STATE OF MINNESOTA

IN SUPREME COURT

A06-1871

OFFICE OF
APPELLATE COURTS

OCT 13 2006

FILED

Tim Breza, Larry Buboltz, Dan Dorman, Morrie Lanning, Michael Lang, Keith Langseth, Jerry Miller, H. Dan Ness, Tom Rukavina, Kathy Serva, Eric Sorenson, Mark Voxland, Lauri Winterfeldt-Shanks,

Petitioners,

vs.

Mary Kiffmeyer, Secretary of State,

Respondent

RESPONSE OF SECRETARY OF STATE MARY KIFFMEYER TO PETITION PURSUANT TO MINN. STAT. § 204B.44

TO: The Supreme Court of the State of Minnesota:

INTRODUCTION

Respondent Minnesota Secretary of State, Mary Kiffmeyer (the Secretary), submits this memorandum in response to the Petition submitted in the above-captioned matter. As the State's chief election officer, charged with impartial performance of largely ministerial duties in connection with the upcoming general election, the Secretary, in her official capacity, neither supports nor opposes adoption of the constitutional amendment that is the subject of this action The Secretary does, however, have an interest in assuring the orderly conduct of elections and protecting the rights of Minnesota citizens to vote as provided by the Minnesota Constitution and Statutes. To that end, she has performed the duties of her office pertaining to the proposed constitutional amendment in a timely manner and, in all respects, in accordance with the requirements and directions provided by the constitution and the Legislature. The Petition submitted in this case identifies no error, omission or other wrongful act committed by the

Secretary pertaining to the ballot question. Consequently, it is the position of the Secretary that the Petition should be denied.

BACKGROUND AND STATEMENT OF FACTS

In 2005, in accordance with Minn. Const. art IX, § 1, a majority of each house of the Minnesota Legislature approved as part of an omnibus transportation bill, a proposal to amend the Minnesota Constitution to provide for dedication of certain tax revenues to be used for transportation purposes commencing with the fiscal year beginning July 1, 2007. Chapter 88, 2005 Minn. Laws, 459, § 9.[1] Under the proposed amendment, two sections would be added to article XIV of the Constitution. Under proposed section 12, a portion of the proceeds of sales taxes on motor vehicle sales would be dedicated to transportation purposes. That portion would increase over a period of five fiscal years and, after June 30, 2011, all of the proceeds would go to transportation. *Id.*

Proposed section 13 would provide for allocation of the dedicated funds as follows:

> Section 13. The revenue apportioned in section 12 must be allocated for the following transportation purposes: not more than 60 percent must be deposited in the highway user tax distribution fund, and not less than 40 percent must be deposited in a fund dedicated solely to public transit assistance as defined by law.

Id.

The legislature also specified the exact question that must appear on the ballot in the 2005 general election as follows:

> "Shall the Minnesota Constitution be amended to dedicate revenue from a tax on the sale of new and used motor vehicles over a five-year period, so that after June 30, 2011, all of the revenue is dedicated at least 40 percent for public transit assistance and not more than 60 percent for highway purposes?

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[1] While the Governor vetoed the transportation bill itself, the veto did not negate the proposed Constitutional amendment. *See, e.g.*, Op. Atty. Gen. 213C, March 9, 1994, Petitioners' Appendix (P. App.) at 32-35.

Yes . . .
No . . . . .“”

Id., § 10.

As required by Minn. Stat. § 3.21, the Office of the Attorney General on July 3, 2006 transmitted to the Secretary a "Statement of Purpose and Effect" addressing the proposed amendment. *See* Affidavit of Mike McCarthy, dated October 12, 2006 submitted herewith (McCarthy Aff.), ¶ 4, and Attachment A.

On July 12, 2006, in accordance with Minn. Stat. § 204D.15, subd. 1, the Secretary proposed a title for the ballot question, which was approved by the Attorney General, as follows:

> Phased-in Dedication of Motor Vehicle Sales Tax to Highways and Public Transit.

McCarthy Aff ¶¶ 5, 6, Attachments B and C.

On September 11, 2006, the Secretary proposed a slight modification of the title, which was also approved by the Attorney General's Office:

> Phased in Dedication of the Motor Vehicle Sales Tax to Highways and Public Transit.

