NO. A23-1940

State of Minnesota

In Supreme Court

Minnesota Voters Alliance, et al.,

Appellants,

vs.

Tom Hunt, et al.,

Respondents,

Steve Simon, et al.,

Respondents,

Jennifer Schroeder, et al.,

Respondents.

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STATEMENT OF LEGAL ISSUES

(1) Whether Respondents exceed their authority by implementing laws which grant Minnesotans convicted of felonies "the civil right to vote" but do not "restore" them to the "civil rights" lost because of felony conviction.

a. Appellants raised this issue in their Petition for a Writ of Quo Warranto, Doc. 1, and in their memoranda of law below, Docs. 40, 53, 61.

b. The district court dismissed the petition and held that Respondents' actions do not exceed their authority under the Minnesota Constitution. Add. 10–11 (Doc. 79 at 10–11).

c. Appellants preserved this issue by timely filing a Notice of Appeal to the court of appeals on December 20, 2023, Doc. 81, and a Petition for Accelerated Review to this Court on December 22, 2023.

d. Most apposite cases and statutes:

1. Minn. Const. Art. VII, § 1;
2. *Schroeder v. Simon*, 985 N.W.2d 529 (Minn. 2023);
3. Minn. Stat. § 201.014, subd. 2a (2023);
4. Minn. Stat. § 609.165 (2023).

(2) Whether Appellants have standing, as taxpayers or an association, to petition for a writ of quo warranto or declaratory judgment against Respondents, where Respondents are implementing laws that Appellants allege violate the Minnesota Constitution, where the Legislature has appropriated tax monies to implement those laws.

a. Appellants raised this issue in their Petition, Doc. 1, in their memoranda of law, Docs. 40, 53, 61, and in declarations before the district court, Docs. 39, 41-43.

b. The district court held that Appellants lack standing. Doc. 77 at 8.

c. Appellants preserved this issue by timely filing a Notice of Appeal to the court of appeals on December 20, 2023, Doc. 81, and a Petition for Accelerated Review to this Court on December 22, 2023.

d. Most apposite cases and statutes:

1. *McKee v. Likins*, 261 N.W.2d 566 (Minn. 1977);
2. *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171 (Minn. 2020);

3. *Save Lake Calhoun v. Strommen*, 928 N.W.2d 377 (Minn. Ct. App. 2019);
4. *Minn. Voters All. v. State,* 2015 Minn. App. Unpub. LEXIS 495 (May 26, 2015).

(3) Whether Minnesota courts, like those in the federal Eighth Circuit, presume that putative intervenors are adequately represented by government where the government, as a sovereign, is defending laws conferring on the putative intervenors the rights they seek to vindicate through intervention.

a. Appellants raised this issue in their memorandum of law opposing Intervenor-Respondents' motion to intervene. Doc. 46.

b. The district court granted the motion to intervene and held that Minnesota courts do not apply the Eighth Circuit's presumption of adequacy to intervention where government defendants are already defending the constitutionality of state law. Add. 15 (Doc. 75 at 4).

c. Appellants preserved this issue by timely filing a Notice of Appeal to the court of appeals on December 20, 2023, Doc. 81, and a Petition for Accelerated Review to this Court on December 22, 2023.

d. Most apposite cases and statutes:

1. Minnesota Rule of Civil Procedure 24.01;
2. *N.D. ex rel. Stenehjem v. United States*, 787 F.3d 918 (8th Cir. 2015);
3. *DSCC & DCCC v. Simon,* No. 62-CV-20-585, 2020 Minn. Dist. LEXIS 220 (Minn. Dist. Ct. July 28, 2020);
4. *Doe v. State*, No. 62-CV-19-3868, 2020 Minn. Dist. LEXIS 51 (Minn. Dist. Ct. Jan. 28, 2020).

(4) Whether the district court erred by granting intervention as of right to the Intervenor-Respondents.

a. Appellants raised this issue in their memorandum of law opposing Intervenor-Respondents' motion to intervene before the district court. Doc. 46.

b. The district court granted Intervenor-Respondents' motion to intervene as of right. Add. 4–5 (Doc. 75 at 4–5).

c. Appellants preserved this issue by timely filing a Notice of Appeal

to the court of appeals on December 20, 2023, Doc. 81, and a Petition for Accelerated Review to this Court on December 22, 2023.

d. Most apposite cases and statutes:

1. Minnesota Rule of Civil Procedure 24.01;
2. *N.D. ex rel. Stenehjem v. United States*, 787 F.3d 918 (8th Cir. 2015);
3. *Miller v. Miller,* 953 N.W.2d 489, 493 (Minn. 2021);
4. *DSCC & DCCC v. Simon,* No. 62-CV-20-585, 2020 Minn. Dist. LEXIS 220 (Minn. Dist. Ct. July 28, 2020).

STATEMENT OF THE CASE

Appellants Minnesota Voters Alliance, Mary Amlaw, Ken Wendling, and Tim Kirk brought this action as a petition for a writ of quo warranto, or in the alternative for a declaratory judgment, in Anoka County District Court on June 29, 2023. Appellants seek the writ and a declaration that Respondents' actions implementing portions of chapters 12 and 62 of the 2023 Minnesota session laws (the "Acts" or the "Felon Voting Law")—which purport to allow felons not restored to the civil rights they lost upon conviction to vote—violate the Minnesota Constitution. Appellants also seek injunctive relief against the implementation of the Acts. The State and Anoka County Respondents moved to dismiss, and the Intervenor-Respondents moved to intervene and to dismiss.

On December 13, 2023, the district court, Judge Thomas R. Lehmann presiding, granted Intervenor-Respondents' motion to intervene and then granted dismissal of the Petition. Appellants timely appealed on December 20, 2023, and sought accelerated review from this Court on December 22, 2023. The Court granted accelerated review.

RELEVANT FACTS

I. The Constitutional Provision and Laws in Conflict.

Article VII, section 1 of the Minnesota Constitution states:

> Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct. The place of voting by one otherwise qualified who has changed his residence within 30 days preceding the election shall be prescribed by law. The following persons shall not be entitled or permitted to vote at any election in this state: A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; a person under guardianship, or a person who is insane or not mentally competent.

Article VII is only about "Elective Franchise"—the right to vote—as the title states. The framers did not say that restoration of the "right to vote," alone, renders a person eligible to vote again. Instead, Article VII conditions convicted felons' "entitle[ment]" or "permi[ssion]" to vote on the restoration of their "civil rights." "Civil rights" is rendered in the plural.

This past legislative session, Minnesota enacted the Felon Voting Law, which disregards this simple requirement. These Acts relate to (a) citizens' eligibility to vote, and (b) notice related to the changes to eligibility.

A. The Acts purport to enable and permit convicted felons still on supervised release, probation, and work release to vote.

Chapter 12 of the 2023 Minnesota session laws was enacted on March 3, 2023, and it amended Minn. Stat. § 201.014, to include subdivision 2a, to state:

> An individual who is ineligible to vote because of a felony conviction has ***the civil right to vote*** restored during any period when the individual is not incarcerated for the offense. If the individual is later incarcerated for the offense, the individual's civil right to vote is lost only during that period of incarceration.

2023 Minn. Laws ch. 12 § 1 (emphasis added). This purported to restore "the civil right to vote" to convicted felons out of prison but still on supervised release or probation.

Chapter 62 of the 2023 Minnesota session laws was enacted on May 24, 2023, and its article 4, section 10 amended the just-amended Minn. Stat. § 201.014, subd. 2a, discussed above, to include the following change:

> An individual who is ineligible to vote because of a felony conviction has the civil right to vote restored during any period when the individual is not incarcerated for the offense. If the individual is later incarcerated for the offense, the individual's civil right to vote is lost only during that period of incarceration. <u>For purposes of this subdivision only, an individual on work release under section 241.26 or 244.065 or an individual released under section 631.425 is not deemed to be incarcerated.</u>

This purports to restore the right to vote to convicted felons who are still incarcerated, but on work release.

B. The Acts also created new provisions altering what information is maintained on voters, what notices must be provided to voters, and what challenges to voter eligibility may be made on Election Day.

In addition to the eligibility provisions described above, the Acts also require Respondents to modify voter rolls, notify citizens of the effect of changes in the law, and aid those under still felony sentence in registering to vote,

among other things. These changes include the following:

a. They direct Respondents Simon and the Office of the Minnesota Secretary of State ("OSS") to create a document which will mislead those serving felony sentences that they may vote. 2023 Minn. Laws ch. 12 § 3; Minn. Stat. § 201.276 (2023).

b. They direct Respondent Hunt to modify the "Voter's Bill of Rights" and post it at all polling places in Anoka County informing those still serving felony sentences that they may vote. *Id;* Minn. Stat. § 201.276, subd. 1d (2023).

c. They direct Respondents Simon and the OSS to modify the state voter registration application, the polling place roster at every polling place, and the voter signature certificate for mail and absentee ballots to incorrectly allow those still serving felony sentences to certify their eligibility to vote. *See id.* §§ 2, 5; Minn. Stat. §§ 201.071, subd. 1 (2023); 204C.10 (2023).

d. They direct Respondent Reimann and others in her position to designate an official to provide notice to those still serving felony sentences that they have the right to vote, and a voter registration application. *Id.* § 6; Minn. Stat. § 243.205 (2023).

e. By allowing those still serving felony sentences to vote and register to vote, they direct Respondent Hunt and/or Respondents Simon and OSS to illegally modify the Statewide Voter Registration System ("SVRS") pursuant to Minn. Stat. §§ 201.021 and 201.022 to include as eligible voters those who are serving felony sentences. *See* 2023 Minn. Laws ch. 62, art. 4, §§ 11, 19, 22; Minn. Stat. §§ 201.022, subd. 1 (2023); 201.121, subd. 1 (2023); 201.145, subd. 4 (2023).

