

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 Heimberger, an individual and a
registered voter; and Minnesota for Marriage, an association of
individuals and registered ballot committee,

Petitioners,

vs.

Mark Ritchie, in his 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.

**MOTION TO PARTICIPATE AS AMICI CURIAE
IN SUPPORT OF PETITIONERS, WITH PROPOSED BRIEF**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
ISSUES PRESENTED	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	2
ARGUMENT	2
I. <u>THE LEGISLATURE HAS EXCLUSIVE AUTHORITY TO PROPOSE AND REFER CONSTITUTIONAL AMENDMENTS TO THE VOTERS</u>	2
II. <u>THE LEGISLATURE PRESCRIBES THE DUTIES AND AUTHORITY OF THE SECRETARY OF STATE AND ATTORNEY GENERAL OVER BALLOT TITLES FOR CONSTITUTIONAL AMENDMENTS</u>	4
III. <u>THE SECRETARY OF STATE'S STATUTORY AUTHORITY TO PROVIDE AN APPROPRIATE TITLE DOES NOT INCLUDE REPLACEMENT OF THE LEGISLATURE'S BALLOT QUESTION TITLE UNDER CANONS OF STATUTORY CONSTRUCTION</u>	5
CONCLUSION	7
CERTIFICATION OF BRIEF LENGTH	9

TABLE OF AUTHORITIES

MINNESOTA CONSTITUTIONAL PROVISIONS

Minn. Const. Art. V, § 1, 4	4
Minn. Const., Article IX, § 1	1,3
Minnesota Constitution, Article XIV, § 1 (1857)	2-3

STATE STATUTES

Minn. Stat. § 204D.15	5, 6, 7
Minn. Stat. § 645.16	6
Minn. Stat. § 645.17	6
Minn. Stat. § 645.26	-

CASES

<i>State v. Duluth & N.M. Railway</i> , 102 Minn. 26 (1907)	3, 4
<i>State ex rel. Mattson v. Kiedrowski</i> , 391 N.W.2d 777, 781 (Minn.1986)	4, 5
<i>State ex rel. Marr v. Stearns</i> , 72 Minn. 200, 75 N.W. 210 (Minn. 1898), <i>rev'd on other grounds</i> , 179 U.S. 223 (1900)	3, 4

MISCELLANEOUS

H.F. 247 (1919)	5
S.F. 1308, ch. 88, §§ 1-2, 87th Leg., Reg. Sess. (Minn. 2011)	7
Minnesota Laws 1974, c. 409, § 1	3

PROPOSED BRIEF IN SUPPORT OF PETITIONERS

ISSUES PRESENTED

Throughout the history of this state, only the Legislature has had the power to propose and refer amendments to the Constitution to the people. Minnesota Constitution, Article IX, section 1. That power has included the right to propose both the content of state constitutional amendments and the amendment title to appear on the ballot. The legislature passed the proposed Marriage Amendment with a ballot question title. The Secretary of State rejected the Legislature's ballot question title, substituting his own.

- (1) Whether the Secretary of State's statutory authority to provide an appropriate title includes the power to reject and replace the Legislature's ballot question title?

Apposite Constitution Provisions, Statutes and Cases:

Minn. Const. art. IX, § 1;

Minn. Stat. § 204B.44;

State v. Duluth & N.M. Railway, 102 Minn. 26 (1907);

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

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

- (2) Whether canons of statutory construction support Petitioners' claim that the Secretary of State's statutory authority to provide an appropriate title does not include replacement of the Legislature's ballot question title?

Apposite Statutes and Cases:

Minn. Const. Art. V

Minn. Stat. § 204B.44;

Minn. Stat. § 645.16;

Minn. Stat. § 645.17;

Minn. Stat. § 645.26

STATEMENT OF THE CASE

Amici adopt the statement of the case set forth in Petitioners' Brief and Appendix.

STATEMENT OF THE FACTS

Amici adopt the statement of the facts set forth in Petitioners' Brief and Appendix.

ARGUMENT

I. THE LEGISLATURE HAS EXCLUSIVE AUTHORITY TO PROPOSE AND REFER CONSTITUTIONAL AMENDMENTS TO THE VOTERS.

Throughout the history of Minnesota only the legislature has had the power to propose and refer constitutional amendments to the voters. Agreement on this point is and has been so strong that both the Democratic and Republican versions of the original state constitution in 1857 contain identical language.

