

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

TENTH JUDICIAL DISTRICT

Minnesota Voters Alliance; Mary Amlaw; Ken
Wendling; Tim Kirk,

Case Type: Other Civil

File No. 02-cv-23-3416

The Honorable Thomas R. Lehmann

Petitioners,

v.

**REPLY IN SUPPORT OF PROPOSED
INTERVENOR-RESPONDENTS
JENNIFER SCHROEDER AND ELIZER
DARRIS'S MOTION FOR JUDGMENT
ON THE PLEADINGS**

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 of the Minnesota
Correctional Facility – Lino Lakes,

Respondents.

INTRODUCTION

Proposed Intervenor-Respondents Jennifer Schroeder and Elizer Darris (“Proposed Intervenor-Respondents”) submit this reply to address Petitioners Minnesota Voters Alliance, Mary Amlaw, Ken Wendling, and Tim Kirk’s (collectively “Petitioners”) Memorandum of Law in Opposition to Respondents’ and Proposed Intervenor’s Motions. While Petitioners submitted a combined opposition brief, Proposed Intervenor-Respondents focus this reply on arguments raised against their Motion for Judgment on the Pleadings and address arguments not yet fully briefed. In short, Petitioners improperly urge this Court to stretch the confines of taxpayer standing, and Proposed Intervenor Defendants’ Motion for Judgment on the Pleadings should be granted. But if the Court were to find that Petitioners have standing, any potential relief should be tied directly to their status as taxpayers.

ARGUMENT

A. Petitioners' Attempt To Stretch The Confines of Taxpayer Standing Fails

Petitioners rely on a 1977 Minnesota Supreme Court decision to support their case for standing, which states that “while the activities of governmental agencies engaged in public service ought not to be hindered merely because a citizen does not agree with the policy or discretion of those charged with the responsibility of executing the law, the right of a taxpayer to maintain an action in the courts to restrain the unlawful use of public funds cannot be denied.” *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977). But *McKee* is widely differentiated from the case at bar and has been “limited . . . closely to its facts.” *Citizens for Rule of Law v. Senate Comm. on Rules & Admin.*, 770 N.W.2d 169, 175 (Minn. Ct. App. 2009); see, e.g. *Mankato Aglime & Rock Co. v. City of Mankato*, 434 N.W.2d 490, 493 (Minn. App. 1989) (denying claim of standing to seek judicial review of agency decision because taxpayer was not aggrieved by decision even though taxpayers argued they had standing under *McKee*).

In *McKee*, a taxpayer brought suit challenging the authority of state and county welfare officials to use state funds to make welfare payments for medical expenses connected with abortions as authorized under Minnesota statute. Plaintiff brought (1) a constitutional first amendment claim that Ramsey County tax funds, which he paid into via property taxes, were being used in violation of his freedom of religion because he believed that abortion constitutes the taking of human life and (2) a claim that the policy bulletin issued by a state official authorizing welfare coverage of abortions constituted a rule within the meaning of the Minnesota APA and was not issued pursuant to the requisite public hearing and notice requirements. *Id.* at 568. The court ultimately ruled that plaintiff had standing and remanded for compliance with rulemaking procedures. *Id.* But in doing so, the court issued a narrow holding focused exclusively on plaintiff's

standing as a taxpayer in the rulemaking context under the Minnesota APA: “[A] taxpayer suing as a taxpayer has standing to challenge administrative action which allegedly is rulemaking adopted without compliance with the statutory notice requirements.” *Id.* at 571. Unlike *McKee*, the case at bar involves solely a constitutional challenge to state legislation; it does not involve rulemaking or the Minnesota APA.

The *McKee* court never held that concern over government appropriations is sufficient to permit broad challenges to the legality or constitutionality of laws, absent direct injury to the person harmed by the law. The Minnesota Court of Appeals has followed this guidepost. In *Hageman v. Stanek*, Minnesota taxpayers brought suit to challenge the constitutionality of a Minnesota statute that provided grants of appropriated funds to local programs that offered services to victims of domestic abuse. 2004 WL 1563276, at * 1 (Minn. Ct. App. July 13, 2004). The Fourth Judicial District of Minnesota dismissed for lack of standing and failure to state a claim. *Id.* In affirming, the Minnesota Court of Appeals noted that “allowing standing on the basis of an individual’s status as a taxpayer alone has always required an ‘injury in fact.’ This requirement has been interpreted broadly but is not without limits.” *Id.* The Court of Appeals further clarified that:

The *McKee* case does not offer an open door to taxpayer standing on any issue . . . Appellants request that this court remove any restrictions on taxpayer standing for constitutional claims brought in Minnesota’s state courts. This would allow any individual taxpayer to challenge any Minnesota statute providing for the expenditure of state funds, without showing that any person has been injured, or that the taxpayer’s interest is different than that of citizens generally. We decline to do so because this would constitute an unwarranted intrusion on the authority of the legislature.

Id. at *2-3. Ultimately, the court concluded that “[t]he *McKee* decision dealt with a taxpayer’s challenge to administrative rulemaking, not a challenge to state legislation [on constitutional grounds], and is not controlling in the current matter.” *Id.* The same is true here.