f. By allowing those still serving felony sentences to vote and register to vote pursuant to Minn. Stat. § 201.061, they direct Respondent Hunt to violate Minn. Stat. § 201.054, subd. 2, by including as eligible voters on the SVRS felons who have not been "restored to civil rights."

g. By allowing those still serving felony sentences to vote and register to vote, they direct Respondent Hunt to illegally modify the SVRS county master list pursuant to Minn. Stat. § 201.091 to include as eligible voters felons who have not been "restored to civil rights."

h. By allowing those still serving felony sentences to vote and register to

vote, they direct Respondent Hunt and those election judges and absentee ballot board members serving in Anoka County to accept ballots cast illegally by felons who have not been "restored to civil rights."

i. By allowing those still serving felony sentences to vote and register to vote, they direct Respondents Simon and OSS to certify vote totals reported by county auditors which include votes cast by felons who have not been "restored to civil rights."

j. By allowing those still serving felony sentences to vote and register to vote, they direct Respondents Simon and OSS to incorrectly determine, under Minn. Stat. § 201.145, subd. 3, that felons who have not been "restored to civil rights" are eligible to vote, and report to the county auditors an incorrect list of those ineligible to vote. *See* 2023 Minn. Laws ch. 62, art. 4, § 22; Minn. Stat. § 201.145, subd. 4 (2023).

k. By allowing those still serving felony sentences to vote and register to vote, they forbid Respondent Hunt pursuant to Minn. Stat. § 201.145 from including as "challenged" on the SVRS felons who have not been "restored to civil rights." *Id.*; Minn. Stat. § 201.145, subd, 4 (2023).[1]

l. They forbid Respondent Hunt from reporting to the county attorney pursuant to former Minn. Stat. § 201.145, subd. 3(d), felons who illegally voted before being "restored to civil rights." 2023 Minn. Laws ch. 62, art. 4, § 21; Minn. Stat. § 201.145, subd. 3 (2023).

m. They appropriate $14,000 to Respondent OSS to implement the provisions of chapter 12 of the 2023 session laws, including the provision allowing voting by felons who have not been "restored to civil rights." 2023 Minn. Laws ch. 12, § 8.

n. They appropriate $200,000 to Respondent OSS "to develop and implement an educational campaign relating to the restoration of the right to vote to formerly incarcerated individuals." 2023 Minn. Laws ch. 62, art. 1, § 6.

[1] The "challenge status" related to a voter is the basis for an election judge, authorized challenger, or other voter to "challenge an individual based on personal knowledge that the individual is not an eligible voter." Minn. Stat. § 204C.12, subd. 1.

See Doc. 1 (Pet. ¶ 23). These new notice and list-modification changes allow felons who have not been "restored to civil rights" to vote. They thus conflict with the language of the Minnesota Constitution forbidding it.

II. If a Felon Is on Supervised Release, Probation, or Work Release, the Felony Sentence Restricts Rights Under Current State Law.

Under still-effective Minnesota law, convicted felons are not restored to their civil rights until the discharge of their sentence or a pardon. The only partially amended Minn. Stat. § 609.165 still reads as follows:

> 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.

2023 Minn. Laws ch. 12 § 7. Minn. Stat. § 609.165 (2023) continues to acknowledge that only the full discharge of the felony sentence "restores" felons to the "civil rights" lost by virtue of the sentence. And Minn. Stat. § 609B.610, which was not amended or repealed by the 2023 session laws, states: "An individual convicted of treason or any felony whose civil rights have not been restored is not eligible to vote under section 201.014." Chapter 609B lists a litany of deprivations and collateral consequences imposed on convicted felons during their sentences. A felon's "civil rights" are expressly not restored under Minnesota law by virtue of leaving prison (whether to begin supervised release or

probation) or obtaining "work release."

Supervised release became a major part of Minnesota's criminal sentencing structure in 1993. The 1993 laws modified sentences so that felons now serve fully *one-third* of sentences under supervised release. Minn. Stat. § 244.01, subd. 8. This means that someone sentenced to 10 years for second-degree arson serves 6-plus years imprisonment and 3-plus years of supervised release. *See id.* and Minn. Stat. § 609.562. Supervised release is thus an integral part of the criminal sentence in Minnesota.

Probation works differently: for felony sentences, it can last for up to 5 years and can be imposed instead of jail time, except for certain felonies, where the probation can last for the maximum duration of a sentence which might have been imposed. Minn. Stat. § 609.135, subd. 2 (2023), *as amended by* 2023 Minn. Laws, ch. 52, art. 6, sec. 13.

Both supervised release and probation restrict many liberties outside the prison gates. As the Minnesota Department of Corrections explains,

> Every person on supervised release follows conditions such as having an approved residence, submitting to regular drug and alcohol tests, restrictions against accessing the Internet, and in some cases electronic monitoring. If someone violates the conditions of their release, a warrant will be issued and they will be taken into custody. The case will be reviewed to determine how severe the violation was and what action should be taken as a result.[2]

[2] *How Supervision Works*, Minnesota Department of Corrections, https://mn.gov/doc/community-supervision/.

Similarly, those on probation must report changes of address, employment, and phone number to a probation officer, must check in with a probation officer at set times, and cannot travel out of state without permission.[3]

"Work release," unlike probation or supervised release, occurs while convicted felons are still in the "confinement" portion of their sentence. Minn. Stat. § 241.26 ("Release under this subdivision is an extension of the limits of confinement. . . ."); Minn. Stat. § 244.01, subd. 2 (defining "inmate" as inclusive of those on work release); Minn. Stat. § 244.065 (referring to section 241.26); Minn. Stat. § 631.425, subd. 3 ("an inmate employed"), subd. 4 (confinement when not employed), subd. 5 (earnings collected by government and garnished for some purposes), subd. 7 (remand to "actual confinement" for violations of condition of work release). Those on work release are confined to a facility when not working, except for those who have "maintained steady employment and have followed all program rules" for a time.[4] Even when they are not confined,

[3] *E.g., Rights and Responsibilities of Probationer*, Anoka County, https://www.anokacountymn.gov/DocumentCenter/View/29090/Probation-Rights-Responsibilities-flyer-2022?bidId=; *Standard Conditions of Probation for Felony Convictions*, Minnesota Judicial Branch, https://www.mncourts.gov/mncourtsgov/media/Judicial_Council_Library/Policies/PolicyAttachments/Standard-Conditions-of-Probation-for-Felony-Convictions.pdf.

[4] *See Work Release Program Fact Sheet*, Minnesota Department of Corrections, Jan. 2023, https://mn.gov/doc/assets/Work%20Release_tcm1089-309002.pdf.

those on work release have far fewer liberties than non-convicted members of the public.[5]

Prior to restoration of their civil rights by discharge of a sentence, convicted felons face substantial restrictions on those civil rights. *See generally* Minn. Stat. ch. 609B & *id.* §§ 609B.600–.615 In addition to losing the right to vote, Minn. Stat. § 609B.610, and those other restrictions on travel and other liberties, convicted felons also may not serve on a jury unless they have "had their civil rights restored," Minn. Gen. R. Prac. 808(b)(6),[6] and may not be placed on a ballot for public office, Minn. Stat. § 609B.141; *id.* § 204B.10, subd. 6(1).

While the new laws purport to restore *the* civil *right* to vote, a felon still on supervised release, probation, or work release has not been "restored to civil rights." The legislature's decree that felons have the right to vote if not currently incarcerated is inconsistent with the reality that they do not, as this Court noted, have many of the civil rights a non-felon has. *Schroeder v. Simon ("Schroeder II")*, 985 N.W.2d 529, 544–45 (Minn. 2023) ("Indeed . . . the constitutional rights of parolees and probationers may be limited in ways that the

[5] *See id.* ("Participants on work release must adhere to strict rules as established by the department and the contracting facility.").

[6] Individuals convicted of a felony may also be struck from a jury for cause. Minn. R. Crim. P. 26.02, subd. 5; *see also* Ben Johnson, *State Jury Service*, Minnesota House Research, July 2019, https://www.house.mn.gov/hrd/pubs/ss/ssjury.pdf.

rights of persons who have completed their sentences may not be."); *id.* at 545 n.11.

III. The Acts Require Ongoing Expenditures of State and Local Tax Dollars and Ongoing Actions in Excess of Respondents' Authority.

The Legislature expressly appropriated funds for the implementation of the Acts, and Respondents are currently taking unlawful actions to implement them. In fact, in response to this lawsuit, Respondent Simon and OSS remarked: "we will continue to move forward with implementing the law as approved by the legislature and the Governor."[7]

The Acts expressly appropriate $14,000 to OSS to implement the provisions of chapter 12, which includes the amendment to section 201.014 purporting to restore "the civil right to vote" to those on supervised release or probation. 2023 Minn. Laws ch. 12, § 8. They also appropriate $200,000 to OSS "to develop and implement an educational campaign relating to the restoration of the right to vote to formerly incarcerated individuals." 2023 Minn. Laws ch. 62, art. 1, § 6. It is indisputable that Respondents are spending these appropriations in furtherance of the Acts, are using the powers purportedly granted to them, and appear set to continue to do so absent Court action.

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[7] Kyle Brown, *Group files lawsuit seeking to reverse Minnesota law that restores voting rights to some felons*, KSTP, June 29, 2023, https://kstp.com/kstp-news/top-news/group-files-lawsuit-seeking-to-reverse-minnesota-law-that-restores-voting-rights-to-some-felons/.

