

NO. _____

State of Minnesota
In Supreme Court

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

PETITIONERS' BRIEF AND ADDENDUM

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INTRODUCTION

Minnesota's legislature has proposed a constitutional amendment to be put to the voters of Minnesota for approval or disapproval in the November 2012 general election that would radically change the way Minnesotans vote. If adopted, the proposed constitutional amendment would convert Minnesota from a state in which all eligible voters are encouraged to exercise their right to vote, to a state with one of the most restrictive voting laws in the United States. Indeed, the proposed amendment would impose voting restrictions more onerous than those the United States Department of Justice has refused to approve under the Voting Rights Act because they would adversely affect the right of racial minorities to vote.

Because the proposed amendment would radically change the way Minnesota citizens exercise the most fundamental right of a democracy, the right to vote, it is critical that the ballot question on the amendment comport with the Minnesota Constitution and fairly and accurately describe the proposed changes to voters. Regardless of the substantive merits of the amendment, which are beyond the scope of the Petition, the Minnesota Constitution mandates that the ballot question truthfully inform Minnesota voters what they are voting on before they mark their ballots "Yes" or "No."

The ballot question prepared by the legislature violates Article 9, § 1, of the Minnesota Constitution because it does not accurately describe the proposed amendment. The proposed amendment would require voters "voting in person" to present "government-issued photographic identification" to vote. Yet the ballot question asks whether "all voters"—not just persons "voting in person"—should be required to present

“photo identification”—as opposed to “government-issued” photo identification—to vote.

The amendment would also require “[a]ll voters” to be subject to “substantially equivalent identity and eligibility verification” before voting. Although the amendment’s principal author and sponsor denies this provision would end Election-Day Registration or require absentee voters to show photo identification, the “substantially equivalent” language is so vague it is anyone’s guess what effect it will ultimately have on Minnesota’s voting system, either by future legislation or judicial construction. Yet the ballot question does not even mention this proposed new requirement. Minnesota voters have the right to know that the proposed amendment would add this vague and potentially far-reaching new requirement to the Constitution when they vote on the proposal.

The proposed amendment would also require Minnesota to adopt a “provisional balloting” system. Provisional voting would add delay, uncertainty and expense to Minnesota’s voting system. Yet, again, the ballot question does not even mention this proposed change to Minnesota’s Constitution and voting system.

The ballot question the legislature has formulated and mandated is unconstitutionally misleading. It omits crucial changes and misinforms Minnesota voters about the nature and extent of the proposed overhaul of Minnesota’s voting system. Petitioners respectfully request that this Court restrain the Secretary of State from placing it on the November 2012 general election ballot.

ISSUE PRESENTED

Is the ballot question mandated by the legislature to be put to the voters of Minnesota in the November 2012 general election for approving or disapproving the proposed constitutional amendment so unreasonable and misleading as to evade the Minnesota Constitution's requirement to submit the amendment to a popular vote?

STATEMENT OF THE CASE

1. **The Parties**

Petitioners include three nonpartisan, nonprofit organizations: the League of Women Voters Minnesota, Common Cause, and Jewish Community Action, which together have over 12,000 members in Minnesota, the majority of whom are registered voters. Each organization's mission includes ensuring that voters are well-informed and able to participate knowledgeably in the democratic process. Each organization is petitioning this Court for relief because it believes the ballot question is materially misleading, deprives its Minnesota members of the right to have the Minnesota Constitution amended based upon a popular vote, and may adversely impact its members' right to vote in future elections. Affidavit of Stacey Doepner-Hove¹; Affidavit of Michael Dean; and Affidavit of Vic Rosenthal.

Petitioners also include five individual registered Minnesota voters. Petitioner Gabriel Herbers is a 92-year old Roman Catholic nun who is legally blind, has limited mobility, and resides in an assisted living facility. Affidavit of Gabriel Herbers. Petitioner Shannon Doty is a soldier deployed in Afghanistan. Affidavit of Shannon Doty.

¹ Cited affidavits are being filed with this Brief in a separate compendium.

Petitioner Gretchen Nickence is a member of the La Courte Oreille Band of Chippewa Indians who has been homeless from time-to-time, and whose only form of photo identification is her tribal identification card. Affidavit of Gretchen Nickence. Petitioner Kathryn Ibur is a student at Macalester College whose only forms of photo identification are a college-issued card and a Missouri drivers' license. Affidavit of Kathryn Ibur. Petitioner John Harper Ritten is a student at Washington University in St. Louis who expects to be voting by absentee ballot in the November 2012 and subsequent elections. Affidavit of John Harper Ritten. Each individual petitioner believes the ballot question is materially misleading, and risks deceiving voters into voting for a constitutional amendment that would adversely impact his or her right to vote in future elections.

Respondent Mark Ritchie is the Minnesota Secretary of State. Ritchie is the chief election official in Minnesota. He is responsible for administering Minnesota's election laws and overseeing the preparation of election ballots. In that capacity, he is responsible for seeing to it that the proposed amendment is placed on the November 2012 election ballot for approval or rejection.

2. The Proposed Amendment

In 2011, the Minnesota legislature attempted to modify Minnesota's voting system by statute. The bill passed by the legislature provided in pertinent part that Minn. Stat. § 204C.10 would be amended to provide that, prior to a voter obtaining a printed voter's receipt, an election "judge must: (1) require the voter to present a photo identification document, as described in subdivision 2; and (2) confirm the applicant's name, address, and date of birth. A voter who cannot produce sufficient identification as required by

subdivision 2 may not sign the polling place roster, but may cast a provisional ballot, as provided in section 204C.135.” S.F. 509, Ch. 69, Leg. Sess. (Minn. May 23, 2011).

Governor Mark Dayton vetoed the bill, and the legislature did not override his veto.

On or about April 5, 2012, the 87th Minnesota legislature enacted Chapter 167, House File 2738, of the 2012 Session Laws (hereinafter the “Voter Identification and Provisional Ballot Amendment”). It provides as follows (new language underlined):

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."

