

STATE OF MINNESOTA
IN SUPREME COURT
Case No. A12-0920

League of Women Voters Minnesota; Common Cause, a District of Columbia nonprofit corporation; Jewish Community Action; Gabriel Herbers; Shannon Doty; Gretchen Nickence; John Harper Ritten; Kathryn Ibur;

Petitioners;

vs.

Mark Ritchie, in his capacity as Secretary of State of the State of Minnesota, and not in his individual capacity;

Respondent;

and

87th Minnesota House of Representatives and 87th Minnesota Senate

Intervenors-Respondents.

**BRIEF AND SUPPLEMENTAL APPENDIX OF INTERVENORS-
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MINNESOTA SENATE**

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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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Minnesota Constitution, Article IX, Section 10

INTRODUCTION AND STATEMENT OF THE CASE

Pursuant to their authority under article IX, section 1 of the Minnesota Constitution, the majority of the Minnesota House of Representatives (“House”) and the majority of the Minnesota Senate (“Senate”) (collectively, “Minnesota Legislature” or “Legislature”) passed the following:

An act proposing an amendment to the Minnesota Constitution, article VII, section 1; requiring voters to present photographic identification; providing photographic identification to voters at no charge; requiring substantially equivalent verification standards for all voters; allowing provisional balloting for voters unable to present photographic identification.

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, article VII, section 1, will read:

Section 1. (a) Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct. The place of voting by one otherwise qualified who has changed his residence within 30 days preceding the election shall be prescribed by law. The following persons shall not be entitled or permitted to vote at any election in this state: A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; a person under guardianship, or a person who is insane or not mentally competent.

(b) All voters voting in person must present valid government-issued photographic identification before receiving a ballot. The state must issue photographic identification at no charge to an eligible voter who does not have a form of identification meeting the requirements of this section. A voter unable to present government-issued photographic identification must be permitted to submit a provisional ballot. A provisional ballot must only be counted if the voter certifies the provisional ballot in the manner provided by law.

(c) All voters, including those not voting in person, must be subject to substantially equivalent identity and eligibility verification prior to a ballot being cast or counted.

Sec. 2. SUBMISSION TO VOTERS.

(a) The proposed amendment must be submitted to the people at the 2012 general election. If approved, the amendment is effective July 1, 2013, for all voting at elections scheduled to be conducted November 5, 2013, and thereafter. The question submitted must be:

"Shall the Minnesota Constitution be amended to require all voters to present valid photo identification to vote and to require the state to provide free identification to eligible voters, effective July 1, 2013?"

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: "Photo Identification Required for Voting."

H.F. No. 2738, ch. 167, §§ 1–2, 87th Leg., Reg. Sess. (Minn. 2012).

The issue before the Court is not whether the proposed “Photo ID Amendment” should or should not become part of the Minnesota Constitution. The Minnesota Legislature has the exclusive constitutional authority to place this proposed amendment on the ballot for the voters’ consideration. This case requires the Court to simply decide whether the ballot question relating to the proposed amendment constitutes a proper exercise of the very broad and exclusive discretion vested in the Minnesota Legislature under the Minnesota Constitution to place proposed constitutional amendments on the ballot for approval or rejection by Minnesota’s electorate.

Over the years, some 213 constitutional amendments have been presented to Minnesota voters.¹ A review of these ballot questions and amendments demonstrates that

¹ A listing and summary of the 213 constitutional amendments and ballot questions considered since statehood is available at:

ballot questions traditionally are not intended to provide voters with a detailed explanation of all in the so-called “substantive provisions” of the particular amendment. Instead, the Minnesota Legislature has typically provided the voters with a single-sentence description in varying degrees of length and detail. These ballot questions have traditionally neither been descriptions of each “substantive provision” nor a substitute for the actual proposed amendment itself.

The ballot question at issue in this action, which identifies the proposed amendment, asks Minnesota voters:

Shall the Minnesota Constitution be amended to require all voters to present valid photo identification to vote and to require the state to provide free identification to eligible voters, effective July 1, 2013?

Yes _____

No _____

In enacting the particular ballot question at issue in these proceedings, the Minnesota Legislature properly exercised its exclusive discretion and authority, and adhered to long-standing tradition, by generally describing the proposed amendment to ensure that voters can identify the particular amendment when casting their votes either in favor or against the proposed amendment.

Petitioners erroneously contend that the ballot question “is so fundamentally unfair and misleading that it evades the constitutional requirement to submit the proposed constitutional amendment to a popular vote.” (Pet’rs’ Br. 34) Petitioners simply ignore

<http://www.leg.state.mn.us/lrl/mngov/constitutionalamendments.aspx> and is included at Intervenor-Respondent’s Supplemental Appendix at RA 1–16.

the history and tradition of the 213 ballot questions that have been presented to the electorate, and instead contend that ballot questions must describe every “substantive” provision of the amendment—something that traditionally has not been done with respect to Minnesota ballot questions. Similarly, this Court has never held that the Legislature’s ballot questions must describe all of the “substantive” terms of the proposed amendment. Finally, Petitioners urge this Court to do something this Court has never done before: to direct the Secretary of State not to place a ballot question passed by the Legislature on the general election ballot.

Petitioners’ arguments should be rejected and the Petitioners’ petition should be denied in all respects.

FACTUAL BACKGROUND

The Legislature would point out that the “factual” allegations in the Petition and the Petitioners’ other submissions² are largely made up of descriptions of the Secretary of State’s statements and opinions concerning future events, and as such are not “facts.” (*See, e.g.*, Pet. ¶¶ 26, 27, 32, 33) Additionally, the affidavits submitted by the Petitioners constitute hearsay and likewise largely contain opinion, conjecture, and speculation regarding future events—rather than admissible factual evidence. (*See, e.g.*, Herbers Aff.