Since the day the new laws became effective, public reports have indicated that many Minnesotans who are not eligible to vote under the Minnesota Constitution are registering to vote because of Respondents' actions.[8] On June 2, 2023, Respondents OSS and Simon issued a release stating that as of June 1, 2023, "[t]he law restoring voting rights to Minnesotans who have left prison behind takes effect today, June 1."[9] The same article states that "we have to hit the ground running to get our newly eligible neighbors registered," and that "[t]he Secretary of State's online voter registration portal and its printable voter registration form have been updated to accommodate all Minnesotans who are not currently incarcerated." *Id.*

Respondents have acted and continue to act in furtherance of the Acts by posting the following information on the OSS website:

> Your criminal record does not affect your right to vote in Minnesota unless you are currently incarcerated for a felony conviction.
> . . .
> You can vote if . . . you have been convicted of a felony, but are not incarcerated.
> . . .
> You cannot vote if . . . you are currently incarcerated serving a felony sentence.[10]

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[8] Brian Bakst, *Law restoring voting rights to thousands kicks in as sign-ups start*, MPRNews, June 1, 2023, https://www.mprnews.org/story/2023/06/01/law-restoring-voting-rights-to-thousands-kicks-in-as-signups-start.

[9] *Voting Rights Restored to Formerly Incarcerated Minnesotans*, OSS, June 2, 2023, https://www.sos.state.mn.us/about-the-office/news-room/voting-rights-restored-to-formerly-incarcerated-minnesotans/.

[10] *I Have A Criminal Record*, OSS, https://www.sos.state.mn.us/elections-

Respondents have posted the following information on a downloadable flyer, titled "What's New For 2023," on the OSS website:

> RESTORING THE VOTE. Now, Minnesotans who have left prison behind will be included in our democracy. Any criminal record does not affect your right to vote, unless you are currently incarcerated serving a felony conviction. If you are not incarcerated, including if you are on probation or parole, or owe restitution, you are eligible to vote.[11]

Respondents Simon and OSS have also modified Minnesota's voter registration application and are continuing to use it.[12] These Respondents have similarly modified Minnesota's mail and absentee ballot applications and are continuing to use them.[13] Respondent Hunt is required to process voter registrations using these applications. Minn. Stat. § 201.061, subd. 1.

Relatedly, Respondent Simon and OSS have updated the polling place posters to include the following poster:[14]

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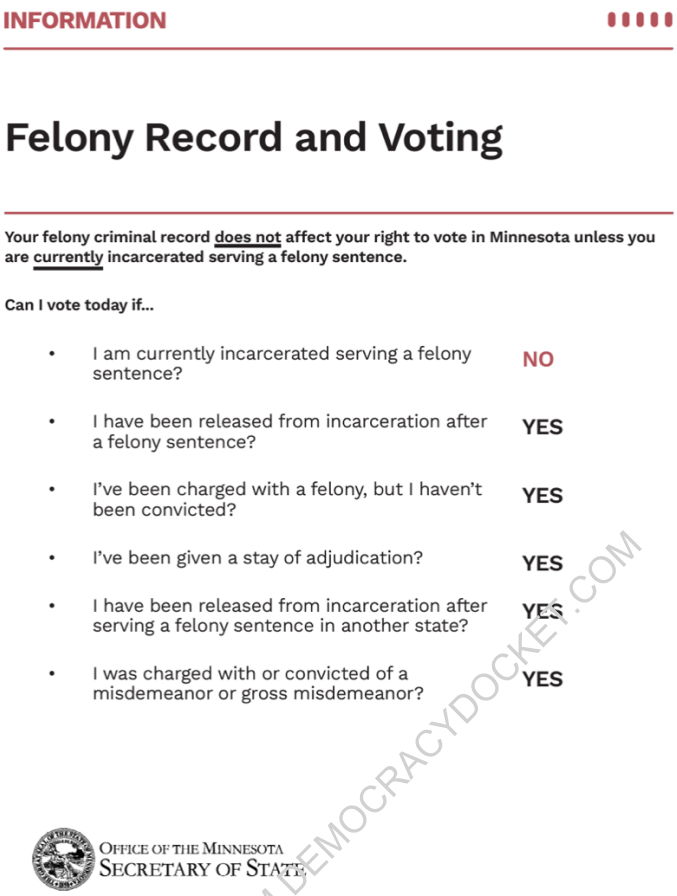
voting/register-to-vote/i-have-a-criminal-record/; *see also Register to Vote*, OSS, https://www.sos.state.mn.us/elections-voting/register-to-vote/ ("To vote you must be: . . . Not currently incarcerated for a felony conviction.").

[11] *What's New For 2023*, OSS, https://www.sos.state.mn.us/media/5482/whats-new.pdf.

[12] *Minnesota Voter Registration Application*, OSS, https://www.sos.state.mn.us/media/1587/minnesota-voter-registration-application.pdf.

[13] *See 2024 Minnesota Absentee Ballot Application*, https://www.sos.state.mn.us/media/2444/english-regular-absentee-ballot-application.pdf.

[14] *Polling Place Posters to Vote*, https://www.sos.state.mn.us/media/1287/english-polling-place-poster.pdf (page 11).



INFORMATION

Felony Record and Voting

Your felony criminal record does not affect your right to vote in Minnesota unless you are currently incarcerated serving a felony sentence.

Can I vote today if...

• I am currently incarcerated serving a felony sentence?	NO
• I have been released from incarceration after a felony sentence?	YES
• I've been charged with a felony, but I haven't been convicted?	YES
• I've been given a stay of adjudication?	YES
• I have been released from incarceration after serving a felony sentence in another state?	YES
• I was charged with or convicted of a misdemeanor or gross misdemeanor?	YES

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Respondent Hunt is required to post these in Anoka County polling places. *See* Minn. Stat. § 204C.08, subd. 1d; Laws 2023, ch. 12 § 4.

OSS also published a 2023 Voter's Bill of Rights stating: "VOTE IF YOU ARE NOT CURRENTLY INCARCERATED FOR A FELONY CONVICTION[.] If you had a felony conviction, you can vote if you are not currently incarcerated for the felony offense."[15]

For its part, the Minnesota Department of Corrections released a 2023

[15] *Know Your Rights factsheet*, https://www.sos.state.mn.us/media/4695/know-your-rights.pdf.

Legislative Session Impact Brief, which states:

> Restore the Vote
>
> What: Minnesotans on parole, probation, or supervised release due to a felony conviction have been restored the right to vote upon leaving incarceration. . . .
>
> Who: Individuals with a felony conviction upon release from prison, including work release.
>
> When: The law is currently in effect. Applications to register to vote are provided to every person releasing from state prison facilities.[16]

According to the DOC, therefore, Respondent Reimann is acting according to the new laws—and in excess of her authority under the Constitution.

Given these public statements and the laws' requirements, felons who have not been restored to civil rights are registering to vote in an ongoing fashion in Anoka County, Minnesota, and through the OSS. Respondents are facilitating and processing those registrations in an ongoing fashion, in excess of their constitutional authority. Additionally, Respondents are spending appropriations from the Legislature and other funds allocated to elections and voting to do so. 2023 Minn. Laws ch. 12, § 8; *id.* ch. 62, art. 1, § 6; Anoka County 2023 Budget, General Government Services, *available at* https://bit.ly/48yYwEo (Election Services budget of $767,253).

[16] *2023 Legislative Session DOC Impact Brief*, Minnesota Department of Corrections, https://mn.gov/doc/about/legislative-info/impact-brief.jsp.

Respondents are spending a whole lot more to implement an express legislative appropriation than it took for the Minnesota Department of Natural Resources to rename a Minneapolis lake. And given these actions and the laws' requirement to allow those still serving felony sentences to vote, constitutionally ineligible voters will vote in the 2024 primary and general elections taking place later this year absent this Court's action.

IV. The Individual Appellants Are State and Local Taxpayers.

The individual Appellants are residents of Anoka County, Minnesota, and state and local taxpayers to Minnesota and Anoka County. Doc. 1 (Pet. ¶¶ 27–29). Appellant Minnesota Voters Alliance ("MVA") is a Minnesota nonprofit corporation which advocates for the interests asserted by the individual Appellants, who are each long-time supporters and volunteers with MVA. Doc. 1 (Pet. ¶ 26); Doc. 39 (Decl. of Andrew Cilek, Sept. 30, 2023); Doc. 41 (Decl. of Mary Amlaw, Oct. 1, 2023); Doc. 42 (Decl. of Ken Wendling, Oct. 2, 2023); Doc. 43 (Decl. of Tim Kirk, Sept. 30, 2023).

V. The Intervenor-Respondents, the Secretary, and the Attorney General Have Long Agreed That Convicted Felons Released from Incarceration Should Be Permitted to Vote.

Over a decade ago, Attorney General Keith Ellison, then serving in the United States House of Representatives (and now representing Respondents OSS and Simon), advocated for legislation that would require states to let

convicted felons vote once released from prison.[17] As Attorney General, he has consistently taken the same position.[18] Simon similarly advocated for the legislature to restore voting rights to felons back in 2019.[19]

These proposals did not become reality during the 2019 legislative session, so Intervenor-Respondents sued for a judicial declaration that the prior law was unconstitutional. *See* Docs. 27 (Decl. of Jennifer Schroeder ¶ 8), 28 (Decl. of Elizer Eugene Darris ¶ 7). During that litigation, the Attorney General's office admitted before this Court that, while it was obligated to defend the existing law, "the parties would likely be aligned" if the dispute arose in a legislative hearing.[20] And once this Court concluded that the Constitution required

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[17] *Ellison seeks bill to let ex-felons vote*, Post Bulletin, Nov. 17, 2007, https://www.postbulletin.com/news/ellison-seeks-bill-to-let-ex-felons-vote.

[18] *Attorney General Keith Ellison: Minnesota's top prosecutor explains why he thinks felon voting rights should be restored*, PBS, https://www.pbs.org/video/attorney-general-keith-ellison-35297/.