McCarthy Aff. ¶¶ 7, 8, Attachments D and E

On September 20, 2006, as required by Minn. Stat. § 204D.15, subd. 2 the Secretary's office electronically transmitted to all county auditors a sample of the question as it will appear on the November 7, 2006 ballot. McCarthy Aff. ¶ 9, Attachment F.

On October 4, 2006, the Petitioners filed the Petition pursuant to Minn. Stat. § 204B.44 asking the Court to enjoin altogether the election on the amendment on the grounds that they find the ballot question to be "confusing." The Petitioners' claim is apparently based upon the notion that, instead of stating that "not more than 60 percent" of the dedicated proceeds may be allocated to highway spending the ballot question should have explained that the Legislature

could allocate anywhere from zero to 60 percent of the dedicated motor vehicle sales tax (MVST) funds to highway funding. According to Petitioners, for the Legislature to have constitutional authority to allocate all of the MVST proceeds to transit and none to highway construction, would constitute "a radical and permanent change that needs to be clearly spelled out to the voters." Petition at 13.

In fact, however, that constitutional authority would not arise from the proposed amendment, but has always existed and will continue to exist regardless of whether the amendment is approved. As Petitioners themselves point out, the Legislature is free, under Minnesota's current constitution, to choose not to allocate *any* MVST proceeds to highways, and has in fact done so in the past. *See* Petition at 8-10, Appendix at 3-11

ARGUMENT

I. THE DOCTRINE OF LACHES APPLIES TO THIS CASE.

The Court has asked the parties to address whether the doctrine of laches should apply to the Petition in this case. That question should be answered in the affirmative.

The Court has repeatedly noted that:

> [I]n the election context we especially consider the application of laches, an equitable doctrine applied to "prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay." *Aronvich v. Levy,* 238 Minn. 237, 242, 56 N.W.2d 570, 574 (1953). The doctrine has particular application in challenges to ballot preparation and election proceedings. *Peterson v. Stafford,* 490 N.W.2d 418, 419 (Minn. 1992). In considering laches, we have held that the practical question in each case is whether there has been such an unreasonable delay in asserting a known right, resulting in prejudice to others, as would make it inequitable to grant the relief prayed for. *Fetsch v. Holm,* 236 Minn. 158, 163, 52 N.W.2d 113, 115 (1952).

Piepho v. Bruns, 652 N.W.2d 40, 43 (2002)

In *Piepho,* the Court did not apply laches to foreclose the section 204B.44 petition despite its lateness relative to date of ballot preparation (two days before the start of absentee balloting)

because the record did not disclose when the petitioner first became aware of the basis for the challenge. *Id. See also Fugina v Donovan,* 259 Minn. 35, 37, 104 N.W.2d, 911, 913 (1960). In *Fugina*, the Court stated that an election challenge filed on August 24, 1960 to a constitutional amendment approved by the legislature in July of 1959 would normally be barred by laches. The Court elected not to bar the petition, however, because it determined that the public interest involved in resolving the constitutional issue presented in that case justified a judicial determination. The issue presented was whether the proposed amendment, which would lengthen the legislative session and remove restrictions on legislators holding other offices, violated the constitutional requirement that multiple amendment proposals be presented as separate ballot questions. The court noted that the issues were solely questions of law calling for prompt judicial resolution *Id* Noting the great deference owed to the judgment of the legislature in such matters, the Court then permitted the election to go forward. *Id.* at 39-40, 104 N.W.2d at 915. In this case, however, the petition was filed far later than the one in *Fugina* Furthermore it does not present a purely legal question concerning violation of a constitutional mandate that requires judicial resolution. Instead the Petition raises only an issue concerning relative clarity of the ballot language, which is essentially a question of subjective fact upon which each individual voter has an interest in making an independent judgment. Therefore the public interest in this case does not tend to favor judicial resolution that would deprive the voters of an opportunity to speak at the polls.

It is undisputed that the wording of the amendment and the ballot question were approved in May of 2005, and therefore was known to Petitioners for well over a year before the Petition was filed. Furthermore, they knew, when the Legislature adjourned *sine die* on May 22, 2006, that any efforts to change or "clarify" the ballot question by legislative action before the

general election, had been unsuccessful. Nevertheless, they delayed taking action in this Court until less than five weeks remained before the election, and one day before absentee voting began, thereby assuring that a compressed time-frame for briefing and consideration of the case would be required, and that supporters of the amendment would have little opportunity to prepare counter measures.