² The Minnesota Legislature does not concede the allegations as presented by Petitioners. Pursuant to the Court’s Order dated June 1, 2012, “[a]ny party who contends there is a genuine issue of fact or facts material to this case” was instructed to so notify the Court and the other parties by June 8, 2012. (June 1, 2012, Order at ¶ 3) The Minnesota Legislature did not become a party to this case until June 15, 2012, when this Court granted its motion to intervene.

¶¶ 9 & 11; Nickence Aff. ¶¶ 6-7; Ritten Aff. ¶¶ 10-11; Ibur Aff. ¶¶ 7-9; Doty Aff. ¶¶ 13 & 15)

The only relevant and material facts relate to the passage and enactment of the proposed amendment and ballot question. While the Petitioners' presentation of legislative history is parsed and one-sided, it nonetheless evidences the legislative process properly at work. Indeed, it shows that a variety of viewpoints were presented and debated, and different options were suggested and considered as part of the constitutional process.

The legislative process leading to passage of the proposed constitutional amendment was lengthy and complex. On January 26, 2012, a proposed constitutional amendment to require photographic identification for voters was introduced in the Senate as Senate File No. 1577. On March 7, 2012, the proposed amendment was introduced in the House as House File No. 2738. After passage by the House on March 20, the House File was transmitted to the Senate. The House File was substituted for the Senate file in the Senate Committee on Rules and Administration on March 21, 2012. After the House and Senate passed the conference committee report on House File No. 2738 on April 3 and April 4, respectively, the legislative process was completed on April 10 when the Secretary of State filed the bill.

Between January 26, 2012 and April 10, 2012, the legislation was debated and amended in the course of three House committee hearings, four Senate committee

hearings, a conference committee hearing, and numerous floor debates.³ In the floor debates on House File 2738 alone, 14 amendments were offered in the House (House Journal, March 20, 2012, pages 6761 to 6771) and 15 amendments were offered in the Senate (Senate Journal, March 23, 2012, pages 4923 to 4938).⁴

The fact that the proposed amendment and the ballot question were properly considered, debated, voted on, and passed by the Minnesota Legislature evidences that the Legislature properly exercised its authority under the Minnesota Constitution.

ARGUMENT

I. PETITIONERS HAVE FAILED TO ESTABLISH THAT THIS COURT HAS SUBJECT MATTER JURISDICTION BASED ON MINNESOTA STATUTES SECTION 204B.44.

As a threshold matter, the Petitioners have failed to show that the placement of the photo-identification ballot question on the ballot is a cognizable “error, omission, or wrongful act” so as to establish subject matter jurisdiction under Minnesota Statutes section 204B.44.⁵

³ A summary of the Minnesota Legislature’s actions taken on the amendment is included in the Minnesota Legislature’s Supplemental Appendix at RA 50-52 and is available at: https://www.revisor.mn.gov/revisor/pages/search_status/status_detail.php?b=Senate&f=S F1577&ssn=0&y=2012&ls=87, and https://www.revisor.mn.gov/revisor/pages/search_status/status_detail.php?b=Senate&f=HF2738&ssn=0&y=2012 (floor amendments includes amendments ruled out of order; numbers do not include amendments to the amendment).

⁴ See The House Journal for March 20, 2012, is accessible at: <http://www.house.leg.state.mn.us/cc/journals/2011-12/J0320089.pdf>; The Senate Journal for March 23, 2012 is accessible at: <http://www.senate.mn/journals/2011-2012/20120323092.pdf>

⁵ Petitioners have pleaded Minn. Stat. § 204B.44 as the sole basis for this Court’s jurisdiction in this matter. (Pet. at ¶ 10)

As noted, the proposed amendment and ballot question were properly debated, voted on, and passed by the Minnesota Legislature under the exclusive authority granted by Article IX of the Minnesota Constitution. It is certainly not a wrongful act for the Legislature to properly exercise its constitutional authority and duty. Moreover, the Minnesota Legislature is not among the enumerated election officials listed in Minnesota Statutes section 204B.44.

Petitioners contend that the Secretary of State's placement of the photo-identification ballot question on the November 2012 would constitute a "wrongful act" under Minnesota Statutes section 204B.44. (Pet'rs' Br. 19) However, the only action upon which Petitioners rely to support their contention of a "wrongful act" involves the action of the Minnesota Legislature—which, by definition is not an action, much less a "wrongful act," by any of the election officials itemized in the statute. *Schiff v. Griffin*, 639 N.W.2d 56, 60 (Minn. Ct. App. 2002) (citing *Schroeder v. Johnson*, 252 N.W.2d 851, 852 (Minn. 1976), for proposition that Minn. Stat. § 204B.44 only applies to errors or omissions actually attributable to the election officials enumerated in the statute).

Intervenors-Respondents recognize that, in *Breza v. Kiffmeyer*, 723 N.W.2d 633 (Minn. 2006), this Court entertained a petition filed pursuant to Minnesota Statutes section 204B.44 in which the petitioners sought to enjoin the Secretary of State from proceeding with the general election on a proposed constitutional amendment, based on the petitioners' claim that the ballot question on the amendment was "unconstitutionally misleading." *Id.* at 636-37. In *Breza*, the Court did not expressly address the scope of its jurisdiction under section 204B.44. In reviewing the briefs that were submitted in *Breza*,

it does not appear that the Secretary of State (who was the sole respondent in that proceeding) challenged or otherwise raised any questions as to the Court's subject matter jurisdiction under section 204B.44. After reviewing the question of whether the petition in *Breza* may be barred by laches, the Court "chose to address petitioners' claim on the merits," *id.* at 636, and denied the relief sought by the petitioners. *Id.* at 637. In light of the fact that the Court did not expressly address the subject matter jurisdiction question, and did not grant any relief that the petitioners had sought under the statute, the House and Senate respectfully submit that *Breza* does not provide clear authority that the Court has subject matter jurisdiction under Minnesota Statutes section 204B.44 to grant the relief sought by Petitioners in the instant proceedings.

