

JUL 09 2012

No. A12-1149

A12-1258

State of Minnesota

FILED



# 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.*

## PETITION TO CORRECT ERROR OR OMISSION UNDER MINNESOTA STATUTE § 204B.44

Erick Kaardal (229647)\*\*  
MOHRMAN KAARDAL, P.A.  
33 South Sixth Street, Suite 4100  
Minneapolis MN 55402  
Telephone: (612) 341-1074  
Facsimile: (612) 341-1076  
kaardal@mklaw.com

Cleta Mitchell (D.C. 433386)^\*  
ACTRIGHT LEGAL FOUNDATION  
2029 K Street NW, Ste 300  
Washington, DC 20006  
Telephone (202) 683-9405  
Facsimile (888) 815-5641  
cmitchell@actright.com

Austin R. Nimocks (Tex. 24002695)\*  
ALLIANCE DEFENDING FREEDOM  
2029 K Street NW, Suite 300  
Washington, DC 20006  
Telephone: (202) 393-8690  
Facsimile: (480) 444-0028  
animocks@telladf.org

**COUNSEL FOR PETITIONERS**  
*\*Pro Hac Vice Motions Pending*  
*^ Lead Counsel*  
*\*\* Local Counsel*  
*(Additional Counsel on Inside Cover)*

The Petitioners, 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 (“MFM”), an association of individuals, and a registered ballot committee (collectively “Petitioners”), through their counsel, and for their Petition seek relief under Minnesota Statute § 204B.44 (Errors or Omissions) against the Respondents, Mark Ritchie, the Minnesota Secretary of State (“Secretary”) and Lori Swanson, the Minnesota Attorney General (“Attorney General”), hereby allege and state the following:

### INTRODUCTION

1. Pursuant to its authority under Article IX, section 1 of the Minnesota Constitution, the Minnesota Legislature passed a proposed constitutional amendment to be referred to the people to adopt or reject in the November 2012 general election. If adopted, the Minnesota Constitution will provide that “only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota” (“the Marriage Amendment”). *See* S.F. 1308, ch. 88 §§ 1-2, 87th Leg., Reg. Sess. (Minn. 2011) (“S.F. 1308”) (Attachment A). The political and legal battles surrounding the Marriage Amendment have been numerous. A majority of both houses of the duly-elected members of the Minnesota Legislature have acted in accordance with Article IX, section 1 and all other authority provided to it under the Minnesota Constitution to refer the

Marriage Amendment to the people for their decision. Despite the actions of the Legislature, officers of the Executive Branch have taken various ultra vires actions to thwart the constitutional authority of the Legislature to refer this constitutional amendment to Minnesota citizens. The Governor has attempted to interfere with the referendum process by claiming “veto” authority over the referred Marriage Amendment. (Letter of Governor Mark Dayton to Senate President Michelle Fischbach (May 25, 2011) (Attachment B).) And most recently, on June 28, 2012, the Secretary, who is charged with the ministerial duties of administering elections in Minnesota, announced his intent to “substitute” the ballot title of the Marriage Amendment adopted by the Legislature for a title of his own creation, ignoring the title provided by the Legislature. In attempting this action, the Secretary is acting in a manner not authorized by law and seeks to interfere with the exclusive authority and power of the Legislative Branch of Government. Petitioners seek this Court to determine that the Secretary has committed errors or omissions under Minnesota Statute § 204B.44 in proposing to the Attorney General: that (1) the Legislature’s ballot title for the Marriage Amendment should or can be altered or changed, and (2) he may omit the Legislature’s ballot title and replace it with another of his sole creation. Petitioners seek relief in this Court in the form of an Order requiring the Secretary to prepare ballots for the Marriage Amendment containing the title adopted by the Legislature, and enjoin the Secretary, Attorney General, and all other persons who are agents and representatives of the Executive Branch of Government

from further interfering with or altering to the proposed amendment approved by the Legislature.