Sec. 1. Whenever a majority of both Houses of the Legislature shall deem it necessary to alter or amend this Constitution, they may propose such alterations or amendments, which proposed amendments shall be published with the laws which have been passed at the same session, and said amendments shall be submitted to the people for their approval or rejection; and if it shall appear, in a manner to be provided by law, that a majority of voters present and voting shall have ratified such alterations or amendments, the same shall be valid to all intents and purposes, as a part of this Constitution.

If two or more alterations or amendments shall be submitted at the same time, it shall be so regulated that the voters shall vote for or against each separately.

Minnesota Constitution, Article XIV, § 1 (1857).¹

In 1974 the state constitution was amended “to improve its clarity by removing obsolete and inconsequential provisions, by improving its organization and by correcting grammar and style of language, but without making consequential changes in legal effect.” Minnesota Laws 1974, c. 409, § 1. The current provision for amending the constitution is found at Minn. Const. art. IX, § 1, and continues to affirm the exclusive authority of the Legislature to propose and refer constitutional amendments to the people.

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. If a majority of all the electors voting at the election vote to ratify an amendment, it becomes a part of this constitution. If two or more amendments are submitted at the same time, voters shall vote for or against each separately.

Id.

Minnesota courts have long acknowledged this constitutional principle.

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. It cannot be claimed, in reason or justice, that this case falls within this limitation.

¹ Both the Democratic and Republican versions are available on the website of the Minnesota Historical Society at <http://www.mnhs.org/library/constitution/index.html> (last viewed July 12, 2012).

State ex rel. Marr v. Stearns, 72 Minn. 200, 218 75 N.W. 210, 214-15 (Minn. 1898), *rev'd on other grounds*, 179 U.S. 223 (1900). *Accord Breza v. Kiffmeyer*, 723 N.W.2d 633, 636 (2006) (*quoting Stearns*, 72 Minn. at 218, 75 N.W. at 214) and *State v. Duluth & N. M. Ry. Co.*, 102 Minn. 26, 30, 112 N.W. 897, 898 (1907).

II. THE LEGISLATURE PRESCRIBES THE DUTIES AND AUTHORITY OF THE SECRETARY OF STATE AND ATTORNEY GENERAL OVER BALLOT TITLES FOR CONSTITUTIONAL AMENDMENTS.

The identity and duties of the Executive Branch are established in Article V of the Minnesota Constitution. The secretary of state and the attorney general are identified as members of the executive branch. Minn. Const. Art. V, § 1. Section 4 of Article V provides: “The duties and salaries of the executive officers shall be prescribed by law.”² In determining the scope of legislative authority to define the duties of members of the Executive Branch this Court has observed, “[u]nder the prescribed-by-law provision of Article V, the legislature has the authority to prescribe duties for the executive officers, and this authority includes the power to change, from time to time, such duties as the public health and welfare demand.” *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 781 (Minn.1986). This legislative power to prescribe the duties of the Secretary of State and Attorney General is broad, exceeded only when the legislature attempts to strip a

² The corresponding provision in the original Constitution of 1857 (article V, section 5) stated: “And the further duties and salaries of said executive officers shall each thereafter be prescribed by law.”

constitutional office of its “core function”. “The limitation implicit in Section 1 of Article V serves only to prevent the legislature from abolishing all of the independent functions inherent in an executive office.” *Id.* at 782.

In 1919 the Legislature granted the Secretary of State the authority to provide an appropriate title to ballot questions. H.F. 247 (1919) (attached as Appendix A). Prior to this time the Legislature had provided all language regarding a constitutional amendment that was to be provided on the ballot. *See Amendment to the Constitution of the State Adopted in 1894* (attached as Appendix B). The current statutory grant of authority to the Secretary of State to provide an appropriate title is found at Minn. Stat. § 204D.15, and does not differ in substance. “The secretary of state shall provide an appropriate title for each question printed on the pink ballot.”

The fact that the Secretary of State did not have the right or ability to determine the title for constitutional ballot questions at any time prior to 1919 establishes that this act is not a core function and therefore subject to the legislature’s power to prescribe the duties of the office.

III. THE SECRETARY OF STATE’S STATUTORY AUTHORITY TO PROVIDE AN APPROPRIATE TITLE DOES NOT INCLUDE REPLACEMENT OF THE LEGISLATURE’S BALLOT QUESTION TITLE UNDER CANONS OF STATUTORY CONSTRUCTION.