For the reasons stated above, this Court should decline to reach the merits of the Petition because the Petitioners have failed to allege a cognizable error, omission, or wrongful act under Minnesota Statutes section 204B.44.

II. THE LEGISLATURE HAS THE SOLE AND EXCLUSIVE AUTHORITY TO SUBMIT CONSTITUTIONAL AMENDMENTS FOR RATIFICATION BY THE VOTERS AND JUDICIAL REVIEW OF BALLOT QUESTIONS IS VERY NARROW AND HIGHLY DEFERENTIAL.

In the event the Court determines it has subject matter jurisdiction under the statute, Petitioners have the burden of proof in a ballot challenge under Minnesota Statutes 204B.44. *Weiler v. Ritchie*, 788 N.W.2d 879, 882 (Minn. 2010). Specifically, this Court has recognized that the burden of proof in such a challenge rests with the petitioners to demonstrate the error the petitioners seek to have corrected. *Id.* (citing *Lundquist v. Leonard*, 652 N.W.2d 33, 36 (Minn. 2002); *Olson v. Zuehlke*, 652 N.W.2d

37, 40 (Minn. 2002). Consistent with this precedent, Petitioners bear the burden of proof in this case. *Id.*

The Minnesota Constitution vests the Minnesota Legislature with sole and exclusive authority to submit constitutional amendments for ratification by the voters. Minn. Const. art. IX, § 1 (“A majority of the members elected to each house of the legislature may propose amendments to this constitution. Proposed amendments shall be . . . submitted to the people for their approval or rejection at a general election.”). As part of this authority, the Legislature has exceedingly broad discretion in drafting and submitting ballot questions on proposed amendments to the people. *See State ex rel. Marr v. Stearns*, 72 Minn. 200, 218, 75 N.W. 210, 214 (1898) (“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 . . . [.]”), *rev’d on other grounds*, 179 U.S. 223 (1900).

The Minnesota Legislature is not required to select a ballot question that “is the best and fairest that could have been framed by a trained lawyer.” *Stearns*, 72 Minn. at 217, 75 N.W. at 214. This Court has held that it cannot invalidate the Legislature’s judgment and discretion “in prescribing the form and substance of the [ballot] question to be submitted, simply because [the Court] may be of the opinion that the question was not phrased in the best or fairest terms.” *State v. Duluth & N.M. Ry. Co.*, 102 Minn. 26, 112 N.W. 897, 898 (1907). In fact, this Court has never invalidated a ballot question that has

been duly drafted and enacted by the Minnesota Legislature under its exclusive constitutional authority.⁶

Petitioners' contention that the ballot question must identify all "substantive provisions" of the proposed amendment is simply wrong. (Pet. ¶¶ 18-19) There is no such requirement. Instead, the ballot question need only identify the particular amendment on the ballot in a way that is not "so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote." *Stearns*, 72 Minn. at 218, 75 N.W. at 214.

The Minnesota Legislature has never been required to draft ballot questions so as to describe each of the "substantive provisions" of the proposed amendment. In fact, "there are a large number of important amendments to the Minnesota Constitution which

⁶ The applicable standard of review of ballot questions in Minnesota is far more deferential to the Legislature's exercise of its exclusive authority and broad discretion than the standards applied in the inapposite cases from Missouri and Florida on which Petitioners rely. (Pet'rs' Br. at 22 (citing *Advisory Op. to Att'y Gen. re: Stop Early Release of Prisoner*, 642 So. 2d 724 (Fla. 1994) which is distinguishable from and inapplicable to the instant case because, *inter alia*, Minnesota does not have a constitutional provision similar to the one applied in that case, Minnesota does not allow voter initiatives to amend the constitution, and Minnesota has vested its legislature with discretion to determine the appropriate manner to submit proposed constitutional amendments to the voters) & 28 (citing *Aziz v. Mayer*, No. 11AC-CC00439, slip. op. (Mo. Cir. Ct. Cole Co. Mar. 27, 2012) which is a trial court opinion that is distinguishable from and inapplicable to the instant case because, *inter alia*, it has no precedential effect even in Missouri, Minnesota does not have a statute similar to the one applied in that case, and the Missouri legislature chose to reformulate the official summary statement rather than seeking review of the trial court's decision)). Because of the exclusive authority granted to the Legislature by the Minnesota Constitution, and because of this Court's highly deferential standard of review that has remained constant for over 100 years, these non-precedential and inapposite cases Petitioners have cited from other jurisdictions do not provide any useful guidance and therefore are inapposite.

were submitted by a ballot question upon which there was no suggestion as to the nature of the amendment. It has never been suggested that such amendments are void.” *Stearns*, 72 Minn. at 218, 75 N.W. at 214.⁷ Given that this Court has held there is no constitutional requirement for the Minnesota Legislature to describe *any* of the so-called “substantive provisions” of a proposed amendment in the ballot question, it necessarily follows that there is no constitutional requirement to describe *all* of the substantive provisions of a proposed amendment in the ballot question.

Since 1898, the Court has held firm to the very narrow scope of review that it set forth in *Stearns*. 72 Minn. at 218, 75 N.W. at 214 (holding that challenges to ballot questions will fail unless petitioners can show that the ballot question is “so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote”). Not surprisingly, due to the high standard set out in *Stearns*, this Court has never held a particular ballot question to be “so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.” *See, e.g., Breza*, 723 N.W.2d at 636 (Minn. 2006) (reviewing the most recent challenge to a ballot question and holding that, “[t]he ballot question in this case clearly does not meet the high standard set out in our precedent for finding a proposed constitutional amendment to be misleading”).