This Court and Minnesota election officials have plainly demonstrated the capability to consider important election cases expeditiously when necessary due to exigent circumstances beyond the control of the parties. *See, e.g., Erlandson v. Kiffmeyer,* 659 N.W.2d 724, 726 (Minn. 2003); *Clark v. Growe,* 461 N.W.2d 385 (Minn. 1990); However, such extraordinary efforts are not called for where the need for speed is entirely due to unnecessary delay in filing the Petition.

Petitioners' reasons for their delay in acting are unpersuasive. They cite no authority or rationale for the proposition that they "had to" wait to see how their theories played in the press before taking action. Petitioners' Laches Memorandum (Pet. Memo) at 5-6. Neither was there any requirement that they wait for the Secretary's one-line ballot title or the Attorney General's Statement of Purpose and Effect before deciding whether they considered the ballot question to be confusing.[2] In any event the Attorney General's statement was issued on July 3, 2006, and Petitioners still waited a full three months before filing their Petition.

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[2] Contrary to Petitioners' assertion at page 5 of their memorandum, the Attorney General's statement was referred to by the Court in *Knapp v. O'Brien,* 288 Minn. 103, 179 N.W.2d 88 (1970) as an aid to construing the adopted constitutional amendment at issue. The statement in no sense "saved an otherwise confusing ballot question."

The Petitioners' concerns about "campaigns of disinformation" by certain advocacy groups have no place in this action. Their remedy for such complaints lies with the Office of Administrative Hearings pursuant to Minn. Stat. ch. 211B.

And finally, Petitioners' assertion that no one will be prejudiced by preventing the election from taking place is without merit. The members of both houses of the Legislature who voted for the amendment will certainly be prejudiced by having their efforts set aside. Most importantly, however, the voters of the state will be denied their right to determine for themselves whether the amendment is worthy of support. The fact that no group favoring the amendment is presently a party to this case may be more a testament to the Petitioners' strategy rather than to any lack of interest or prejudice to amendment supporters.

While the Petition to enjoin the election must be determined prior to the November 7, 2006 election, denial of the Petition under the doctrine of laches would not necessarily preclude a subsequent challenge to the result of the election pursuant to Minn. Stat. ch. 209 (2004). Consequently, the Petitioners' effort to compel this Court to resolve their objections to the ballot question in an artificially compressed time-frame should be rejected.

II. THE PETITION DOES NOT ESTABLISH ANY BASIS UPON WHICH RELIEF CAN BE GRANTED UNDER MINN. STAT. § 204B.44.

Minn. Stat. § 204B.44 provides a remedy in circumstances where it is alleged that an election official has committed or is about to commit a "wrongful act, error or omission" in connection with the conduct of an upcoming election. The Petition here, however, specifies no such error, omission or wrongful act by the Secretary in connection with the upcoming election on the constitutional amendment. It is undisputed that the Secretary has performed all of the duties imposed upon her by law in connection with the amendment election. McCarthy Aff The Petition contains no assertion that the Secretary has legal authority to take any action whatsoever

that would address the Petitioners' concern about the ballot question. Plainly, the Secretary has no power to either refuse to place the proposed amendment on the ballot or to change the question prescribed by the Legislature in any manner. Even the Court itself does not generally exercise authority to change or negate a ballot question except in the most extreme circumstances. As the Court acknowledge in *State ex rel Marr v Stearns,* 72 Minn 200, 217-18, 75 N.W. 210, 214 (1898), reversed on other grounds, 179 U.S. 223, 21 S. Ct. 73 (1900).

> The question here is not whether the form of the ballot selected by the legislature is the best and fairest that could have been framed by a trained lawyer. But it is, did the form of ballot actually used comply with the constitution? Neither the form nor the manner of submitting the question of the amendment to the people is prescribed by the constitution. They 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.

See also Fugina v. Donovan; State v Duluth & N.M. Rwy Co., 112 N.W. 897, 898 (Minn. 1907). Thus even if it might be argued that the Secretary has some implied authority to withhold a ballot measure that is "manifestly unconstitutional",[3] even Petitioners do not claim that the ballot question here rises to that level.

