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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

CASE TYPE: Other Civil

Minnesota Voters Alliance; Mary Amlaw; Ken Wendling; Tim Kirk, Petitioners, v. Tom Hunt, in his official capacity as elections official for Anoka County; Steve Simon, in his official capacity as Secretary of State; Anoka County; the Office of the Minnesota Secretary of State; Shannon Reimann, in her official capacity as chief executive officer of the Minnesota Correctional Facility – Lino Lakes, Respondents.	Court File No. 02-CV-23-3416 **PETITIONERS' MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENTS' AND PROPOSED INTERVENORS' MOTIONS**

INTRODUCTION

Petitioners file this consolidated memorandum in opposition to Respondents' motions to dismiss and Proposed Intervenors' proposed motion for judgment on the pleadings. The Proposed Intervenors' arguments are largely duplicative of Respondents' arguments, and Respondents Tom Hunt and Anoka County joined Section I of the State Respondents' memorandum of law on standing, so Petitioners believe a consolidated memorandum will be simpler and more convenient for the Court.

In short, the Petitioners have standing based on a straightforward application of the Minnesota Supreme Court's standing doctrine vis-à-vis the writ of quo warranto. In addition, Petitioners have taxpayer standing to assert their alternative claim for a declaratory judgment. Furthermore, the plain text and history of the Minnesota Constitution makes clear that the framers referred to more than just the "right to vote" when they required a convicted felon to be "restored to civil rights." Minn. Const. Art. VII, § 1. Given how the Legislature has seen fit to include supervised release, probation, parole,

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and work release as varying restrictions on those civil rights, the only mechanism available under current law to restore "civil rights" is the discharge of a felony sentence. The only way for that to change is either by a legislative act with a mechanism that, in fact, restores those convicted of felonies of their civil rights, or an amendment to the Minnesota Constitution. Barring those changes in law, Respondents may not constitutionally carry out the directives of the Felon Voting Law at issue here. The Court should therefore deny Respondents' motions to dismiss and, if intervention is granted, deny Proposed Intervenors' motion for judgment on the pleadings.

RELEVANT FACTS

The facts relevant to this motion are set forth in the Petition itself, which Petitioners summarized in their brief in support of granting the writ of quo warranto. Pet'rs' Br., Oct. 2, 2023, pp. 3-14. Petitioners further cite to specific allegations in the Petition throughout this brief to invite the Court's attention to those allegations which support their standing, *e.g.,* Petition ¶¶ 22-28, 39-41; the Respondents' ongoing excess of authority, *e.g.,* Petition ¶¶ 35-42; and the expenditures appropriated to Respondents to carry out the obligations identified by the Petition, *id.* Petitioners have also identified the conflict between the Felon Voting Law and the Constitution in the Petition and throughout the papers in this case. *E.g.,* Petition ¶¶ 1-22.

Petitioners pause, however, to object to the State Respondents' mischaracterization of their intent and actions, which is nothing but a flagrant *ad hominem* attack with no bearing on the legal issues in this matter. Petitioner Minnesota Voters Alliance ("MVA") certainly takes action where it believes that government has stepped beyond its authority or is misapplying the law related to Minnesota elections, but Petitioners emphatically reject the smear that "they merely want to prevent people from voting" or seek to "curtail the right to vote." State Resp'ts' Mem. Supp. Mot. to Dismiss, Oct. 2, 2023, at 1, 3.

In fact, Petitioner MVA won a case at the United States Supreme Court in 2018 where Minnesota law and the Secretary's policy made it *harder* to vote: because of that unconstitutional law, MVA

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Executive Director Andy Cilek was actually turned away from voting at a polling place in 2010 *twice* for wearing a t-shirt, and had his name taken down for potential prosecution under that speech code. *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1884 (2018). Just recently, MVA encouraged all eligible voters to request an absentee ballot for the upcoming 2023 election and cast their vote in time to be counted. *Request Absentee Ballots for November 2023 NOW!*, Minnesota Voters Alliance, *available at* https://www.mnvoters.org (last accessed Oct. 13, 2023). And while MVA has brought cases which have frustrated the Secretary's actions because they were without legislative or constitutional authority, such as its successful challenge to the online voter registration system in 2014, *see Minn. Voters All. v. State*, 2015 Minn. App. Unpub. LEXIS 495, at *2 & *2 n.2 (May 26, 2015), MVA's intent has always been to uphold Minnesota's law and support the self-governance of the people of Minnesota eligible to vote.

But this case is not about MVA—it is about what the Minnesota Constitution means when it says that those convicted of felony sentences may not vote "unless restored to civil rights," and whether Respondents' actions enabling those still under sentence to vote is within their legal authority.

ARGUMENT

I. If the Court Denies Intervention, Proposed Intervenors' Motion for Leave to File Should Be Denied.

Petitioners address Proposed Intervenors' motion to intervene separately, and here respond to the substance of the arguments made in their motion for judgment on the pleadings, in addition to the Respondents' motions. However, if the Court denies the motion to intervene, Petitioners oppose Proposed Intervenors' motion for leave because they would not be parties, and so if intervention is denied, the Court need not consider those non-party arguments and should deny the motion.

II. Petitioners Have Standing to Bring This Case.

Contrary to the assertions made in Respondents' and Intervenors' briefs, Petitioners have adequately alleged their standing to bring the petition for writ of quo warranto, and they also have standing

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as state taxpayers to bring their action for declaratory judgment to challenge Respondents' illegal actions and expenditures. Petition ¶ 22-24, 25-28, 39-41.

A. Petitioners have standing to seek the writ of quo warranto.

Petitioners have already made clear that they have standing in their affirmative brief in support of granting the writ of quo warranto. Petitioners refer the Court to that brief at pages 15-17 for a straightforward analysis of standing for the writ. Respondents' attack is really an attack on the writ itself, and so here justifies brief additional discussion as to why the writ exists and who may invoke it.

Just three years ago, in *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171 (Minn. 2020), the Minnesota Supreme Court considered a direct challenge to the very existence of the writ of quo warranto, and soundly rejected it. *Id.* at 176. The court held that "[t]he underlying reason for the writ—to rein in government officials who exceed their constitutional or statutory authority—remains as valid as ever." *Id.* The court did not even require a person bringing the writ to be a taxpayer; rather, citing *State ex el. Palmer v. Perpich*, 182 N.W.2d 182, 183 (Minn. 1971), the court held that "a writ of quo warranto is an available remedy to challenge whether an official's action exceeded the official's statutory authority." *Save Lake Calhoun*, 943 N.W.2d at 176. In *Palmer*, prior to the opening of the 1971 legislative session, 34 members of the senate were to caucus with the "conservatives," and 33 with the "liberals." 182 N.W.2d at 183. Based on an election contest having been filed against Richard F. Palmer, even though Palmer held a valid certificate of election, Lieutenant Governor Perpich refused to allow Palmer to be sworn. *Id.* at 183-84. This resulted in an even 33-33 split, which Perpich seized on to claim the power to cast the deciding vote on who may be the secretary of the senate, and Perpich and the liberals voted for Patrick E. Flahaven. *Id.* at 184. Based on this record, the matter was brought to the Supreme Court.

Importantly, the court grounded the availability of the writ of quo warranto in Article VI, § 2 of the Minnesota Constitution, by which authority the legislature created Minn. Stat. § 480.04, which in turn authorizes the court to issue the writ of quo warranto. *Id.* The court held, "[c]learly, under this

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provision we have the power to determine whether a constitutional officer is attempting to usurp power which is not granted to him by the Constitution or by the laws of this state." *Id.* The court then held that Perpich had exceeded his authority and advised the senate to follow the court's directive without issuing the formal writ. *Id.* at 185-86.

Likewise, in *Save Lake Calhoun*, the petitioner was merely an association that argued the Commissioner of the DNR didn't have the authority to rename Lake Calhoun to Bde Maka Ska under Minnesota law. 943 N.W.2d at 176. That was it. They had no interest different from any other citizen as to the renaming of the lake, and there was no "direct expenditure" to challenge. Petitioners here have stronger allegations—namely that the Respondents are exceeding their constitutional authority and are using taxpayer dollars to take the actions they are taking. Petition ¶ 22-24, 25-28, 39-42.