⁷ For examples of such questions, *see infra*, Section IV, B. 1.

III. THE BALLOT QUESTION AT ISSUE PROPERLY PROVIDES A GENERAL DESCRIPTION OF THE PROPOSED AMENDMENT.

The photo-identification ballot question properly describes the general subject of the proposed amendment on which the people will vote. The ballot question does not have to describe each “substantive provision” of a proposed amendment. The ballot question is not intended as a substitute for the amendment itself, or to replace the voter’s responsibility to inform himself or herself about the proposed amendment before voting (just as it is the voter’s responsibility to inform himself or herself as to particular candidates who are on the ballot). The photo-identification ballot question is sufficient because it plainly describes the general purpose of the amendment.

The arguments made by the Petitioners are largely, if not entirely, their criticisms of the proposed amendment itself and their predictions of the challenges that may arise and other issues Petitioners foresee if the amendment is adopted by the voters. As such, “[P]etitioners’ quarrel is not with the wording of the ballot question but with the substance of the proposed amendment itself.” *Breza*, 723 N.W.2d at 635-36. These arguments are controverted and these issues are the subject of divergent views. More importantly, these same arguments and issues were debated in the House and Senate when those legislative bodies considered whether to place this proposed amendment before the voters. Having debated those arguments and issues, the majority of both the House and the Senate voted in favor of placing the proposed amendment before the voters.

The ballot question for this particular proposed amendment was likewise introduced, debated, revised, and ultimately approved by the House and Senate; and it constitutes what the majority of legislators in each of those houses of the Legislature considered to be a fair general description of the proposed amendment.

The proposed amendment provides that “[a]ll voters voting in person must present valid government-issued photographic identification” and that “[a]ll voters, including those not voting in person, must be subject to substantially equivalent identity and eligibility verification. . . .” It is therefore fair for the ballot question to generally describe the proposed amendment as requiring “all voters to present valid photo identification to vote” because all voters will be required to present “government-issued photographic identification” or “substantially equivalent identity and eligibility verification.” The Petitioners’ arguments that these provisions of the amendment could be described in more detail so as to address the concerns they have raised regarding the wisdom of the proposed amendment (such as whether there will be different requirements for absentee voters as compared to in person voters, (Pet’rs’ Br. at 21-24); the potential meaning of “substantially equivalent” (*id.* at 24-27); or the different potential issuers of photo identifications (*id.* at 28-29)) does not make the ballot question inaccurate in light of what it is, namely, a general description of the proposed amendment.

Further, the amendment’s procedure for situations when a voter cannot produce the required identification, but might be able to certify the ballot in a manner permitted by law, does not change the proposed amendment’s general requirement and overall purpose for “all voters to present valid photo identification to vote.” Accordingly, the

Petitioners’ arguments, opinions, and predictions regarding the sorts of potential challenges a provisional ballot process may involve (Pet’rs’ Br. at 30-32)—as well as the contrary and divergent views and opinions held by others who do not believe a provisional ballot process will present the sorts of challenges the Petitioners predict—does not require that it be described in the ballot question. This procedure only comes into play when a voter cannot produce the required identification at the time he or she appears at the polling station. Thus, providing for such a process only serves to underscore the focal point of the proposed amendment, which is to require voters to present “government-issued photographic identification” or “substantially equivalent identity and eligibility verification” in order to cast their ballot. Accordingly, the proposed amendment’s overall requirement and objective for “all voters to present valid photo identification to vote” is generally and fairly described in the ballot question.

Finally, the proposed amendment also provides “[t]he state must issue photographic identification at no charge to an eligible voter who does not have a form of identification meeting the requirements” of the amendment. It is fair for the ballot question to generally describe the proposed amendment as requiring “the state to provide free identification to eligible voters.” Again, arguments that this provision of the amendment could be described and discussed in more detail—including arguments regarding alleged differences between the phrases “no charge” and “free” (AARP Amicus Br. at 5-6)—does not render the general description of that provision of the amendment in the ballot question inaccurate.

It is important to note that the Minnesota Legislature does not treat—and traditionally never has treated—the ballot question as the source by which the voters will inform themselves as to the substance of the proposed amendments that are placed on the ballot for their consideration. The Legislature has never intended or expected that the ballot question would be a substitute for encouraging voters to actually read and analyze the proposed amendments for themselves. Indeed, rather than using the ballot questions to provide a detailed description of the proposed amendments, the Legislature instead requires that, at least four months before the election, the Attorney General shall furnish to the Secretary of State “a statement of the purpose and effect of all amendments proposed, showing clearly the form of the existing sections and how they will read if amended.” Minn. Stat. § 3.21. The statement required from the Attorney General is intended to be a careful analysis and presentation of the proposed amendments. *See, e.g., id.* (“If a section to which an amendment is proposed exceeds 150 words in length, the statement shall show the part of the section in which a change is proposed, both its existing form and as it will read when amended, together with the portions of the context that the attorney general deems necessary to understand the amendment.”).

The Minnesota Legislature properly followed the constitutional framework of drafting the ballot question, debating it, and duly voting to present it to the people. The ballot question properly describes the general purpose of the proposed amendment. Petitioners are simply arguing that, from their perspectives, the ballot question could have been phrased in better or fairer terms. But this Court has held that is not sufficient to establish a ballot question is unreasonable or misleading, let alone enough to prove that it

is “so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.” *Stearns*, 72 Minn. at 218, 75 N.W. at 214. Therefore, the Petitioners’ petition should be denied.

IV. THE PHOTO-IDENTIFICATION BALLOT QUESTION CONFORMS WITH THE MINNESOTA LEGISLATURE’S TRADITIONAL EXERCISE OF ITS CONSTITUTIONAL AUTHORITY.