The Petitioners' quarrel is not with any actions or omissions of the Secretary, or really with the wording of the ballot question, *per se,* but with the substance of the amendment itself which does not contain the language they prefer.

---

[3] *See, e.g., Davies v. City of Minneapolis,* 316 N.W.2d 498, 504 (Minn 1982)

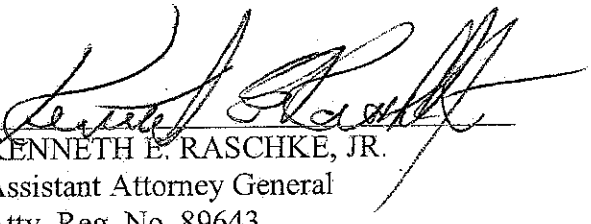
CONCLUSION

For the above reasons, the Secretary respectfully requests that the Court deny the Petition.

Dated: Oct. 13, 2006

Respectfully submitted,

MIKE HATCH
Attorney General
State of Minnesota



KENNETH E. RASCHKE, JR.
Assistant Attorney General
Atty. Reg. No. 89643

445 Minnesota Street, Suite 1800
St. Paul, Minnesota 55101-2134
(651) 297-1141 (Voice)
(651) 282-2525 (TTY)

ATTORNEYS FOR RESPONDENT

AG: #1684105-v1

STATE OF MINNESOTA | SUPREME COURT

Tim Breza, Larry Buboltz,
Dan Dorman, Morrie Lanning,
Michael Lang, Keith Langseth,
Jerry Miller, H. Dan Ness,
Tom Rukavina, Kathy Serva,
Eric Sorensen, Mark Voxland,
Lauri-Winterfeldt-Shanks,

Petitioners,

Vs.

Mary Kiffmeyer, Minnesota
Secretary of State

Respondent

COURT FILE NO.A06-1871

AFFIDAVIT OF MIKE MCCARTHY

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Mike McCarthy, being first duly sworn, deposes and says as follows:

1. I began work in the Elections Division of Secretary of State's Office in July of 1999 on mobility assignment from the Minnesota Department of Public Service. On June 24, 2000, I was appointed to the Secretary of State's Office. On January 30, 2002 I became a State Program Administrator Senior in the Elections Division. My current position title is Supervisor of the Elections Division. I have served in this position since January 26, 2005.

2. My current duties include supervising and performing elections administration duties of the Secretary of State's Office. In this capacity I am responsible for the internal operations of the Elections Division, including the process of filing for office as well as for compiling the list of candidates and other information certified by the Secretary of State for the state primary and general elections. I am also responsible for certifying the pink ballot used for state constitutional amendments. I am also responsible for the duties of the Office of the Secretary of State with respect to absentee balloting in Minnesota. I train local election officials in the conduct of their elections administration duties and oversee such training provided by Elections Division Staff. In addition, I routinely respond to inquiries by local election officials on matters of elections administration.

3. For the 2006 election I was responsible for the process by which the Office of the Secretary of State prepared for presentation of the proposed constitutional amendment question to the voters at the November 7, 2006 general election.

4. The Office of the Secretary of State asked for and received from the Attorney General a statement of the purpose and effect of the proposed amendment, as required under Minnesota Statutes, section 3.21. This statement was received on July 3, 2006 and a copy of that document is attached to this affidavit as Attachment A.

5. Based upon the language of the question and the statement of the purpose and effect of the amendment by the Office of Attorney General, the Secretary of State, on July 12, 2006, proposed a title for approval by the Attorney General as required by Minnesota Statutes, section 204D.15, subd. 1. That title was: "Phased-in Dedication of Motor Vehicle Sales Tax to Highways and Public Transit." A copy of the letter from Secretary Kiffmeyer to Attorney General Hatch is attached to this affidavit as Attachment B.

6. On July 24, 2006, Secretary Kiffmeyer received a letter dated July 20, 2006 approving that title. A copy of that letter is attached to this affidavit as Attachment C.

