature did not provide a standard of proof in section 204D.15. This Court has held that a preponderance of the evidence standard is used when the Legislature does not provide a standard of proof. *Weiler v. Ritchie*, 788 N.W.2d 879, 883 (Minn. 2010). This Court has addressed this question; it need not look to Alaska, Maryland, or Montana as amici suggest. (Amici Br. at 4 n.8). Therefore, the reasonableness standard proposed by Respondents' amici, (Amici Br. at 3-4), is not applicable in this case.

correct; the Voter ID Amendment will impact *voters*—not voting—by making photo identification a *prerequisite* to voting. Chapter 167, H.F. 2738, § 1 (identification must be presented “before receiving a ballot”).

Lastly, Respondents attempt to justify the Secretary’s title by claiming that it is consistent with the Attorney General’s chosen statement of purpose and effect. But in fact, it is inconsistent with that statement, which, unlike the title, references “photo identification.” (*See* Resp’ts’ Add. at 13.) Moreover, the statement does *not* indicate, unlike the Secretary’s title, that the Amendment will unquestionably make changes to voter registration. Rather, it explains, “The effect of the amendment depends upon the future legislation which implements it, which must define:...(4) the manner in which election day registration is conducted.” (*Id.*) But even if the Secretary’s title was consistent with the statement, it is immaterial to the question of whether the title appropriately describes the *Voter ID Amendment*.

So, not only have Respondents acted without authority by defying the will of the Legislature and substituting their own ballot title, the substitute title is not appropriate. Not only is the title approved by the Legislature more appropriate in terms of the language used, (Pet’rs’ Br. at 26), but when the Legislature dictates a title, that title is the only one which is “appropriate,” and hence the only one which the Secretary should include on the ballot.

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 Voter ID Amendment, Chapter 167, House File 2738, including the title “Photo Identification Required for Voting;” and any and all other such relief as may be just and equitable.

This 26th 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 4,593 words. This brief was prepared using Microsoft Word 2010.

Dated: July 26th, 2012

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