Petitioners assert that the ballot question is unconstitutional and “misleading” because, in their view, it does not accurately and completely describe each of the “substantive provisions” of the proposed constitutional amendment. Specifically, Petitioners characterize the proposed amendment as having “four substantive provisions.” Petitioners then argue that, because the ballot question does not enumerate each of the four “substantive provisions” that Petitioners have parsed out from the proposed amendment, the ballot question is unconstitutionally misleading. (Pet. at 6-7) Petitioners’ position is squarely at odds with (1) the constitutional mandate that the Legislature has the exclusive authority to decide the form and manner of ballot questions, (2) this Court’s decisions that the Legislature’s authority may only be challenged where the ballot question is “so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote” *Stearns*, 72 Minn. at 218, 75 N.W. at 214, and (3) the traditional form and manner in which the Legislature has presented ballot questions to Minnesota voters on some 213 occasions from 1858 through the present.

A. The Legislature has not Traditionally Attempted to Describe All of the “Substantive Provisions” of the Proposed Amendment in the Ballot Question.

Petitioners’ contention that the ballot question is required to accurately and completely describe all of the “substantive provisions” of a proposed amendment fails for several separate and independent reasons. First, there is no law to support their proposition. On the contrary, as noted, this Court has recognized that there has never been any requirement that the ballot question contain any “suggestion as to the nature of the amendment.” *Stearns*, 72 Minn. at 218, 75 N.W. at 214.

Second, the Minnesota Legislature has traditionally exercised its authority in presenting short one-sentence ballot questions for even the most complex proposed amendments.⁸ This traditional practice of providing the voters with a one-sentence ballot question demonstrates that the ballot question is intended to be a brief, general description of the amendment rather than a comprehensive listing of all of its alleged “substantive provisions.”

Third, even if there was such a requirement for the Minnesota Legislature to parse out and identify each “substantive provision” of a proposed amendment—which there is not—the characterization of the “substantive” provisions of a proposed amendment is inherently subjective. Accordingly, such an analysis is for the Minnesota Legislature to engage in when it formulates the ballot question. Likewise, the voters shall reach their

⁸ As noted, *supra*, all 213 ballot questions are included at RA 1–16 and are available with links to the full text of the corresponding proposed amendment at: <http://www.leg.state.mn.us/lrl/mngov/constitutionalamendments.aspx>.

own conclusions as to what they consider to be the “substantive provisions” when they make up their minds on whether to vote in favor or against the proposed amendment. There is no place for the Court to impose its judgment as to what the “substantive provisions” of a proposed amendment are, or to substitute its judgment as to whether a ballot question captures all such “substantive provisions.”

Fourth, there are good and sufficient reasons why the ballot question should not be required to provide a detailed description of all of the so-called “substantive provisions” of the proposed amendment: so the voter will inform himself or herself of the proposed amendment. As the Petitioners agree, “voters have the right to know what they are voting on” (Pet’rs’ Br. at 20), and therefore voters should educate themselves on the proposed amendment. The ballot question is not intended to serve as, nor should it be, a substitute for the proposed amendment itself.

In short, there is no requirement that the Minnesota Legislature provides voters with a “CliffsNotes” summary of the proposed amendment in the ballot question. The Minnesota Legislature need only do what it has done in this case—and what it has done more than 200 times over the past 154 years—which is to provide the voters with a short description so they know which amendment they are voting on.

B. The Legislature has Traditionally Exercised Broad Discretion in the Manner it has Formulated Past Ballot Questions for Submission to Voters.

The form and manner in which the Legislature has traditionally presented ballot questions to Minnesota voters is instructive. Traditionally, the Legislature has exercised its very broad authority and discretion by formulating these ballot questions in varying

ways. As will be discussed below, there have been instances where the Legislature simply identified the article and section of the state constitution that the proposal, if approved, would amend. On the other hand, there were a few instances when the Legislature actually included the text of the proposed amendment itself in the ballot question. *See, e.g.*, H.F. 235, ch. 427, §§ 1–2, 1925 Minn. Laws 773–74 (RA 42–43). There were also some instances in which the Legislature framed the ballot questions in a somewhat rhetorical manner, such as a proposed amendment “for the protection of rights of working men and women,” *see, e.g.*, H.F. 45, ch. 2, §§ 1–4, 1887 Minn. Laws 4–5 (RA 35–36); and adding to the constitution “a new section in relation to freedom of markets.” *See, e.g.*, H.F. 2, ch. 1, §§ 1–4, 1887 Minn. Laws, 3–4 (RA 33–34). Such illustrations demonstrate that the Legislature has traditionally exercised very broad discretion in the phrasing of these ballot questions—commensurate with its exclusive authority under the Minnesota Constitution to do so—notwithstanding the relative complexity of the proposed amendments or the controversial nature of the “substantive provisions” contained therein. The following examples show that the traditional purpose of ballot questions has been to simply identify the general subject matter or topic involved in the proposed amendment, and not to attempt to describe every “substantive provision” or change made by the amendment.

- 1. Ballot questions which did not indicate the nature of the proposed amendment.**

Historically, an accepted practice for the Minnesota Legislature has been to propose ballot questions to the voters without any suggestion or summary of the

amendment. *Stearns*, 72 Minn. at 218, 75 N.W. at 214 (“ . . . there are a large number of important amendments to the constitution which were submitted by a ballot upon which there was no suggestion as to the nature of the amendment. It has never been suggested that such amendments are void. The act in question was properly submitted to the people.”) Indeed, of the 213 proposed ballot questions in Minnesota’s history, at least 42 of the questions have contained either no suggestion as to the nature of the amendment, or such limited detail that one would not know what changes the proposed amendment would make by simply viewing the ballot question.

