

No. A12-1149

A12-1258

STATE OF MINNESOTA
IN 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.

RESPONDENTS' BRIEF AND ADDENDUM

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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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LEGAL ISSUES

- I. Whether the Secretary of State has authority pursuant to Minn. Stat. § 204D.15, subd. 1 to provide a title for the ballot question at issue.

Apposite Authorities:

Minn. Const. art. IV, § 23

Minn. Const. art. IX, § 1

Minn. Stat. § 204D.15 (2010)

Breza v. Kiffmeyer, 723 N.W.2d 633 (Minn. 2006)

Bergman v. M. Mills, 988 S.W.2d 84 (Mo. Ct. App. 1999)

I.N.S. v. Chadha, 462 U.S. 979 (1983)

- II. Whether the Secretary provided an “appropriate” title for the ballot question.

Apposite Authorities:

Minn. Stat. § 3.21 (2010)

Minn. Stat. § 204D.15 (2010)

Breza v. Kiffmeyer, 723 N.W.2d 633 (Minn. 2006)

STATEMENT OF THE CASE

Since 1919, Minnesota legislation has explicitly granted to the Secretary of State the responsibility to designate the title on the general election ballot for a proposed constitutional amendment. The current law, Minn. Stat. § 204D.15, subd. 1 (2010), directing the Secretary to “provide an appropriate title,” was adopted in 1981 and remains in full force and effect. In addition, the Governor vetoed legislation which included a different title than the one provided by the Secretary for the subject constitutional amendment. The Legislature did not override the Governor’s veto. The title duly provided by the Secretary pursuant to applicable law should be given effect by the Court.

STATEMENT OF FACTS

On May 21, 2011, the Minnesota Legislature passed a bill to propose a constitutional amendment for the electorate to consider at the 2012 general election. 2011 Minn. Laws ch. 88 (“Chapter 88”). The bill contained the text of the proposed constitutional amendment and the question that would appear on the ballot, as well as a title for the question. *Id.* Chapter 88 was presented by the Legislature to Governor Dayton on May 23, 2011. (Respondents’ Addendum “R. Add.” 1.) The Governor timely vetoed and returned the bill to the Minnesota Senate (the originating body) on May 25, 2011. The veto was symbolic with respect to the proposed constitutional amendment and the ballot question. (R. Add. 2-3.)¹ The Legislature did not override or attempt to override the Governor’s veto of the title.

¹ See *Breza v. Kiffmeyer*, 723 N.W.2d 633, 634 n.2 (Minn. 2006); Op. Atty. Gen. 213-C (March 9, 1994) (R. Add. 4-6).

By letter dated June 15, 2012, the Secretary of State notified the Attorney General that he provided a title for the ballot question as required by Minn. Stat. § 204D.15. (R. Add. 7.) The title provided by the Secretary of State is: “LIMITING THE STATUS OF MARRIAGE TO OPPOSITE SEX COUPLES.” *Id.* By letter dated June 19, 2012, the Attorney General approved this title pursuant Section 204D.15. (R. Add. 8-9.)

ARGUMENT

I. THE SECRETARY OF STATE IS MANDATED TO PROVIDE BALLOT QUESTION TITLES FOR PROPOSED CONSTITUTIONAL AMENDMENTS.

Article IX, § 1 of the Minnesota Constitution reads in relevant part as follows:

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 has been part of the Minnesota Constitution since its adoption in 1857. Minn. Const. art. IX, § 1 (1857). It is implemented as provided in state law. *See, e.g., State v. Randolph*, 800 N.W.2d 150, 159 (Minn. 2011) (recognizing the legislative duty to adequately implement through legislation the constitutional right to appellate counsel in misdemeanor appeals); *Electric Short Line Terminal Co. v. City of Minneapolis*, 64 N.W.2d 149, 152 (Minn. 1954) (recognizing that because the Takings Clause of the Minnesota Constitution contains no express provision as to the mode in which compensation is to be determined, it is “presumed that the framers of the constitution intended to leave that subject to the discretion of the legislature, to be regulated in such manner as might be prescribed by law”).

Beginning in 1887, various laws have been enacted to implement Article IX. *See, e.g.*, 1887 Minn. Laws ch. 157. In 1919, the Legislature passed a statute which required the Secretary of State to “apply an appropriate designation or title” on the ballot for each proposed constitutional amendment submitted to the voters. 1919 Minn. Laws ch. 76, § 1 (codified as Minn. Gen. Stat. ch. 6, § 277 (1923)). (R. Add. 10-11.) The Legislature recodified the statute in 1939 (1939 Minn. Laws ch. 345 pt. 6 ch. 7, § 3, codified as Minn. Stat § 205.62 (1941)), in 1959 (1959 Minn. Laws ch. 675, art. 4, § 28, codified as Minn. Stat. § 203.28, subd. 2 (1961)), and in 1975 (1975 Minn. Laws ch. 5, § 53, codified as Minn. Stat. § 203A.31, subd. 2 (Supp. 1975)).