[19] Tim Pugmire, *Simon's election agenda includes felon voting*, MPR News, https://www.mprnews.org/story/2019/01/03/simons-election-agenda-includes-felon-voting.

[20] Peter Callaghan, *Why voting rights for more than 50,000 Minnesotans may hinge on how the state Supreme Court applies a unique legal test*, MinnPost, https://www.minnpost.com/state-government/2021/12/why-voting-rights-for-more-than-50000-minnesotans-may-hinge-on-how-the-state-supreme-court-applies-a-unique-legal-test/; *see also Schroeder II*, 985 N.W.2d at 566 n.10 (Hudson, J., dissenting) ("The Secretary of State's counsel acknowledged at oral argument that, under different circumstances, 'the parties would likely be aligned,' and that '[t]he Secretary [of State] has been a public advocate for changing this statute.'" (citing Oral Argument at 28:01-08, *Schroeder v. Simon*, No. A20-1264 (Minn. argued Nov. 30, 2021), https://www.mncourts.gov/

convicted felons to be "restored to civil rights" to vote, a step the legislature had not yet taken, Simon rebuked the law he had previously defended. In relevant part, the statement read:

> The Minnesota Supreme Court has made it clear that the future of voting rights for Minnesota residents who have left prison behind lies in the hands of the legislature. While our office defended the law as it is currently written, I believe that the policy is long overdue for a correction. If a person is deemed by a judge or jury to be worthy enough and safe enough to live in our community, then it is entirely reasonable to allow that person to have a say about who governs them. This restoration of voting rights is good for all of us, because we know that when people have a sense of ownership in their community they are far less likely to commit another crime. I will continue to be a strong advocate for legislation, already passed by the House, that will allow those who have left prison behind to rejoin our democracy and vote in our elections.[21]

That legislation was enacted as the Acts at issue here.

Since the passage of the Felon Voting Law, Simon has "celebrate[d]" this new legislation.[22] He called it "a victory for voting rights and for Minnesota" and lauded that it would "make [our democracy] stronger."[23] He said that he

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SupremeCourt/OralArgumentWebcasts/ArgumentDetail.aspx?vid=1507.)).

[21] *Secretary of State Steve Simon Statement on Supreme Court Opinion*, OSS, https://www.sos.state.mn.us/about-the-office/news-room/secretary-of-state-steve-simon-statement-on-supreme-court-opinion/.

[22] *People with felony convictions can now vote in Minnesota; Secretary of State Simon celebrates*, KARE11, https://www.kare11.com/article/news/politics/people-with-felony-convictions-can-now-vote-minnesota-secretary-of-state-simon-celebrates/89-4d930144-5055-459b-be93-5829e6b53e63.

[23] *Voting Rights Restored to Formerly Incarcerated Minnesotans*, *supra* note 9.

"can't wait" to see tens of thousands of felons still serving sentences vote in the next election.[24] In fact, Simon has traveled Minnesota to spread the word about the new legislation, indicating that he wants "people to take advantage of the right to vote."[25] In response to this lawsuit, and the constitutional problems Appellants have identified, Simon planned to continue "implementing the law."[26]

The State Respondents have always supported the Felon Voting Law, celebrated its passage, and continue to implement it. Unlike in other recent (and ongoing) cases in which the OSS[27] and the Attorney General[28] have taken active litigation positions contrary to putative intervenors after abandoning the

[24] Dana Ferguson, "Voting rights restored to 50,000 under new Minnesota law," MPR News, March 3, 2023, https://www.mprnews.org/story/2023/03/03/voting-rights-restored-to-50000-under-new-minnesota-law.

[25] Clay Schuldt, *Simon discusses voting law changes*, The Journal, https://www.nujournal.com/news/local-news/2023/08/02/simon-discusses-voting-law-changes/.

[26] Kyle Brown, *supra* note 7.

[27] *DSCC & DCCC v. Simon*, No. 62-CV-20-585, 2020 Minn. Dist. LEXIS 220, at *55–56 (Minn. Dist. Ct. July 28, 2020) (Secretary Simon conceded the very issue being litigated in a contemporaneous case, yet objected to intervention).

[28] *Compare Doe v. State*, Order, No. 62-CV-19-3868 (Minn. Dist. Ct. Mar. 14, 2023) (denying intervention upon the Attorney General's objection to a putative intervenor) *with* Brian Bakst & Michelle Wiley, *Ellison won't appeal state judge's abortion decision*, MPRNews, July 28, 2022, https://www.mprnews.org/story/2022/07/28/ellison-wont-appeal-abortion-decision (in the same case, Attorney General fails to appeal judgment that state law is unconstitutional and then objects to private intervention seeking to uphold the law).

defense of extant state law, the State is zealously representing the Intervenor-Respondents' interests here in its capacity as a sovereign.

ARGUMENT AND AUTHORITIES

Before the Court are four issues, each subject to *de novo* review. The first is whether Appellants have standing to seek the writ of quo warranto or a declaratory judgment. "Because standing is a jurisdictional issue, [the Court] evaluate[s] decisions on standing de novo." *In re Consol. Hosp. Surcharge Appeals of Gillette Child.'s Specialty Healthcare*, 883 N.W.2d 778, 784 (Minn. 2016) (quotation omitted).

The second is the merits of Appellants' Petition: whether Respondents exceed their authority under Article VII, section 1 of the Minnesota Constitution by implementing the Acts. The district court dismissed the petition by deciding that Respondents' actions do not exceed their authority under the Constitution. Add. 9–12 (Doc. 79 at 9–12). "Statutory construction is . . . a matter of law that [the Court] review[s] de novo." *State v. Jones*, 678 N.W.2d 1, 23 (Minn. 2004).

The third and fourth issues concern the district court's grant of intervention as of right to the Intervenor-Respondents and, relatedly, whether Minnesota courts, like those in the federal Eighth Circuit, presume that putative intervenors are adequately represented by government where the government, as a sovereign, is actively defending laws—as opposed to conceding cases or refusing to uphold the law on appeal—conferring on the putative intervenors the

very same rights they seek to vindicate through intervention. *See* Add. 12–16 (Doc. 75 (Order Granting Intervention)). "Orders concerning intervention as a matter of right, pursuant to Minn. R. Civ. P. 24.01, are subject to de novo review and are independently assessed on appeal." *State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 499 (Minn. App. 2005).

In short, Appellants have standing, the Respondents are exceeding their authority under the Minnesota Constitution because the Felon Voting Law does not effectively restore voting rights, and the district court erred in granting the motion to intervene because the State Respondents are representing the State's sovereign interests with zeal. We address each issue in turn.

I. Appellants Have Standing to Seek the Writ of Quo Warranto and a Declaratory Judgment.

The district court held that Appellants lacked standing because they "do not challenge a specific disbursement of public funds" and "[t]he expenditure of public funds must be the *focus* of the taxpayer's challenge." Add. 6–7 (Doc. 79 at 5 n. 1, 6–7 (emphasis original)). The decision was wrong and created a misguided and novel test for taxpayer standing. "[W]ell settled" law provides that allegations of "illegal actions on the part of public officials" are independently adequate for taxpayer standing. *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977) (quotation omitted). Nonetheless, Appellants *have* identified unlawful disbursements of public monies in furtherance of Respondents' illegal actions.

See Doc. 1 (Pet. ¶ 23). Appellants have standing here. *See Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 176 (Minn. 2020).

A. Appellants have "direct standing" to seek the writ of quo warranto.

Minnesota courts have consistently held that plaintiffs have standing to restrain unlawful government conduct, both as taxpayers and just as Minnesotans. Three years ago, in *Save Lake Calhoun*, this 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." 943 N.W.2d at 176. The Court did not even require a person bringing the writ to be a taxpayer; rather, citing *State ex rel. 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. Standing to seek the writ does not depend on tracing the appropriation of taxpayer funds, but on a colorable argument that a government official is acting in excess of statutory or constitutional authority.

Decades of Minnesota precedent support this conclusion. In *Palmer*, prior to the opening of the 1971 legislative session, 34 members of the senate caucused as "conservatives," and 33 as "liberals." 182 N.W.2d at 183. One elected conservative, Richard Palmer, faced an election contest, so the Lieutenant

Governor decided that he could not be sworn in, called the senate a tie at 33-33, and cast a deciding vote. *Id.* at 183–84. Palmer successfully challenged the legality of the Lieutenant Governor's actions, which cemented the availability of the writ "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.* at 184.

Although the Court declined to issue a formal writ and instead directed the senate to follow the Constitution going forward, the Court's analysis of its own power was clear: "we do have power to determine whether the lieutenant governor . . . acted in accordance with the powers granted to him by the Constitution." *Id.* at 185. Here, with a plausible allegation of government action in excess of constitutional authority before the Court, the Court "ha[s] power" to decide the merits. *Id.*

B. The individual Appellants have taxpayer standing to seek the writ of quo warranto and a declaratory judgment.

Unlike in federal court, Minnesotans in state court enjoy *multiple* bases for taxpayer standing. It is "well settled" that taxpayers may bring an action to "restrain unlawful disbursements of public moneys . . . as well as to restrain illegal action on the part of public officials." *McKee*, 261 N.W.2d at 571 (quoting *Oehler v. City of St. Paul*, 174 Minn. 410, 417 (1928)). The district court dramatically narrowed Minnesotans' historically broad taxpayer-standing right

by requiring that stopping unlawful disbursements be the *sole* focus of Appellants' case.

That conclusion runs headfirst into *McKee*. There, the plaintiff's property taxes went into a general fund used for medical assistance to welfare recipients, including the funding of abortion services. *Id.* at 568. But the rulemaking authorizing abortion funding had procedural defects. *Id.* The Court held that McKee had standing "to challenge administrative action which allegedly [was] rulemaking adopted without compliance with the statutory notice requirements." *Id.* Public funds were certainly at issue, but the crux of the case was the legality of the underlying regulation that authorized the expenditures. *See also In re Sandy Pappas Senate Comm.*, 488 N.W.2d 795, 798 (Minn. 1992) (explaining that *McKee* supports challenges to the "promulgation of rules *making possible* the allocation of tax revenue" (emphasis added)).