One example is the 1876 ballot question for the amendment that granted the governor line-item veto power. Specifically, the amendment added the following provision to Section 11 of Article 4 of the Constitution:

If any bill presented to the governor contain several items of appropriation of money, he may object to one or more such items, while approving of the other portion of the bill. In such case, he shall append to the bill at the time of signing it, a statement of the items to which he objects, and the appropriation so objected to shall not take effect. If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately re-considered. If, on re-consideration, one or more of such items be approved by two-thirds of the members elected to each house, the same shall be a part of the law, notwithstanding the objections of the governor. All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

Ch. 1, General Laws of 1876, § 1 (RA 29–30). This detailed amendment—which the Petitioners could likely parse into a number of “substantive provisions”—was presented to the voters with the following question appearing on the ballot: “Amendment to section

eleven, article four of the constitution, ‘yes;’” . . . and “Amendment to section eleven, article four of the constitution, ‘no.’”⁹

A simple survey of these past ballot questions that properly presented the proposed amendments to the people, even though the questions contained no suggestion as to the nature of the proposed amendments—let alone a full description of all “substantive provisions” of the proposed amendments—renders Petitioners’ argument moot.

2. 1871 ballot question to authorize state loan for asylum buildings.

Certain ballot questions have provided more detail, but still have not endeavored to set forth all of the “substantive provisions” of the proposed amendment. For example, in 1871, the Legislature proposed an amendment to Article 9 of the Minnesota

⁹ These types of ballot questions have been commonly used and approved in Minnesota’s history including, *inter alia*, in 1858, an amendment to establish state government, with the ballot question, “For amendment to Section 7 Article 5” or “Against amendment to Section 7 Article 5” (RA 17–18); in 1865 and 1868 with amendments to “authorize Negroes to vote” presented with the ballot question in 1865 as “For amendment to section one, article seven” or “Against amendment to section one, article seven,” and presented in 1868 with the ballot question, “Amendment to section one, article seven of the constitution, Yes . . . No” (voters rejected the amendment in 1865, but approved it in 1868) (RA 19–23); in 1869, an amendment to abolish Manomin County, presented with the ballot question, “Amendment to Article XI of the Constitution—Yes . . . No” (RA 24); in 1875 for the amendment to prescribe the manner in which school funds could be invested, presented with the ballot question, “Amendment to article seven (7) of the constitution, yes . . . no” (RA 27-28); in 1876, an amendment to authorize district court judges to sit on the Minnesota Supreme Court when justices were disqualified, presented with the ballot question, “Amendment to section 3, article 6, of the constitution, relating to the Supreme Court, Yes . . . No” (RA 31-32); in 1883 for the amendment to make terms of justices of the supreme court six instead of seven years, presented with the ballot question, “Amendment to article seven of the constitution—Yes . . . No” (RA 37–39); and in 1920 for the amendment to authorize state income tax and to change provisions on tax-exempt property with the ballot question, “Amendment of article 9 of the constitution, relating to taxation, to take the place of section one. Yes . . . No.” (RA 40-41.)

Constitution “authorizing an increase in the public debt for certain special purposes.”

Ch. XIX, General Laws of 1871, §§ 1–3 (RA 25-26). The amendment provided in full:

Sec. 14. For the purpose of erecting buildings for a hospital for insane, deaf, dumb and blind asylum, and state prison, the legislature may, by law, increase the public debt of state to an amount not exceeding two hundred and fifty thousand dollars in addition to the public debt already heretofore authorized, and for that purpose may provide by law for issuing and negotiating the bonds of the state, and appropriate the money only for the purposes aforesaid, which bonds shall be payable in not less than ten nor more than thirty years from the date of the same at the option of the state.

This proposed amendment was presented to Minnesota voters with the following ballot question:

In favor of borrowing money for the erection of public buildings—Yes.
In favor of borrowing money for the erection of public buildings—No.

Id. This ballot question plainly did not explain all of what might be characterized as “substantive provisions” or changes that the proposed amendment would have on the Minnesota Constitution. First, it did not explain that “public buildings” included only “a hospital for insane, deaf, dumb, and blind asylum, and state prison.” Second, it did not explain that it would “increase the public debt” in an amount not exceeding \$250,000 over the already existing public debt. Third, it did not explain that to finance the buildings, the Legislature could issue and negotiate bonds. Fourth, it did not explain that the bonds must be paid “in not less than ten nor more than thirty years from the date of the same at the option of the state.”¹⁰

¹⁰ Notably, the 1871 proposal failed to secure adoption by the voters. Thereafter, a nearly identical amendment was proposed on the 1872 ballot with the ballot question phrased as: “In favor of borrowing money for the erection and completion of the asylums

But even though the ballot question did not describe all “substantive provisions” or aspects of the proposed amendment, there was no suggestion that the ballot question was so unreasonable or misleading so as to be a palpable evasion of the constitutional requirement to submit the amendment to a popular vote. The ballot question was not misleading because it properly identified the general purpose of the proposed amendment to the electorate.

3. 1956 ballot question to permit the legislature to reorganize the judicial power of the state.

In 1955, the Legislature proposed an amendment to Article VI of the Minnesota Constitution “providing for the exercise of the judicial power of the state.” H.F. 954, ch. 881, §§ 1–2, 1955 Minn. Laws 1550–1553. The amendment contained 12 sections, some of which had subparts, and provided for comprehensive rules regarding the judiciary in Minnesota including the scope and jurisdiction of certain courts, the number of justices and composition of the Supreme Court, the number and boundaries of judicial districts, the role and selection of district court clerks, the original jurisdiction of district courts over civil and criminal cases, the terms of office and election of judges, restrictions on judges from holding other offices, the governor’s authority to appoint judges to vacant positions, and the ability of retired judges to be assigned and hear certain cases, to name a few. (RA 44-47)

for the insane, and deaf, dumb and blind, and state prison, yes . . . no.” While generally more descriptive, the ballot question still contained no information about the increasing public debt, financing, bonds, and the repayment period of the amendment. This time, the amendment was approved by Minnesota voters.