Respondents cannot defeat this straightforward analysis, but Petitioners respond to their arguments nonetheless. Respondents argue that Petitioners do not have taxpayer standing because they are collaterally estopped from asserting it; or, even if they are not estopped, they do not meet the requirements in this case; or, even if they do meet the requirements, taxpayer standing is not a basis for standing in quo warranto actions. State Resp'ts' Mem. 5-11. None of these arguments is availing.

1. Petitioners are not collaterally estopped from claiming taxpayer standing in this case.

Collateral estoppel does not preclude litigation of different issues while seeking different remedies. Petitioners here are seeking a writ of quo warranto or a declaratory judgment stopping the implementation of a brand-new law which, on its face, requires taxpayer dollars to implement. Their standing here is a completely different issue than when Petitioner MVA sought to intervene in Proposed Intervenors' prior lawsuit attempting to modify the prior felon voting law.

"Collateral estoppel 'precludes parties to an action from relitigating in subsequent actions issues that were determined in the prior action.'" *State v. Lemmer*, 736 N.W.2d 650, 658 (Minn. 2007) (quoting *In re Village of Byron*, 255 N.W.2d 226, 228 (Minn. 1977)). "Where collateral estoppel is applied, the

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party is simply precluded from presenting evidence that would result in the relitigation of a previously litigated issue." *Id.* Collateral estoppel's application turns on the identity of the issues litigated—in other words, if the issues are different, there cannot be collateral estoppel. *All Finish Concrete, Inc. v. Erickson*, 899 N.W.2d 557, 567 (Minn. Ct. App. 2017). Issues are only identical where the issue is "distinctly contested and directly determined in the earlier adjudication" and "the issues presented by [the current] litigation are in substance the same as those resolved" in the previous litigation. *Erickson*, 899 N.W.2d at 567 (internal marks and citations omitted). Where "the right to assert the second claim did not arise at the same time as the right to assert the first claim, then the claims cannot be considered the same cause of action," and collateral estoppel cannot apply. *Care Inst., Inc. v. Cty. of Ramsey*, 612 N.W.2d 443, 447 (Minn. 2000); *see also United States SBA v. Bensal*, 2014 U.S. Dist. LEXIS 154925, at *10-11 (N.D. Cal. Oct. 31, 2014) (application of a different law precludes collateral estoppel).

As far as Petitioners can tell, nobody in the history of Minnesota has ever brought a lawsuit to challenge the implementation of a law that purportedly enables individuals to vote contrary to constitutional prohibition. Nobody has sought a declaratory judgment related to such an issue; nobody has sought a writ of quo warranto related to such an issue. What *has* happened is that associations and individuals have sought to restrain government conduct in excess of government authority based on just their interest as a taxpayers, or even just their interest as Minnesotans. In those cases, the Minnesota Supreme Court and the Minnesota Court of Appeals have consistently held that plaintiffs have standing to restrain unlawful government conduct, both as taxpayers and just as Minnesotans. *See, e.g.*, *Save Lake Calhoun*, 943 N.W.2d at 176; *Palmer*, 182 N.W.2d at 183–84; *Minn. Voters All. v. State*, 2015 Minn. App. Unpub. LEXIS 495, at *2 (May 26, 2015) (Petitioner Minnesota Voters Alliance had standing to sue to obtain writ of quo warranto against online-voter-registration system).

Despite these obvious distinctions and principles, Respondents argue that Petitioners are collaterally estopped from asserting taxpayer standing in this case because MVA (and, by nature of their

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purported privity as members of MVA, the individual Petitioners) "sought to intervene as a party, arguing that it had taxpayer standing" in *Schroeder v. Simon*, 950 N.W.2d 70 (Minn. Ct. App. 2020) (*Schroeder I*), and the court of appeals affirmed the district court's denial of the intervention. State Resp'ts' Mem. 7. This argument is entirely frivolous. First, as noted above, standing to seek the writ of quo warranto does not depend on being a taxpayer. But even if it did, there is no identity of the issues between this action seeking entirely different remedies related to a different law than in *Schroeder*, and there was no judgment against MVA in *Schroeder*, either with or without prejudice. Rather, MVA's bid to intervene failed, though it sought to intervene on the side that prevailed in that action. It is absurd to argue, as the Respondents have, that failing to intervene as a defendant to uphold the constitutionality of one law that has now been abrogated means one cannot bring an independent suit seeking to restrain government action and to challenge the implementation of *an entirely different law* which replaced that former law as a *plaintiff*.

MVA's argument for its status as a taxpayer in *Schroeder I* was an argument for why it had "an interest in the subject of the action" the second requirement for intervention as a matter of right pursuant to Minn. R. Civ. P. 24.01. *Schroeder I*, 950 N.W.2d at 76 (citation omitted). That is, it was an argument for its intervention, not an issue whose "final adjudication on the merits" would preclude MVA from ever again claiming taxpayer standing in any future case. The court of appeals expressly acknowledged that "taxpayer standing is not synonymous with demonstrating an interest sufficient to warrant intervention as a matter of right." *Id.* at 78. Further, in *Schroeder I*, "MVA described its interest as twofold: (1) an interest in the attorney general's office uniformly asserting the no-private-cause-of-action defense and (2) an 'interest in ending the meritless litigation as state taxpayers.'" *Id.* at 76. MVA did *not* argue that it sought to restrain the implementation of an illegal or unconstitutional law. Taxpayer standing to supplement the government's defense of a law to save taxpayer dollars is not the same as taxpayer standing to stop an excess of government authority and continuous implementation

of an unconstitutional law based on the Minnesota Constitution's prohibition.

The superficial similarities of *Schroeder I* with this case—the "taxpayer standing" argument against a waste of taxpayer dollars and the interpretation of the interrelation of felon voting laws with the Minnesota Constitution—are irrelevant to taxpayer standing and do not go to the merits of the issues Petitioners raise here, which are based on new laws and different actions. Petitioners are not collaterally estopped from seeking taxpayer standing in this or any other case, and MVA's failure to intervene in *Schroeder I* does not otherwise preclude any claim Petitioners raise here.

2. Petitioners have taxpayer standing to seek both the writ of quo warranto and a declaratory judgment.

Next, Respondents argue that Petitioners do not meet the requirements for taxpayer standing in this case because the court of appeals' decision in *Schroeder I* decided that "taxpayer standing is only available to petitioners challenging 'a specific disbursement'" and "'the reinstatement of voting rights after a felony criminal conviction' was not litigating a disbursement." State Resp'ts' Mem. 8 (quoting *Schroeder I*, 950 N.W.2d at 78). Respondents misstate the law and misuse *Schroeder I*. Petitioners meet the requirements for taxpayer standing.

First, *Schroeder I* is an incredibly weak case vis-à-vis taxpayer standing because the court of appeals there only sought to address whether MVA had an "interest," consistent with Minn. R. Civ. P. 24, sufficient to intervene as a defendant. As mentioned above, the court of appeals noted the distinction between taxpayer standing generally and the considerations for intervention. 950 N.W.2d at 78. The court of appeals simply wasn't considering whether taxpayers have standing to bring actions for the writ of quo warranto or declaratory judgment as plaintiffs. The cases on point for those issues are *Save Lake Calhoun*, 943 N.W.2d at 176, and MVA's challenge to online voter registration prior to its statutory codification in *Minnesota Voters Alliance v. State*, 2015 Minn. App. Unpub. LEXIS 495, at *2.

Second, taxpayer standing is *not* "only available to petitioners challenging 'a specific disbursement.'" *Id.* (quoting *Citizens for Rule of Law v. S. Comm. on Rules & Admin.*, 770 N.W.2d 169, 175 (Minn.

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Ct. App. 2009)). *Schroeder I* itself stated that "a challenge to 'a specific disbursement' is *generally* required to invoke taxpayer standing." 950 N.W.2d at 78 (emphasis added). *Citizens* specifically stated that "taxpayers do have standing to bring an action challenging the 'unlawful disbursements of public money . . . [or] illegal action on the part of public officials.'" 770 N.W.2d at 175 (quoting *Olson v. State*, 742 N.W.2d 681, 684 (Minn. Ct. App. 2007)). This nested quotation is originally from *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977), which found these *multiple* bases for taxpayer standing "well settled." And *Save Lake Calhoun* put this issue to final rest in the same year as *Schroeder I*: the Court noted that its "precedent does not require" an ongoing action to seek the writ of quo warranto. 943 N.W.2d 171 at 176 n.3. Consistently, if there is no ongoing action, there will not be an ongoing disbursement of funds to pay for a nonexistent action. *See id.* Instead, the writ of quo warranto is available to any Minnesotan who sees illegal action on the part of public officials and seeks to hold them within the powers they actually have under the law.