## **PARTIES**

2. Petitioner Senator Warren Limmer brings this Petition in his capacity as a duly elected Member of the Minnesota state Senate having served as chief legislative sponsor of the Marriage Amendment, and author of the ballot title of the Marriage Amendment adopted by the Legislature, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

3. Petitioner Representative Steve Gottwalt brings this Petition in his capacity as a duly elected Member of the Minnesota state House of Representatives having served as an author of the Marriage Amendment, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

4. Petitioner Senator Dan Hall brings this Petition in his capacity as a duly elected Member of the Minnesota state Senate having served as an author of the Marriage Amendment, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

5. Petitioner Representative Steve Drazkowski brings this Petition in his capacity as a duly elected Member of the Minnesota state House of Representatives having served as an author of the Marriage Amendment, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

6. Petitioner Senator Sean Nienow brings this Petition in his capacity as a duly elected Member of the Minnesota state Senate having served as an author of the Marriage Amendment, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

7. Petitioner Senator Paul Gazelka brings this Petition in his capacity as a duly elected Member of the Minnesota state Senate, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

8. Petitioner Senator Julianne Ortman brings this Petition in her capacity as a duly elected Member of the Minnesota state Senate, and in her individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

9. Petitioner Representative Peggy Scott brings this Petition in her capacity as a duly elected Member of the Minnesota state House of Representatives having served as an author of the Marriage Amendment, and in her individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

10. Petitioner Senator Michelle Benson brings this Petition in her capacity as a duly elected Member of the Minnesota state Senate, and in her individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

11. Petitioner Representative Ernie Leidiger brings this Petition in his capacity as a duly elected Member of the Minnesota state House of Representatives, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

12. Petitioner Representative Bob Dettmer brings this Petition in his capacity as a duly elected Member of the Minnesota state House of Representatives having served as an author of the Marriage Amendment, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

13. Petitioner Representative Glenn Gruenhagen brings this Petition in his capacity as a duly elected Member of the Minnesota state House of Representatives having served as an author of the Marriage Amendment, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

14. Petitioner Representative Bob Gunther brings this Petition in his capacity as a duly elected Member of the Minnesota state House of Representatives, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

15. Petitioner Representative Joyce Peppin brings this Petition in her capacity as a duly elected Member of the Minnesota state House of Representatives, and in her individual capacity as a Minnesota resident, and registered voter in the State of Minnesota.

16. Petitioner Representative Mike Benson brings this Petition in his capacity as a duly elected Member of the Minnesota state House of Representatives having served as an author of the Marriage Amendment, and in his individual capacity as a Minnesota resident, and registered voter in the State of Minnesota

17. Petitioner John Helmberger is an individual Minnesota resident and registered voter, and serves as Chairman and Treasurer of Petitioner MFM. Petitioner Helmberger brings this action in his individual capacity as well as representative of MFM.

18. Petitioner Minnesota for Marriage ([www.MinnesotaForMarriage.com](http://www.MinnesotaForMarriage.com)) is the ballot issue committee, registered with the Minnesota Campaign Finance and Public Disclosure Board pursuant to Minn. Stat. 10A.14, to promote passage of the Marriage Amendment, and is responsible for reporting the receipts and expenditures related to the campaign in support of the Marriage Amendment. Its principal place of business is in the State of Minnesota. Petitioner MFM is a broad-based association of tens of thousands of Minnesota citizens representing the Democrat-Farmer-Labor and Republican Party, as well as Independents and people of virtually every faith, and no faith, who support the Amendment. MFM is supported by a broad range of individual Minnesotans registered to vote and Petitioner MFM brings this action on behalf of and represents the interests of those individuals. MFM is the leading organization urging adoption of the Marriage Amendment. In that regard, MFM has raised in excess of \$1.5 million from citizens and groups to mount its campaign, has assembled tens of thousands of volunteers, has communicated extensively with the media and the public and is devoting all of its financial and human resources to urge voter adoption of the Marriage Amendment.