This sweeping amendment was presented to Minnesota voters with the following ballot question:

Shall Article VI of the Constitution of the State of Minnesota relating to the judicial power of the state be amended to organize, establish, conduct, and operate the judicial power of the State of Minnesota in accordance with the provisions of the amendment printed and published in Laws 1955, Chapter [881]?

Yes _____
No _____

H.F. 954, ch. 881, § 2, 1955 Minn. Laws 1553. Thus, for example, this ballot question did not specifically describe that: “The supreme court shall consist of one chief judge and not less than six nor more than eight associate judges, as the legislature may establish,” *id.* at 1550 (Art. VI, Sec. 2); “[t]he term of office of all judges shall be six years and until their successors are qualified[,]” *id.* at 1551 (Art. VI, Sec. 8); or “[t]he legislature may provide by law for retirement of all judges . . . and for the removal of any judge who is incapacitated while in office.” *Id.* at 1552 (Art. VI, § 10) Instead, following the well-established tradition of ballot questions, this particular ballot question simply identified for Minnesota voters the general purpose of the proposed amendment on which they were voting.

4. 2008 ballot question to protect natural resources and preserve Minnesota’s arts and cultural heritage by increasing the sales and use tax rate.

Most recently, the Legislature proposed an amendment to increase sales and use taxes in Minnesota and to apply certain percentages of the increased tax revenue to preserve and protect various natural resources, wildlife, cultural heritage, and arts. H.F.

2285, ch. 151, §§ 1–2 (RA 48-49). Specifically, the Legislature proposed that an entirely new section be added to the constitution as Section 15 of Article XI. The amendment proposed to increase the sales and use tax rate by three-eighths of one percent under the general state sales and use tax law. *Id.* The proposed amendment also set forth a specific percent allocation of the funds generated by the additional taxes with:

1. 33% to the “outdoor heritage fund” that could “be spent only to protect, and enhance, wetlands, prairies, forests, and habitat for fish game and wildlife”; and
2. 33% to the “clean water fund” that could “be spent only to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation, and at least five percent of the clean water fund must be spent only to protect drinking water sources;” and
3. 14.25% to the “parks and trails fund” that could “be spent only to support parks and trails of regional or statewide significance”; and
4. 19.75% to the “arts and cultural heritage fund” that could “be spent only for arts, arts education, and arts access and to preserve Minnesota’s history and cultural heritage.

Moreover, the amendment itself created in the state treasury “an outdoor heritage fund; a parks and trails fund; a clean water fund and a sustainable drinking water account; and an arts and cultural heritage fund,” where such funds had not previously existed. Finally, the amendment specified that “land acquired by fee with money deposited in the outdoor heritage fund . . . must be open to the public taking of fish and game during the open season unless otherwise provided by law.” *Id.*

Despite all these changes that the proposed amendment contained, the ballot question was relatively simple:

Shall the Minnesota Constitution be amended to dedicate funding to protect our drinking water sources; to protect, enhance, and restore our wetlands, prairies, forests, and fish, game, and wildlife habitat; to preserve our arts and cultural heritage; to support our parks and trails; and to protect, enhance, and restore our lakes, rivers, streams, and groundwater by increasing the sales and use tax rate beginning July 1, 2009, by three-eighths of one percent on taxable sales until the year 2034?

Yes _____

No _____

Id.

Although more detailed than the 1871 ballot question, *supra*, the ballot question did not inform voters that the amendment would create certain funds in the state treasury; it did not tell voters the percentage allocated to different causes under the amendment; and it did not tell voters that certain land acquired must be open to hunting and fishing during the open season; and it did not tell voters that the dedicated moneys must “supplement” traditional funding sources. These were all arguably “substantive” provisions of the proposed amendment according to the “substantive provision” standard the Petitioners are advocating for the Court to adopt. Thus, following the Petitioners’ reasoning, the 2008 ballot question must have been “fundamentally unfair and misleading.” But, of course, it was not. Rather, the 2008 ballot question was entirely consistent with past practice and Article IX of the Minnesota Constitution, and was not

“so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.”¹¹

C. Past Ballot Questions and Standards Developed in Case Law show that this Ballot Question is not Constitutionally Deficient.

Petitioners’ arguments simply ignore well-established Minnesota law, over 150 years of tradition, and more than 200 previous ballot questions that have been put before Minnesota voters. This Court has held that a ballot question is constitutional where “the ‘clear and essential purpose’ of the proposed amendment [is] ‘fairly expressed in the question submitted.’” *Breza*, 723 N.W.2d at 636 (quoting *State v. Duluth & N.M. Ry. Co.*, 102 Minn. 26, 30, 112 N.W. 897, 898 (1907)).