Third, *Schroeder I* did *not* "specifically state[] that 'the reinstatement of voting rights after a felony criminal conviction' was not litigating a disbursement and that it was therefore not subject to a taxpayer-standing challenge." State Resp'ts' Mem. 8 (quoting *Schroeder I*, 950 N.W.2d at 78). The court certainly did not hold that taxpayers cannot challenge ongoing government actions which quite obviously use taxpayer funds to implement, whether related to reinstatement of voting rights or the reinstatement of the name of a lake—that holding would have directly contradicted *Save Lake Calhoun*. Rather, the *Schroeder I* Court identified as the purpose of MVA's intervention an objection to the way "government funds are used to defend litigation." *Schroeder I*, 950 N.W.2d at 78. This was not a broad statement concerning all possible actions that might challenge the reinstatement of voting rights where funds are used to process those reinstatements, but rather a statement that MVA could not, by intervention, control the way the State conducted its defense. To that point, the only expenditure relevant to *Schroeder I* was the use of government funds to defend litigation, related to which the court of

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appeals held MVA did not have an interest to restrain. *Id.* In other words, MVA did not have standing to dictate the way in which the Attorney General litigated its defense of the prior felon voting law.

Nonetheless, even assuming that Petitioners must identify specific disbursements to be challenged, they have clearly satisfied that requirement. They clearly allege that Respondents have taken and continue to take illegal actions beyond their constitutional power to implement the provisions of Laws 2023, chapters 12 and 62. Pet'rs' Mem. 4-6, 15; Petition ¶¶ 22, 34–38, 41. They also allege, and public records amply demonstrate, that Respondents have used unlawful disbursements of public monies in furtherance of their illegal actions. Pet'rs' Mem. 4-6, 8-13, 16; Petition ¶ 22; Laws 2023, ch. 12, § 8 ($14,000 to implement chapter 12), ch. 62, art. 1, § 6 ($200,000 to "develop and implement an educational campaign relating to the restoration of the right to vote to formerly incarcerated individuals"). As the court of appeals easily noted in the online-voter-registration case, "Respondents conceded that taxpayer funds were used to create, maintain, and operate the online-voter-registration system. Appellants thus had standing to petition for the writ." 2015 Minn. App. Unpub. LEXIS 495, at *7. Frankly, it is impossible that taxpayer funds are *not* being used to implement the Felon Voting Law. Thus Petitioners have shown a "link between that challenge and an illegal expenditure of tax monies." *Olson*, 742 N.W.2d at 685.

Respondents further claim that *Schroeder I* "recognized that cases granting taxpayer standing involved challenges to direct expenditures, as opposed to substantive programs that only incidentally or indirectly involved expenditures." State Resp'ts' Mem. 8. Respondents infer this "recogni[tion]" from cases the *Schroeder I* Court collected that found taxpayer standing "in challenges to 'expenditure of tax revenue,' 'legality of the expenditure of state funds,' and 'increases in legislative per diem.'" *Id.* (citing *Schroeder I*, 950 N.W.2d at 78). The distinction Respondents attempt to infer here is unrecognized in Minnesota case law, hence their lack of direct support for their claim. "[T]he right of a taxpayer to maintain an action in the courts to restrain the unlawful use of public funds cannot be denied." *McKee*,

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261 N.W.2d at 571.[1] That use is not always a "direct expenditure,"; rather, government actions like the renaming of Lake Calhoun or the unlawful implementation of the online-voter-registration system are also susceptible to taxpayer suits. Petitioners meet the requirements for taxpayer standing, whether for the writ of quo warranto or a declaratory judgment.

3. Taxpayer status is a legitimate basis for standing in quo warranto actions.

Finally, Respondents resort to a bizarre claim that "taxpayer status is not a basis for standing in quo warranto actions." State Resp'ts' Mem. 9. State Respondents claim that Minnesota courts "have never held that quo warranto is proper when the petitioner's only interest in the case is as a taxpayer." *Id.* at 10. Respondents are wrong.

In their principal brief, Petitioners quoted at length from *Minn. Voters All. v. State*, 2015 Minn. App. Unpub. LEXIS 495 (May 26, 2015), where the court found MVA itself had taxpayer standing in a quo warranto action to challenge the state's online voter-registration system. *See* Pet'rs' Mem. 15-16. Respondents fail to acknowledge this. The courts have also found taxpayer standing sufficient for petitioners to bring writs of quo warranto in: *Save Lake Calhoun v. Strommen*, 928 N.W.2d 377, 384 (Minn. Ct. App. 2019); *Minn. Voters Alliance v. City of Minneapolis*, 2021 Minn. Dist. LEXIS 78, *20-21; *Minn. Voters Alliance v. Lake Cnty.*, 2021 Minn. Dist. LEXIS 1119, *15; and *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 317 (Minn. Ct. App. 2007) (noting that the district court found petitioners had taxpayer standing though it denied issuing the writ because it was an inappropriate action). Respondents make no effort to address, let alone distinguish, these cases.

Taxpayer standing is proper for quo warranto actions, and Petitioners have both taxpayer standing and standing to enjoin illegal government action, whether or not they are taxpayers.

[1] *See* section I.B below for a fuller discussion of *McKee* and how it clearly authorizes Petitioners' suit.

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B. Petitioners have standing to bring an action for a declaratory judgment.

Unlike federal-taxpayer standing, Minnesotans enjoy a state-taxpayer-standing doctrine that allows for robust challenges to illegal expenditures of tax dollars and illegal actions on the part of public officials. *McKee v. Likins*, 261 N.W.2d 566, 570-71 (Minn. 1977). This case is, in part, about the unlawful disbursement of public funds in furtherance of Respondents' actions that violate the Minnesota Constitution. Minnesota taxpayers have standing to sue to stop such expenditures. *Id.*

McKee is directly on point. There, a state taxpayer sued state and county officials to enjoin public expenditures for abortions. *Id.* at 568. The court noted that "[i]n contrast with the Federal courts, it generally has been recognized that a state or local taxpayer has sufficient interest to challenge illegal expenditures." *Id.* at 570 (cleaned up). Quoting *Oehler v. City of St. Paul*, 174 Minn. 410, 417 (1928), the court also recognized that it was just as "'well settled'" that "[t]axpayers are legitimately concerned with the performance by public officers of their public duties" and may bring an action "'to restrain illegal action on the part of public officials.'" *McKee*, 261 N.W.2d at 571. The court denied the government's motion to dismiss on the basis that "the right of a taxpayer to maintain an action in the courts to restrain the unlawful use of public funds cannot be denied." *Id.* at 571.

Here, Petitioners have alleged that they are taxpayers and that Respondents have illegally spent state money by implementing the Acts at issue. Petition ¶¶ 22-24, 25-28, 39-41. Petitioners need allege no more to establish standing here.

Respondents and Intervenors complain that Petitioners have no particular injury distinct from the general public. *See* Resp'ts' Mem. 5; Intervenors' Mem. 8-9.[2] But "[t]axpayers without a personal or direct injury may still have standing but only to maintain an action that restrains the 'unlawful disbursements of public money . . . [or] illegal action on the part of public officials.'" *Olson v. State*, 742

[2] Intervenors' memorandum of law in support of their motion for judgment on the pleadings can be found as Exhibit 1 to the Affidavit of Erica Abshez Moran.

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N.W.2d 681, 684 (Minn. Ct. App. 2007) (quoting *McKee*, 261 N.W.2d at 571); *see also Citizens for Rule of Law v. S. Comm. on Rules & Admin.*, 770 N.W.2d 169, 175 (Minn. Ct. App. 2009); *Minn. Voters All. v. State, No. A14-1585*, 2015 Minn. App. Unpub. LEXIS 495, at *6 (May 26, 2015). Those are precisely the actions Petitioners are bringing here. *See* Petition ¶¶ 22-24.