Thus, taxpayers have standing "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 N.W.2d 681, 684 (Minn. Ct. App. 2007) (quoting *McKee*, 261 N.W.2d at 571).

While the court of appeals in *Schroeder v. Simon* ("*Schroeder I*"), 950 N.W.2d 70, 78 (Minn. Ct. App. 2020), stated that "a challenge to 'a specific disbursement' is *generally* required to invoke taxpayer standing" (emphasis added), that does not eliminate the other independently sufficient basis for

standing: restraining illegal action. Furthermore, *Schroeder I* was about the interest sufficient to authorize intervention as of right—not taxpayer standing sufficient to bring any future case. *See id.* at 78 ("[T]axpayer standing is not synonymous with demonstrating an interest sufficient to warrant intervention as a matter of right."). And MVA, the proposed intervenor in *Schroeder I*, never claimed an interest in halting illegal action; rather, MVA hoped to uphold the law in place at the time, same as the Secretary of State. *See id.* at 76.

Regardless, *Save Lake Calhoun* put this issue to final rest in the same year. There, the petitioners argued that the DNR Commissioner exceeded his lawful authority by changing Lake Calhoun's name to Bde Maka Ska. 943 N.W.2d at 176–77. Those allegations were sufficient for standing. *Save Lake Calhoun v. Strommen*, 928 N.W.2d 377, 384 (Minn. App. 2019) (explaining that taxpayers had standing based on "allegations of financial resources being expended related to the DNR's exercise of authority to promote the name change" combined with the assertion that the "DNR acted illegally"). On appeal, this Court did not disturb the appellate court's holding on standing. *See Save Lake Calhoun*, 943 N.W.2d at 181 (Minn. 2020) (affirming in part and reversing in part).

The reason why is simple: "precedent does not require" an ongoing action to seek the writ of quo warranto. *Id.* at 176 n.3. It is axiomatic that if there is no ongoing action, there is no ongoing disbursement of funds to pay for a nonexistent action. *See id.* Instead, "a writ of quo warranto is an available remedy to

challenge whether an official's action exceeded the official's statutory authority." *Id*. Appellants have mirrored the allegations from *Save Lake Calhoun* in all relevant respects—and then some—and thus have taxpayer standing.

Like in *Save Lake Calhoun*, Appellants are taxpayers who allege that Respondents have taken and continue to take illegal actions, funded by illegal expenditures of taxpayer money, in excess of their constitutional or statutory power. *See* Doc. 1 (Pet. ¶¶ 22–25, 26–29, 39–42); Docs. 41–43 (declarations of individual Appellants). Appellants exhaustively listed the various actions taken by Respondents because of the new laws, actions the new laws now require in perpetuity, all in excess of the limitation on elective franchise in Article VII, section 1 of the Constitution. *See supra* Facts Section I.B; Doc. 1 (Pet. ¶ 23). Even assuming that Appellants must identify specific disbursements for standing, Appellants have plainly alleged, and public records amply demonstrate, that Respondents' illegal acts are funded by the unlawful disbursements of public monies. *Id*. (Pet. ¶ 23); 2023 Minn. Laws ch. 12, § 8 ($14,000 to implement chapter 12), *id.* 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"). Those disbursements far exceed what was spent on employees' salaries to rename a Minneapolis lake.

Frankly, it is impossible that taxpayer funds are *not* being used to implement the Felon Voting Law. There would be no violation of Article VII, section

1 *without* Respondents' use of taxpayer monies to flout the Constitution, as no one ineligible to vote would be added to the voter rolls. Thus, Appellants have shown a "link between that challenge and an illegal expenditure of tax monies." *Olson*, 742 N.W.2d at 685. The individual Appellants have taxpayer standing.

C. Appellant MVA has associational standing to seek the writ of quo warranto and a declaratory judgment.

Appellant MVA meets the requirements for associational standing. As the United States Supreme Court has explained:

> "[A]n 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 State by Humphrey v. Philip Morris, Inc.*, 551 N.W.2d 490, 497–98 (Minn. 1996) (following *Hunt*).

First, as explained above, the individual Appellants have standing to sue in their own right. As stated in the Petition and in their respective declarations, each individual Appellant is a taxpayer and a long-time supporter of and volunteer with MVA. *See* Doc. 1 (Pet. ¶ 26); Docs. 39, 41–43.[29]

[29] In the district court, neither Respondents nor Intervenor-Respondents challenged Appellant MVA's associational standing on this first requirement.

Second, Appellant MVA is a nonpartisan Minnesota nonprofit corporation that provides research, voter education, and advocacy for election integrity. Doc. 1 (Pet. ¶ 26); Doc. 39. Ensuring that Minnesota public officials comply with the requirements of the Minnesota Constitution in their registration- and election-related activities is obviously germane to election integrity and MVA's long-time advocacy.

Third, none of Appellant MVA's members *must* participate in this lawsuit. The relief sought is an end to actions which violate Article VII, section 1 of the Minnesota Constitution. If granted by this Court, MVA, like individual Appellants, would benefit because all support MVA's purpose to uphold the integrity of Minnesota elections and the laws and constitutional provisions pertaining to those elections.[30]

Any standing concerns here are put to rest by previous litigation involving MVA. *See Minn. Voters All. v. State*, No. A14-1585, 2015 Minn. App. Unpub. LEXIS 495 (May 26, 2015). Previously, the court of appeals held that MVA, among other individual petitioners, had standing to seek the writ of quo

[30] Furthermore, this third factor is "prudential" and generally satisfied "whenever one plaintiff sues for another's injury." *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.,* 517 U.S. 544, 555–57 (1996). Appellants are not aware of any Minnesota court to apply this prudential requirement to refuse associational standing. *See also Humphrey*, 551 N.W.2d at 498 (Minnesota courts "relax requirements for associational standing where the relief sought is equitable only").

warranto where petitioners "challenged the online-voter-registration system, which was an ongoing pursuit that appellants believed the secretary of state went beyond his power to create" and "Respondents conceded that taxpayer funds were used to create, maintain, and operate the online-voter-registration system." *Id.* at *7 (citation omitted). Like in that case, Appellant MVA has associational standing here.

II. Respondents' Illegal Actions Are Ongoing and in Furtherance of the Acts.

As explained more thoroughly below, Article VII, section 1 of the Minnesota Constitution conditions the re-eligibility of the right to vote for those convicted of felony sentences on the restoration of their "civil rights." As such, no official in Minnesota, including Respondents, has the authority to: (1) inform persons who are convicted of a felony and still serving their sentences that they may vote, or; (2) allow a person convicted of a felony and still on supervised release or probation to register to vote or vote in any election. Doc. 1 (Pet. ¶ 22). Here, while this Court's "precedent does not require" allegations of ongoing action, *Save Lake Calhoun*, 943 N.W.2d at 176 n.3, Appellants have gone above and beyond by exhaustively laying out ongoing actions by Respondents which exceed the scope of their authority under Section 1. *See supra* Facts Section III; Doc. 1 (Pet. ¶ 23).

Based on these and other allegations stated in their Petition, Appellants have adequately alleged that Respondents are committing ongoing acts that exceed their statutory authority under the Minnesota Constitution. Appellants have thus satisfied the requirements to seek the writ of quo warranto and a declaratory judgment in Minnesota courts.

III. The Text and Structure of Article VII, Section 1 of the Minnesota Constitution Unambiguously Require the "Restoration" of Multiple "Civil Rights" Before the Singular "Right to Vote" Is Restored to Convicted Felons.

This case comes down to what "restored" and "civil rights" mean in Article VII, section 1, of the Minnesota Constitution. That section states, in pertinent part:

> The following persons shall not be entitled or permitted to vote at any election in this state: A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; a person under guardianship, or a person who is insane or not mentally competent.

Appellants' argument is simple: the constitution means what it says. A person convicted of a felony must have their "civil rights"—*rights plural*—"restored"—as opposed to never lost—before they can become eligible to vote at any Minnesota election. In other words, the "certain events" that must occur—by legislative action or governor's pardon—before a "person[] shall . . . be entitled or permitted to vote" are the "restoration" of the "civil rights" lost. *Schroeder II*, 985 N.W.2d at 545.

Respondents' argument is neither simple nor reasonable. They posit that "civil rights" is some sort of shibboleth for "whatever right—or *singular* right—the legislature wishes to restore." *See, e.g.*, Doc. 57 at 8 (claiming that voting rights can be restored however the legislature "deems appropriate"). Section 1 says nothing like that. The plain meaning of the plural "unless restored to civil rights" cannot reasonably be understood to be satisfied with the restoration of only one singular "right."

By enacting the Felon Voting Law, the legislature attempted to restore "*the* civil *right* to vote" to convicted felons who are no longer in prison.[31] Minn. Stat. § 201.014, subd. 2a (2023) (emphasis added). This does not satisfy the Constitution's plain meaning for two reasons: (1) it does not restore felons released from prison to their civil *rights*, plural, and (2) for felons who are never imprisoned, the Acts do not "restore" *anything*. Plain meaning and precedent support Appellants' conclusion. Alternatively, even if Section 1 is ambiguous, the history and purpose of the Constitution law support Appellants as well.[32]

[31] Except felons on work release are still serving the "confinement" portion of their prison term—they are still considered in "confinement" under the law except, somehow, related to the Felon Voting Law. *Compare* Minn. Stat. § 201.014 (2023) *with id.* § 241.26 ("Release under this subdivision is an extension of the limits of confinement. . . .").