Based on this Court’s prior holdings and 213 ballot questions previously submitted the people, a ballot question is not “so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote,” and the

¹¹ Petitioners’ arguments suggest that many of the simple ballot questions used to submit prior constitutional amendments to the voters were constitutionally deficient, because by Petitioners’ standards they failed to give voters notice of important substantive features of the proposed amendments. Taken to their logical conclusion, Petitioners’ arguments suggest that some of these amendments were not properly approved, because the submission process (under the *Stearns* standard) evaded the constitutional requirement to submit them to the voters. The challenges in both the *Stearns* and *Duluth & N.M. Ry. Co.* cases were made after the voters have approved the laws. Had the challengers prevailed, the laws would have been invalidated. If Petitioners are correct—which they are not—this could call into question the validity of longstanding amendments to the constitution. This is obviously not what the Court intended in formulating the standard in *Stearns*. Accepting Petitioners’ arguments would undercut the clarity and certainty of the constitutional amendment process that the Court has fostered under *Stearns* and its progeny by granting wide latitude to the Legislature to formulate ballot questions. To backtrack on that over century long rule, as advocated by Petitioners, could have very troubling implications, which the Court should approach with great caution.

clear and essential purpose of the proposed amendment has been fairly expressed even when a ballot question: (a) contains unnecessary language, *Breza*, 723 N.W.2d at 636; (b) could have been drafted in a more lawyer-like manner, *Stearns*, 72 Minn. at 217, 75 N.W. at 214; (c) is not phrased in the best or fairest terms, *Duluth*, 102 Minn. at 30, 112 N.W. at 898; (d) does not describe any of the “substantive provisions” of the amendment, *Stearns*, 72 Minn. at 218, 75 N.W. at 214; (e) does not contain a detailed description of all elements or substantive provisions contained within the amendment, *see* RA 25-26 (Ch. XIX, General Laws of 1871, §§ 1–3, the 1871 ballot question to authorize state loans for asylum buildings); RA 44-47 (H.F. 954, ch. 881, §§ 1–2, the 1956 ballot question to reorganize the judicial power of the state); RA 48-49 (H.F. 2285, ch. 151, §§ 1–2, the ballot question regarding sales and use taxes for natural resources); (f) contains language that could be misinterpreted by some voters, *Breza*, 723 N.W.2d at 636; or (g) when “there was no suggestion as to the nature of the amendment.” *Stearns*, 72 Minn. at 218, 75 N.W. at 214.

The standards that Petitioners urge this Court to adopt are entirely inconsistent with past practice in Minnesota, and granting the Petitioners’ petition would require overturning precedent that has been consistently followed since 1898, ignoring traditions that predate those decisions, and improperly invading the exclusive province of the Legislature.

V. MINNESOTA LAW PERMITS THE LEGISLATURE TO PROVIDE TITLES FOR BALLOT QUESTIONS.

The Minnesota Legislature's constitutional authority to place proposed amendments on the ballot for consideration by the voters not only includes the authority to formulate the ballot questions, but it also includes the authority to determine the titles that will accompany those ballot questions. As the *Stearns* case held, the constitution leaves to the "judgment and discretion of the legislature" to decide both the form and "manner of submitting the question of the amendment to the people[.]" *Stearns*, 75 N.W. at 218. The "form and manner" must include whether to expressly provide a title for the question and the wording of the title. This is simply part and parcel of the process of submitting the proposed amendment to the voters.

In this case, the Legislature exercised its constitutional authority to specify a title of "Photo Identification Required for Voting," which accurately identifies the amendment and is not misleading.

Petitioners contend that Minnesota Statutes section 204D.15, subdivision 1, does not permit the Legislature to specify the title for the ballot question at issue in these proceedings. (Pet'rs' Br. at 33) Section 204D.15, subdivision 1, directs the Secretary of State, with the approval of the Attorney General, to provide "an appropriate title" for ballot questions submitting proposed amendments to the voters. This statute simply provides a rule to govern instances when the Legislature does not specify a title for a

ballot question. It does not, as Petitioners apparently are arguing, abrogate the Legislature's constitutional power to specify titles for ballot questions.¹²

In this instance, the Legislature has chosen to exercise that power and has specified an appropriate title. Accordingly, Section 205D.15, subdivision 1, simply does not apply; it is preempted by the Legislature's exercise of its constitutional authority to specify the title for the ballot question in submitting the proposed amendment to the voters.¹³

Thus, Petitioners' contention that the Legislature cannot validly specify the title for the ballot question at issue in these proceedings fails as a matter of law.

CONCLUSION

Petitioners' challenge has not met the "high standard" established by Minnesota law to show that the ballot question is "so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote."

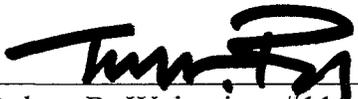
¹² Reading section 204D.15, subdivision 1, to only apply in circumstances in which the relevant act submitting the constitutional amendment does not otherwise specify a title is consistent with the common rubric to construe statutes narrowly to avoid constitutional questions. *See, e.g., Matter of Welfare of RAV*, 464 N.W.2d 507 (Minn. 1991) (applying overbreadth doctrine). However, if the Court decides to entertain Petitioners' argument that section 204D.15 prohibits the legislature from specifying the question, it will be faced with the difficult constitutional question of whether a statute, passed by a prior legislature, can limit the constitutional power of later legislatures to submit constitutional amendments to the voters.

¹³ Similarly, the Legislature also decided the title for the 2008 ballot question detailed above. *See* 2008 Minn. Laws, Ch. 151, H.F. 2285 sec. 2(b) ("The title required under Minnesota Statutes, section 204D.15, subdivision 1, for the question submitted to the people under paragraph (a) shall be 'Clean Water, Wildlife, Cultural Heritage, and Natural Areas.'").

State ex rel. Marr v. Stearns, 72 Minn. 200, 75 N.W. 210, 214 (1898), *rev'd on other grounds*, 179 U.S. 223 (1900). Petitioners' Petition, therefore, must be denied.

Dated: June 25, 2012

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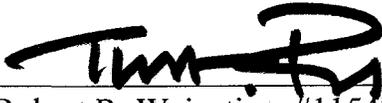
CERTIFICATE OF COMPLIANCE

Pursuant to Rule 132.01 subd. 3, the undersigned hereby certifies, as counsel for Intervenor-Respondents 87th Minnesota House of Representatives and 87th Minnesota Senate, that this Brief complies with the type-volume limitation as there are 8,610 words of proportional space type in this Brief. This Brief was prepared using Microsoft Word 2010.

Respectfully submitted,

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