

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' PETITION PURSUANT TO MINN. STAT. § 204B.44

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PETITION PURSUANT TO
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Secretary of State of the State
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Respondent.

Petitioners state and allege as follows:

PARTIES

1. The League of Women Voters Minnesota (“LWV Minnesota”) is a nonprofit organization with over 1500 members, the majority of whom are registered voters in the state of Minnesota. The mission of LWV Minnesota is to encourage the informed and active participation of citizens in government. LWV Minnesota takes action on selected governmental issues after study and agreement by its members. LWV

Minnesota encourages members to be informed participants in political activity, but as a nonpartisan organization, it neither opposes nor supports any political party or candidate for public office, even when the office is unaffiliated with a political party. Taking positions on issues of public policy is consistent with LWV Minnesota's nonpartisan role. LWV Minnesota is nonpartisan so that there is not a question of its interest in anything other than the general good. LWV Minnesota stands upon principles and policies of legislation designed for the general good. LWV Minnesota provides nonpartisan information to others with the understanding that they will use it to make their own decisions. It encourages others to register, to vote, and to communicate policy priorities to those in public office. It provides information and training on voting procedures, candidates, issues, effective lobbying, and running for office. LWV Minnesota's positions on issues are based on study and consensus by its members. LWV Minnesota believes that the legislatively mandated ballot question for the proposed Voter Identification and Provisional Ballot amendment to the Minnesota Constitution is misleading because it does not accurately and factually describe the proposed amendment, and because it fails to describe at all certain important substantive provisions contained in the amendment relating to provisional balloting which, if implemented, will effectively eliminate election day registration in Minnesota. LWV Minnesota wishes to ensure that all voters in Minnesota are fully and truthfully informed about the contents of the proposed amendment and all of the substantive changes it will make in Minnesota law in the ballot question so that they may intelligently choose whether to vote "yes" or "no" on the proposed amendment.

2. Petitioner Common Cause is a District of Columbia nonprofit corporation with a Minnesota chapter known as Common Cause Minnesota. Common Cause has more than 10,000 members in the State of Minnesota, the majority of whom are registered voters. Common Cause is a nonpartisan, grassroots organization dedicated to restoring the core values of American democracy, reinventing an open, honest and accountable government that serves the public interest, and empowering ordinary people to make their voices heard in the political process. It is the opinion of Common Cause that the legislatively mandated ballot question for the proposed Voter Identification and Provisional Ballot Amendment to the Minnesota Constitution is misleading because it does not accurately and factually describe the proposed amendment, and because it omits certain important substantive provisions contained in the Amendment relating to provisional balloting which, if implemented, will effectively eliminate election-day registration in Minnesota.

3. Petitioner Jewish Community Action (“JCA”) is a Minnesota nonprofit corporation that has over 700 household members, the majority of whom are registered Minnesota voters. The mission of JCA is to bring together Jewish people from diverse traditions and perspectives to promote understanding and take action on social and economic justice issues in Minnesota. JCA brings a distinct Jewish voice to the fight for justice. JCA addresses issues that shape the lives of people throughout the metropolitan area, working to develop specific strategies for addressing key issues. JCA also works with a range of constituency groups, including new Americans from the former Soviet Union, youth, and affiliated and unaffiliated Jews, many of whom may be

disenfranchised by the proposed Voter Identification and Provisional Ballot Amendment. JCA believes that it is in the best interests of all voters in the state of Minnesota to be fully informed as to provisions of the proposed constitutional amendment, and that the proposed ballot question does not fully inform voters because it is inaccurate, incomplete and misleading.

