

**STATE OF MINNESOTA  
IN SUPREME COURT**

**No. A06-1871**

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

Petitioners,

vs.

Mary Kiffmeyer, Minnesota Secretary of State,

Respondent.

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**AMICUS CURIAE BRIEF OF  
REPRESENTATIVE RON ERHARDT, MINNESOTA CHAMBER OF  
COMMERCE, AND MINNESOTA CENTER FOR ENVIRONMENTAL  
ADVOCACY**

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**STATEMENT OF THE CASE<sup>1</sup>**

Petitioners seek to enjoin an election, scheduled for November 7, 2006, on the following ballot question, describing a proposed Transportation Amendment to the Minnesota Constitution:

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

Yes \_\_\_\_\_

No \_\_\_\_\_

The language of the ballot question is derived from the text of the actual amendments that will be added to Article XIV of the Minnesota Constitution, if adopted:

Section 12. Beginning with the fiscal year starting July 1, 2007, 63.75 percent of the revenue from a tax imposed by the state on the sale of a new or used motor vehicle must be apportioned for transportation purposes described in section 13, then the revenue apportioned for transportation purposes must be increased by ten percent for each subsequent fiscal year through June 30, 2011, and then the revenue must be apportioned 100 percent for transportation purposes after June 30, 2011.

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

H.F. 2461, ch. 88 §§ 9 & 10, 2005 Minn. Laws 459.

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<sup>1</sup> Pursuant to Minnesota Civil Appellate Rule 129.03, no counsel for a party authored this brief in whole or in part, and no person or entity made a monetary contribution to the preparation or submission of this brief other than the amici, their members (in the case of organizational amici), or their counsel.

The proposed Transportation Amendment reflects the Legislature's considered decision to dedicate the state sales tax on motor vehicles to funding transportation needs. The Amendment phases in the tax dedication over a period of five years and provides flexibility in the allocation of that money, while requiring that transit gets a guaranteed 40 percent of the allocation.

Petitioners allege that the ballot question on the Transportation Amendment is infirm because it is misleading, deceptive and will confuse voters. Petitioners ask the Court to enjoin the Secretary of State from holding an election on the question.

### INTRODUCTION

Petitioners ask the Supreme Court to do something it has never done before: declare the language in a ballot question on a proposed constitutional amendment "so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote." 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).<sup>2</sup> Petitioners base their case for judicial intervention into the constitutional amendment process on

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<sup>2</sup> This Court has only once enjoined a ballot question, and that case involved an amendment to a city charter, not a constitutional amendment passed by the Legislature. In Housing & Redevelopment Authority v. City of Minneapolis, 293 Minn. 227, 198 N.W.2d 531 (1972), the Court affirmed a lower court's finding that a proposed charter amendment to the City Charter of the City of Minneapolis violated the Minnesota Constitution's home rule provisions. The Court held that it was reasonable to enjoin an election where the measure, if adopted, would be found unconstitutional by the courts. 198 N.W.2d at 536 (citing Winget v. Holm, 187 Minn. 78, 244 N.W. 331, 332 (1932)). Housing & Redevelopment Authority was not decided on the basis of any confusion in the ballot question itself, and therefore has no relevance to this case.

purported mass “confusion” surrounding the meaning of the Transportation Amendment ballot question. Petitioners’ evidence comprises little more than anecdotes bolstered by speculative inferences about the impact of newspaper stories on voters. In reality, there is no confusion that requires or permits the Court to withdraw the ballot question from the public’s consideration.

Petitioners’ request that the Court enjoin the ballot question is a transparent attempt to have the judicial branch use its equitable powers to accomplish what Petitioners themselves failed to accomplish in the 2006 Legislative Session. It is patently obvious that Petitioners would prefer a constitutional amendment that guarantees a “firm” 60/40 split between highway and transit funding rather than the flexible 60/40 split in the proposed Transportation Amendment.<sup>3</sup>

The legislative history of the Transportation Amendment demonstrates that the Legislature considered, but ultimately rejected, replacing the flexible 60/40 split with a fixed 60/40 split. In 2006, the Legislature carefully considered the question of whether the split between highway and transit funds should be fixed or flexible. To Petitioners’