Three basic rules of statutory construction should guide this Court’s review of the conflict between the Legislature’s constitutional right to propose and refer

constitutional amendments to the people and the Secretary of State's statutory authority to provide appropriate titles for ballot questions.

“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16. Minn. Stat. § 204D.15 which authorizes the Secretary of State to provide appropriate titles does not include any language that suggests that office has exclusive right to provide titles; nor is there language suggesting that the statutory right is intended to diminish the Legislature's right and duty to propose and refer constitutional amendments to the people. Neither does the statute contain language directing or permitting the Secretary of State to replace the Legislature's ballot title for constitutional amendments.

The second rule of construction that should guide this Court's deliberations is that any interpretation of Minn. Stat. § 204D.15 that would conflict with the Minnesota Constitution is to be avoided. Minn. Stat. § 645.17(3). Clearly this rule would be violated if the Legislature shirked its duty to determine the content of constitutional amendments to be placed on the ballot, instead prescribing that the Secretary of State determine a substantial aspect of proposed constitutional amendments. Yet rejecting the Legislature's title in favor of a title favored by the Secretary of State, thus altering voters' understanding of the impact of the proposed amendment, would do exactly that. Any judgment in this case

resulting in that outcome must be excluded from serious consideration. See Minn. Stat.. § 645.17(1) (“the courts may be guided by the following presumptions: (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable”).

Finally, and most importantly, state law directs this Court to adopt interpretations of statutes that allow the particular to control the general.

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.

Minn. Stat.. § 645.26 (1). Applying that rule in this case, the particular ballot title prescribed by the Legislature in referring the proposed amendment to the voters should be interpreted as an exception that controls Minn. Stat. § 204D.15, the general provision authorizing the Secretary of State to provide ballot titles.

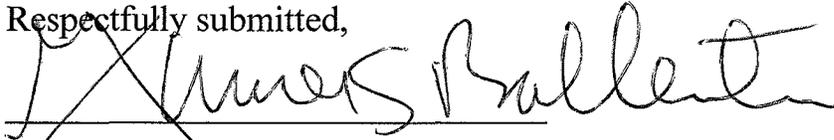
CONCLUSION

Amici respectfully request an entry of judgment in favor of Petitioners 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 Secretary Ritchie and General Swanson 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.

Dated: July 12, 2012

Respectfully submitted,



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* Motion for Admission Pro Hac Vice pending

I hereby acknowledge that sanctions may be awarded pursuant to Minn. Stat. §

549.211



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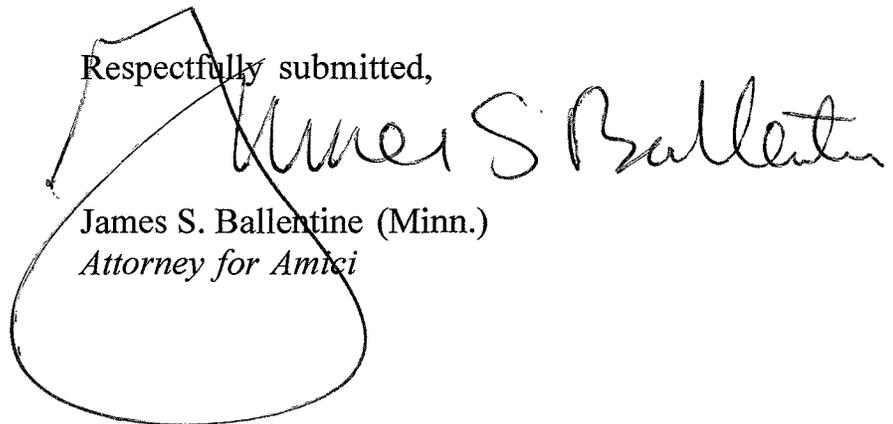
* Motion for Admission Pro Hac Vice pending

CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 1,791 words. This brief was prepared using Microsoft Word 2010.

Dated: July 12, 2012

Respectfully submitted,

A handwritten signature in black ink that reads "James S. Ballentine". The signature is written in a cursive style and is positioned to the right of the typed name. A large, hand-drawn circle is drawn around the signature and the typed name below it.

James S. Ballentine (Minn.)
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