A. The Secretary Was Required To Provide The Title Pursuant To Minn. Stat. § 204D.15.

In 1981, the Legislature reorganized Minnesota’s election laws and the bill was signed by then-Governor Quie. *See* 1981 Minn. Laws ch. 29, pp. 38-39, 153. The reorganized laws included procedures for presenting a proposed change to the State Constitution on the general election ballot. *See, e.g., id.* art. VI, §§ 11, 15 (codified as Minn. Stat. §§ 204D.11, 204D.15). *See also Clark v. Pawlenty*, 755 N.W.2d 293, 306 (Minn. 2008) (noting the legislative recodification of Minnesota election law in 1981).

Pertinent to this case, Minn. Stat. § 204D.11, subd. 2 provides that “[a]mendments to the state constitution shall be placed on a ballot printed on pink paper which shall be known as the ‘pink ballot.’” Minn. Stat. § 204D.15, subd. 1 is entitled “**Titles for constitutional amendments,**” and provides in relevant part as follows:

The *secretary of state* shall provide an *appropriate title* for each question printed on the pink ballot. The title shall be approved by the attorney

general, and shall consist of not more than one printed line above the question to which it refers.

(Emphasis added).

Section 204D.15 plainly empowers the Secretary to provide titles for all proposed constitutional ballot questions. *See, e.g., Breza*, 723 N.W.2d at 635 n.3 (“By statute, the secretary of state must provide an appropriate title for each question presented on the ballot for constitutional amendments, and the title must be approved by the attorney general.”). Accordingly, the Secretary of State was authorized, and indeed required, to provide the title.

B. Section 204D.15 Remains In Full Force And Effect And Petitioners’ Argument To The Contrary Violates The Separation Of Powers Doctrine.

An existing statute, including Section 204D.15, can only be amended or repealed by enactment of a new law. *See, e.g., Clinton v. City of New York*, 524 U.S. 417, 428 n.12 (1998) (noting that a statute can be amended or repealed only through the constitutional process of enacting a new statute); *I.N.S. v. Chadha*, 462 U.S. 919, 954 (1983) (recognizing that “[a]mendment or repeal of statutes, no less than enactment,” must conform with constitutional lawmaking procedures). This fundamental principle reflects the balance struck between the legislative and executive branches of government for the making of laws. *See, e.g., Duxbury v. Donovan*, 138 N.W.2d 692, 696 (Minn. 1965) (noting that Governor’s veto authority is designed “to maintain the separation of the branches of government.”).

Chapter 88 did not purport to amend or repeal section 204D.15; rather, it acknowledged the “title [was] required under Minnesota Statutes, section 204D.15, subdivision 1”, 2011 Minn. Laws ch. 88, § 2(b), the law mandating the Secretary to provide the title. In any event, Governor Dayton vetoed the bill on May 25, 2011. (R. Add. 2.) Thus, to the extent the Legislature’s reference to a title is argued to be an amendment or repeal of Section 204D.15, the Governor’s veto of the bill defeats any such argument. *See* Minn. Const. art. IV, § 23 (granting Governor veto authority).²

In other words, Section 204D.15 was duly enacted in 1981 as part of the constitutionally required lawmaking process, *i.e.*, passage of a bill by the Legislature and approval by then-Governor Quie. 1981 Minn. Laws ch. 29, art. VI, § 15 & p. 153. As with all existing statutes, the Legislature must follow the same lawmaking process to amend or repeal Section 204D.15, including the Governor’s right to veto any such law. *See supra* at 5. Therefore, contrary to Petitioners’ argument, the Legislature cannot unilaterally amend or repeal Section 204D.15 because it would violate separation of powers by usurping the Governor’s veto authority. *See supra* at 5-6 & n.2. The Legislature is bound in this case by the 1981 enactment of section 204D.15.

² Among the most important of constitutional checks is the executive veto, which provides an important restraint upon the legislature’s ability to enact, amend or repeal laws. *Duxbury*, 138 N.W.2d at 696. The Minnesota Constitution provides that the Governor may veto a bill by returning it to the house in which it originated within three days of its presentment to the Governor. Minn. Const. art. IV, § 23. In this case, the bill was presented to the Governor on May 23, 2011. (R. Add. 1.) The Governor returned the vetoed bill to the Senate, the originating body, on May 25, 2011. (R. Add. 2.) Moreover, the fact that the Governor referred to his veto as “symbolic” or that the Revisor failed to include the veto in the official record does not change the undisputed fact that the Governor vetoed the bill.