Intervenors defend Respondents by claiming they have taken no unlawful actions but rather are simply "taking actions expressly authorized and required by the Re-enfranchisement Statute." Intervenors' Mem. 10. But Petitioners have alleged that those actions, which are in furtherance of the registration of convicted felons, are in direct conflict with Article VII, Section 1 of the Minnesota Constitution. Petition ¶¶ 22-24. It is axiomatic that the Minnesota Constitution is the supreme law of this state and restrains what the Legislature may do when it passes session laws. *Rice v. Connolly*, 488 N.W.2d 241 (Minn. 1992). The Legislature cannot permit what the constitution prohibits; so while the Respondents may be carrying out the Felon Voting Law consistent with its terms, their actions are nonetheless unlawful.

Intervenors and Respondents cannot argue in good faith that an action to restrain expenditures based on an unconstitutional law is not possible, as the Minnesota Supreme Court has clearly stated that Minnesotans may challenge unconstitutional activity just as they may challenge activity not authorized by statute. *Cruz-Guzman v. State*, 916 N.W.2d 1, 13–14 (affirming denial of motion to dismiss action seeking declaratory and injunctive relief, whether or not it proceeded under the Declaratory Judgments Act); *Save Lake Calhoun*, 943 N.W.2d at 175–76 (discussing *Palmer*, 182 N.W.2d at 185–86); *Rice*, 488 N.W.2d at 244–48 (holding the Minnesota Racing Commission's rules unconstitutional and granting the writ of quo warranto). In addition, the Minnesota Constitution itself authorizes Petitioners to bring suits to "obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws." Minn. Const. art. I, § 8; *see also Schroeder v. Simon*, 985 N.W.2d 529, 567 n.12 (Minn. 2023) (Hudson, J., dissenting) (*Schroeder II*) (identifying Minn.

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Const. art. I, § 8 as entitling Minnesotans to a constitutional remedy for constitutional violations).

Intervenors' attacks on Petitioner MVA's associational standing are likewise without merit. *See* Intervenors' Mem. 11-12.

> "[A]n an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977); *see also State by Humphrey v. Philip Morris, Inc.*, 551 N.W.2d 490, 497-98 (Minn. 1996) (adopting *Hunt*'s approach). Intervenors argue that Petitioner MVA does not meet the last two factors because, they argue, the interest of the instant litigation is not "germane to its purpose of ensuring election integrity" "as it would take away the right to vote from a re-enfranchised group of people," and "the remedy sought by MVA will plainly not benefit its members." Intervenors' Mem. 11-12 (citing *United Food & Com. Workers Union, Loc. No. 663 v. United States Dep't of Agric.*, 532 F. Supp. 3d 741, 758 (D. Minn. 2021)); *see also* Petition ¶ 25.

Intervenors' statement suffers obvious defects, first of which is that this lawsuit would not "take away the right to vote" from anyone because the Minnesota Constitution does not allow the Legislature to enable voting for felons not restored to civil rights in the first place. And ensuring that Minnesota public officials comply with the requirements of the Minnesota Constitution in their registration- and election-related activities is absolutely germane to election integrity and MVA's long-time advocacy. Intervenors' claim that it would be "more germane" to MVA's purpose to "advocat[e] to protect the right to vote for all members of the citizenry deemed worth to exercise it" presumes that the Minnesota Constitution permits felons no longer incarcerated but still serving their sentences to vote in Minnesota elections. But that is the very issue in contention in this case. Case-in-point is the online-voter-registration case: once the Legislature authorized the practice, MVA did not challenge the online-voter-registration system further, because it was then lawful. *See Minn. Voters All. v. State*,

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2015 Minn. App. Unpub. LEXIS 495, at *2 & *2 n.2.

For the third factor, Intervenors cite to *United Food & Com. Workers Union Loc. No. 663 v. USDA*, 532 F. Supp. 3d 741 (D. Minn. 2021), to nuance this third factor as one "that ensures that the remedy sought by the organization will benefit its members." *Id.* at 758 (citing *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.,* 517 U.S. 544, 556–57 (1996)). But MVA does meet the third factor because its individual members need not participate in the litigation, which is all that the third factor requires. MVA's individual members have standing, and the equitable relief sought here would accrue to those members just the same as were they participating individually. This follows from the fact that this third factor is "prudential," *id.*, not a "constitutional necessity," and the considerations that underly it "are generally on point whenever one plaintiff sues for another's injury." *United Food & Com. Workers Union Loc. 751*, 517 U.S. at 556–57. The Minnesota courts "relax requirements for associational standing where the relief sought is equitable only." *Humphrey*, 551 N.W.2d at 498. Based on Petitioners' research, no other Minnesota court has raised this prudential requirement to refuse associational standing; indeed, the Minnesota Supreme Court has, in more than one case, found associational standing even where the association has had "no 'members,'" *see, e.g., id.*; *Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 221 N.W.2d 162, 165 (Minn. 1974) (approving standing of Minnesota Public Interest Research Group despite it having no members), where such allegations of benefit would have been impossible.

Intervenors also argue that Petitioners don't have standing in their Section I.C., but their argument doesn't address standing as state taxpayers. *See* Intervenors' Mem. 12-13. None of the federal cases they cite to concerned plaintiffs claiming standing on the basis of state-taxpayer status. Petitioner MVA claims associational standing for the declaratory-judgment portion of this suit on the basis of its members' status as state taxpayers and their individual standing. As for the writ of quo warranto, MVA has direct, not associational, standing, just as the court of appeals held in the online-voter-

registration case. *See Minn. Voters All. v. State*, 2015 Minn. App. Unpub. LEXIS 495.

Petitioners have standing to bring their action for a declaratory judgment and injunctive relief.

III. Petitioners' Entitlement to the Writ of Quo Warranto and Declaratory and Injunctive Relief Is Well-Pleaded.

Intervenors argue that Petitioners have failed to make sufficient allegations for their declaratory judgment action because "the Petition is devoid of any request that the Court declare the parties' rights, status, or other legal relation." Intervenors' Mem. 17. This apparent code-pleading or "magic words" demand is really just another argument against Petitioners' standing. As discussed above, Petitioners have standing as state taxpayers. And *McKee v. Likins* readily dispatches this argument, because the Minnesota Supreme Court expressly held that McKee had standing "to seek a declaratory judgment . . . and thus . . . an injunction against the use of state monies for elective, nontherapeutic abortions . . . as a taxpayer." 261 N.W.2d at 569–70.

Intervenors' further argument that Petitioners' action for declaratory judgment is actually an action for injunctive relief, *id.*, misunderstands how "liberally construed and administered" the Uniform Declaratory Judgment Act ("UDJA") is, Minn. Stat. § 555.12, and how "[f]urther relief based on a declaratory judgment or decree may be granted whenever necessary or proper," *id.* § 555.08. Again, *McKee* is on point and expressly refutes this argument. 261 N.W.2d at 569–70. And, in fact, whether this case proceeds under the UDJA or just as an action for declaratory and injunctive relief generally, the Minnesota Supreme Court has specifically allowed such suits. *Cruz-Guzman*, 916 N.W.2d at 13–14 (affirming denial of motion to dismiss action seeking declaratory and injunctive relief, whether or not it proceeded under the Declaratory Judgments Act).

Intervenors also argue that Petitioners' pleadings are deficient "because there is no unauthorized assumption or exercise of power by a public official. Petitioners only assert bald legal conclusions that Respondents have acted in excess of their authority." Intervenors' Mem. 14. On the contrary, Petitioners have thoroughly alleged the existence of Respondents' actions in excess of their authority

under Article VII, Section 1 of the Minnesota Constitution. Petition ¶¶ 22-24, 35–39. Petitioners also cited, with references, additional actions taken by Respondents in furtherance of the Felon Voting Law in the memorandum of law supporting the granting of the writ of quo warranto. Pet'rs' Mem. 8–13. Intervenors, like State Respondents, claim that *Schroeder II* explicitly sanctioned the Legislature's approach here in the Acts to restore the right to vote by an affirmative act. Intervenors' Mem. 14–15. Petitioners understand and certainly anticipated this merits argument, but it is not a legitimate argument as to the inadequacy of the allegations in the Petition. Intervenors and State Respondents' disagreement as to whether the Legislature's, and subsequently the Respondents', acts are authorized by the Constitution is bound up in the interpretation of Article VII, Section 1, as discussed in Petitioners' principal brief and below. *See* Pet'rs' Mem. 23–24.