(Addendum ("Add.") at 1.)²

Thus, the proposed Constitutional amendment has four substantive provisions. It would require the following:

² The act is available on the Office of the Revisor of Statutes's website at <https://www.revisor.mn.gov/laws/?id=167&doctype=chapter&year=2012&type=0>.

1. All voters “voting in person” to “present valid government-issued photographic identification before receiving a ballot”;
2. The State to “issue photographic identification at no charge to an eligible voter who does not have” the requisite “form of identification”;³
3. A “provisional ballot” for persons who are unable to present government-issued photographic identification; and
4. All voters to be “subject to substantially equivalent identity and eligibility verification prior to a ballot being cast or counted.”

3. The Ballot Question Is Misleading and Only Addresses Two of the Four Proposed Substantive Changes In The Way Minnesotans Vote

Although the proposed amendment has four substantive provisions, the ballot question mandated by the legislature merely states:

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?

(Add. at 1.) This question addresses the first two proposed substantive changes, but it does not ask voters whether they accept or reject the latter two substantive changes.

Moreover, with respect to the two substantive changes it does address, the ballot question describes those changes inaccurately.

³ Providing free identification is necessary to avoid the constitutional prohibition against poll taxes. *See Crawford v. Marion County Election Board*, 553 U.S. 181, 198 (2008) (explaining that Indiana’s photo identification law was not a facially unconstitutional poll tax because requisite photo identification cards were free).

- a. **The ballot question falsely states that the amendment would “require all voters to present valid photo identification to vote.”**

The ballot question addresses the first provision—requiring in-person voters to present government-issued photo identification—but it does so by misstating one key feature and omitting another. The key feature it misstates is who would be required to present photo identification. The ballot question asks whether the Constitution should be amended to require “*all* voters” to present valid photo identification to vote. But the plain language of the proposed amendment expressly requires photo identification only from persons voting “in-person.” Another provision in the proposed amendment, not mentioned in the ballot question, would require “substantially equivalent identity and eligibility verification” from all voters, “including those not voting in person,” but it is uncertain how future legislatures and the Secretary of State would implement, and how courts would construe, this vague language as applied to mail-in absentee voters. The amendment’s principal author and sponsor contends absentee voters would not be required to present photo identification to vote. *See, e.g.*, Tr. of MN. House of Reps. In re: Conference Committee Report on HF2738 (Kiffmeyer/Newman) Amendment to the Minnesota Constitution (Apr. 3, 2012) [Appendix “APP.” at 91-92, 95-96]; Tr. of Hearing on H.F. 2738 Before the H. Gov’t Operations and Elections Comm., 2011-12 Regular Session (Mar. 8, 2012) [APP. at 2, 4-5, 7-8, 11-12, and 33-35]. Regardless of whether this turns out to be true, since the proposed amendment requires “in person” voters to provide photo identification, but mail-in voters to provide a yet-to-be

determined “substantial equivalent,” the ballot question’s unequivocal assertion that photo identification would be required of “all voters” is not accurate.

The key feature regarding photo identification omitted from the ballot question is that the amendment would require “government-issued” photographic identification.” The ballot question only refers to “valid photo identification,” thereby failing to inform the voters that only a much more restricted subset of photo identification would be acceptable for voting. Among states that have imposed or are considering voter photo identification requirements, whether to strictly require “government-issued” photo identification or to accept a broader array of identification is one of the significant variables in how restrictive the scheme is. *See, e.g., Voter ID: State Requirements*, NAT’L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/legislatures-elections/elections/voter-id.aspx> (last updated May 22, 2012) [hereinafter *VOTER ID: State Requirements*].

Voter identification requirements fall along a continuum. Minnesota is currently one of approximately twenty states that maintain the most voter-friendly identification requirement permissible under the federal “Help America Vote Act of 2002” (“HAVA”). *See, e.g.,* EAGLETON INST. OF POLITICS OF RUTGERS & MORITZ COLL. OF LAW, REPORT TO THE U.S. ELECTION ASSISTANCE COMMISSION ON BEST PRACTICES TO IMPROVE VOTER IDENTIFICATION REQUIREMENTS PURSUANT TO THE HELP AMERICA VOTE ACT OF 2002 (June 28, 2006), *available at* http://www.eac.gov/research/other_reports.aspx [hereinafter REPORT ON VOTER IDENTIFICATION]. HAVA requires any voter who registers by mail and who has not previously voted in a federal election to show current

and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. 42 U.S.C. § 15483(b). Under current Minnesota law, in order to vote registered voters who have voted in a prior election need only sign the polling place roster, in which they attest to their eligibility to vote and are informed that giving false information is a felony punishable by five-years' imprisonment and a \$10,000 fine. Minn. Stat. § 204C.10(a).⁴ No identification is required of any voters except first-time mail-in registrants.

“Government-issued” photo identification is at the opposite end of the voter identification spectrum. Of the 28 states that are currently enforcing voter identification laws of some kind, only five strictly require photo identification. *See Voter ID: State Requirements, supra*.⁵ Of the states that strictly require photo identification, only three—

⁴ The statute provides:

An individual seeking to vote shall sign a polling place roster which states that the individual is at least 18 years of age, a citizen of the United States, has resided in Minnesota for 20 days immediately preceding the election, maintains residence at the address shown, is not under a guardianship in which the court order revokes the individual's right to vote, has not been found by a court of law to be legally incompetent to vote or has the right to vote because, if the individual was convicted of a felony, the felony sentence has expired or been completed or the individual has been discharged from the sentence, is registered and has not already voted in the election. The roster must also state: “I understand that deliberately providing false information is a felony punishable by not more than five years imprisonment and a fine of not more than \$10,000, or both.”

Minn. Stat. § 204C.10(a).