A similar conclusion was reached in *Bergman v. M. Mills*, 988 S.W.2d 84 (Mo. Ct. App. 1999). In that case, the Missouri General Assembly passed a bill directing that a referendum be submitted to the voters concerning the right of citizens to carry concealed firearms. *Id.* at 87. The General Assembly’s bill included a “ballot title[]” for the referendum. *Id.* Several parties challenged the title on the ground that pre-existing state statutes assigned responsibility for providing a ballot title to executive branch officials. *Id.* at 90. The issue before the Missouri Court of Appeals was whether “the legislature has limited its own ability to prescribe ballot language without first amending or repealing those [pre-existing] statutes in a manner permitted by the Constitution.” *Id.* at 89.

After noting that separation of powers “prevents abuses which can flow from centralization of power”, the court held that:

The legislature is strictly confined by . . . the Missouri Constitution to *enacting laws and it is not permitted to execute laws already enacted. . . . [T]he legislature may not control, supervise or manage the execution of law except by the language contained in the law itself.* There is nothing in Chapter 116 that expressly reserves unto the General Assembly the authority to prepare official ballot summaries when it desires to do so, nor is there any implied reservation of such power. *Accordingly, the legislature has limited its ability to prescribe ballot language . . . and it cannot now purport to control the execution of the law. . . .*

Id. at 90-91 (emphasis added). *See also id.* at 90 (concluding that legislature did not “somehow retain[] an inherent authority to draft official ballot summaries itself whenever it chooses to do so.”).

Likewise, the Minnesota Legislature’s attempt to provide a title to the proposed constitutional amendment is without legal effect. By enacting Minn. Stat. § 204D.15, the

Legislature required the Secretary of State to provide the title. *See State v. King*, 257 N.W.2d 693, 697 (Minn. 1977) (recognizing that Legislature can delegate discretionary authority to executive branch, and stating that the court “view[s] legislative delegations liberally”). Therefore, just as in *Bergman*, the Legislature is bound by its statutory delegation of authority to the Secretary of State and “it cannot now purport to control the execution of the law[.]” *Bergman*, 988 S.W.2d at 91. Since the Secretary of State followed proper procedure to provide a ballot question title under Minn. Stat. § 204D.15, the title selected by the Secretary should appear on the ballot.

II. THE SECRETARY PROVIDED AN “APPROPRIATE” TITLE.

The title provided by the Secretary of State accurately refers to the constitutional amendment at issue. The proposed amendment reads: “Only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota.” 2011 Minn. Laws ch. 88, § 1. Pursuant to his authority under section 204D.15, the Secretary of State provided the following title: “LIMITING THE STATUS OF MARRIAGE TO OPPOSITE SEX COUPLES.” (R. Add. 7.) The amendment’s use of the word “only” plainly intends a limitation. *American Heritage College Dictionary*, p. 954 (3d ed. 1997) (defining “only” to mean “alone in kind or class; sole” and “exclusively”). Should the amendment pass, it will have the effect of limiting-- indeed precluding-- any future Minnesota legislature from expanding marriage beyond opposite-sex couples.

The Secretary’s title is also consistent with the statement of purpose and effect provided by the Attorney General. *See* Minn. Stat. § 3.21 (requiring attorney general to

furnish to the secretary of state a statement of purpose and effect of all proposed constitutional amendments). The statement of purpose and effect states as follows:

Minnesota Statutes currently prohibit marriages between individuals of the same sex. *See, e.g.*, Minn. Stat. § 517.03. The purpose and effect of the amendment is to incorporate this prohibition into the Minnesota Constitution.

(R. Add. 12.) The Secretary's title accurately reflects the "prohibition" that will be incorporated into the state constitution if the amendment passes. *Cf. Breza*, 723 N.W.2d at 636 (stating ballot question is proper unless it is "so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit a law to popular vote.").

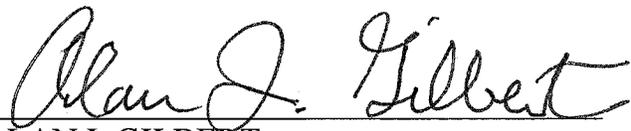
CONCLUSION

For the above reasons, Respondents respectfully request that the Petition be denied.

Dated: July 16, 2012

Respectfully submitted,

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