4. Petitioner Gabriel Herbers is a Catholic Nun with the Sisters of the Good Sheppard. She is 92 years old and lives in a senior's assisted living apartment in Oak Park Heights, Minnesota. She is legally blind and has limited mobility. She has had a lifetime of service in the public interest including serving as a school teacher, administrator and principal; the Peace and Justice coordinator for the Province of the Sisters of the Good Sheppard; and, currently, as a peer counselor with Vision Loss Resources where she mentors and counsels six individuals who are legally blind. She is registered to vote and votes via absentee ballot because of her limited mobility. She has a current State of Minnesota Identification Card; however, she is concerned that she will have a difficult time updating the address on her state identification card in the event that she is forced to move into a skilled nursing facility in the future. She wishes to be a voice for other women, especially women living in poverty, who do not have the courage or ability to stand up for themselves but who would be disenfranchised if the voting amendment were to pass. She is concerned that voters will be misled or confused by the ballot proposal and will not understand all of the provisions that will be added to the Minnesota Constitution in the event that the voting amendment passes.

5. Petitioner Shannon Doty is a Minnesota resident who is a student at William Mitchell College of Law and a Combat Medic in the Wisconsin National Guard. Doty is currently deployed in Afghanistan. Doty is registered to vote in Minnesota and has voted in Minnesota in the past. Because she is currently deployed, Doty will be voting absentee for the November 2012 general election. Because it is her present intention to remain a member of the Wisconsin National Guard, it is likely that she will be deployed again in the future, which may again require her to vote absentee. While she is deployed, Doty does not carry a state-issued photo identification or driver's license. Doty is concerned that the proposed constitutional amendment will adversely affect her right and ability to vote absentee. Doty is unsure what type of identification will be considered "valid" for purposes of the amendment, and the amendment fails to provide guidance as to whether her military identification card will be sufficient. Finally, Doty is also concerned that individuals voting on the amendment will not be fully informed about all of the provisions of the proposed constitutional amendment.

6. Petitioner Gretchen Nickence is a Minnesota resident. She is a registered voter in Minnesota. Nickence is an enrolled member of the La Courte Oreilles Band of Chippewa Indians, which is located in Wisconsin. From time-to-time, Nickence has been homeless in the past. The only photographic identification card that Nickence possesses is an identification card issued to her by the La Court Oreilles Band. Her identification card includes her photograph and her current Minnesota address. She is concerned that the proposed constitutional amendment will adversely impact her ability to vote in future elections because it is unclear whether or not tribal identification cards issued by tribes

outside the state of Minnesota will be considered a valid government-issued photographic identification for purposes of the amendment. Nickence also is concerned that voters like her will be confused and misled by the ballot question because it only refers to “valid photographic identification” without the qualification that it be “government issued, ” which may incorrectly lead voters to believe that any photographic identification card will be acceptable.

7. Petitioner Kathryn Ibur is a student in her junior year at Macalester College. She is a Minnesota resident, is a registered Minnesota voter, has voted in Minnesota in the past, and intends to remain in Minnesota and vote in Minnesota throughout at least the remainder of her college career. Ibur has a student photo identification card issued by Macalester College, and she has a current driver’s license with her photo issued by the State of Missouri. Ibur is concerned that, if the proposed amendment is adopted, her two identification cards will be insufficient to permit her to vote if presented at the polling place in future elections. Moreover, she is concerned that the fact that the Voter Identification and Provisional Ballot Amendment requires government issued identification is not disclosed in the ballot question will mislead other voters similarly situated to her to vote in favor of the amendment not knowing that the student issued identification they possess will not comply with the requirement of the amendment, and not knowing that this may cause them to have to cast a provisional ballot.

8. Petitioner John Harper Ritten is a resident of and registered voter in Minnesota. He is a student at Washington University in St. Louis, Missouri, and he will

be voting absentee in the November 2012 general election and expects to be a student voting absentee in future elections as well. He is concerned that the provisions of the amendment that apply to absentee ballots will adversely affect his right and ability to vote absentee while attending college in the future. He is also concerned that the ballot question as now written fails to adequately inform voters about all of the provisions of the proposed constitutional amendment before they cast their votes “yes” or “no”

9. Respondent Mark Ritchie is the duly elected Secretary of State of the State of Minnesota. As such, Respondent Ritchie is the chief election official in Minnesota and is responsible for administration of the Minnesota election laws.