[32] *See* Argument Section V, below, for Appellants' argument if the Court concludes that Section 1 is ambiguous.

A. The plain meaning of Section 1 unambiguously requires restoration of *more than* the right to vote.

Precedent does much of the work here. To start, the *Schroeder II* Court already declared that the text of Article VII, section 1 is "straightforward." 985 N.W.2d at 536. "[T]here is no room for the application of rules of construction" to contradict a "straightforward" meaning. *Id.* (quoting *Kernan v. Holm*, 34 N.W.2d 327, 329 (Minn. 1948)); *accord Minn. Voters All. v. Cnty. of Ramsey*, 971 N.W.2d 269, 275 (Minn. 2022). To find it, the Court "read[s] words in context," *id.* at 279, "interpret[s] [the constitution] 'so as to give effect to each word and phrase,' and . . . may consult dictionary definitions," *Mittelstaedt v. Henney*, 969 N.W.2d 634, 639 (Minn. 2022) (quoting *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016)).

Schroeder II provides a starting point. The text "means that a person convicted of a felony (just like a person younger than 18 years of age or a noncitizen) is excluded from the set of persons who have a right to—who are 'entitled to'—vote." *Schroeder II*, 985 N.W.2d at 536–37. Indeed, an individual convicted of a felony crime "is permanently prohibited from voting 'unless restored to civil rights.'" *Id.*

A basic understanding of the English language and grammar does the rest. Section 1's use of the plural word "rights" unambiguously indicates more than one right. The operative phrase— "a *person* who has been convicted of treason

or felony, unless restored to civil *rights*"—contemplates an individual person and their civil *rights*, plural, lost by reason of conviction. Had the framers intended to signify one right, i.e., the right to vote, they would have said "unless restored to the right to vote," or "unless restored to *the* civil right." *See id.* at 538 (rejecting the argument of Intervenor-Respondents here, in part, because Section 1 does not use the words "restored upon release from prison"); *Buzzell v. Walz*, 974 N.W.2d 256, 265 (Minn. 2022) (rejecting an interpretive argument because, had the Legislature intended a particular meaning, it would have chosen a more direct textual path). Instead, the framers recognized that convicted felons lose more than just their right to vote, and the only reasonable interpretation is that the framers intended to condition re-eligibility to vote upon the restoration of the "civil rights," plural, that the person lost.

The right to vote is certainly *part* of a person's civil rights, but it is not all of them. This Court already explicitly said so in *Schroeder II*. When examining the "1867 statute that automatically restored the civil rights of *some* convicted felons following release from prison," 985 N.W.2d at 541 (emphasis original), the Court noted that "the person would be entitled to automatic restoration of his 'rights of citizenship' (*including* the right to vote)," *id.* (emphasis added). And where the Court addressed the former version of Minn. Stat. § 609.165, which restored to "all civil rights and to full citizenship" those discharged from their criminal conviction, the Court referred to the restoration of civil rights as

"*including* the right to vote." *See, e.g., id.* at 533, 552 (emphasis added). This substantiates the plurality of "civil rights." *See also Minn. Democratic-Farmer-Labor Party v. Simon*, 970 N.W.2d 689, 698 n.9 (Minn. Ct. App. 2022) ("But since the founding of the state someone who commits a felony loses certain civil rights—including the right to vote—until restored through other means.").

Therefore, Section 1's use of the plural phrase "civil rights" demonstrates beyond reasonable doubt that *multiple* rights are contemplated. And the absence of the quantifier "all" does not suggest that "civil rights" therefore must refer to the single right to vote; rather, it suggests that the *singular* right to vote may not be restored until plural "civil rights" are. The constitution contemplates *more than one right*, while the Acts only purport to restore *one*. That is simply not enough, making the law unconstitutional in every application.

Unlike Appellants' "straightforward" interpretation, Respondents' renders Section 1 meaningless to whole classes of persons convicted of a felony. The Constitution *requires* that a "person" is not entitled to vote if they have been "convicted of treason or felony." As the Court in *Schroeder II* held, an affirmative act of the Legislature or Governor is required to subsequently *restore* that "person's" civil rights before they can vote. 985 N.W.2d at 545. As things currently stand, however, the Acts violate Section 1's clear instructions by *never* disqualifying a "person" convicted of a felony who is not sentenced to jail time.

See Minn. Stat. § 201.014, subd. 2a (2023) ("[T]he individual's civil right to vote is lost only during that period of incarceration.").

"Restore" plainly does not mean "never lose." Instead, the plain meaning is to "give back, return." *Restore*, Merriam-Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/restore (last visited Feb. 4, 2024). At bottom, the Acts clearly conflict with Section 1, which, by use of the phrase "restore," does not allow a person convicted of a felony to *ever* lose the right to vote.

B. Dictionary definitions and precedent confirm that "civil rights" refers to the rights lost because of a felony conviction, including at least the rights to vote, hold office, and serve on a jury.

The Legislature's attempt to restore *only* the right to vote to those still under sentence (whether on supervised release, probation, or work release) cannot possibly satisfy the Constitution's condition of "restored to civil rights." The phrase "civil rights," plural, has traditionally been understood to reference the core civil rights "provided by law to any person who is required to obey the laws and is not under punishment by law for a criminal act." *Civil Rights (Civil Liberties)*, Wolters Kluwer Bouvier Law Dictionary Desk Edition (2012); *see also United States v. Cassidy*, 899 F.2d 543, 549 (6th Cir. 1990) (explaining that "civil rights . . . encompass[es] those rights accorded to an individual by virtue of his citizenship in a particular state"). In other words, these are the

rights traditionally lost by virtue of a felony conviction.

Needless to say, there are many rights restricted by virtue of a felony conviction such as limitations on travel. *See supra* Facts Section II; *Schroeder II*, 985 N.W.2d at 544–45 ("the constitutional rights of parolees and probationers may be limited in ways that the rights of persons who have completed their sentences may not be.") & *id.* n.11. But this Court need not delineate every civil right contemplated by Article VII, because "civil rights" has been historically understood to include *more than* the singular right to vote. *See State v. Brooks*, 604 N.W.2d 345, 352 (Minn. 2000) (looking to the "historical usage" of a phrase to determine plain meaning). Federal courts have long confirmed that "civil rights," plural "include the right to vote, the right to seek and hold public office and the right to serve on a jury." *Cassidy*, 899 F.2d at 549; *see Logan v. United States*, 552 U.S. 23, 28 (2007) (Ginsburg, J., for a unanimous U.S. Supreme Court) (holding that "civil rights," plural, in federal law encompasses "the rights to vote, hold office, and serve on a jury").

Minnesota law has always said the same. The 1867 felon voting law, passed less than a decade after the constitution was adopted, provided that after "the whole term of his service, or remainder of his sentence," an individual could "be entitled to restoration of the rights of citizenship, which may have been forfeited by his conviction." *Schroeder II*, 985 N.W.2d at 541 (quoting Act of Feb. 19, 1867, ch. 14, § 82, 1867 Minn. Laws 18, 19 (codified at Minn. Gen.

Stat. ch. 120, § 85 (1878))). A 1907 statute similarly provided that felons, after having "paid and satisfied such fine or served such sentence shall be restored to all their civil rights and to full citizenship with full right to vote *and* hold office." *Id.* at 542 (quoting Act of Mar. 12, 1907, ch. 34, 1907 Minn. Laws 40, 40–41). And the former Chief Justice of this Court previously interpreted the constitution to mandate that any convicted felon, "until restored to civil rights, would not be entitled to vote *or to hold any office*." *State ex rel. Brady v. Bates*, 112 N.W. 1026, 1029 (Minn. 1907) (Start, C.J.) (citing Minn. Const. art. VII, § 2 (1857)) (emphasis added).[33] The former version of Minn. Stat. § 609.165, subd. 1 (2022) recognized the same: "discharge shall restore the person to all civil rights and to full citizenship, with full right to vote *and hold office*." (emphasis added).

The new Felon Voting Law is an obvious anomaly. It is clear that the legislature has attempted to restore only *one* civil right—the right to vote—without likewise restoring any other core rights of citizenship. The restoration of this one civil right cannot possibly satisfy Section 1. And it most certainly cannot do so when it is the very civil right whose restoration *depends* on the restoration of the others.

[33] Before the 1974 general revision of the Minnesota Constitution, the current text of Article VII, Section 1 was included in Article VII, Section 2. *See Schroeder II*, 985 N.W.2d at 536 n.5.

C. Nothing this Court said in *Schroeder II* endorses Respondents' limitless interpretation of Section 1.

In *Schroeder II*, the Court went as far as it needed to answer whether release from prison, as opposed to discharge from a sentence, restores a person convicted of a felony to civil rights. 985 N.W.2d at 537–38; *see also Brooks*, 604 N.W.2d at 352 (looking to precedent to guide the Court's interpretation of an unambiguous constitutional provision). In answering this question, the Court examined the text and history of Section 1 to conclude that "a person convicted of a felony cannot vote in Minnesota unless the person's right to vote is restored by some affirmative act of, or mechanism established by, the government." *Schroeder II*, 985 N.W.2d at 545. The Court stated that under Section 1 "the Legislature has broad, general discretion to choose a mechanism for restoring the entitlement and permission to vote to persons convicted of a felony," *id.* at 556, and the Legislature may act through "a legislative act that generally restores the right to vote upon the occurrence of certain events," *id.* at 534.

The Court's holding clarified the *means* by which the State restores individuals convicted of felony crimes to their right to vote—an "affirmative act." But the Court's holding did not—indeed, could not—remove the constitutional requirement that a convicted felon first be restored to core civil *rights* before regaining the right to vote. Only an amendment to the constitution could do that. The Court's description of the mechanism which could be used—a legislative

act—has no bearing on the *substance* of what that legislative act must accomplish. The "certain events" to which the Court refers must, therefore, be the restoration of "civil rights," plural.