⁵ Those states are Georgia, Kansas, Indiana, Pennsylvania, and Tennessee. *See id.* Kansas's statute applies to both in-person and absentee voters, but exempts permanently disabled

Georgia, Tennessee, and Indiana—require photo identification that is government-issued. *See id.* Even as to those three states, requiring government-issued photo identification is a recent phenomenon; no state had ever done so before Indiana imposed this requirement in the 2006 elections. WENDY R. WEISER & LAWRENCE NORDEN, BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW, VOTING LAW CHANGES IN 2012 4 (2011), *available at* http://www.brennancenter.org/content/resource/voting_law_changes_in_2012.

Ten states request photo identification, but allow alternative forms of identity verification as a back-up.⁶ Two states, Texas and South Carolina, recently passed laws requiring government-issued photo identification, but as “covered” jurisdictions under Section 5 of the Voting Rights Act they cannot change their voting laws without first obtaining the United States Department of Justice’s pre-clearance. Section 5 prohibits the enforcement of laws having the “purpose” or “effect of denying or abridging the right to vote on account of race or color.” 42 U.S.C. § 1973c. The Department of Justice has objected to both states’ laws requiring government-issued photo identification on the ground that they would unnecessarily impose barriers to voting that would disproportionately impact minority voters. *See* Letter from U.S. Dep’t of Justice to Office

Branch of NAACP v. Walker, Case No. 11CV5492, 2012 WL 739553 (Dane Co. Cir. Ct. Mar. 6, 2012), *cert. granted*, No. 2012AP557-LV, 2012 WL 1020254 (Wis. Ct. App. Mar. 28, 2012), *cert. denied*, 811 N.W.2d 821 (Wis. 2012); *League of Women Voters of Wisconsin v. Walker*, Case No. 11CV4669, 2012 WL 763586 (Dane Co. Cir. Ct. Mar. 12, 2012), *cert. granted*, No. 2012AP584, 2012 WL 1020229 (Wis. Ct. App. Mar. 28, 2012), *cert. denied*, 811 N.W.2d 821 (Wis. 2012). [APP. at 199-219].

⁶ *See* CONN. GEN. STAT. § 9-261; DEL. CODE ANN. tit. 15, § 4937; IDAHO CODE ANN. §§ 34-1106(2), 34-1113, 34-1114; LA. REV. STAT. ANN. §§ 18:562, 18:565; MICH. COMP. LAWS ANN. §§ 168.523, 168:727; N.D. CENT. CODE §§ 16.1-05-07(3), 16.1-05-06, 16.1-02-05; S.D. CODIFIED LAWS §§ 12-18-6.1, 12-18-6.2; FLA. STAT. ANN. § 101.048(2)(b); MONT. CODE ANN. §§ 13-13-114, 13-15-107(2); R.I. GEN. LAWS ANN. §§ 17-19-24.2, 17-19-24.3(b).

of Texas Sec'y of State (March 13, 2012), *available at* http://www.justice.gov/crt/about/vot/sec_5/ltr/l_031212.php; Letter from U.S. Dep't of Justice to Assistant Deputy Attorney General of South Carolina (Dec. 23, 2011), *available at* http://www.justice.gov/crt/about/vot/sec_5/ltr/l_122311.php. Both states have filed suit in federal court seeking a declaratory judgment that their photo ID requirements do not violate Section 5, but currently these laws cannot be enforced.

Minnesota's proposed amendment would not only change Minnesota's voting system by imposing one of the strictest voter identification requirements in the nation, it would enshrine these requirements in the Minnesota Constitution. The only state that has any voter identification requirement in its constitution is Mississippi. *See Voter ID: State Requirements, supra*. However, Mississippi's constitutional amendment has not taken effect despite its legislature's passing implementing legislation, because Mississippi is also a covered jurisdiction under the Voting Rights Act and it has not received Department of Justice pre-clearance. *See id.*; 30 Fed. Reg. 9897 (Aug. 7, 1965). Even Mississippi's photo identification amendment is less stringent than Minnesota's proposal, because it exempts persons residing in state-licensed care facilities. *See Voter ID: State Requirements, supra*. Minnesota's proposal contains no exemptions for any in-person voters.⁷

⁷ The ballot question addresses the proposed amendment's second provision by asking voters to decide whether the Constitution should be amended to "require the state to provide free identification to eligible voters." The actual amendment, however, would only require the state to provide free identification to an eligible voter who does not have a form of identification meeting the requirements of this section." The ballot question omits this qualifier on the free identification provision.

b. The Ballot Question Fails To Disclose That The Amendment Would Introduce A Provisional Voting System Into Minnesota Elections.

The ballot question completely omits any mention of the proposed amendment's last two substantive provisions: provisional voting, and requiring that all voters be subject to "substantially equivalent identity and eligibility verification" before voting. If adopted, these two undisclosed provisions would significantly change Minnesota's voting system. The ballot question's silence on these material changes in Minnesota's system of voting is fatal to its validity.

The significance of these proposed changes can only be appreciated by contrasting them with Minnesota's current system. Minnesota is currently one of the few states that provides for Election-Day Registration ("EDR"). *See* U.S. ELECTION ASSISTANCE COMM'N, 2010 ELECTION ADMINISTRATION AND VOTING SURVEY at 6-7 (Dec. 2011) [hereinafter 2010 VOTING SURVEY].⁸ With EDR, if an eligible voter shows up at the polls and is not on the registration rolls, whether because the voter never registered, has moved since the last election, has not voted in four years, or simply because of an administrative error, the voter can register at the polling place and still vote. *See* Minn. Stat. § 201.054, subd. 1; § 201.061, subd. 3; § 201.171; Minn. R. 8200.5100, 8200.5200, 8200.5300, 8200.5500. States with EDR, like Minnesota, have had consistently higher voter turnout

⁸ Idaho, Iowa, Maine, Montana, New Hampshire, North Carolina, Wisconsin, Wyoming, and the District of Columbia also have EDR or a similar system, "same-day registration." *See id. see also* DEMOS, VOTERS WIN WITH SAME DAY REGISTRATION 3 (Jan. 2010), *available at* http://www.demos.org/sites/default/files/publications/VotersWinSDR_2010_Demos.pdf. The Connecticut legislature has recently passed EDR, but the Governor has yet to sign it. *See* H.B. 5024, Gen. Assem., Reg. Session (Conn. 2012). North Dakota does not require registration to vote. *See* 2010 VOTING SURVEY.