JURISDICTION

10. This Court has original jurisdiction of this action pursuant to Minn. Stat. §§ 204B.44(a), (b) and (d) because it is an action brought to correct:

- (a) An error or omission in the placement or printing of the name or description of any candidate or any question on any official ballot as provided in Minn. Stat. § 204B.44(a); and
- (b) Any other error in preparing or printing any official ballot as provided in Minn. Stat. § 204B.44(b); and
- (c) Any wrongful act, omission, or error of the Respondent who is charged with a duty concerning an election as provided in Minn. Stat. § 204B.44(d).

FACTS

11. On May 23, 2011, the 87th Minnesota Legislature passed and, and at the direction of the Minnesota Legislature Office of the Revisor of Statutes, presented to Governor Mark Dayton, Chapter 69, Senate File 509, of the 2011 Session Laws which sought to make changes to the voting laws of the state of Minnesota.

12. Chapter 69, section 24 provided in pertinent part that Minn. Stat. § 204C.10 would be amended to provide in Minn. Stat. § 204C.10(b) 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."

13. On May 26, 2011, Governor Mark Dayton vetoed Chapter 69, Senate File 509.

14. The 87th Minnesota Legislature did not vote to override Governor Dayton's veto of the Voter Identification and Provisional Ballot Statute in the manner required by Article IV, Sections 23 and 24 of the Minnesota Constitution.

15. By reason of the foregoing, the Voter Identification and Provisional Ballot Statute did not become law.

16. On or about April 5, 2012, the 87th Minnesota Legislature passed Chapter 167, House File 2738, of the 2012 Session Laws (hereafter the “Voter Identification and Provisional Ballot Amendment”). It provided:

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."

(Emphasis added.)

CAUSE OF ACTION

17. Petitioners reallege all and singular paragraphs 1-16 hereinabove.
18. The Voter Identification and Provisional Ballot Amendment has four substantive provisions. The proposed amendment would:
 - A. Require all voters "voting in person" to "present valid government-issued photographic identification before receiving a ballot";
 - B. Require the State to "issue photographic identification at no charge to an eligible voter who does not have" the requisite "form of identification", but not to those who do;

- C. Establish a “provisional ballot” system for persons who are unable to present government-issued photographic identification, whose ballots will be counted only if each such voter “certifies” the provisional ballot in some manner to be later provided for by law; and
- D. Require that all voters be “subject to substantially equivalent identity and eligibility verification prior to” casting a ballot or having their ballots counted.

19. The ballot question purporting to summarize the four changes to be effected by the Voter Identification and Provisional Ballot Amendment is unreasonable and misleading because it both *erroneously* describes some of the fundamental substantive changes, and *omits* to even mention other fundamental substantive changes.

20. The ballot question addresses only two of the four voting changes effected by the Voter Identification and Provisional Ballot Amendment, and it does so in a factually inaccurate and misleading manner. The ballot question states, erroneously, that the amendment will: (1) “require *all* voters to present valid photo identification to vote”; and (2) “require the state to provide free identification to *eligible voters*.” (Emphasis added.)

21. In fact, the Voter Identification and Provisional Ballot Amendment expressly requires only voters who vote in person to present valid photo identification before voting. This fact is not disclosed or otherwise discernible from the ballot question. Voters who do not vote in person, for example absentee voters who vote by mail, will not

be expressly required by the Amendment to present valid government-issued photo identification, but rather will be subject to a vague “substantially equivalent identity and eligibility verification” standard. These facts are not disclosed or otherwise discernible from the ballot question.

22. Because it does not appear possible for absentee voters voting by mail (including eligible voters serving in the military away from Minnesota, and other eligible voters absent from Minnesota) to present valid government-issued photographic identification to an election judge before voting, such voters may either be subject to a lower standard for identification than voters who vote in person, or be disenfranchised. Neither of these consequences is discernible from the ballot question.

23. The ballot question also inaccurately states that the Amendment requires that voters will need only to present some form of “valid photo identification to vote”, thus falsely implying that “valid” photo identification issued by employers, private schools or universities, or other non-governmental entities will be sufficient to allow an eligible voter to receive and cast a ballot. In fact, the Voter Identification and Provisional Ballot Amendment does not allow a voter to use non-government issued photo identification; this fact is not disclosed by, nor is it discernible from, the ballot question.