19. Respondent Mark Ritchie is the Minnesota Secretary of State. The Secretary is the chief elections official in Minnesota and is responsible for administering

Minnesota's election laws and overseeing the preparation of election ballots. In that capacity, he is responsible for placing an "appropriate title" on each proposed amendment. Minn. Stat. § 204D.15(1). He is sued in his official capacity. The principal place of business of the Elections and Administration section of the Secretary's office is 180 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, MN 55155.

20. Respondent Lori Swanson is the Minnesota Attorney General. Under Minnesota Statutes § 204D.15(1), the Attorney General is charged with approving the appropriate title of a constitutional amendment. The Attorney General is the chief law officer of the state. She "shall appear for the state in all causes in the supreme and federal courts wherein the state is directly interested[.]" Minn. Stat. 8.01. And she "may institute, conduct, and maintain all such actions and proceedings as [s]he deems necessary for the enforcement of the laws of this state, the preservation of order, and the protection of legal right." *Head v. Special School District No. 1*, 288 Minn. 496, 503, 182 N.W.2d 887, 892 (1970), *overruled on other grounds*, *Nyhus v. Civil Service Bd.*, 305 Minn. 184, 232 N.W.2d 779 (1975). She is sued in her official capacity. The principal place of business of the Minnesota Attorney General's Office is 75 Rev. Dr. Martin Luther King, Jr. Boulevard, Saint Paul, Minnesota.

## JURISDICTION AND VENUE

21. This Court has original, personal and subject matter jurisdiction as well as venue under Minn. Stat. § 204B.44(a), (b) and (d) because this is a civil action brought to correct:

- (a) An error or omission in the placement or printing of the name or description of a question on an official ballot as provided in Minn. Stat. § 204B.44(a);
- (b) Any other error in preparing or printing any official ballot as provided in Minn. Stat. § 204B.44(b); and
- (c) Any wrongful act, omission, or error of the Respondents who are charged with duties concerning an election as provided in Minn. Stat. § 204B.44(d).

## FACTS

22. The Minnesota Legislature is empowered by the Article IX, section 1 of the Minnesota Constitution to propose amendments to the Minnesota Constitution to be “submitted to the people for their approval or rejection at a general election.” Minn. Const. art. IX, § 1. It did just that in passing the Marriage Amendment.

23. Once the Legislature passes a proposed amendment under its Article IX, section 1 power, the people of Minnesota, including the individual Petitioners, have a constitutional right to approve or reject the amendment as proposed by the Legislature.

24. On May 11, 2011 the 87th Minnesota Senate passed Chapter 88, Senate File 1308, 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.<sup>1</sup> The 87th Minnesota House passed the same on May 21, 2011. It was filed with

---

<sup>1</sup> The entire text of Chapter 88, Senate File 1308 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.

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.”

the Secretary on May 25, 2011 to be placed on the ballot at the November 2012 general election for voter approval.

25. In passing the Marriage Amendment, the Legislature specified that the ballot title shall be the “Recognition of Marriage Solely Between One Man and One Woman.” Chapter 88, Senate File 1308 § 2(b).

26. More than 13 months later, on June 15, 2012, the Secretary sent a letter to Attorney General Lori Swanson explaining that he had chosen a title and that he was submitting his new title—“LIMITING THE STATUS OF MARRIAGE TO OPPOSITE SEX COUPLES”—to her for approval. (Letter of Secretary of State Mark Ritchie to Attorney General Lori Swanson (June 15, 2012) (Attachment C).)

27. Four days later, on June 19, 2012, Attorney General Swanson responded by letter, writing with approval of the Secretary’s proposed substituted 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) (Attachment D) (citing Op. Atty. Gen. 213-C (March 9, 1994) (Attachment F).) The Attorney General did not cite to any authority for the proposition that a legislative act proposing an amendment to the Minnesota Constitution contains “matters of ordinary legislation” that are materially different from the legislative act required to amend the Minnesota Constitution.

28. The Secretary's letter and the Attorney General's response became public almost two weeks later, on June 28, 2012, less than two months before the ballots are printed. (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) (Attachment E).) 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. The legislative authority extends to and includes the power to write the language of such referred amendments in their entirety, including the ballot title of referred amendments, without the interference of the Executive Officers of the State of Minnesota.