than states without it. WEISER & NORDEN, *supra*, at 25; *see also* DEMOS, VOTERS WIN WITH SAME DAY REGISTRATION 3 (Jan. 2010), *available at* http://www.demos.org/sites/default/files/publications/VotersWinSDR_2010_Demos.pdf [hereinafter SAME DAY REGISTRATION]. Minnesota ranked second in voter participation in the 2010 general election, and first in the 2008 election. 2010 VOTING SURVEY, *supra*, at 27; U.S. ELECTION ASSISTANCE COMM'N, 2008 ELECTION ADMINISTRATION AND VOTING SURVEY 31 (Nov. 2009).⁹

States that do not have EDR (or same-day registration) are required by HAVA to provide for provisional voting. *See* 42 U.S.C. §§ 15482(a), 1973gg-2(b). Under HAVA, individuals turned away from voting at the polls, either because they do not appear on the registration rolls for that polling place, or because an election official asserts the individual is ineligible to vote, must be offered a provisional ballot. 42 U.S.C. § 15482(a). Whether the provisional ballot is counted depends on whether election officials later determine that the person was eligible to vote. *Id.* Where a provisional ballot is cast due to lack of identification, the voter must return with accepted identification and “cure” the provisional ballot. Minnesota is currently exempt from HAVA’s provisional voting requirements because it offers EDR, which permits persons faced with registration issues at the polls to register and vote on the same day. *See* 42 U.S.C. §§ 15482(a), 1973gg-2(b); EAGLETON INST. OF POLITICS OF RUTGERS & MORITZ COLL. OF LAW, REPORT TO THE U.S. ELECTION ASSISTANCE COMMISSION ON BEST PRACTICES TO IMPROVE

⁹ HAVA created the Election Assistance Commission to compile data and review procedures regarding election administration. 42 U.S.C. §§ 15321-22.

PROVISIONAL VOTING PURSUANT TO THE HELP AMERICA VOTE ACT OF 2002 27-28 (June 28, 2006), *available at* http://www.eagleton.rutgers.edu/research/provisionalvoting_voterID.php [hereinafter REPORT ON PROVISIONAL VOTING].

Provisional voting represents a different system for addressing registration issues from EDR. *See, e.g.*, U.S. ELECTION ASSISTANCE COMM’N, BEST PRACTICES ON PROVISIONAL VOTING 6, *available at* http://www.eac.gov/research/other_reports.aspx [hereinafter BEST PRACTICES ON PROVISIONAL VOTING]. Unlike casting a regular ballot, submitting a provisional ballot is not voting. U.S. ELECTION ASSISTANCE COMM’N, EAC ADVISORY 2005-006: PROVISIONAL VOTING AND IDENTIFICATION REQUIREMENTS 2-3 (Sept. 13, 2005), *available at* http://www.eac.gov/research/other_reports.aspx. A provisional ballot is merely a claim by a potential voter that he or she has the right to vote. *Id.* Because regular and provisional ballots have different purposes, the “nature and procedures associated with a provisional ballot are wholly distinct from those of a traditional ballot.” *Id.* at 2.

In order to adopt provisional voting, Minnesota would be required to develop, implement, and manage an entirely new voting system at substantial cost and expense. *See, e.g.*, BEST PRACTICES ON PROVISIONAL VOTING, *supra*. HAVA requires states using provisional voting to establish a free access system, such as a website or toll-free phone number that permits individuals to determine whether their provisional ballots were counted, and if they were not counted, the reason why. 42 U.S.C. §15482(a)(5). Different states have different procedures and standards for determining whether provisional ballots will be counted. Some states, for example, will not count a provisional ballot if the

voter was eligible to vote and properly registered, but tried to vote at the wrong precinct, whereas other states will salvage all the votes the individual was eligible to cast.¹⁰ See generally Richard F. Shordt, Note, *Not Registered to Vote? Sign This, Mail It, and Go Hire a Lawyer*, 78 GEO. WASH. L. REV. 438, 459 (Feb. 2010). With respect to voter identification, different states have adopted different rules for determining whether the provisional ballot may be counted. Some states permit the voter to return with proper identification, but the length of time allowed ranges from one to thirteen days. REPORT ON PROVISIONAL VOTING 23 & n.39.

States also differ in the amount of time they permit for determining the eligibility of provisional ballots after Election Day; times for the provisional ballot canvass range from two to thirty days. REPORT ON PROVISIONAL VOTING, *supra*, app. B, Attachment A. States also differ regarding the transparency of the provisional ballot canvass, such as whether candidate representatives are permitted to observe. EDWARD B. FOLEY, UNCERTAIN INSURANCE: THE AMBIGUITIES AND COMPLEXITIES OF PROVISIONAL VOTING 9 (Moritz College of Law Oct. 30, 2007), available at <http://moritzlaw.osu.edu/library/documents/Foley103007Draft.pdf>. States that utilize provisional voting also must develop procedures for administering provisional ballots on Election Day and establishing a chain of custody for the ballots. BEST PRACTICES ON PROVISIONAL VOTING, *supra*, at 4-5. Poll

¹⁰ Compare OHIO REV. CODE ANN. §§ 3505.181(C)(2)(a), 3505.181(E)(1), 3505.182, 3505.183(B)(4)(a)(ii); *State ex rel. Painter v. Brunner*, 941 N.E.2d 782 (Ohio 2011) (holding that out-of-precinct provisional ballots must be rejected in Ohio and that, contrary to certain directives promulgated by Secretary of State's office, there is no exception to this rule); 26 OKLA. STAT. ANN. TIT. 26, § 7-116.1(C); 1 TEX. ADMIN. CODE §§ 81.172(c)(1), 81.172(i)(4)(J), with CAL. ELEC. CODE § 14310(c)(3); GA. CODE ANN. § 21-2-419(c)(2); WASH. ADMIN. CODE 434-253-047(4)-(5).

workers must be trained in these new procedures. *Id.* Managing the provisional voting process can strain the capacity of election officials or cause substantial numbers of votes not to be counted. REPORT ON PROVISIONAL VOTING, *supra*, at 12-14 & n.13. In the 2008 general election, Ohio alone rejected 39,989 provisional ballots statewide, 19.3 percent of the total provisional ballots cast in that election.¹¹ And the cost of processing provisional ballots is greater than the cost of regular ballots. REPORT ON VOTER IDENTIFICATION, *supra*, at 17.