7. On September 11, 2006, in a letter to Attorney General Hatch (mistakenly dated July 12, 2006), Secretary Kiffmeyer proposed an amended title, after having noted that the title was not grammatically correct. The amended title was "Phased in dedication of the Motor Vehicle Sales Tax to Highways and Public Transit." A copy of the letter is attached to this affidavit as Attachment D.

8. On September 12, 2006, the Office of the Secretary of State received a letter from Kenneth E. Raschke, Jr. of the Office of the Attorney General approving the amended title on behalf the Attorney General. A copy of the letter is attached to this affidavit as Attachment E.

9. On September 20, 2006, the Office of the Secretary of State electronically transmitted to each county auditor or election supervisor in the state of Minnesota the pink ballot sample ballot required by Minnesota Statutes, section 204D.15, subd. 3. A copy of the e-mail message and the sample ballot transmitted as an attachment to that e-mail message is attached to this Affidavit as Attachment F.

10. As set forth above, the Office of the Secretary of State has fulfilled all statutory duties mandated by statute or rule, in compliance with the relevant sections thereof, and has neither committed errors nor omitted any required acts in the election process followed with respect to the proposed constitutional question.

11. Absentee balloting in Minnesota must begin no later than thirty days prior to the election. This year, the thirtieth day prior to the election was Sunday, October 8, 2006, thus the last business day to commence absentee balloting in conformity to the statute was Friday, October 6, 2006.

12. If official ballots are not available, the statutes provide that emergency ballots that are essentially the same in content as the official ballot, and which can later be transcribed to official ballots by election judges, be sent to each voter who has made a valid application.

    Thus, a substantial number of absentee ballots, have already been mailed out to voters. This includes a substantial number of overseas voters pursuant to the provisions of Minnesota Statutes, sections 203B.16 to 203B.27.

13. Additional absentee ballots are being mailed each day since October 6, 2006. All of these ballots bear the proposed constitutional amendment question, and it will be difficult if not impossible for these voters to be notified that this question is not to be voted, should the court determine that to be the outcome of this petition.

14. The Court asked that respondent inform the court of the date by which a decision must be made in this case in order to effect any necessary changes to ballots for the November 7, 2006 general election.

    a. Since the only relief sought by the Petitioners in this case is an order of the Court enjoining the election on the proposed constitutional amendment in connection with the November 7, 2006 general election, I assume that there will not be a requirement to print ballots containing language different from that contained in the sample ballot, Attachment F.

    b. Ballots have already been printed by the county auditors, who are responsible for that function, and absentee ballots are already being distributed to those voters who have requested absentee ballots either this year or as an ongoing matter. That distribution was required by Minnesota Statutes, section 203B.06 and 204B.35.

    c. Because ballots have already been printed prior to the decision of this court, the question on adoption of the proposed constitutional amendment appears on the ballot. If the court decides to remove the constitutional amendment question from the ballot, that question should be redacted in whole on the ballot

    d. The ballots delivered for use in polling places could be altered by hand by the election judges as late as election day to remove the constitutional question from the ballot. The Court could also order county auditors to

reprint ballots for use in the general election to remove the question from the ballot.

e. Voters who will have voted on this question who will have cast absentee or mail ballots should not have their votes for that question tabulated if the Court enjoins the election on the constitutional amendment question.,

f. Thus, the court may respond to this petition as late as the last day when that determination could be effectively communicated to the election judges, which would be November 2, 2006, the Thursday before the election.

g. In any case, if the court determines that ballots are to be reprinted, the Office of the Secretary of State has no role in that remedy, because in Minnesota, ballots are printed by county auditors. The county auditors would need to reprint each ballot style in the state; there are 4121 precincts in Minnesota, and nearly as many ballot styles. The Office of the Secretary of State estimates that at least five business days prior to election day would be required for reprinting and redistribution to polling places. That estimate assumes no remailing to absentee voters.

Further your affiant saith not.