Petitioners have adequately alleged that Respondents have acted in excess of their authority under the Minnesota Constitution, satisfying the requirement to bring their petition for writ of quo warranto and for a declaratory judgment.

IV. The Minnesota Constitution Requires the State to Restore a Convicted Felon to "Civil Rights" in Order for the Right to Vote to Be Restored.

Petitioners explain in their principal brief why Article VII, Section 1 of the Minnesota Constitution prohibits the restoration of the right to vote to persons convicted of felony crimes without their first being restored to all civil rights. *See* Pet'rs' Mem. 17–27. Petitioners maintain that this is the unambiguous meaning of Article VII, Section 1. *Id.* at 18.

Contrastingly, State Respondents claim that the term "civil rights" in the constitutional provision unambiguously refers only to the right to vote, despite the obvious contradiction between the singular and plural. State Resp'ts' Mem. 11. Alternatively, State Respondents claim that, if the provision is ambiguous, the ambiguity resolves in their favor upon review of the circumstances of the constitution's adoption and the historical practices since that time. *Id.* at 15–16. State Respondents' arguments are without merit.

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A. "Restored to civil rights" does not unambiguously mean "restored to voting rights."

Petitioners explain in their principal brief why the term "civil rights" means "the whole of the rights and liberties" to which Minnesotans are entitled when "not under a punishment by law for a criminal act" and must, in any case, refer to more than only the right to vote.[3] *See* Pet'rs' Mem. 19–23.

To support their claim that "restored to civil rights" unambiguously means "restored to voting rights," State Respondents first point to *Minn. Voters Alliance v. Simon*, 885 N.W.2d 660, 662 (Minn. 2016). State Respondents argue that because the Minnesota Supreme Court did not address how the statutory mechanism for restoring the right to vote to felons worked the restoration of all civil rights, the court's failure to elaborate on this point "clearly indicates that the court equates restoration of the right to vote with the restoration referenced in [Article VII, Section 1]." State Resp'ts' Mem. 11. But the court's lack of elaboration on this point "clearly indicates" nothing of the kind. The court's "discussion of the laws that govern voter registration and eligibility to vote" was avowedly "brief," and it addressed the restoration of the right to vote in only four sentences. *MVA v. Simon*, 885 N.W.2d at 662. Moreover, the court's discussion was meant to serve as an overview for its more in-depth analysis of the issue before it, voters' certification of the right to vote. *Id.* at 661-62. The issue of restoration of the right to vote was not before the court there. And, in any event, the court identified Minn. Stat. § 609.165 as restoring the right to vote because "such discharge shall restore the person *to all civil rights*." *MVA v. Simon*, 885 N.W.2d at 662 (quoting Minn. Stat. § 609.165) (emphasis added). *MVA v.*

[3] Important here in terms of the remedy Petitioners seek, the writ of quo warranto or a declaratory judgment and corresponding injunction, the Court need not definitively identify every "civil right" which is part of the cadre of "civil rights" to which the framers of the Minnesota Constitution referred. If the Court agrees that "civil rights" refers to more than the right to vote, the Court should hold the Felon Voting Law unconstitutional, issue the writ, and let the Legislature propose a constitutional amendment or write new laws which actually accomplish the restoration of "civil rights," if it so chooses. But the Court has not been called on to interpret a potential future statute which purports to restore other, further, or different civil rights than just the "right to vote."

Simon thus actually favors Petitioners' interpretation, not Respondents'.

Where the issue of restoration of the right to vote *was* before the court, however, in *Schroeder v. Simon*, 985 N.W.2d 529 (Minn. 2023) (*Schroeder II*), the Minnesota Supreme Court repeatedly acknowledged the plurality of the "civil rights" at issue, referring to them as "*including* the right to vote." *See, e.g.*, *id.* at 533, 552 (emphasis added); *see also* Pet'rs' Mem. 19–20. How can a plural noun ("civil rights") "include" something (the right to vote) and yet consist of *only* that thing? State Respondents do not address this. Instead, as Petitioners predicted, State Respondents claim that *Schroeder II* sanctioned the means by which the Legislature restored voting rights in the Felon Voting Law in contention here. *Compare* State Resp'ts' Mem. 14 *with* Pet'rs' Mem. 24, n.20. As Petitioners explained in their principal brief, the *Schroeder II* Court did not and could not greenlight the Legislature to circumvent the restoration of all civil rights in order to restore the right to vote. *See* Pet'rs' Mem. 23–27.

State Respondents further claim that "the best evidence of what 'restored to civil rights' meant to the convention's delegates is how the phrase was used by them at Minnesota's constitutional conventions." State Resp'ts' Mem. 13. Contrary to State Respondents' assertion, this "best evidence" does not support their position equating "civil rights" with "the right to vote." The delegates' discussion of what would become Article VII, Section 1 was brief, and State Respondents cherry-pick one sentence by Mr. Colburn to support their claim that the entire discussion "makes clear that, to the delegates, 'restoration of civil rights' meant 'restoration of voting rights.'" State Resp'ts' Mem. 14. However, a fuller context of that quotation demonstrates that Respondents' quote-grabbing is fatally flawed.

Prior to the delegates' discussion of this Article VII, Section 1, the proposed section read:

> No person shall be qualified to vote at any election who shall be convicted of treason—or any felony—or of voting, or attempting to vote, more than once at any election—or of procuring or inducing any person to vote illegally at any election; *Provided*, That the Governor or the Legislature may restore any such person to civil rights.

Debates & Proceedings of the Constitutional Convention for the Territory of Minnesota 540 (George W. Moore, Saint Paul, 1858), *available at* https://archive.org/details/debatesproceedin00minnrich/page/n11/

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mode/1up [hereinafter Debates & Proceedings]. As the discussion of the section is very brief and the context is important, the full discussion is reproduced below:

> Mr. MORGAN. I move to strike out the whole section. I believe it is unusual, in this connection, to introduce such a section as this. I have never seen it in any other Constitution, and it certainly is a very sweeping piece of legislation, and a matter wholly within the province of the Legislature. This provision is certainly a very stringent one, and difficult of application, and in many cases would work great hardship.
>
> The motion was not agreed to.
>
> Mr. BUTLER. I move to amend by striking out the word "procuring," and inserting "voting."
>
> The amendment was agreed to.
>
> Mr. BALCOMBE. I move to strike out all after the word "felony."
>
> Mr. COLBURN. I object to that, for the reason that it would cut off the power of the Legislature ***to restore civil rights*** to any person who may be convicted of violating the provisions of this section.
>
> Mr. MORGAN. A pardon always restores a person ***to his legal civil rights***.
>
> Mr. COLBURN. That is usually the case under the laws of the various States; but where there is a Constitutional provision, that no person shall vote at any election who shall have been convicted of a particular offence, it is not in the power of the Legislature or Governor to restore him.
>
> Mr. MORGAN. The object of the gentleman from Fillmore can be attained by moving to strike out all after "felony," and before "provided."
>
> Mr. BILLINGS. I move to amend the amendment, by striking out the word "any," in the second line, and all after the word "felony," down to the word "provided."
>
> The amendment to the amendment was agreed to, and then the amendment as amended was adopted.

Id. at 540-41 (emphasis added). The State Respondents only quoted the second quotation from Mr. Colburn above, for the obvious reason that it is the one quotation that does not specify the subject of the restoration—civil rights. The State Respondents thus take advantage of this to suggest that "to restore him" refers to the right to vote. But the full context of the discussion above shows that the shared understanding of the delegates never deviated from "civil rights" as the object of the

restoration. Therefore, the delegates' discussion in no way supports State Respondents' claim that "civil rights" equates with "right to vote"; rather, "civil rights" means all of a persons' "legal civil rights," as Mr. Morgan's statement indicated. Indeed, Mr. Morgan's describing the "civil rights" as "legal civil rights" demonstrates that by "civil rights" the delegates did not just mean "the right to vote"; the additional description of "legal" implies an expansive understanding of "civil rights," one that includes multiple rights of state citizenship.