The proposed amendment would expressly require Minnesota to adopt and implement a new, and not yet designed, system of provisional voting, with the attendant uncertainty and cost. Yet the ballot question does not even mention this proposed fundamental change to Minnesota's voting system.

c. The Ballot Question Fails To Disclose That The Amendment Would Require All Voters To Be Subject To “Substantially Equivalent Identity And Eligibility Verification” Before Voting.

The ballot question also does not disclose that the amendment would require that all voters be subject to “substantially equivalent identity and eligibility verification prior to a ballot being cast or counted.” This provision could effectively eliminate EDR in Minnesota. Currently voters can register at least 21 days before an election or at the polling place on Election Day. Minn. Stat. § 201.061. In the last presidential election, over 540,000 Minnesotans registered on Election Day, almost 19% of the total voters. Minnesota Election Statistics 1950-2010, OFFICE OF THE MINNESOTA SECRETARY OF

¹¹ Ohio Sec’y of State, Election Results, General Election 2008, Provisional Ballot Statistics, <http://www.sos.state.oh.us/sos/upload/elections/2008/gen/provisionals.pdf>.

STATE, <http://www.sos.state.mn.us/index.aspx?page=137>. Eligibility verification involves checking various databases to confirm a potential voter is a citizen and not a felon, among other things. *See* Minn. Stat. §§ 201.014, 201.021-22, 201.091, 201.12, 201.121, 201.13, 201.14, 201.15, 201.155; Minn. R. 8200.5100, 8200.5500, 8200.9305, 8200.9310, 8200.9315. According to Respondent Ritchie's testimony before the legislature, it is not now logistically possible to check the eligibility of election-day registrants in a manner substantially similar to those who had registered in advance and permit them to vote on Election Day. *Tr. of Hearing on H.F. 2738 Before the H. Gov't Operations and Elections Comm., 2011-12 Regular Session* (Mar. 8, 2012) (statement of Secretary of State Mark Ritchie) [APP. at 13-14, 16-18, 19-21]. We believe it is undisputed that it could cost Minnesota many tens of millions of dollars to implement a provisional voting system. Petition, ¶ 33.

Again, the "substantially equivalent" provision would significantly change Minnesota's voting system, either by completely eliminating Election Day registration or by allowing it to be preserved only at significant expense. Yet the ballot question does not even mention this proposed addition to the Constitution.

ARGUMENT

The Ballot Question’s Description of the Proposed Amendment is Unconstitutionally Misleading.

- a. **This Court must not allow the proposed amendment to be decided based upon a ballot question that is unconstitutionally misleading.**

The Minnesota Constitution provides that proposed amendments shall be “submitted to the people for their approval or rejection.” Art. IX, § 1. Although the legislature has discretion in drafting the form of submission to the voters, this Court’s role is to ensure the 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.” *Breza v. Kiffmeyer*, 723 N.W.2d 633, 636 (Minn. 2006) (quoting *State ex rel. Marr v. Stearns*, 72 Minn. 200, 218, 75 N.W. 210, 214 (1898), *rev’d on other grounds*, *Stearns v. Minnesota*, 179 U.S. 223 (1900)).

Petitioners seek relief under Minn. Stat. § 204B.44 because the ballot question violates the Minnesota Constitution. The statute gives “[a]ny individual” the right to petition this Court to correct certain election “errors, omissions, or wrongful acts which have occurred or are about to occur,” including “an error or omission in the placement or printing of . . . any question on any official ballot.” Minn. Stat. § 204B.44. Placing the misleading ballot question on the official ballot in the November 2012 general election would be constitutional error and, because such placement is a “wrongful act . . . about to occur,” Petitioners have standing to seek relief. The Secretary of State is the proper respondent in this proceeding. *See Clark v Ritchie*, 787 N.W.2d 142 (Minn. 2010); *Clark*

v. Pawlenty, 755 N.W.2d 293 (Minn. 2008). The statute authorizes this Court to award “appropriate relief,” which in this case would be to restrain the Secretary of State from preparing official ballots with the unconstitutionally misleading ballot question. *See Winget v. Holm*, 187 Minn. 78, 244 N.W. 331 (1932).

This Court applies an objective standard in determining whether a ballot question is unconstitutionally misleading. *See Breza*, 723 N.W.2d at 636. The Court considers whether the language of the ballot question itself would mislead a voter of common intelligence as to the proposed amendment’s actual meaning and effect. *See id.*

Ensuring that Minnesota voters are not misled about proposed constitutional amendments is, of course, always important; voters have the right to know what they are voting on. But this safeguard is particularly important when the proposed amendment itself affects the people’s right to vote. The right to vote is the basis of our democracy; it is the fundamental right upon which all our other rights depend. *See, e.g., Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 729-30 (Minn. 2003). When Minnesota voters are being asked to change their system of voting, it is of paramount importance that the changes be fairly and accurately described in the ballot question. This ballot question fails to do so.

- b. **The ballot question is unconstitutionally misleading because it states the amendment would require photo identification from “all voters,” when the amendment actually states photo identification is required from those who vote “in person.”**

The challenged ballot question reads, in its entirety, as follows: “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?” (Add. at 1) (emphasis added). A voter of common intelligence would believe that the ballot question means what it says—that the Minnesota Constitution would be amended to require “all voters” to present valid photo identification to vote.