29. There is no genuine dispute as to any material fact relating to this matter.

#### **CAUSE OF ACTION**

30. Petitioners incorporate all previous allegations contained in this Petition as if set forth herein.

31. The process for amending the Minnesota Constitution is set forth in Article IX, section 1 of the Minnesota Constitution, which vests in the Legislature and the people the sole authority to amend the State Constitution. The Legislature acted in accordance with its constitutional authority when it passed Chapter 88, Senate File 1308—the Marriage Amendment. The Constitution vests the Legislature with the sole prerogative to

propose constitutional amendments and provides that proposed amendments are to be submitted to the people for approval at the next general election. The Minnesota Constitution vests no authority in the Executive Branch officers of the State to deny, interfere with or obstruct the power of the Legislature to propose constitutional amendments, or with the power of the citizens to approve or reject proposed amendments. The Legislature has conformed to the requirements of Article IX, section 1 of the Minnesota Constitution in adopting the Marriage Amendment, having approved the amendment in its entirety, including the question and title to appear on the 2012 General Election ballot.

32. Specifically, the Marriage Amendment approved and referred by the Legislature is to appear on the ballot with the title: "Recognition of Marriage Solely Between One Man and One Woman." Ch. 88, SF 1308 § 2(b).

33. The Secretary disregarded this title, choosing instead to write his own title: "LIMITING THE STATUS OF MARRIAGE TO OPPOSITE SEX COUPLES." The Attorney General erroneously approved this title. The actions of the Secretary and Attorney General are unlawful and exceed their constitutional authority.

34. Under Minnesota Statute § 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. Minn. Stat. § 204B.44.

35. Therefore, the Petitioners petition the Court to correct all errors or omissions the Secretary has committed by substituting a proposed ballot title for the Marriage Amendment provided for and approved by the Legislature. Specifically, it is unlawful error for the Secretary to utilize, and the Attorney General to approve, the title “LIMITING THE STATUS OF MARRIAGE TO OPPOSITE SEX COUPLES” and an unlawful omission for the Secretary to fail to include on the ballot the duly enacted ballot title “Recognition of Marriage Solely Between One Man and One Woman” as instructed in Chapter 88, Senate File 1308.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioners request this Court for 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, including awarding Petitioners’ attorneys fees, expenses, and costs to the extent allowed by law.

Dated this 9th day of July, 2012.

Respectfully submitted,



Erick Kaardal (229647)\*\*  
MOHRMAN KAARDAL, P.A.  
33 South Sixth Street, Suite 4100  
Minneapolis MN 55402  
Telephone: (612) 341-1074  
Facsimile: (612) 341-1076  
kaardal@mklaw.com  
\*\**Local Counsel*

Austin R. Nimocks (Tex. 24002695)\*  
ALLIANCE DEFENDING FREEDOM  
2029 K Street NW, Suite 300  
Washington, DC 20006  
Telephone: (202) 393-8690  
Facsimile: (480) 444-0028  
animocks@telladf.org

\* *Pro Hac Vice Pending*

Cleta Mitchell (D.C. 433386)^\*  
ACTRIGHT LEGAL FOUNDATION  
2029 K Street NW, Ste 300  
Washington, DC 20006  
Telephone (202) 683-9405  
Facsimile (888) 815-5641  
cmitchell@actright.com

Kaylan L. Phillips (Ind. 30405-84)\*  
Eric C. Bohnet (Ind. 24761-84)\*  
Zachary S. Kester (Ind. 28630-49)\*  
Noel H. Johnson (Wisc. 1068004)\*  
ACTRIGHT LEGAL FOUNDATION  
209 West Main Street  
Plainfield, Indiana 46168  
Telephone (202) 683-9405  
Facsimile (888) 815-5641  
kphillips@actright.com  
ebohnet@actright.com  
zkester@actright.com  
njohnson@actright.com

**COUNSEL FOR PETITIONERS**

*\*Pro Hac Vice Motions Pending*

*^ Lead Counsel*

*\*\* Local Counsel*