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<sup>3</sup> When the Petitioners have themselves appeared in the news media, it has been as advocates of a fixed 60/40 split between highway funds and transit funds from the legislative dedication. See “Moorhead Leaders Await Court’s Proposal Review,” Fargo Forum at Appx. 0001-02 (Oct. 6, 2006) (Petitioners Lanning, Langseth, Voxland and Winterfeld-Shanks); Minutes, Meeting of Alexandria City Council at Appx. 0003 (Feb. 27, 2006) (Petitioner Ness); “Transportation Funds on Nov. 7 Ballot: Statewide Groups of Supporters, Opponents to Face Off at Polls,” Mesabi Daily News at Appx. 0006 (Aug. 17, 2006) (Petitioner Rukavina); “Outdoor Bands Can Play Until 12 Without A Permit,” DL [Detroit Lakes] Online at Appx. 0009 (Mar. 12, 2006) (Petitioner Bubolz).

dismay, the fixed 60/40 split failed to clear the Conference Committee, leaving the flexible split on the ballot.

With their last-minute flurry of filings, Petitioners seek to spring an “October Surprise”<sup>4</sup> in order to frustrate the considered will of the Legislature, and to interfere with the voters’ right to decide the fate of the proposed Transportation Amendment.

Petitioners have presented no compelling evidence that warrants the extreme step of judicial intervention into the legislative and electoral process.

### ARGUMENT

#### **I. JUDICIAL REVIEW OF CONSTITUTIONAL AMENDMENT BALLOT QUESTIONS IS VERY LIMITED**

The Minnesota State Constitution mandates that courts safeguard the right of the people to amend the laws under which they live:

Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform government whenever required by the public good.

Minn. Const. art 1, § 1. Accordingly, the Minnesota Supreme Court has long recognized that judicial review of constitutional amendment ballot questions is very circumscribed:

The courts cannot review the judgment and discretion of the Legislature in prescribing the form and substance of the question to be submitted, simply because they may be of the opinion that the question was not phrased in the best or fairest terms.

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<sup>4</sup> Petitioners were aware of the ballot question well before October 4, 2006. See, e.g., Appendix 0003-09. Petitioners’ unreasonable delay in asserting a known right would properly bar Petitioners’ claim, if they had one. See Fetsch v. Holm, 236 Minn. 158, 52 N.W.2d 113, 115 (1952).

State v. Duluth & N.M. Ry. Co., 102 Minn. 26, 112 N.W. 897, 898 (1907); see also State v. Minnesota & N.W. Ry. Co., 102 Minn. 506, 112 N.W. 899, 899 (1907) (per curiam) (affirming Duluth & N.M. Ry. Co.); Winget v. Holm, 187 Minn. 78, 244 N.W. 331, 334 (1932) (“Since the Legislature is invested with the power to propose amendments, their scope and form must be left to it within reasonable limits.”); Dunnell Minn. Digest Constitutional Law § 1.02 (4th ed. 2006).<sup>5</sup>

The case of Fugina v. Donovan, 259 Minn. 35, 104 N.W.2d 911 (1960), cited by Petitioners in their Petition to Enjoin Election at 11-12 (10/04/06), is consistent with the Supreme Court’s deference to legislative drafting of proposed constitutional amendments. In Fugina, the Petitioner sought to prevent the Secretary of State from submitting to voters two constitutional amendments in the form of a single legislative proposal. Although the Supreme Court stated that it “would have been preferable to present [the two amendments] as separate proposals,” the Court nonetheless concluded that “this belief cannot be made the basis for a ruling that the propositions must be separately submitted.” 104 N.W.2d at 914. Instead, the Court applied a “broader and more liberal view” to the question before it, and refused to enjoin the election so long as it could identify a rational basis for the Legislature’s actions. Id.; see also Winget, 244 N.W. at 334 (stating that the Supreme Court will defer to the judgment of the Legislature on the drafting of amendments).

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<sup>5</sup> Petitioners reliance, in part, on Minn. Stat. § 204B.44, as a basis for the Court’s jurisdiction does not change the standard of judicial review set forth in this section.

Consistent with the deference owed to the Legislature, the Minnesota Supreme Court has identified a very narrow scope for judicial review, requiring only that amendment ballot questions “not be so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.” State ex rel. Marr v. Stearns, 72 Minn. 200, 75 N.W. 210, 214 (1898). In the 108 years since the Stearns decision, the Minnesota Supreme Court has never found the language in a amendment ballot question to be so confusing or misleading as to transgress this standard.