What this Court *did say* about substance supports Appellants' view. To start, the Court recounted that discharge of a sentence has been the condition for restoration of "civil rights" since the ratification of the Minnesota Constitution. In summarizing the history of legislative enactments from 1858 through 1919, the *Schroeder II* Court said:

> [E]ach of these legislative enactments require[d] an affirmative act of the Governor (or a judge in the case of persons convicted of a felony who are sentenced to pay a fine or serve time in county jail) to restore the person's civil rights *upon completion of a sentence and release from incarceration*.

Id. at 541–43 (emphasis added). As a result, "one way to interpret the framers' understanding of the phrase 'unless restored to civil rights' is that restoration occurs upon completion of the sentence." *Id.* at 544. That is how the former version of Minn. Stat. § 609.165, subd. 1, in place since 1963, operated. *Id.* at 533, 546.[34] The same was true of other constitutional mechanisms for restoring

[34] The original 1963 Felon Voting Law "included in its definition of discharge an 'order of the adult corrections commission . . . prior to expiration of sentence'" that "restore[d] civil rights to persons on parole *but before* the expiration of their sentence." *Schroeder II*, 985 N.W.2d at 546 n.13 (quoting Minn. Stat. § 609.165, subd. 2(2) (1965)). In other words, discharge of the sentence was still the guide, and "civil rights," plural still had to be restored before the right to vote could be.

the right to vote, like a pardon. *Id.* at 538. In sum, since the ratification of the Minnesota Constitution, the legislature has consistently implemented Section 1 by restoring the right to vote upon affirmative discharge of a sentence. In other words, the right to vote was *only* restored upon the restoration of "civil rights," plural.

The current legislature's attempt to circumvent this condition is incompatible with the Constitution. Appellants do not question that, in response to *Schroeder II*, the legislature took an "affirmative action" in passing the Acts. But the legislature did not accomplish the "certain events" the Court required to be accomplished. Rather, the Acts purport to restore only the right to vote to convicted felons who are on probation, supervised release, or work release; they fail to restore felons to their "civil rights." *See* Minn. Stat. § 201.014, subd. 2a (2023).

The legislature itself acknowledged, by amending Minn. Stat. § 609.165, subd. 1, a section aptly titled "Restoration of Civil Rights," that in Minnesota law, it is still only the complete discharge of a sentence that restores "civil rights," plural:

> **Restoration**. 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.

2023 Minn. Laws ch. 12, § 7 (italics added); Minn. Stat. § 609.165, subd. 1 (2023); *see also* Minn. Stat. § 609.165, subd. 2 (defining "discharge" as occurring either "by order of the court following stay of sentence or stay of execution of sentence" or "upon expiration of sentence"). Thus, the legislature which passed the Acts itself understands that "civil rights" contemplates more than the right to vote, and the "statutory mechanism to restore *civil rights* of persons convicted of a felony," still requires discharge. *Schroeder II*, 985 N.W.2d at 533 (emphasis added).

The district court placed great weight on the use of the word "all" in Minn. Stat. § 609.165, subd. 1 (2023). *See* Doc. 77, at 9–10. But the fact that discharge of a sentence has the effect of restoring "*all* civil rights" does not mean that the singular right to vote can be restored without restoring "civil rights," plural, as Section 1 commands. Instead, as the district court itself acknowledged, the statute discusses the consequences of discharge for *all* individuals convicted of a crime, "including misdemeanor or gross-misdemeanor offenses." *Id.* at 9 n.5. For everyone with a criminal record in Minnesota, discharge means it is like the crime was never committed, other than the record of the crime itself. And for those with a felony conviction, the restoration of "all civil rights" certainly means that Section 1 is satisfied. *See Schroeder II*, 985 N.W.2d at 544 (explaining that Minn. Stat. § 609.165 (2022) complied with Section 1). Unlike previous felon voting laws, where the legislature took great effort to comply with Section

1, the Acts plainly acknowledge that "civil rights," plural have not been restored, only the singular right to vote. As *Schroeder II* and Minnesota history make clear, one is not enough.

To be sure, the *Schroeder II* Court, in a footnote discussing the equal-protection challenge to the previous Felon Voting Law, stated "*another* choice that the Legislature could have made consistent with Article VII, Section 1: to restore voting rights to all Minnesotans immediately following their felony conviction, thus allowing incarcerated Minnesotans to vote." *Id.* at 554 n.21. This *dictum*, however, cannot be read to override the clear requirements of Section 1. As argued above, enabling or permitting voting for persons *immediately* upon conviction—without any loss of the right to vote in the first place—would nullify part of Section 1: felons would not lose their right to vote for any measurable period upon conviction; and, second, restoring "*the right* to vote" does not restore "civil *rights*," as Section 1 plainly requires. The Court's passing statement cannot be read to authorize the legislature to sidestep Section 1.

In summary, the legislature has broad discretion to "reimagine" sentencing laws and restore convicted felons to civil rights sooner than in the past. But the legislature may not declare the Constitution satisfied when it isn't.

IV. If the Court Finds Article VII, Section 1 to Be Ambiguous, the History of Its Adoption Supports Appellants' Straightforward Reading.

The constitution is ambiguous where "there is more than one reasonable interpretation." *Spann v. Minneapolis City Council*, 979 N.W.2d 66, 73 (Minn. 2022). If so, the Court considers "the canons of statutory construction to determine which reasonable interpretation [it] should adopt." *Id.* (quotation omitted). Ambiguity also "permits [the Court] to consider not just the current language of the [constitution], but also prior versions," in addition to "the contemporaneous legislative history" and purpose of the provision. *Id.* at 76 (quoting Minn. Stat. § 645.16). Here, even if the Court finds Section 1 ambiguous, the available evidence supports Appellants' reading.

The record of Section 1's adoption supports the view that "civil rights" refers to more than the right to vote. The only evidence by which this Court can infer intent behind its adoption on the part of the framers and ratifiers is found in the record of the Republican delegates' discussions held during the 1857 Minnesota Constitutional Convention.[35]

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

[35] The Democrat delegates did not discuss the provision, nor have Appellants found any discussion by the Democrat delegates on the subject of "civil rights."

> 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), https://archive.org/details/debatesproceedin00minnrich/page/n11/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 discussion above shows that the delegates' shared understanding never deviated from "civil rights" as the object of the restoration. They never refer only to the right to vote. 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.

Furthermore, the content of this discussion makes clear 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 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.

Similarly, 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, Republican delegate Mr. Morgan stated, in part:

> 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, *supra* at 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 because of a Governor's pardon. Mr. Morgan's statement, 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 the delegates' common understanding was that "civil rights" meant *at least* the right to vote and the right to hold office. Likewise, former Chief Justice Start, interpreting this very provision, has defined "civil rights" as including at least the right "to vote or to hold any office." *State ex rel. Brady*, 112 N.W. at 1029 (Start, C.J., concurring).

As we have repeatedly noted, the Felon Voting Law attempts to restore only the right to vote, not any other civil right. As discussed above (see Argument Section III.C), the legislature amended Minn. Stat. § 609.165, subd. 1, but retained the requirement that the full restoration of civil rights—more than just

the right to vote—occurs only after the discharge of the felony sentence. Therefore, Minnesotans with felony convictions are still not eligible to vote, hold elected office, or sit on a jury. *See* Minn. Stat. § 609B.141 ("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."); *see* Minn. Gen. R. Prac. 808(b)(6). Thus, 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. Even if the Court finds Article VII, section 1, ambiguous, the evidence supports Appellants' reading.

V. Intervenor-Respondents Are Not Entitled to Intervene as of Right Because They Are Adequately Represented by The Current State Respondents.

Intervention as of right is governed by Minnesota Rule of Civil Procedure 24.01:

> Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Minn. R. Civ. P. 24.01. Intervenor-Respondents do not meet the requirements of Rule 24.01: their involvement in this lawsuit is not necessary to protect their interests, and they are adequately represented by the existing Respondents.

Therefore, whether this Court examines this issue under existing Minnesota caselaw or by applying the federal presumption of adequacy when an intervenor and a government party's interests align, the outcome is the same: the Court should reverse the district court's Order granting intervention as of right. *See* Add. 12–16 (Doc. 75).

A. Under existing Minnesota caselaw, Intervenor-Respondents fail the requirements for intervention as of right.

Intervenor-Respondents must show "an inability to protect [their] interest *unless* the applicant is a party to the action" and that their interest "is not adequately represented by existing parties." *Miller v. Miller*, 953 N.W.2d 489, 493 (2021) (quotation omitted) (emphasis added). As stated in Rule 24.01, that means the Intervenor-Respondents must be "*so situated* that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Minn. R. Civ. P. 24.01 (emphasis added).

As a result, individuals oftentimes have a right to intervene when their desired outcome is *different from* or *opposed to* that of the other parties in a case. *See, e.g.*, *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207–08 (Minn. 1986) (explaining that the newspaper-intervenor's interests were not adequately represented when the existing parties did not challenge a trial court order sealing a document, but the newspaper sought to keep it

public); *Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28 (Minn. 1981) (concluding that intervention was proper when intervenors, who had an interest in a group home situated in a particular neighborhood, sought a different outcome than the defendant group-home builder, who "apparently ha[d] no ties to this particular neighborhood").

It is only the extremely rare case in which an intervenor seeking the same result as a government party might be allowed to intervene. And in that case, intervention is only warranted when *current* evidence demonstrates that the government party is advancing *currently* conflicting positions on the same legal issue in multiple cases. This typically arises where a state defendant abandons defense of state law in the case at issue or in another contemporaneous case. *See, e.g., DSCC & DCCC*, No. 62-CV-20-585, 2020 Minn. Dist. LEXIS at *55–56 (granting intervention even though intervenors made "similar arguments to those advanced by the Secretary of State"—but *only* because the Secretary of State "conced[ed] an identical issue, in a contemporaneous case").