The actual amendment, however, does not provide that “all voters” will be required to present valid photo identification in order to vote. On the contrary, the proposed amendment states: “All voters **voting in person** must present valid government-issued photographic identification before receiving a ballot.” (Add. at 1) (emphasis added). By its plain language, the amendment would require only voters voting in person to present photo identification. Absentee voters voting by mail would not necessarily be required to provide photographic identification. They would be subject to another provision, subsection (c), which provides: “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.” (Add. at 1). It is unknown what that provision will mean with respect to absentee voters. The ballot question does not mention or even hint at this “substantially equivalent” provision.

The ballot question is materially misleading because it explicitly promises something that the amendment itself does not deliver. *See Advisory Op. to Att'y Gen. re: Stop Early Release of Prisoners*, 642 So. 2d 724, 727 (Fla. 1994) (finding proposed ballot summary “seriously misleading” because it ignores amendment’s own exceptions). The ballot question promises a simple and certain standard: “all voters” would be required to present photo identification. However, the amendment would actually deliver something very different. It would create two classes of voters: those voting in person, who would be expressly required by the Constitution to present photo identification, and those voting by mail, who would not. In the 2008 general election, approximately 10% of Minnesota voters voted by absentee ballot; in the 2010 general election, approximately 6% voted by absentee ballot. *See Absentee Balloting in the 2010 General Election*, available at <http://www.sos.state.mn.us/index.aspx?page=1570>; State of Minnesota 2008 Canvassing Report available at <http://www.sis.state.mn.us/index.aspx?page=1408>. Thus, a substantial percentage of Minnesota voters would not be subject to the proposed amendment’s express photo identification requirement.

It is unknown what the “substantially equivalent” provision will wind up meaning for absentee voting. Currently, Minnesotans serving in the military and their family members (as well as Minnesotans temporarily living outside the country) are not subject to the same eligibility and identity verification procedures as other absentee voters. *See* Minn. Stat. §§ 203B.02, 203B.04-09, 203B.11-12, 203B.14-24, 203B.26-27; Minn. R. 8210.0500, 8210.0600, 8210.0800. The federal Uniformed and Overseas Citizens Absentee Voting Act requires states to permit such citizens to vote absentee in elections

for federal office, and prohibits states from imposing certain restrictions on their absentee ballots. *See* 42 U.S.C. §§ 1973ff to 1973ff-7. Other absentee voters must have their absentee ballots witnessed by someone who certifies the voter filled out a blank ballot and sealed it in the ballot envelope; the witness must be someone registered to vote in Minnesota, a notary, or a person authorized to give oaths. *See* Minn. Stat. § 203B.07, subd. 3. But Minnesotans serving in the military and their families, as well as Minnesotans temporarily living abroad are not required to have their absentee ballots certified by any witness; they can “self-certify” their absentee ballots. *See* Minn. Stat. § 203B.21, subd. 3.

The amendment’s principal author and sponsor in the House of Representatives, Rep. Mary Kiffmeyer, repeatedly stated during House committee hearings and floor debate that the proposed amendment is not intended to require absentee voters who vote by mail to present photo identification to vote. *See, e.g.*, APP. at 91-92, 95-96; APP. at 2, 4-5, 7-8, 11-12 and 33-35. Rep. Kiffmeyer’s explanation further confirms the misleading nature of the ballot question. The ballot question asks whether the Constitution should be “amended to require all voters to present valid photo identification to vote.” Not only is this question contrary to the plain language of the amendment (“voters voting in person must present valid government-issued photographic identification”), but it is also contrary to the intent of the amendment according to its principal sponsor. Therefore, the ballot question affirmatively misstates the express language, and purported intent of the proposed amendment.

The difference between the ballot question and the actual proposed amendment was not a mere oversight. It was repeatedly pointed out to the bill’s sponsors during legislative committee meetings and debate. For example, at a meeting of the House Government Operations and Elections Committee, when Rep. Kiffmeyer stated that absentee voters would not need to present photo identification, Rep. Scalze noted that the proposed ballot question was therefore misleading because it said “all voters,” and in her district approximately 20% voted by absentee ballot and would not be required to show photo identification. [APP. at 7-8]. Rep. Kiffmeyer dismissed this concern, with a *non-sequitur*, stating that polls show people support photo ID for voting, voters are familiar with the voting process, and voters would learn more about the proposed amendment before the election. *Id.* None of this responds to the constitutional infirmity of the misleading nature of the ballot question itself.

The bill’s sponsors had ample opportunity to correct the ballot question—after all, adding the qualifier “in-person” would have been easy—and intentionally chose not to do so. Whatever their motivation, the legislative decision not to correct this highly misleading statement is “a palpable evasion of the constitutional requirement to submit the law to a popular vote.” *Breza*, 723 N.W.2d at 636.

- c. **The ballot question is unconstitutionally misleading because it omits any mention of the “substantially equivalent” verification provision.**

The ballot question’s complete failure to mention the “substantially equivalent identity and eligibility verification” part of the amendment is also fatally misleading. For one thing, the “substantially equivalent” provision is directly inconsistent with the ballot

question's assertion that the amendment would "require all voters to present valid photo identification." A voter of common intelligence would spot this inconsistency. Failing to tell voters about the "substantially equivalent" provision is part and parcel of misleading them into believing the amendment would necessarily require "all voters to present valid photo identification."

This omission is an evasion of the constitutional requirement to submit the amendment to a popular vote. Many voters might support an amendment requiring "all voters to present valid photo identification," but not support an amendment requiring only some voters to do so. Indeed, voters likely to favor the ballot question as framed are particularly likely to be misled by the omission of the "substantially equivalent" provision. Voters who believe photo identification should be strictly required to prevent identity voting fraud are more likely to be troubled by an exception for persons not voting in person. They may decide it is irrational for the Minnesota Constitution to "impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud." *Developments in the Law—Voting and Democracy*, 119 HARV. L. REV. 1144, 1153 (2006). Such voters are also more likely to be troubled by allowing "substantially equivalent" forms of identity verification; after all, if "substantially equivalent" forms suffice, then why strictly require photo identification from in-person voters? The ballot question as framed poses a substantial risk of misleading voters into voting for a voting scheme they would actually oppose.