## **II. THE BALLOT QUESTION IS NOT UNREASONABLE OR MISLEADING**

The only evidence that Petitioners put forth to support their claim that the ballot question is “misleading or deceitful” are anecdotes and newspaper stories relating that some people are confused by its language. Petitioners’ claims come nowhere close to meeting the high standard required for judicial interference in the amendment process. In both Stearns and Duluth & N.M. Railway, the Minnesota Supreme Court confronted objectively “confusing” ballot questions and concluded that the questions were neither unreasonable nor misleading.

### **A. A Ballot Question That Tracks The Language Of The Amendment Cannot Be Unreasonable Or Misleading**

The Stearns case involved a constitutionally mandated ballot question, which required that any proposed law repealing laws relating to the taxation of railroads had to be approved by a popular vote to become effective. The proposed law, which consisted of 502 words and five sections, imposed taxes on railroad lands while exempting lands

held, used or occupied for rights of way, gravel pits, sidetracks, depots, and all buildings and structures used in the actual management and operation of the railroads. The proposed law also repealed tax laws on railroads inconsistent with the Act. See Ch. 168, General Laws of 1895, attached hereto as an Addendum. The ballot question, however, provided none of this detail. It said only:

*For taxation of railroad lands. Yes \_\_\_ No \_\_\_*

The petitioner in Stearns challenged the validity of the ballot question – in language reminiscent of Petitioners’ accusations of deliberate deceit – as a “cunning political device to catch votes.” 75 N.W. at 214. The Court disagreed, holding that the language was not unreasonable or misleading, and further noting that “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.” Id. at 215.

By contrast, the ballot question for the proposed Transportation Amendment is simply not confusing under the standard set forth in Stearns. The Transportation Amendment ballot question tracks the language of the amendment itself, reducing any potential confusion a voter might have about the substance of the amendment. At its core, then, Petitioners’ complaint is not with the ballot question, but with the text of the Transportation Amendment itself, and the flexible 60/40 split in the dedicated fund between highway projects and transit projects. However, that text is plainly not subject to judicial review, the drafting of constitutional amendments being solely the province of the Legislature. Wass v. Anderson, 312 Minn. 394, 252 N.W.2d 131, 135 (1977)

(holding that form of proposed constitutional amendment “is a matter addressed to legislative discretion”).

**B. Ambiguity In A Ballot Question Does Not Render It Constitutionally Infirm**

The Duluth & N.M. Railway case involved the same railroad taxation provision as the Stearns case did. At issue in Duluth & N.M. Railway was a proposed law that would increase the gross earnings tax on all railroads to 4 percent. The ballot question put before the voters asked whether they approved an increase in the railroad tax:

*For increasing the gross earnings tax of railroad companies from three to four per cent. Yes \_\_\_ No \_\_\_*

112 N.W. at 898. The Railway challenged the ballot question as unconstitutionally misleading because voters could be misled into thinking that the law would only increase the tax rates of those railways paying a 3 percent tax at the time the amendment passed, rather than all railways. Id. The Court agreed with the Railway that the reference to the 3 percent rate was both superfluous and confusing, and that “the simplest and fairest form of the question submitted would have been this: ‘For increasing the gross earnings tax of railroad companies to four per cent.’” Id. Nevertheless, the Court found that the purpose of the proposed law was “fairly expressed in the question submitted” and upheld its constitutionality. Id. at 898-99.

Petitioners freely admit that they are asking this Court to engage in the type of second-guessing of the legislature expressly prohibited by Duluth & N.M. Railway. The Petitioners implore the Court to “[m]ake the legislature go back and do it right” and to

“send a message to the legislature that it, too, like the rest of us, cannot get away with slapdash work.” Petitioners’ Laches Mem. at 10 (10/10/06).

Such a level of judicial interference in the legislative process is inconsistent with the holding in Duluth & N.M. Railway, and the separation of powers concerns that underlie the Court’s deference to the Legislature in the area of proposing constitutional amendments. There is no reason to believe that the Transportation Amendment does anything other than reflect the will of a majority of its members. As Petitioners readily admit, the Transportation Amendment not only was approved by the Legislature in 2005, but it was thoroughly debated in 2006, after which the Legislature decided to make no changes in the Amendment or ballot question. In other words, given a chance for a do-over, the Legislature remained satisfied with its initial judgment. Petitioners disagree with that decision – but that is a matter of a difference of opinion about transportation policy, not constitutional law.