24. The proposed ballot question also erroneously states that the Voter Identification and Provisional Ballot Amendment will “require the state to provide free identification to eligible voters.” In fact, it is only eligible voters who do not *already* have valid government-issued identification who will be entitled to such free identification. This fact is not disclosed by, nor is it discernible from, the ballot question.

25. In addition to misstating what the Amendment does and does not require, the proposed ballot question completely fails and omits to make any mention of the provisional ballot system being created by the Voter Identification and Provisional Ballot Amendment. The fact that the proposed Amendment would create a provisional voting system in Minnesota, is not disclosed by nor is it discernible from the ballot question. Thus, a voter voting on this Amendment will not be informed by the ballot question that if amended the Constitution will require that all future Minnesota elections be subject to a provisional voting scheme, and to a new set of unspecified laws to be enacted to determine whether and when provisional ballots will be accepted and counted.

26. According to Respondent, if the Voter Identification and Provisional Ballot Amendment is approved, 500,000, or more, Minnesota voters would likely cast provisional ballots each election year.

27. According to Respondent, because one-third of all of the provisional ballots that are cast in states that employ a provisional balloting system are never counted, Minnesota's overall vote count could be reduced by up to 200,000.

28. As a result of the creation of a provisional balloting system that is not disclosed in the ballot question, additional time will be required before the votes of Minnesota voters are counted and certified under the Voter Identification and Provisional Ballot Amendment. This fact is not disclosed by, nor is it discernible from, the ballot question.

29. Likewise, the proposed ballot question completely omits any mention of the new requirement that that all voters be "subject to substantially equivalent identity and

eligibility verification prior to” casting a ballot or having their ballots counted. This fact is not disclosed by, nor is it discernible from, the ballot question.

30. Currently, voters are allowed to update their address or other voter registration information and to cast their ballot in their neighborhood polling place on election day.

31. The effect of the “substantially equivalent identity and eligibility” language in the Amendment will be to eliminate Election-Day registration (even for eligible voters who have government issued photo identification) in Minnesota. The elimination of Election-Day registration by the Amendment is a material substantive change in Minnesota’s historic voting practices which is not disclosed by, nor discernible from, the ballot question.

32. According to Respondent, at best, Election-Day registrants could only cast provisional ballots that could not be opened or processed until the weeks following the election.

33. According to Respondent, creating a system to process provisional ballots could cost \$40 million, or more, in the first instance, and \$3 to \$4 million each election year thereafter. The substantial costs that would be imposed by the Voter Identification and Provisional Ballot Amendment is not disclosed by, nor is it discernible from, the ballot question.

34. Taken together, the provisions in the Voter Identification and Provisional Ballot Amendment will transform Minnesota from a state where all eligible voters may easily exercise their voting franchise, which has resulted in eligible Minnesota voters

voting at a rate rarely equaled in any other state, to the state with the most restrictive voting requirements in the nation, and almost certainly a correspondingly low voter turnout, which would cause irreparable harm to the democratic process in Minnesota.

35. Because the proposed ballot question materially misstates important provisions in the Voter Identification and Provisional Ballot Amendment, and omits other provisions, the proposed ballot question is unreasonable and misleading, and fails to provide voters with a fair opportunity to understand and vote on the fundamental voting changes that would occur.


36. Petitioners, and the members of the Petitioners that are organizations, will be harmed if the ballot question is on the November 2012 election ballot.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for judgment in their favor and against Respondent Mark Ritchie in his capacity as Secretary of State and chief election official of the State of Minnesota, striking the ballot question pertaining to the Voter Identification and Provisional Ballot Amendment, Chapter 167, House File 2738, of the 2012 Session Laws, from the November 2012 election ballot, enjoining Respondent from placing the ballot question on the November 2012 election ballot, and such other, further, or different relief as the Court may deem just and equitable.

DATED: May 30, 2012

MASLON EDELMAN BORMAN & BRAND
LLP

By  _____

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