In this case, however, Intervenor-Respondents want the *exact* same result as the Respondents, and the overwhelming evidence indicates that the State Respondents and their attorneys fully support the result sought by Intervenor-Respondents, with zero contemporaneous evidence to the contrary. *See supra* Facts Section V. Indeed, Intervenor-Respondents seek to advance a position "substantially the same as the position advanced" by the Respondents already.

League of Women Voters Minn. v. Ritchie, 819 N.W.2d 636, 643 (Minn. 2012) (denying intervention for this reason); *see also* Doc. 27 at 3, ¶ 17 (Schroeder acknowledging that "my position will likely closely align with that of the Defendants"); Doc. 28 at 3, ¶ 15 (Darris acknowledging the same).

Intervenor-Respondents have only made nearly identical arguments to those already made by Respondents. Both want to distract from the merits of this lawsuit with the same false accusation about Appellants' motives. *Compare* Doc. 36, Ex. 1, at 19 n.2 ("Petitioners do so in order to stop Proposed Intervenor-Defendants from voting . . . ."), *with* Doc. 33 at 1 (falsely stating that "they merely want to prevent people from voting."). Both argue that the *Schroeder II* decision somehow authorized the unconstitutional Acts. *Compare* Doc. 36, Ex. 1, at 4 ("Thus, the Minnesota Supreme Court explicitly recognized that the legislature may act to restore the right to vote, and it did just that following the *Schroeder* decision."), *with* Doc. 33 at 14 (emphasizing that *Schroeder II* recognized the Legislature's broad power to restore civil rights). And both claim that Petitioners lack standing. *Compare* Doc. 36, Ex. 1, at 9 (claiming that Petitioners' allegations are "insufficient to confer taxpayer standing"), *with* Doc. 33 at 6 (arguing that Appellants "do not meet the requirements for taxpayer standing"). Intervenor-Respondents are not "so situated" that their interest would go unprotected without joining this lawsuit.

The *Schroeder I* litigation is case-in-point. There, Appellant MVA sought to intervene to assert a defense of the old felon voting law that could have prevented further litigation and spending of taxpayer dollars after the Attorney General's office declined to assert it. *See Schroeder I*, 950 N.W.2d at 73. At the time, these same Intervenor-Respondents, ironically, accused MVA of attempting to "usurp the role of the Attorney General to prioritize, shape, and present defenses at an appropriate procedural time." Pls.' Mem. in Opp. to Mot. to Intervene, *Schroeder v. Simon*, No. 62-cv-19-7440 (Minn. Dist. Ct. Jan. 16, 2020). The district court sided with the Intervenor-Respondents, in that case the plaintiffs. The reason: "Defendant states that he will seek dismissal of the case, and this Court has no reason to believe otherwise." *Schroeder v. Simon*, Order, No. 62-cv-19-7440 (Minn. Dist. Ct. Feb. 12, 2020).

Then, on appeal in *Schroeder I*, the State Respondents—who did not object to intervention here—argued that MVA should not be allowed to intervene because "the interests sought to be advanced by the government [must] be in active opposition to the interests of the party seeking intervention," and "the goals sought by the Secretary and MVA are identical: a judgment dismissing Plaintiffs' claims and denying them relief." Resp. Sec'y of State Steve Simon's Br., 15, *Schroeder v. Simon*, No. A20-0272 (Minn. App. Apr. 23, 2020). The court of appeals affirmed the denial of intervention. *Schroeder I*, 950 N.W.2d at 73.

Thus, the Minnesota courts in *Schroeder I* denied intervention to MVA despite the fact that there was good reason, based on years of public statements, to doubt both the Attorney General's advocacy and the Secretary's interest in upholding the prior law: they had opposed the old policy for years and publicly indicated that they would *not* want to see the old felon voting law upheld as a matter of policy.[36] There is far less reason to allow intervention in this case: the Attorney General's office, and the Secretary, are vigorously defending this Felon Voting Law, in addition to publicly supporting Intervenor-Respondents' position for years. There can be no doubt that the Attorney General's, and the Secretary's, representation is adequate.

In another recent case, *Doe v. State*, No. 62-CV-19-3868, 2020 Minn. Dist. LEXIS 51, at *22 (Minn. Dist. Ct. Jan. 28, 2020), the fact that the Attorney General had filed a motion to dismiss was again sufficient evidence that an intervenor's interest in defending the constitutionality of a law was adequately represented:

> On this record, it can't be said that the Defendants have been anything but zealous in their defense in this case. They brought a motion to dismiss all claims against all Defendants. While this court has not yet made a decision on the motion to dismiss, the legal theories advanced by the Defendants are at least plausible and adequate. If Defendants are correct, their motion to dismiss will end the case.

[36] Peter Callaghan, *supra* note 20.

Id. Later on in the case, the district court held that some provisions of Minnesota law were unconstitutional, and the Attorney General's office abandoned its defense of state law, publicly declining to appeal. Proposed intervenors in that case felt that the government was not adequately representing their interest in upholding the laws. Once again, the district court disagreed. *See Doe v. State*, Order, No. 62-CV-19-3868 (Minn. Dist. Ct. Sept. 6, 2022).

In this case, Intervenor-Respondents need to demonstrate an *even better* reason to justify intervention as of right. But they have only "made a conclusory statement that [their] rights will be jeopardized" without intervention and have given the courts no reason to believe that the Secretary and Attorney General will not represent their interests here. *Husfeldt v. Willmsen*, 434 N.W.2d 480 (Minn. Ct. App. 1988). If the facts of *Doe* and *Schroeder I* did not justify intervention, then it is certainly not appropriate in this case either. The Court should reverse the district court's order granting intervention.

B. Under federal law, if adopted, Intervenor-Respondents fail to meet the requirements for intervention as of right.

"[P]ersuaded by federal authority which raises the bar for demonstrating inadequacy when one of the parties is an arm or agency of the government and the case concerns a matter of sovereign interest," the Ramsey County District Court has adopted the Eighth Circuit's presumption of adequate representation. *DSCC & DCCC*, 2020 Minn. Dist. LEXIS 220, at *54 (citing *N.D. ex rel.*

Stenehjem v. United States, 787 F.3d 918, 921 (8th Cir. 2015)). The *Stenehjem* presumption "makes sense," *id.* at *55, "because in such cases the government is presumed to represent the interests of all its citizens," *Stenehjem*, 787 F.3d at 921 (quotation omitted). "This presumption may be rebutted when the proposed intervenor makes 'a strong showing of inadequate representation.'" *DSCC & DCCC*, 2020 Minn. Dist. LEXIS 220, at *54 (quoting *Stenehjem*, 787 F.3d at 921).[37]

Appellants ask the Court to adopt the *Stenehjem* presumption of adequacy but hold that a strong showing of inadequate representation can be made where the government defendant concedes important legal issues in a contemporaneous case, *DSCC & DCCC*, 2020 Minn. Dist. LEXIS 220, or abandons the defense of state law, *Doe*, 2020 Minn. Dist. LEXIS 51, so long as the putative intervenors can show a threshold interest in the issues in play.

The district court below rejected the *Stenehjem* presumption, Add. 15 (Doc. 75 at 4), but this Court should adopt it and apply it to this case, where Intervenor-Respondents cannot make *any* showing of inadequate representation. State Respondents have argued for years in favor of the Intervenor-Respondents and their litigation. The Secretary vowed to be "a strong advocate for this

[37] The only rule the Ramsey County District Court did not adopt from *Stenehjem* was its "suggestion that only a 'dereliction of duty' would render the advocacy of an arm or agency of the government inadequate." *DSCC & DCCC*, 2020 Minn. Dist. LEXIS 220, at *55 n. 3 (quoting *Stenehjem*, 787 F.3d at 922).

legislation" before the Felon Voting Law was even signed into law.[38] Since then, the Secretary has called the law a "victory"[39] and has focused on "implementing the law" despite the constitutional issues raised by Appellants.[40]

The Intervenor-Respondents' interests are *fully* subsumed by the government's, and Respondents have not shrunk from vigorously defending the law with the same arguments advanced by Intervenor-Respondents. Even if they want these outcomes for a different reason, which does not appear to be the case, that is immaterial. *See Stenehjem*, 787 F.3d at 921–22; *see also Curry v. Regents of Univ. of Minn.*, 167 F.3d 420, 423 (8th Cir. 1999) (explaining that a difference in motivation does not matter when the government's interest "encompasses" the intervenor's). In this case, like in *DSCC & DCCC*, the presumption should apply. But in this case, unlike in *DSCC & DCCC*, there is no contemporary evidence of the Secretary of State contemporaneously conceding important legal issues against Intervenor-Respondents' interests.

Thus, Intervenor-Respondents cannot rebut the presumption of adequate representation by the Secretary and the Court should reverse the district court's order grant of intervention.

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[38] *Secretary of State Steve Simon Statement on Supreme Court Opinion*, *supra* note 21.

[39] *Voting Rights Restored to Formerly Incarcerated Minnesotans*, *supra* note 9.

[40] Kyle Brown, *supra* note 7.

CONCLUSION

For the reasons set forth herein, Appellants request the Court to issue the writ of quo warranto, prohibit Respondents from taking any action pursuant to the Acts, and reverse the district court's order granting intervention.

Respectfully submitted,

Dated: February 6, 2024

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document conforms to the requirements of Minn. R. Civ. App. P. 132.01, is produced with a proportional 13-point font, and the length of this document is 13,989 words. This Brief was prepared using Microsoft Word 365, Version 2401.

Dated: February 6, 2024

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