Mike McCarthy

Subscribed and sworn to before me this 11th day of October, 2006

Notary Public

JENNIFER NANCY WOTHE
Notary Public-Minnesota
My Commission Expires Jan 31, 2011

Attachment A

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

MIKE HATCH
ATTORNEY GENERAL

SUITE 1800
445 MINNESOTA STREET
ST. PAUL, MN 55101-2134
TELEPHONE: (651) 297-2040

July 3, 2006

JUL
RECEIVED

Mary Kiffmeyer
Secretary of State
State Office Building, #180
100 Dr. Rev. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1299

Re: Minnesota Session Laws 2005 - Chapter 88

Dear Secretary Kiffmeyer:

Pursuant to Minn. Stat. § 3.21 you are hereby furnished with a statement of the purpose and effect of a proposed amendment to the Constitution of the State of Minnesota, which will be presented for voter approval at the state general election on November 7, 2006.

By Chapter 88, 2005, Minn. Laws 459, the legislature has proposed to amend Article XIV of the State of Minnesota Constitution by adding two new sections. If adopted, the new sections will read as follows:

> Sec. 12. Beginning with the fiscal year starting July 1, 2007, 63.75 percent of the revenue from a tax imposed by the state on the sale of a new or used motor vehicle must be apportioned for the transportation purposes described in section 13, then the revenue apportioned for transportation purposes must be increased by ten percent for each subsequent fiscal year through June 30, 2011, and then the revenue must be apportioned 100 percent for transportation purposes after June 30, 2011.
>
> Sec. 13. The revenue apportioned in section 12 must be allocated for the following transportation purposes: not more than 60 percent must be deposited in the highway user tax distribution fund, and not less than 40 percent must be deposited in a fund dedicated solely to public transit assistance as defined by law.

The purpose of the amendment is to dedicate proceeds of state taxes on the sale of motor vehicles for transportation purposes and to provide for allocation of the amounts so dedicated between the highway user tax distribution fund established by Minn. Const. art. XIV, § 5, and a fund to be used for local transit assistance.

The effect of the amendment will be that, beginning with the fiscal year commencing July 1, 2007, 63.75 percent of the proceeds of state motor vehicle sales taxes must be apportioned for transportation purposes. Thereafter, the revenue so apportioned must be increased by ten percent each subsequent fiscal year until June 30, 2011. After June 30, 2011, 100 percent of the revenues must be apportioned for transportation purposes. The amounts so apportioned must be allocated between the local transit assistance fund and the highway tax distributing fund, with at least 40 percent going to the local transit assistance fund.

Very truly yours,

Christie B. Eller

CHRISTIE B. ELLER
Assistant Attorney General
Manager, Public Finance/Opinions Division

(651) 296-9421 (Voice)
(651) 297-1235 (Fax)

AG: #1634206-v1

Attachment B

MINNESOTA SECRETARY OF STATE OFFICE

Mary Kiffmeyer, Secretary of State

July 12, 2006

The Honorable Michael Hatch
Attorney General
102 State Capitol
Saint Paul Minnesota

BY HAND

Dear Attorney General Hatch,

A constitutional amendment will appear on the November ballot as a result of the passage by the Legislature of the provisions of Laws 2005, chapter 88, [HF 2461], Article 3, sections 9 and 10.

Minnesota Statutes, section 204D.15, Subd. 1 states:

204D.15 Pink ballot; form; distribution; sample ballot.

Subdivision 1. **Titles for constitutional amendments.** 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. At the top of the ballot just below the heading, a conspicuous notice shall be printed stating that a voter's failure to vote on a constitutional amendment has the effect of a negative vote.

The title I have chosen to appear and which I hereby submit to you for your approval is:

Phased-in Dedication of Motor Vehicle Sales Tax to Highways and Public Transit

Please review this title and respond with your determination at your earliest convenience. While this question does not appear on the September 12 primary ballot, my experience is that all jurisdictions responsible for printing ballots for the general election in

180 State Office Building • 100 Rev. Dr. Martin Luther King Jr. Blvd. • St. Paul, MN 55155-1299
651-201-1328 • 1-877-600-8683 • TTY: MNRelayService 1-800-627-3529 • Fax: 651-215-0682
Web site www.sos.state.mn.us • E-mail secretary.state@state.mn.us

November will want to know the precise wording of the title and the text of the question as set by the Legislature as quickly as possible.

Thank you for your assistance in this matter.