The only question before the Court is whether the ballot question on the Transportation Amendment “fairly expresse[s]” the underlying text of the actual Amendment. It does so by reasonably and accurately describing the Amendment’s flexible allocation between transit and highway funding. Accordingly, the ballot question more than satisfies the constitutional requirements set forth by the Court.

### **III. THE ATTORNEY GENERAL’S STATEMENT RESOLVES ANY PERCEIVED CONSTITUTIONAL INFIRMITY**

Pursuant to Minn. Stat. § 3.21, the Attorney General furnished the Secretary of State with a statement of the purpose and effect of the proposed Transportation

Amendment. See Petition to Enjoin Election at Appx. 30-31. In Knapp v. O'Brien, 288 Minn. 103, 179 N.W.2d 88 (1970), the Supreme Court held that such statements can clarify an otherwise confusing ballot question because “it must be assumed that [the voters] relied on the attorney general’s explanation of the effect of the amendment.” 179 N.W.2d at 94.

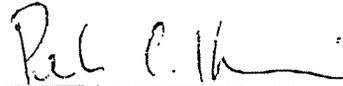
Recognizing that the holding Knapp is fatal to their claims, Petitioners desperately attempt to evade its holding. First, Petitioners directly challenge the Court’s holding by asserting that it is a “doubtful proposition” that voters read these attorney general statements. Petition to Enjoin Election at 16. Second, Petitioners declare, without foundation, that the Attorney General’s statement is confusing. Id. at 17. In fact, the Attorney General’s statement succinctly and accurately conveys the impact of the Transportation Amendment, if adopted. To the extent that the Court finds that the Attorney General’s statement clarifies the Transportation Amendment, Knapp is controlling and disposes of Petitioners’ claims.

CONCLUSION

For the foregoing reasons, and those advanced by Respondent Kiffmeyer, the Court should dismiss the Petition to Enjoin Election and decline to enjoin the vote on the Transportation Amendment ballot question.

Dated: October 13, 2006

FAEGRE & BENSON LLP



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## ADDENDUM

## LAWS OF MINNESOTA, 1895

## CHAPTER 168

*An act relating to the taxation of certain lands owned by railroad companies in this state, and repealing laws and parts of laws relating to the taxation of the same, and to provide for the submission of this act to the people of this state for their approval or rejection.*

Be it enacted by the Legislature of the state of Minnesota:

SECTION 1. All lands in this state heretofore or hereafter granted by the state of Minnesota or the United States, or the territory of Minnesota to any railroad company shall be assessed and taxed as other lands are taxed in this state, except such parts of said lands as are held, used or occupied for right of way, gravel pits, sidetracks, depots and all buildings and structures which are necessarily used in the actual management and operation of the railroads of said companies.

*Provided* that said railroad companies shall continue to pay taxes into the state treasury upon their gross earnings in the same manner and in the same amount as now provided by law. And that nothing in this act contained shall be construed to repeal said laws except in so far as the same relate to the tax upon said lands.

SECTION 2. Such portion or portions of any act or acts, general or special, of the state or territory of Minnesota heretofore enacted, which provides or attempts to provide for any exemption of lands hereby declared taxable, from taxation, or for any other method of taxing said last mentioned lands different from the method of taxing other lands in this state, or which are in any manner inconsistent with the provisions of this act, are hereby repealed.

SECTION 3. If this act shall be held to be void so far as it applies to the lands of any particular railroad company in this state, it shall not be ground for declaring it void or inapplicable to any other company not similarly situated.

SECTION 4. This act shall be submitted to the people of this state for their approval or rejection at the next general election for the year eighteen hundred and ninety-six (1896).

The secretary of state shall cause to be printed upon the form of ballots used in voting for state officers at the next general election, in manner conformable with the requirements of the general election law the words:

	Yes.
For taxation of railroad lands.....	-----
	No.

and each electing voter at such election shall designate his vote by a cross mark made opposite one or the other of the said words "Yes" and "No," and the said election shall in all respects conform so far as may be to the requirements of the general election law, and the returns of said election shall be made, canvassed and certified and the result thereof declared in the manner provided by law for returning, certifying and canvassing votes cast for state officers.

SECTION 5. This act shall take effect and be in force from and after its passage.

Approved March 19th, 1895.