The ballot question's omission of the "substantially equivalent" provision is also misleading because it conceals the uncertainty created by the amendment's ambiguous

language. See *Wolf v. Myers*, 173 P.3d 812 (Or. 2007). The ballot question gives voters the false impression they are voting on a simple, uniform rule—whether “all voters [must] present valid photo identification to vote”—when in fact they are voting on adopting a vague standard that may apply differently to different classes of voters. Many voters may support the simple, bright-line rule the ballot question promises, but oppose the vague standard the amendment would actually impose.

No one knows how this vague constitutional provision would be implemented by the legislature or the Secretary of State, or how it would be interpreted by the courts. For example, the provision may wind up effectively eliminating absentee balloting by mail for state office, if the legislature or courts decide that nothing sent by mail is “substantially equivalent” to presenting photo identification in person to an election judge. This provision may also wind up effectively eliminating same-day election registration in Minnesota. Minnesota does not currently have a system that permits verifying the eligibility of Election Day registrants in the same manner as those registering in advance. Creating such a system might be technologically possible, but it would be expensive.

The issue here is not, of course, whether the Constitution should be amended to require all voters to be subject to substantially equivalent identity and eligibility verification before voting. The issue is whether voters have the right to know what is in the amendment they are being asked to vote on. Nothing in the ballot question remotely suggests they are voting on this provision.

Not surprisingly, the summary prepared by the House Research Department, a nonpartisan House agency that prepares “politically neutral and impartial” bill summaries to help House members “make informed legislative decisions,” emphasizes this provision rather than hides it. [APP. at 187]. Here is the House summary:

This bill proposes an amendment to the Minnesota Constitution requiring all voters be subject to substantially equivalent identity and eligibility verification prior to a ballot being cast or counted.

The constitutional amendment also requires that persons voting in person present valid government-issued photographic identification before receiving a ballot. The state would be required to provide photographic identification at no charge to eligible voters who do not have identification meeting these requirements. A voter unable to present government-issued photographic identification would be permitted to submit a provisional ballot. The process for certification and counting of a provisional ballot would be enacted by law at a later date.

[APP. at 186].

The Senate’s version of the ballot question also would have informed the voters about the “substantially equivalent” requirement. The Senate’s version (of a slightly different bill) provides:

Shall the Minnesota Constitution be amended effective June 30, 2013, to require that all in-person voters present an approved form of government-issued photographic identification at the time of voting; that those not voting in person provide government-issued proof of identity; that all voters be subject to substantially equivalent eligibility verification before a ballot is cast or counted; and that the state provide at no charge an approved photographic identification to eligible individuals? [APP. at 188].

- d. The ballot question is unconstitutionally misleading because it fails to disclose the proposed amendment would require government-issued photo identification.**

Of the handful of states that require photo identification to vote, some require that the photo identification be government-issued, and some do not. *See, e.g., Voter ID: State Requirements, supra*. The legislature deliberately chose the stricter form of photo identification—the proposed amendment would require in-person voters to present “valid government-issued photographic identification.” Yet the legislature omitted the phrase “government-issued” from the ballot question. The ballot question merely asks whether all voters should be required to present “valid photo identification.” A voter of common intelligence would not know that he or she is voting on whether to require government-issued photo identification. A reasonable voter might understand “valid photo identification” to mean one issued by a private university, for example, or by an employer. The ballot question conceals the fact that the right to vote would be conditioned on possessing and presenting a photo identification issued by the government.

This is a material omission. *See Aziz v. Mayer*, No. 11AC-CC00439, slip op. at 5-6 (Mo. Cir. Ct. Cole Co. Mar. 27, 2012) (holding proposed voter photo identification ballot question was impermissibly misleading in part because it “refers to ‘voter photo identification requirements,’ [while] the Proposed Constitutional Amendment requires *government issued* photo identification, a narrower class of photo identification than what the summary statement implies”) (emphasis in original). [APP. at 192-198].

Many voters may favor requiring photo identification but not necessarily requiring *government-issued* photo identification. This is true for various reasons. Voters may oppose the additional burden of obtaining government-issued photo identification or the costs to the government of having to issue them. They may themselves have perfectly valid photo identification, such as student or employee identification, but not a government-issued photo identification, and erroneously believe they would not be affected by such a requirement. The omission of the “government-issued” requirement from the ballot question poses a substantial risk that voters will be misled into voting for an amendment they actually oppose.

Furthermore, there is compelling evidence that this omission was deliberate. The “government-issued” requirement is in the Senate’s version of the ballot question. It is in the summary prepared by the House Research Department. Why, then, is it not disclosed in the ballot question? The logical conclusion is that the omission was calculated to increase the odds of passage by misleading voters as to the photo ID requirement’s actual stringency. No other plausible explanation exists.¹²

¹² The ballot question also asks whether the Constitution should be amended “to require the state to provide free identification to eligible voters,” but that is not what the proposed amendment would actually require. It would actually require the state to provide free identification “to an eligible voter **who does not have a form of identification meeting the requirements of this section.**” (Add. at 1) (emphasis added). A voter of common intelligence reading the ballot question would believe that he or she will receive a free government identification if the proposal passes, but that would only be true for voters who do not already have government-issued photo identification.

- e. **The ballot question is unconstitutionally misleading because it fails to disclose the proposed amendment would require provisional voting.**

Minnesota does not currently have a provisional voting system, because it permits Election Day Registration. *See* 42 U.S.C. §§ 15482(a), 1973gg-2(b). The proposed amendment would expressly require Minnesota to adopt a provisional voting system, but the ballot question does not inform voters of that change.