Another discussion—which involved the same Mr. Morgan also involved with the discussion of Article VII, Section 1's predecessor—further supports Petitioners' view that the delegates understood the term "civil rights" to mean all of a person's civil rights. When discussing a proposed section of the constitution that would have "deprived of holding any office of profit or trust" anyone who fought a duel, Mr. Morgan stated, in part, the following:

> Punishment for crimes are usually contained in the statutes, and not in the Constitution. There are many worse offences than dueling, and to say that a man who has either fought a duel, or has been connected with one, shall be forever disqualified for holding office, is going a good ways. A man may be guilty of manslaughter, or highway robberry [sic], and be in State prison as a punishment for the offence, ***yet if he is pardoned out one day before the expiration of his sentence, he is restored to all his civil rights***; but a man who has been connected in any way with a duel, cannot, if this section is adopted, be restored to his civil rights without a change of the Constitution.

Debates & Proceedings 110 (emphasis added). Mr. Morgan's statement clearly refers to the right to hold office as one of the "civil rights" to which a person may be restored as a result of a Governor's pardon. This reference to another civil right beyond the right to vote using the same phrase as in Article VII, Section 1 completely undermines Respondents' position. Contrary to Respondents' view, this statement of Mr. Morgan, when considered alongside his other comment concerning Article VII, Section 1 that "[a] pardon always restores a person to his legal civil rights," indicates that, in the context of the discussion on Article VII, Section 1, the common understanding of the delegates was that "civil rights" meant at very least the right to vote and the right to hold office, and not just the right to vote alone.

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Likewise, in a concurrence, former Chief Justice Start of the Minnesota Supreme Court, interpreting this very provision in 1907, defined "civil rights" as including at least the right "to vote or to hold any office." *State ex rel. Brady v. Bates*, 112 N.W. 1026, 1029 (Minn. 1907) (Start, C.J., concurring). Chief Justice Start also noted that the Legislature could remove an officer from office for conviction of a felony because "thereby he forfeits ***all civil rights*** by virtue of the constitution." *Id.* (emphasis added).

To be abundantly clear, the Felon Voting Law does not restore the right to hold public office, or any other civil right, to those still serving felony sentences. It only purports to restore the right to vote. In fact, the Legislature amended Minn. Stat. § 609.165, subd. 1 to retain the full restoration of civil rights—more than just the right to vote—only after the discharge of the felony sentence:

> When a person has been deprived *of civil rights* by reason of conviction of a crime and is thereafter discharged, such discharge shall restore the person *to all civil rights* and to full citizenship, ~~with full right to vote and hold office,~~ the same as if such conviction had not taken place, and *the order of discharge shall so provide*."

Laws 2023, ch. 12, § 7 (italics added, strikethrough in original). Thus, the Legislature itself which passed the Felon Voting Law understands that "civil rights" contemplates more than the right to vote, and only after discharge may one convicted of a felony hold public office. Minn. Stat. § 609B.141; Minn. Stat. § 204B.10, subd. 6. Section 609B.141 says: "If a person is convicted of a felony or treason and has not had the person's civil rights restored, under section 204B.10 the person's name shall not be certified to be placed on a ballot." Consistently, Minn. Stat. § 204B.10, subd. 6 says:

> **Candidate's eligibility to hold office.** Upon receipt of a certified copy of a final judgment or order of a court of competent jurisdiction that a person who has filed an affidavit of candidacy or who has been nominated by petition:
>
> (1) has been convicted of treason or a felony and the person's civil rights have not been restored;
>
> . . . .
>
> the filing officer shall notify the person by certified mail at the address shown on the affidavit or petition, and, for offices other than President of the United States, Vice President of the United States, United States Senator, and United States Representative in Congress, shall not certify the person's name to be placed on the ballot.

Under current Minnesota law, just as at the time of our founding, restoring the right to vote alone does not restore a person to the civil rights removed by virtue of the felony conviction.

Finally, State Respondents argue that the definition of the term "civil" supports their argument that "restored to civil rights" means "restored to the right to vote." State Resp'ts' Mem. 14. They take their definition of "civil" from Bouvier's Law Dictionary, which provides: "[Civil] is used in contra-distinction to *barbarous* or *savage*, to indicate a state of society reduced to order and regular government; thus we speak of civil life, civil society, civil government, and civil liberty." Bouvier's Law Dictionary 231 (6th ed. Phila., Childs & Peterson 1856). Specifically, State Respondents claim that because this definition of "civil" "focus[es] on society and government" this somehow "indicate[s] that 'civil rights' refers to the right to participate in that government through the act of voting." State Resp'ts' Mem. 14. But this definition better supports a broad conception of "civil rights" since it refers to the whole of ordered and regular government and civil liberty in general. In any case, this definition, on its face, does not support the absurdly narrow inference State Respondents draw from it.

Therefore, Article VII, Section 1 does not unambiguously support State Respondents' claim that "restored to civil rights" means "restored to the right to vote." Rather, the "straightforward" language of Article VII, Section 1, indicates that the plural "civil rights" "includes" multiple rights that must be restored before a felon regains eligibility to vote. *Schroeder II*, 985 N.W.2d at 536.

B. If Article VII, Section 1 is ambiguous, its ambiguity resolves in Petitioners' favor.

State Respondents also claim that, if the Court finds Section VII, Section 1's "restored to civil rights" language to be ambiguous, the ambiguity resolves in their favor based on the supposed intent of the Republican delegates and framers and historical practice. State Resp'ts' Mem. 15-16. Petitioners maintain that Article VII, Section 1 is "straightforward" and unambiguous. *Schroeder II*, 985 N.W.2d at 536; *see* Pet'rs' Mem. 19. But even if the restoration provision is ambiguous, there is no evidence to support State Respondents' interpretation.

State Respondents argue that "the intent of the constitution as indicated by the framers and the people who ratified it" shows that "the mischief addressed and the remedy sought by the particular provision," *Kahn v. Griffin*, 701 N.W.2d 815, 825 (Minn. 2005), "was the hardship that would result from the loss of voting rights, not other civil rights," State Resp'ts' Mem. 15-16. However, the only evidence by which this Court can infer intent on the part of the framers and ratifiers is the discussion of the restoration provision by the Republican delegates ***and*** the contemporaneous discussion of deprivation of "civil rights" referring to the right to hold public office as well as the right to vote. As shown above in the full excerpt of that discussion, the Republican delegates' discussion revolved around the "civil rights" referred to in the provision, which, as Petitioners demonstrated above, meant all the legal civil rights of the person deprived of the right to vote. The "great hardship" worked by the provision, and the topic of the delegates' discussion, was the conditioning of the restoration of the right to vote upon the restoration of all a person's civil rights by either a legislative act or a governor's pardon. Petitioners agree that the Legislature has broad authority to effect this restoration—but Petitioners disagree that the provision can be read to allow the Legislature to restore voting rights without restoring the civil rights removed by felony conviction. Neither the language of Article VII, Section 1 nor the delegates' discussion of that section supports State Respondents' position.

State Respondents also argue that "historical practice in the 166 years since the Minnesota Constitution was adopted also indicates that restoring the right to vote does not require restoration of all civil rights." Resp'ts' Mem. 16. State Respondents are wrong.

First, State Respondents point to a 1911 law that "created a parole board with authority to determine when persons convicted of felonies should be released on parole or released absolutely," but "absolute release," or discharge, was still required for the restoration of those persons' civil rights. *Schroeder II*, 985 N.W.2d at 542, n. 9 (citing Act of Apr. 20, 1911, ch. 298, 1911 Minn. Laws 412, 412–17); *see* State Resp'ts' Mem. 16 (citing Minn. Stat. § 9275 (1913)). State Respondents claim that the

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language of this law permitted the governor to restore the right to vote without restoring all civil rights. The law says nothing of the sort, and even if the governor could have, under the law, restored some of a person's civil rights, the governor still could not constitutionally restore the right to vote absent restoration of the civil rights removed by the felony sentence. We repeat: the constitution restrains what the legislature can permit.

Specifically, the law provided that, upon recommendation of the parole board "as to whether such prisoner should be restored to any of the rights and privileges of citizenship":

> . . . the governor may in his discretion restore such person so released to any or all of the rights and privileges of citizenship, except in cases where deprivation of any of the rights or privileges of citizenship is specifically made a part of the penalty for the offense for which such person shall have been committed.