Sincerely

Mary Kiffmeyer
Secretary of State

C: Kris Eiden
Christie Eller

Attachment C

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

MIKE HATCH
ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155-1002
TELEPHONE: (651) 296-6196

July 20, 2006

Mary Kiffmeyer
Secretary of State
State Office Building, #180
100 Dr. Rev. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1299

Re: Titles for Constitutional Amendment

Dear Secretary Kiffmeyer:

In your letter dated July 12, 2006 you state that, as required by Minn. Stat. § 204D.15, subd. 1 (2004), you have chosen a title for the proposed constitutional amendment which will appear on the pink ballot at the November 7, 2006 election. *See* ch. 88, 2005 Minn. Laws 459. That title is "Phased-in Dedication of Motor Vehicle Sales Tax to Highways and Public Transit."

The proposed title is hereby approved.

Very truly yours,

MIKE HATCH
Attorney General
State of Minnesota

AG: #1643074-v1

JUL 2006
Received
Minnesota
Secretary of State

Attachment D

MINNESOTA SECRETARY OF STATE OFFICE

Mary Kiffmeyer, Secretary of State

July 12, 2006

Christie Eller, Special Assistant Attorney General.
102 State Capitol
Saint Paul Minnesota

BY HAND

Dear Attorney General Hatch,

A constitutional amendment will appear on the November ballot as a result of the passage by the Legislature of the provisions of Laws 2005, chapter 88, [HF 2461], Article 3, sections 9 and 10.

Minnesota Statutes, section 204D.15, Subd. 1 states:

204D.15 Pink ballot; form; distribution; sample ballot.

Subdivision 1. **Titles for constitutional amendments.** 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. At the top of the ballot just below the heading, a conspicuous notice shall be printed stating that a voter's failure to vote on a constitutional amendment has the effect of a negative vote.

The title you approved by your letter of July 20,2006 is:

Phased-in Dedication of Motor Vehicle Sales Tax to Highways and Public Transit

However it has been brought to my attention that this title is grammatically incorrect and that the word "the" should be inserted before "Motor Vehicle Sale Tax."

180 State Office Building * 100 Rev. Dr. Martin Luther King Jr. Blvd * St. Paul, MN 55155-1299
* 651- 296-2079 * 1-877-600-8683 * TTY: MNRelayService 1-800-627-3529 * Fax: 651-215-0682
* Web site www.sos.state.mn.us * E-mail secretary.state@state.mn.us

Therefore, I hereby submit to you, for approval, the Title:

Phased-in Dedication of the Motor Vehicle Sales Tax to Highways and Public Transit

Counties have indicated that they would like ballot preparation to begin as early as September 13, 2006, so a prompt review of the title would be greatly appreciated.

Thank you for your assistance in this matter.

Sincerely

Mary Kiffmeyer

Mary Kiffmeyer
Secretary of State

C: Kris Eiden
Christie Eller

Attachment E

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

MIKE HATCH
ATTORNEY GENERAL

SUITE 1800
445 MINNESOTA STREET
ST. PAUL, MN 55101-2134
TELEPHONE: (651) 297-2040

September 12, 2006

Via Facsimile & U.S. Mail

Mary Kiffmeyer
Secretary of State
State Office Building, #180
100 Dr. Rev. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1299

Re: Title for Constitutional Amendment

Dear Secretary Kiffmeyer:

By letter dated July 20, 2006 we approved, pursuant to Minn. Stat. § 204D.15, subd. 1 (2004), the title you had chosen for the proposed constitutional amendment which will appear on the pink ballot at the November 7, 2006 election, *i.e.*, "Phased-in Dedication of Motor Vehicle Sales Tax to Highways and Public Transit."

In your subsequent letter which was hand-delivered to our office on September 11, 2006, you state that you propose to change the title to read as follows: "Phased in dedication of the Motor Vehicle Sales Tax to Highways and Public Transit."

On behalf of Attorney General Mike Hatch, that proposed title is also hereby approved.