**STATE OF MINNESOTA  
IN SUPREME COURT**

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

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Mary Kiffmeyer, Minnesota Secretary of  
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Respondent.

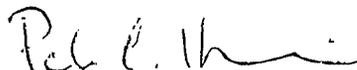
**CERTIFICATION OF  
BRIEF LENGTH**

Appellate Court  
Case Number: A06-1871

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 3,339 words. This brief was prepared using Microsoft Word 2003 software.

Dated: 10.13.06

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# APPENDIX

Fargo Forum

Oct 6, 2006

**Moorhead leaders await court's proposal review**

By Melinda Rogers

The Forum

Moorhead leaders opposed to a proposed constitutional amendment that would change Minnesota's transportation funding system found a glimmer of hope Thursday with news the Supreme Court will weigh whether the measure is proper.

Clay County's legislative delegation and Moorhead leaders spurred a charge against the motor vehicle sales tax proposal, claiming the amendment's wording is confusing and misleading.

At issue is language in the amendment that states all existing motor vehicle sales tax should be spent on transit and transportation needs.

Voters on Nov. 7 will be asked whether they support spending the tax "at least 40 percent for public transit assistance and not more than 60 percent for highway purposes."

That wording worries rural leaders who fear it's a license to dump state funds entirely into Twin Cities' transit projects.

"In effect what it means is transit funding can only go up from 40 percent and road and bridge funding can only go down from 60 percent," said Rep. Morrie Lanning, R-Moorhead.

"Theoretically it could be 100 percent transit for that kind of funding," he said.

Lanning said the Twin Cities' light rail needs will put pressure on legislators to pour more money into metropolitan transit, leaving fewer dollars for roads and bridges in greater Minnesota.

Lanning, along with Sen. Keith Langseth, DFL-Glyndon; Moorhead Mayor Mark Voxland and Moorhead City Councilwoman Lauri Winterfeldt-Shanks were among the signatures on a petition filed Thursday from a citizens group asking the court to reconsider the amendment's legality.

Voxland said he was leery of signing on the petition but said implications the amendment poses to transportation funding for Moorhead and other rural cities swayed him to participate.

"This isn't the way I like to do things - through the court system," Voxland said.

"I'm glad that it got filed. I think it would be good if we can find out that this is something that should be allowed up for a vote."

Winterfeldt-Shanks noted the Supreme Court wouldn't be seeing the petition had the legislature approved wording changes during the session.

Lanning and Langseth proposed bills in the house and senate that clarified the amendment's wording to a 'plain 60 to 40,' Langseth said.

While those bills initially passed, they later died in a transportation conference committee.

"It's not about partisanship. It's about a bad bill for Moorhead," Winterfeldt Shanks said.

Voxland said he felt changes to the amendment's wording were stomped out in the transportation conference committee on purpose, which prompted him to speak out against the proposal.



He and Winterfeldt-Shanks have worked to speak out against the amendment through a grassroots effort.

Their citizens group this week launched a Web site voicing their concerns at [www.stopmvt.org](http://www.stopmvt.org).

The amendment's supporters, meanwhile, expect to spend \$4 million on a "Vote Yes campaign."

That doesn't throw Voxland

"We'll keep working in our quiet little way," he said.

Alexandria, Minnesota  
February 27, 2006

- City Council meeting

CITY ADMINISTRATOR'S ITEMS OF BUSINESS

1 ALASD Permit The Alexandria Lakes Area Sanitary District is requesting a permit from Minnesota Pollution Control Agency (MPCA) to expand its facilities. Mr. Taddei pointed out that the Mayor and City Council had been invited to the public informational meeting in 2005 and generally supports the project, however ALASD has requested that each taxing jurisdiction within the District submit a letter of support for the project to the MPCA. He has talked to Paul Nelson who is the City's representative on the ALASD Board and he supports the expansion project. Following discussion, a motion was made by Benson and seconded by Weisel to authorize the City Administrator to send a letter to the MPCA supporting the expansion project for ALASD. The motion carried by the following vote:

YES: Kalpin, Carlson, Weisel, Benson, Frank  
NO: None

2 Coalition of Greater Minnesota Cities (CGMC) Transportation Funding - City Administrator Jim Taddei noted the constitutional question as it is currently scheduled to appear on the November general election ballot:

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

It is the CGMC's position that the proposed constitutional amendment guarantees 40% of the Motor Vehicle Sales Tax revenue to transit but guarantees no revenue to highway funding. Therefore, the CGMC is requesting each of its member to adopt a resolution, which basically supports dedicating all Motor Vehicle Sales Tax revenue for transportation, support changing the proposed constitutional amendment so that 60% of the revenue is distributed for roads and support a bill in the 2006 Legislative Session that would require, if the constitutional amendment is approved, 60% of the Motor Vehicle Sales Tax be distributed to the highway program. Mayor Ness noted the proposed constitutional amendment guarantees 40% for public transit and 98% of that is metro. The position of the CGMC is they are introducing bills to change the wording on the constitutional amendment so that it reads well. The CGMC is on record as opposing the constitutional amendment. They are asking for support from the cities and asking the county to adopt a resolution supporting this also. Following discussion, a motion was made by Carlson and seconded by Benson to adopt Resolution No. 06-21, RESOLUTION SUPPORTING COALITION OF GREATER MINNESOTA CITIES POSITION ON TRANSPORTATION FUNDING. The motion carried by the following vote:

YES: Kalpin, Carlson, Weisel, Benson, Frank  
NO: None

The full text of this Resolution appears in the Resolution file.

OLD AND OTHER BUSINESS

Council Member Kalpin commented on the 16 unit mental hospital and felt it was a good facility

PUBLIC COMMENT PERIOD

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## Transportation funds on Nov. 7 ballot

### Statewide group of supporters, opponents to face off at polls

Charles Ramsay  
 Merrill Daily News

10/13/06

The constitutional amendment on transportation on the ballot Nov. 7 will be drawing some strong backing from a statewide group of supporters, while opponents will be working just as hard to defeat the measure for several reasons.

Backers feel the amendment will safeguard motor vehicle sales tax funds all going to transportation needs, as about 46 percent, or \$300 million, currently goes to state government's General Fund. Foes, including several Iron Range lawmakers, believe there are better funding solutions and the transfer, over five years if approved, would leave a big hole in the General Fund not filled easily.

Not affected in the Nov. 7 vote will be the \$600-some million in gasoline tax revenue of 20¢ per gallon, which is constitutionally protected for road projects; and some \$500 million in vehicle license fees.

The state Legislature had decided in 1981 that all new and used motor vehicle sales tax revenues should be used for transportation, but over the years more was diverted, now at 46 percent, to state government's General Fund, to pay for other programs.

#### Story Continues Below

Persons on both sides of the issue feel more work on roads is needed, but several officials say it won't be enough, and a few are concerned about the amendment wording, of at least 40 percent for transit and 60 percent for roads.

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Dave Olson, president of the Minnesota Chamber of Commerce, which is part of a coalition of a statewide group, Minnesotans for Better Roads and Transit, that is backing passage of the transportation amendment, says for the first time since 1988, Minnesota residents will "have a real pot of money for transportation."

Passage of the constitutional amendment wouldn't solve all transportation woes, but it would help, he added.

Some effects on Northeastern Minnesota, if the amendment passes, would include:

- Virginia getting \$41,300 more annually, or \$413,000 total in 10 years, for its streets.
- Hubbing getting a total of \$1 million more over 10 years.
- Chisholm getting \$194,000 more total over 10 years.
- St. Louis County getting \$22.7 million more total over 10 years.

Minnesota is more than \$1 billion behind on road projects a year already, and roads help move people and goods to boost the economy, Olson explained.

He urged state residents to vote for the measure on Nov. 7, because it will help protect vehicle sales tax fund revenues from further encroachment by the Legislature, but if it fails, legislative leaders have said not to come back for more road funds. Leaving the amendment space on the ballot blank is considered a "no" vote, so voters should fill in the "yes" space, he said. The amendment passes on a majority of all voters casting ballots approving it.

While the amendment raises concerns that transit (such as buses and light rail, both major Twin Cities movers) does not have a dedicated revenue source as roads do, and "up to 60 percent" for roads may not be that much for rural Minnesota, "our take is it's too big a risk (for the voters) not to pass," he said.

The coalition plans to spend up to \$4 million in the time up to the Nov. 7 vote to urge voters to pass the measure.

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St. Louis County Commissioner Dennis Fink of Duluth has testified at the state Legislature on transportation. He was elected president of the Association of Minnesota Counties in 2004, and helped start a statewide task force on highway funding, which resulted in an initiative to raise the gasoline sales tax 10¢ a gallon over a period of time that passed a legislative conference committee in the 2005 session.