Minn. Stat. § 9275 (1913). However the Court chooses to read this provision, it must be read in concert with Article VII, Section 1. State Respondents' claim—that the governor could simply restore only the right to vote—puts the cart before the horse. It *presumes* their proposed interpretation of Article VII, Section 1, that restoration of the right to vote is not and was not conditioned on the restoration of all civil rights. Absent that presumption, the language of this law does not support State Respondents' interpretation that the governor could have restored the right to vote without restoring all civil rights because the Legislature cannot and could not have circumvented that condition, whether the year be 1911 or 2023. The governor's power in this law to restore "any or all of the rights or privileges of citizenship" was restricted by the Constitution's restoration provision, which, both then and now, requires the restoration of all civil rights for eligibility to vote.

Next, State Respondents point to Minnesota's former ten-year restriction on firearm possession for all persons convicted of a crime of violence to claim that this law, too, "explicit[ly] recogni[zes] that voting rights would be restored if not all civil rights (such as the right to firearm possession) were restored." State Resp'ts' Mem. 16 (citing Minn. Stat. § 624.713, subd. 1(b) (Supp. 1975)). As noted above, Petitioners are not challenging the restoration of any individual person's right to vote upon

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discharge under Minn. Stat. § 609.165, or pardon. They have not placed before the Court whether those discharged from their felony sentences still under a firearms restriction can vote consistent with the Minnesota Constitution. Rather, the Minnesota Supreme Court held that Minnesota's discharge statute, which expressly restores felons to all civil rights, is sufficient to restore the right to vote. *Schroeder II*, 985 N.W.2d at 544.[4] The *Schroeder II* court was not faced with a question of the constitutionality of the firearm-restriction law, or whether those still subject to its restrictions may, consistent with the Minnesota Constitution, vote even after discharge. But the Court need not wrestle with these questions to determine whether "civil rights" is broader than "the right to vote."

Because the *Schroeder II* court already decided the impact of section 609.165, which mostly carried over through the last legislative session, Petitioners' challenge is narrow, and the Court need not follow Respondents' rabbit trails to determine it: can Respondents constitutionally implement the Felon Voting Law, which purports to restore the right to vote prior to the restoration of a felon's civil rights, which is currently accomplished by discharge of the felony sentence or pardon? If the Court decides that "civil rights" is broader than "the right to vote," and are only restored upon discharge or pardon, there is no need to determine the identity of every single civil right a person has which must be restored.[5] It is up to the Legislature to determine those and restore them. And if the Legislature at a later date passes a new law that still does not do enough to restore a person's civil rights, that is a different case not before the Court.

[4] Minn. Stat. § 609.165 also restores those convicted of non-violent felonies to their right to bear arms, *id.* subd. 1 & 1a, and recognizes that those under firearms restrictions are eligible to petition for reinstatement of the right to bear arms, *id.* subd. 1d.

[5] As mentioned above, the former Chief Justice of the Minnesota Supreme Court defined "civil rights" as the right "to vote or to hold any office," *Bates*, 112 N.W. at 1029, and the U.S. Supreme Court has defined them as "the rights to vote, hold office, and serve on a jury." *Logan v. United States*, 552 U.S. 23, 28 (2007). Neither of these courts included the right to bear arms as a "civil right" in this context. But neither Petitioners nor the Court need express any opinion on whether the right to bear arms is considered a "civil right"—the phrase "civil rights" is broader than the right to vote, regardless.

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Finally, State Respondents claim that seven states have "recognized that voting rights may be restored under 'restored to civil rights' language even if not all civil rights are restored." State Resp'ts' Mem. 17. Respondents largely refer to legislative acts, and most of these states' courts have not performed constitutional reviews of these legislative acts. Regardless, Minnesota is its own state with its own constitution that was drafted and adopted by its own delegates; if the Court finds ambiguity in the constitution's language, it must turn to those sources;[6] and, as illustrated above, they do not support State Respondents' claim. If other states' legislatures have chosen to disregard the plain language of their constitutions, rather than amend them, to expand the franchise, that is no concern of Minnesota; the history of those states' constitutions is not before the Court, nor is their respective courts' reasonings upholding the legislatures' respective acts.[7]

Moreover, in other contexts, the federal courts have consistently viewed the restoration of "civil rights" to refer to at least three rights: "the rights to vote, hold office, and serve on a jury." *Logan v. United States*, 552 U.S. 23, 28 (2007); *accord Caron v. United States*, 524 U.S. 308, 316 (1998).[8] The Supreme

[6] The evidence available from the Republican delegates' discussion of Article VII, Section 1 explicitly weighs against considering similar provisions in other states' constitutions. Mr. Morgan stated that he found the section "unusual" and that he had "never seen it in any other Constitution." Debates & Proceedings 540. This suggests the provision was not modeled on any other state's constitution and counsels the Court to limit its analysis to the plain language of the text and, if history is to be considered, the expressed understanding of the delegates.

[7] The law review article on which the Wisconsin Court of Appeals relies for the notion that "The clause 'unless restored to civil rights' as used in the constitution is generally understood to refer to the right to vote" provides no source or substantiation for this view. *See* E.E. Brossard, Restoration of Civil Rights 1946 Wis. L. Rev. 281, 288–89 (1946); *State ex rel. Law Enf't Standards Bd. v. Vill. of Lyndon Station*, 295 N.W.2d 818, 827 (Wis. Ct. App. 1980). It also includes, immediately after this phrase, "Sometimes, although seldom, it may be understood to refer to eligibility to public office." Brossard at 289. But unlike Minnesota, Wisconsin also has an entirely separate constitutional provision relating to holding office after felony conviction. Wis. Const. Art. XIII, § 3. So it is conceivable that Wisconsin's framers might have viewed the phrase differently than Minnesota's.

[8] In *Caron*, the Court held that state law supplies the mechanism for restoring "civil rights," which include "the right to vote, the right to hold office, and the right to sit on a jury," but held that federal law, and not state law, would decide whether possession of firearms could be restored. *Id.* at 315–16.

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Court acknowledged this in *Logan* in reference to the Gun Control Act, which provides that "[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter . . . ." 18 U.S.C.S. § 921(a)(20). And "most federal courts have interpreted 'civil rights restored' to mean that all civil rights that have been *lost* must be restored for the exception to apply." *Johnson v. Dep't of State Police*, 161 N.E.3d 161, 171–72 (IL 2020) (emphasis original) (collecting cases).[9] This reading of "civil rights," plural, as referring to multiple civil rights is not peculiar to the Gun Control Act but derives from the common sense understanding of what a plural noun signifies—multiples. *See, e.g., Walker v. United States*, 800 F.3d 720, 727 (6th Cir. 2015) ("the language of the statute refers to having multiple "civil rights" restored, not just one civil right. On the most natural interpretation of the statutory language, having only one civil right restored is insufficient.").

Therefore, the Court should find that Article VII, Section 1 requires the restoration of all "civil rights" lost by a felon, which is more than the singular right to vote, before the right to vote may be

[9] *Johnson* decided whether an Illinois resident could be restored to the right to bear a firearm based on her "civil rights" being "restored" under the Gun Control Act. The court collected the following cases to explain that the phrase means that civil rights lost must be restored: *United States v. Thompson*, 702 F.3d 604, 608 (11th Cir. 2012) (holding that restoration of only one of three rights lost was insufficient); *United States v. Molina*, 484 Fed. App'x 276, 281 (10th Cir. 2012) (holding that restoration of only two of three rights lost was insufficient); *Buchmeier v. United States*, 581 F.3d 561, 564-65 (7th Cir. 2009) (holding that, where the civil rights lost were restored and where the right to serve on a jury was retained, the defendant's civil rights were sufficiently restored); *United States v. Brown*, 408 F.3d 1016, 1017 (8th Cir. 2005) (holding that restoration of only one of three rights lost was insufficient); *United States v. Leuschen*, 395 F.3d 155, 160 (3d Cir. 2005) (holding that restoration of only two out of three rights lost was insufficient); *United States v. Caron*, 77 F.3d 1, 6 (1st Cir. 1996) (holding that restoration of all of the rights which had been lost was sufficient). *Id.*; *see also Walker v. United States*, 800 F.3d 720, 727 (6th Cir. 2015) ("having just one civil right restored is not functionally equivalent to having multiple restored"); *United States v. Meeks*, 987 F.2d 575, 578 (9th Cir. 1993) (". . . when a state restores a convicted felon's right to vote, to seek and hold public office and to serve on a jury, it has substantially restored his civil rights within the meaning of § 921(a)(20)"); *United States v. Metzger*, 3 F.3d 756, 758 (4th Cir. 1993) ("The term 'civil rights' denotes 'those rights accorded to an individual by virtue of his citizenship in a particular state,' comprising the rights to vote, to hold public office, and to serve on a jury.") (quoting *United States v. Cassidy*, 899 F.2d 543, 549 (6th Cir. 1990)).