Very truly yours,

KENNETH E. RASCHKE, JR.
Assistant Attorney General

(651) 297-1141 (Voice)
(651) 297-1235 (Fax)

AG: #1643074-v1

Attachment F

Bert Black

From: Elections Dept [Elections.Dept@state mn.us]
Sent: Wednesday, September 20, 2006 1:25 PM
Subject: FW: Content of Pink Ballot
Attachments: PINK BALLOT SAMPLE.doc

MEMORANDUM

To: **County Auditors and Election Supervisors**

From: **Office of the Secretary of State**

Re: **Sample Pink Ballot**

Date: **September 20, 2006**

Attached is the sample pink ballot which contains the official title and language of the constitutional amendment question that will appear on the 2006 General Election ballot. This sample ballot is being sent in compliance with MS statute 204D.15 subd. 3:

> Subd. 3. **Sample pink ballot.** Four weeks before the state general election the secretary of state shall file sample copies of the pink ballot in the Secretary of State's Office for public inspection. Three weeks before the state general election the secretary of state shall mail sample copies of the pink ballot to each county auditor Each auditor shall post the sample ballot in
> a conspicuous place in the auditor's office.

The content of the attached pink ballot (title and question) is to appear on <u>all optical scan ballots</u> printed for the 2006 General Election.

A hardcopy of the attachment will be forthcoming. If you have any questions, please contact the Elections Division at 651-215-1440 or elections.dept.@state.mn.us

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NOTICE: E-mail correspondence to and from the Office of the Secretary of State of Minnesota may be public data subject to the Minnesota Data Practices Act and/or may be disclosed to third parties

STATE GENERAL ELECTION BALLOT
CONSTITUTIONAL AMENDMENT BALLOT

COUNTY NAME
NOVEMBER 7, 2006

Failure to vote on a constitutional amendment, will have the same effect as voting no for the amendment

To vote for a proposed constitutional amendment, put an (X) in the square next to the word "YES" for that question. To vote against a proposed constitutional amendment, put an (X) in the square next to the word "NO" for that question.

PHASED IN DEDICATION OF THE MOTOR VEHICLE SALES TAX TO HIGHWAYS AND PUBLIC TRANSIT

	YES
	NO

Shall the Minnesota Constitution be amended to dedicate revenue from a tax on the sale of new and used motor vehicles over a five-year period, so that after June 30, 2011, all of the revenue is dedicated at least 40 percent for public transit assistance and not more than 60 percent for highway purposes?

SAMPLE

AFFIDAVIT OF SERVICE BY U.S. MAIL

Re: *Breza, et al. v. Kiffmeyer, Minnesota Secretary of State*
Court File No. A06-1871

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

TAMARA REIN, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on October 13, 2006, she caused to be served **RESPONSE TO SECRETARY OF STATE MARY KIFFMEYER TO PETITION PURSUANT TO MINN. STAT. § 204B.44, MCCARTHY AFFIDAVIT** by facsimile transmission and/or electronic mail in pdf format, and by depositing the same in the United States mail at said city and state, true and correct copy(ies) thereof, properly enveloped with prepaid first class postage, and addressed to:

Douglas Peine
Attorney at Law
2460 Beverly Road
St. Paul, MN 55104
612-308-0014
peinelawoffice@comcast net

Peter Hennigan
Faegre & Benson, LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
612-766-1600
phennigan@faegre.com

TAMARA REIN

Subscribed and sworn to before me

on this 13th day of October, 2006.

NOTARY PUBLIC

C O RANSOM
NOTARY PUBLIC - MINNESOTA
MY COMMISSION
EXPIRES JAN. 31, 2010

AG: #1686796-v1

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

MIKE HATCH
ATTORNEY GENERAL

SUITE 1800
445 MINNESOTA STREET
ST. PAUL, MN 55101-2134
TELEPHONE: (651) 297-2040

October 13, 2006

Frederick K. Grittner
Supreme Court
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-6102

OFFICE OF
APPELLATE COURTS

OCT 13 2006

FILED

Re: *Breza, et al. v Mary Kiffmeyer, Secretary of State*
Court File No. A06-1871

Dear Mr. Grittner:

Enclosed herewith for filing please find the original and eight copies of **RESPONSE TO SECRETARY OF STATE MARY KIFFMEYER TO PETITION PURSUANT TO MINN. STAT. § 204B.44** and **MCCARTHY AFFIDAVIT**. Also enclosed is the original affidavit of service.

By copy of this letter, counsel is hereby served.

Very truly yours,

KENNETH E. RASCHKE, JR.
Assistant Attorney General
(651) 297-1141 (Voice)
(651) 297-1235 (Fax)

Enclosures

cc: Douglas Peine
Peter Henningan

AG: #1686796-v1