Notably, Petitioners omitted the Fourth Judicial District's decision on standing and subsequent affirmation by the Court of Appeals' decision in *Hageman* in their briefing and instead attempt to focus this Court on several non-controlling decisions where MVA was the petitioner. Mot. at 11. For example, the most recent decision that Petitioners urge this Court to rely on comes from a district court in the Sixth Judicial District in *Minn. Voters Alliance v. Lake Cnty.*, 2021 Minn. Dist. LEXIS 1119 (Aug. 3, 2021). *Id.* In that case, MVA and three individual taxpayers sued Lake County and its county officials for taking actions that allegedly exceeded their official authority by appointing members to the County's Absentee Ballot Board and by excluding election judges from the County's Absentee Ballot Board. *Id.* at *3. The court noted that the petition alleged that Lake County used taxpayer money for state and federal elections including grants through the 2020 Help America Vote Act and the 2020 CARES Act but that petitioners' arguments on standing in their motion for summary judgment did not involve any discussion of government funding or expenditures, and argued instead that *McKee* allows taxpayers to "compel county officers to perform certain acts required by law" and "to restrain illegal action on the part of public officials." *Id.* at *14. The court took this to mean that "[e]ssentially, Petitioners argue that taxpayers have standing to challenge not only the unlawful disbursement of public money, but also standing as taxpayers to challenge illegal action on the part of public officials." *Id.*

The court looked to respondents to counter this argument and address the application of *McKee* on this very point; but respondents offered no counter argument. *Id.* Instead, respondents contended that petitioners did not have taxpayer standing because they had not identified any specific disbursement of money and that additional expenditures would not be needed in relation to the operation of the Absentee Ballot Board since Lake County employees were already being paid. *Id.* For some unknown reason, respondents chose only to address other subsequent limitations

that Minnesota Courts have applied to the holding in *McKee* involving what types of expenditures count towards taxpayer standing, instead of addressing the fact that *McKee* contained a narrow holding applicable to rulemaking under the Minnesota APA and has been refused by other Minnesota Courts to be used as a means of allowing “unwarranted intrusion on the authority of the legislature.” *See, e.g. Hageman*, 2004 WL 1563276 at *2.

Thus, without any briefing from respondents on this crucial point—which if provided, would have, or at the very least should have, explained the limited nature of the *McKee* holding—the district court found that petitioners had standing under an overly broad application of *McKee*:

Respondents do not squarely address *McKee*, but rather contend that the Petitioners do not have taxpayer standing because they have not identified any specific disbursement of money. *See Schroeder*, 950 N.W.2d at 78. Moreover, they argue that there was no additional expenditure related to the operation of the Absentee Ballot Board since Lake County employees were already being paid. While the court of appeals in *Schroeder* did suggest some limitations of the holding in *McKee*, this limitation appears to relate to taxpayer standing which is based upon the expenditure of government funds. *Id.* Governmental expenditures do not appear to be at issue in this case. Instead, Petitioners rely on *McKee*’s ostensible provision of taxpayer standing to those taxpayers who seek “to restrain illegal action on the part of public officials.” *McKee*, 261 N.W.2d at 571 (citation omitted). Although it seems incongruous for taxpayer standing to emanate merely from ‘illegal action’ of a public official, rather than from a challenge to unlawful expenditure of funds by a public official, this court has identified no authority which would suggest that Petitioners’ reading of *McKee* is incorrect. Accordingly, it appears that Petitioners have taxpayer standing.”

Lake Cnty., 2021 Minn. Dist. LEXIS 1119 at *3.

Even though the district court tenuously extend the taxpayer standing doctrine to MVA in a prior case, this Court should not do the same. Plainly, Petitioner MVA and its members have been involved in numerous election lawsuits attempting to impede on certain individuals’ right to vote. This lawsuit is no exception. They depend on this Court to stretch the taxpayer standing doctrine to provide them cover to take away the right to vote of people with whom they presumably do not agree. The Court should not oblige.

The Petition barely mentions the one-time \$14,000 appropriation by the Minnesota Legislature to the Secretary of State's general fund to implement statewide the Re-enfranchisement statute. This is literally a drop in the bucket of a \$72 billion state budget (or 0.000019444%). No appellate court has recognized this level of expenditure as being sufficient to warrant taxpayer standing; to do so would essentially result in "an open door to taxpayer standing" that all have warned against.

Petitioners filed the instant action because they disagree with the policy and effect of the statute: the re-enfranchisement of people convicted of felonies. Period. That is what the Petition and supporting briefs are almost exclusively focused on. This is further confirmed by MVA's litigation history. MVA and its members have long advocated against extending the franchise to people with felony convictions in any manner, even when taxpayer funds have not been involved. *See, e.g. Schroeder v. Minn. Sec'y of State Steve Simon*, 950 N.W.2d 70, 78 (Minn. Ct. App. 2020) (MVA and its members were denied intervention in a case deciding the constitutionality of a Minnesota statute that restored all civil rights to people convicted of felonies upon discharge of their felony sentence that involved no taxpayer funds); *Minn. Voters All. v. City of Minneapolis*, 2020 WL 6119937 (D. Minn. Oct. 16, 2020) (MVA and its members were denied standing when challenging how the City of Minneapolis intended to use its pandemic-related election funds received from a nonprofit—not taxpayer funds—because they feared that making it safer and more efficient to vote in the City was favoring "a particular demographic group – urban progressives.").

This Court should not be misled. The Petitioners lack taxpayer standing because they have no direct injury and cannot rely on an incidental appropriation by the state legislature which is not the gravamen of their Petition.

CONCLUSION

Proposed Intervenor-Respondents respectfully request the Court enter judgment in their favor based on the pleadings, deny the Petition, and dismiss the entire action with prejudice.

Dated: October 23, 2023

/s/ Craig S. Coleman

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 2, against a party for claims made in violation of that statute.

/s/ Craig S. Coleman

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