This is a materially misleading omission. Adopting provisional voting would be a significant change to Minnesota's voting system. The change would affect Election Day procedures, as many Minnesotans would now be required to complete a new form of ballot in order to preserve their right to vote. It would require new post-Election Day procedures, as election officials would now be required to determine the eligibility of provisional ballots. The canvassing of provisional ballots would delay the counting and certification of Minnesota's vote. The length of this delay is unknown. The standards and process for determining eligibility are unknown. The cost of developing and implementing this new system is unknown, but would be substantial.

Yet the ballot question says absolutely nothing about provisional voting. The misleading nature of this omission was repeatedly pointed out to the bill's sponsors, who deliberately chose not to remedy it. For example, Rep. Winkler expressly stated as follows:

The [ballot] question says, shall the constitution be amended to require a valid ID and to provide a free ID? But the question doesn't have anything in here about provisional balloting or substantially equivalent verification eligibility standards. And I'm concerned that that question is not really reflective of the constitutional amendment you're proposing.

So I wonder why you didn't try to align the question to the voters with the ballot question because I'm concerned that that's a form of voter fraud.

[APP. at 81]. Rep. Kiffmeyer responded by simply ignoring Rep. Winkler's concerns, saying only the following:

It's very important to remember that this is a photo ID constitutional amendment, and that key concept is the [inaudible] concept that affects the other areas that are in this constitutional amendment. So I believe that this is what the voters are voting on, that it is a photo ID requirement, and also important for them to know that there is a free ID with that. And so, Mr. Speaker, I believe we have fairly represented the concept of photo ID requirement in the language of the ballot question.

[APP. at 81].

Representative Winkler pressed ahead, saying:

Well, Representative Kiffmeyer, you certainly are skilled at not answering questions. I will hand that to you. . . . And you have a question submitted to the voters which talks about photo ID and a free ID. But it doesn't talk about the rest of the things that are contained in your amendment like provisional balloting and the substantially equivalent language It seems to me what you're doing is trying to sell your amendment to the voters, mislead them into believing that this is just about saying who you are on election day, when, in fact, your bill is a Trojan Horse to do a lot of other things to disrupt and cause chaos in Minnesota's election. . . . This amendment including your title and the question, I believe, are a form of voter fraud because you are misleading the voters into believ[ing] they're just voting on photo ID when they're voting on so much more. . . . You're trying to limit this concept of photo ID which you believe is popular as a way to usher in a whole set of changes to Minnesota's election law which I think will create chaos and confusion and will disrupt some very popular aspects of our voting including absentee balloting and same day registration, so I think you're committing voter fraud.

[APP. at 82-83].

Rep. Kiffmeyer did not respond. Eventually, however, in response to repeated concerns about omissions from the ballot question (*see, e.g., id.*, APP. at 84-88), Rep. Downey predicted that the number of voters who would cast provisional ballots would be small despite the only evidence before the legislature being the testimony of the Secretary of State that as many as 600,000 Minnesotans may be required to cast provisional ballots. Based on Rep. Downey's speculation that only a tiny fraction of voters would be affected, he argued that it would therefore be "entirely confusing and misleading" to advise Minnesota's voters in the ballot question that if they approved the proposed constitutional amendment it would create a new provisional balloting system. [APP. at 91].

Rep. Downey and Rep. Kiffmeyer are mistaken. It is not "confusing and misleading" to accurately advise voters of a constitutional amendment's content and purposes when they are asked to approve it. The ballot question is misleading and unreasonable precisely because it both misstates what the amendment requires, and omits important changes the amendment will impose. The fact that the sponsors deliberately made no attempt to change the misleading nature of the ballot question, despite it being repeatedly pointed out to them, underscores that the oversight was not the result of inattention or benign neglect.

f. The legislature unlawfully provided a misleading title for the proposed amendment.

Minnesota law requires that the title for any ballot question proposing a constitutional amendment be provided by the Secretary of State and approved by the Attorney General. Minn. Stat. § 204D.15. (Add. at 2.)¹³ Yet the bill provides as follows: “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.’” During the House floor debate it was pointed out to the bill’s proponents that not only is the proposed title misleading, but also that Minnesota law does not even permit the legislature to specify the title. [APP. at 82-83].

The bill’s proponents offered no explanation for how the bill could provide a title for the proposed amendment without violating § 204D.15. Nor did they offer any excuse or justification for including the provision. They simply ignored the statute and kept in the provision.

This is not how Minnesota’s Constitution is properly amended. There are rules. Section 204D.15 is one of those rules. Another, more fundamental rule is enshrined in the Constitution itself—“the people” decide whether or not to adopt a proposed amendment. Art. IX, § 1. The people cannot make this decision unless the ballot question

¹³ The statute provides:

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.

Minn. Stat. § 204D.15, subd. 1.

informs them about the proposed amendment's provisions. If this ballot question is allowed to stand, then Minnesota voters will be deprived of their right to approve or disprove the proposed amendment—an amendment that would drastically affect their right to vote in future elections. Minnesotans deserve better.

CONCLUSION

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. A reasonable voter would not know from reading the ballot question that the proposed amendment (a) expressly requires photo identification only from persons voting “in-person”; (b) requires that photo identification be “government-issued”; (c) adds a vague “substantially equivalent” identification and verification requirement that would change Minnesota’s voting system in unknown ways, including potentially ending EDR and limiting absentee voting; and (d) require Minnesota to adopt a provisional voting system. Petitioners respectfully request that the Secretary of State be directed not to place the ballot question on the ballot in the November 2012 election.

Respectfully submitted,

DATED: May 30, 2012

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ATTORNEYS FOR PETITIONERS

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Minnesota Statute 204D.15, Pink Ballot; Form; Distribution;
Sample Ballot (2011)

Add. 2

Key: (1) language to be deleted (2) new language

2012, Regular Session

CHAPTER 167--H.F.No. 2738

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."

Filed with the Secretary of State April 10, 2012

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.

Subd. 2. [Repealed, 1997 c 147 s 79]

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.

History: 1981 c 29 art 6 s 15; 1981 c 217 s 9; 1983 c 303 s 20; 1986 c 444