The bill was vetoed by Gov. Tim Pawlenty in May 2005, who Fink remembers saying that Minnesotans would stop buying gas if it went up from about \$1.80 to \$2 a gallon. The price of gas in June 2006 is around \$2.80 a gallon, without the 2005 proposed state gas tax boost taking effect.

The last time the state tax on gas was raised was in 1988, though it has been looked at by the Legislature at times. Minnesota has depended on increases in the consumption of gas to bring in more revenue, he said.

Some formulas that road funds go through to reach local government units include. All revenues in the Minnesota Highway Users Fund are divided, 62 percent to the state, 29 percent to counties, 9 percent to municipalities. The county 29 percent is divided to the 87 counties on a needs formula, and then, 60 percent has to be for new or reconstruction, and 40 percent for maintenance.

As a result, "some of the rural counties found themselves struggling to get funds," Fink noted. With a typical 50-year lifespan before a road is reconstructed, now that's out to 70 years, he added.

The 2005 legislation on roads set 10 points, including a 5¢ increase per gallon and 5¢ more over three years, and local option sales taxes for transportation, that would have brought \$1 billion in annually.

The proposed constitutional amendment would bring in only \$300 million more to transit and roads if passed while there is a \$1 billion need out there annually for more transportation projects. "It certainly is a stop-gap measure," he said.

Another concern is the Minnesota trend toward legislation by ballot initiative, where voters take action on different proposals. A leading state out west has that system, "and California's a mess," he said.

A real question is whether to keep the current formula of 56 percent of vehicle sales taxes going to

transportation, when the governor easily could move all such revenues to the General Fund "with the stroke of a pen," he said.

Passing the amendment will help, but "does not meet the needs of the state's transportation system," he said.

While \$2.2 million more a year in road revenue to the county would help, "that's only 2 miles of highway per year" in reconstruction, Fink said. However, besides some other overhaul or form of financing of road projects, the state cannot afford to wait another 20 years for an increase in the gas tax. Citizens should pass the amendment by an overwhelming margin, to let Pawlenty and lawmakers know they feel transportation is important, and should contact lawmakers by phone, letter or e-mail to urge more funding, he added.

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For St. Louis County Commissioner Mike Forsman of Ely, roads are the lifeblood of the rural northern district he represents. He is a member of the Area Transportation Partnership recommending projects to the Minnesota Department of Transportation; he is on the Hwy. 53 and Hwy. 169 task forces; and is on the board of directors of the Minnesota Transportation Alliance and will be going out this week to the annual Transportation Alliance Fly-in in Washington, D.C.

Federal funding has not been a problem for roads in the county. U.S. Rep. Jim Oberstar has really done his share in getting funds," he said. "There hasn't been that same commitment from the state." Some federal dollars have wound up supplanting state dollars for roads, he added.

The constitutional amendment would certainly make more transportation funds available, but more is needed, Forsman said. "In general I think we're going backward on our infrastructure."

A mechanic at Mittal Steel Mining near Virginia who fixes up cars, besides being a county commissioner, Forsman travels 25,000 miles or more annually, many on roads in his district, on county duties. A used car he recently fixed up with parts for a new front end is now totally shot.

"And only one reason it wore out," he said. "It's our roads."

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Two DFL state lawmakers from the Iron Range, Sen. Dave Tomassoni of Chisholm and Rep. Tom Rukavina of Virginia, are against the constitutional initiative.

"I'm very nervous about this amendment," Tomassoni explained. "It leaves a huge hole in the General Fund. Other sectors covered by the fund, such as education, health care, property tax relief and local government aid, could be affected."

The amendment's wording of at least 40 percent for metro-favored transit and up to 60 percent for rural-favored roads could result in a battle in the Legislature, with maybe less than 60 percent going for roads. "and for rural Minnesota, that's a bad thing," he said.

Besides the transportation package pushed through last year, which Gov. Pawlenty vetoed, a transportation bonding bill in 2006 fell apart in conference committee.

The state highway system could use some work, Tomassoni acknowledged, but the transportation ballot initiative "could be problematic for Minnesota," he said. "It's probably a good idea not to pass this amendment."