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restored. At present, only a discharge or pardon accomplishes that, so Respondents' actions implementing the Felon Voting Law violate the Minnesota Constitution, and the Court should issue the writ of quo warranto.

V. The Petition Is Timely.

Proposed Intervenors argue that Petitioners' Petition, filed on June 29, 2023, less than a month after the Felon Voting Law's effective date, is untimely, and that the *Purcell* principle urges the Court to dismiss Petitioners' case to avoid "voter confusion and problems for election officials." Intervenors' Mem. 19. This is flat-out wrong—Petitioners could not have filed a ripe action for the writ of quo warranto until after the effective date of the law. Further, and contrary to Proposed Intervenors' false claim that Petitioners "sat on their hands," Petitioners sought to have this case heard on its merits by August 24, 2023, hoping for a decision by the beginning of absentee voting, but October 30, 2023 was the earliest date available with the Court's calendar. Decl. of James V. F. Dickey, Oct. 16, 2023, Ex. 1. It is not Petitioners' fault that the Legislature set the effective date of the Felon Voting Law for July 1, then changed it to June 1 in the subsequent omnibus bill. Proposed Intervenors would have Petitioners bring actions during the legislative session, where changes to existing session laws are always possible, and before those laws are effective. This is preposterous; Proposed Intervenors are essentially arguing for a doctrine that makes it impossible to ever bring an action related to voting eligibility under the Minnesota Constitution, which would eviscerate the Minnesota Supreme Court's jurisprudence on the writ of quo warranto, its practices dealing with election-law cases, and remedies for constitutional violations.

The governor signed H.F. 28, Laws 2023, chapter 12, on March 3, 2023, with an effective date of July 1, 2023. The governor signed H.F. 1830, Laws 2023, chapter 62, on May 24, 2023, with effective dates as early as June 1, 2023. Petitioners' Petition challenges actions and tax expenditures resulting from both of these Acts. Had Petitioners filed immediately on March 3, it would have been before

the signing of H.F. 1830, and, Petitioners surmise, Proposed Intervenors would probably have argued the petition was unripe. They would have had a good point: treatises on the writ of quo warranto hold that it is not ripe to force an ouster until a person has taken office, 65 Am. Jur. 2d 116, Quo Warranto § 58, and the Florida Supreme Court recently held that its concept of the writ of quo warranto, very similar to Minnesota's, is not ripe until the official action to be challenged begins taking place, *League of Women Voters of Fla. v. Scott*, 232 So. 3d 264, 265 (Fla. 2017) ("A party must wait until a government official has acted before seeking relief pursuant to quo warranto because a threatened exercise of power which is allegedly outside of that public official's authority may not ultimately occur."). In recognition of these principles, Petitioners had to wait until the law was effective to file this case.

Here, before June 1, 2023, the Felon Voting Law was not effective, and there should not have been any official action occurring consistent with the new law. As Proposed Intervenors acknowledge, Petitioners allege Respondents took action to implement the Acts as early as June 1, 2023. Intervenors' Mem. 18 (citing Petition ¶ 23). Petitioners filed their Petition on June 29, a little over a month after the governor signed H.F. 1830, which partially amended some laws passed by H.F. 28, and less than a month after the earliest effective date of H.F. 1830. That is not a significant amount of time. The Petition is timely.

Moreover, *Purcell* does not stand for what Proposed Intervenors claim. There is no good-faith basis for Proposed Intervenors to argue that *Purcell* requires dismissal of the merits of this case. The U.S. Supreme Court made it clear in *Purcell* that its ruling only extended to a request for temporary relief—which Petitioners have not sought—and did *not* affect the merits of the case:

> We underscore that we express no opinion here on the correct disposition, after full briefing and argument, of the appeals from the District Court's September 11 order or on the ultimate resolution of these cases. . . . Given the imminence of the election and the inadequate time to resolve the factual disputes, our action today shall of necessity allow the election to proceed without an injunction suspending the voter identification rules.

Purcell v. Gonzalez, 549 U.S. 1, 5–6 (2006).

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There is no basis for dismissing a case based on a ruling that "express[ed] no opinion . . . on the ultimate resolution of these cases." *Id.* at 5. Petitioners are challenging the ongoing enforcement of the law, but given the date available for a hearing and the 90-day window for the Court to issue a decision thereafter, Petitioners understand that a decision likely will not occur prior to the November 7, 2023 election. This is not unusual for challenges to Minnesota election law; the Minnesota Supreme Court regularly reviews cases related to elections after the election has already taken place and then makes decisions thereafter which affect only future elections. In *Minnesota Voters Alliance v. Office of the Minnesota Secretary of State*, No. A22-0111, for example, MVA moved to expedite the Supreme Court's consideration of the appeal, the Supreme Court denied that motion, but then granted review to take place after the 2022 election cycle, and eventually made a decision in May of 2023. Order Denying Motion to Expedite, *Minn. Voters All. v. Office of the Minn. Sec'y of State*, No. A22-0111, Aug. 29, 2022; Order Granting Petition for Review, *id.*, Oct. 18, 2022; *Minn. Voters All. v. Office of the Minn. Sec'y of State*, 990 N.W.2d 710 (Minn. May 24, 2023). In that case, an earlier decision would have affected how absentee ballots were processed for the 2022 election, but the subsequent decision affects future elections. Likewise, in *Kranz v. City of Bloomington*, No. A22-1190, the Minnesota Supreme Court granted a Petition for Accelerated Review on August 30, 2022, prior to the 2022 election, but then scheduled the case to be heard on November 28, 2022, after the 2022 election, and issued a decision on May 24, 2023. Docket, *Kranz v. City of Bloomington*, No. A22-1190 (Supreme Court). The Court did not dismiss the merits of the case based on the *Purcell* principle even though it sought to change what Bloomington voters voted on in the 2022 election.

Petitioners have also not sought a temporary restraining order which would require imminent action to change the status of anyone who acted pursuant to the Felon Voting Law for this election. Petitioners seek prospective declaratory relief and, supplementally, an injunction to prevent Respondents from acting to further the Acts in the future. If the Court finds the Acts are unconstitutional and,

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as a consequence, voters who registered and voted, intending to comply with the Felon Voting Law as it currently stands, are not eligible to vote again absent future legislative or governor action, that is not any reason to dismiss the Petition. Petitioners are not responsible for the subsequent actions necessary to correct unconstitutional actions by executives pursuant to unconstitutional laws. Elections occur every year in Minnesota, and special elections occur all the time. They are ongoing; the Legislature chose to pass the Acts when it did; Petitioners filed within a reasonable time; the Court and any appellate courts will be able to decide this matter well in advance of the 2024 primary and general elections.

Therefore, Petitioners' Petition is timely, and the Court should issue the writ of quo warranto and declaratory relief in Petitioners' favor and deny Respondents and Proposed Intervenors' motions to dismiss.

CONCLUSION

For the reasons set forth herein, in Petitioners' other submissions, and based on the forthcoming arguments, Petitioners ask the Court to deny Respondents and Proposed Intervenors' motions and issue the writ of quo warranto prohibiting Respondents from taking any action pursuant to the Felon Voting Law. Alternatively, if the Court believes additional factfinding to be necessary, the Court should issue the writ of quo warranto with a return date for an evidentiary hearing, and then, upon finding facts consistent with Petitioners' allegations in the Petition, immediately enjoin Respondents from further action consistent with the Acts.

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Respectfully submitted,

Dated: October 16, 2023

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Dated: October 16, 2023

By: */s/ James V. F. Dickey*
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