Approving the amendment would leave a hole in the General Fund hitting school districts, homestead credit and local government aids, shifting burdens onto taxpayers, Rukavina agreed.

"Pawlenty had a chance to fix our roads" with the nickel-a-gallon gas tax per gallon, "and he vetoed it," he said.

The lawmaker disputed the intention of the use of vehicle sale tax funds: "It was never promised it would go to roads," he said.

He added he would campaign against the constitutional amendment and would urge others to vote against

And Jim Currie, president and CEO of the Laurentian Chamber of Commerce of the Quad Cities, said the Chamber's board of directors had not had a chance to vote either way on the measure. He said in his opinion, which was not that of the Chamber's board, trying to replace \$300 million in the General Fund and expect growth is "kind of a shot in the dark."

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For highway officials, one spokesman John Bray of MnDOT District 1, said he could not comment on the amendment. But, roads are "getting worse with a capital W," he said.

It's been almost 20 years since the state gas tax per gallon was raised, and costs for concrete, asphalt, steel have all gone up, as have fuel prices, he said.

Wisconsin does a much better job of maintaining their roads, with an escalator clause on their gas tax, he added. While the constitutional amendment won't fund everything needed, it "is a way to make things happen."

St. Louis County Public Works Director and Highway Engineer Marcus Hall said that about 40 percent of the county's 3,000 miles of roads were rated in poor to very poor condition by MnDOT.

"We're about \$29 million behind every year" in funds needed to maintain local roads, he said. There is about \$30 million in funds the county gets annually from all sources, from the state gas tax, federal funds, the county tax levy and elsewhere, but it's "about half of what's needed each year," he said.

The result is, that every 5 1/2 years the county can afford to come by and put a new overlay on the road in front of your house, for reconstruction, "under current funding levels it would take 200 years to get around to that road," he explained.

The state bonding bill in this year's session that didn't pass would not have helped local governments, and, the county has recently been taking material from asphalt roads that are busted up, ground up and then mixed with new material for an overlay on the same road, Hall said.

He is for passage of the amendment; it would provide \$2.2 million to the county each year, and would help, but \$30 million a year more is needed to keep pace.

The county's road system is "mediocre at best, and it's tending downwards," he said.

City: Outdoor bands can play until 12

Pipp Mayfield

DL-Online 03/13/2006

Outdoor bands can play until midnight this summer without a permit.

But not without some opposition.

"I'm definitely against this midnight closing and outdoor play at all," said Delores Pryor, who lives near the Green Door. "I shouldn't have to put up with it."

She said she's lived 42 years at the same address and has never had a problem until last summer. She also said if the vote was passed she may just call each alderman who voted in favor of the ordinance change at midnight when she couldn't sleep so they couldn't sleep either.

Alderman James Hannon said he's been to Pryor's house, and the noise can be bad.

"Bar owners are going to push the limit until people have to call the police (to shut them down)," he predicted.

Alderman Jim Anderson said it's written into the ordinance that if a business has too many complaints against it, it will lose its privileges to have a band until midnight.

Alderman Ron Zeman said he felt for the neighbors that live close to bars, but the city needs to help support the business district as well.

The ordinance passed 5-3 with Hannon, Leonard Helton and Walt Tollefson voting against the second reading. Alderman Bruce Imholte wasn't present.

The council also voted to provide \$325,000 for ballast on the Highway 10 realignment project. The ballast, or crushed rock, will fill space between Highway 10 and the railroad tracks. The railroad sprays the area each year, so vegetation won't survive there. The council decided rock would look better than dirt for the new gateway district.

"Highway 10 comes through our community, and we need to embrace that," said city beautification committee member Scott Mehlhaff.

Mayor Larry Buboltz said other decisions like greenery and entrance signs to the city can be decided at a later point in the project.

The council also:

1) Held the first reading of amending city ward boundaries. Since annexation of Long Lake, wards 1 and 3 have extended west, and Ward 2 now includes the Lakebreeze area.

2) Approved the final plat for the Detroit Lakes North Industrial Park First Addition.

The addition is located south of the existing North Industrial Park. The road right-of-way was taken off the final plat, although the easement still exists. At this point, the road won't be used.

There are 22 lots in the new addition. There are four lots left in the existing North Industrial Park, but Larry Remmen, community development director, said two of those are in lowland.

3) Adopted a resolution supporting a state constitutional amendment change dedicating the entire motor vehicle sales tax to transportation.

