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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REPLY ARGUMENT AND AUTHORITIES

The Minnesota Constitution, Article VII, section 1 ("Section 1"), requires that the "civil rights" of convicted felons be "restored" before felons are "entitled or permitted to vote" in Minnesota elections. In 2023, the legislature purported to "restore" "*the* civil *right* to vote" to felons still serving their sentences but no longer incarcerated, and to those on "work release." *See* Minn. Stat. § 201.014, subd. 2a (2023) (emphasis added) (the "Felon Voting Law" or the "Acts"). The Acts did *not* "restore" convicted felons to the "civil rights," plural, they lost when convicted. Rather, pre-existing statutes still accomplish that upon discharge. *See id.* § 609.165, subd. 1. Because the legislature did not "restore" what the Constitution requires to be "restored" prior to "entitl[ing] or permit[ing]" voting, Respondents' actions under the Acts exceed their constitutional authority.

Contrary to Respondents' mudslinging, Appellants have no vendetta against convicted felons. Nor is it Appellants' mission to "curtail the right to vote." State Br. 4. On the contrary, Appellants believe the legislature could act within constitutional bounds to "restore" felons' lost "civil rights" sooner than the prior law allowed. Likewise, the legislature could put *to Minnesota voters* a constitutional amendment to authorize voting by those convicted of and serving sentences for treason, arson, murder, felony theft, voter fraud, and other such felony crimes regardless of the restoration of their civil rights. These are

policy questions beyond the scope of this case. This case instead seeks to hold Respondents within their constitutional authority.

In addition to the merits of the case, the Court has before it the opportunity to finish what it started in *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 176 (Minn. 2020), and finally put to rest the government's repeated attempts to eliminate Minnesota's writ of quo warranto. The Court emphatically rejected the government's request to abolish the writ in *Save Lake Calhoun*. Now, the Court can reject the State's more insidious attempt to accomplish the same thing by eviscerating any standing to seek it.

Appellants have standing to seek the writ of quo warranto, Respondents' actions exceed their constitutional authority, and the district court erred by granting the motion to intervene. The Court should reverse and issue the writ of quo warranto.

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

> The underlying reason for the writ [of quo warranto]—to rein in government officials who exceed their constitutional or statutory authority—remains as valid as ever.

Save Lake Calhoun, 943 N.W.2d at 176.

In *Save Lake Calhoun*, the Court reaffirmed that Minnesota citizens may seek the writ of quo warranto to accomplish "a purpose characteristic of American and English constitutional law, that for every wrong there should be a

remedy." *State ex rel. Stuntz v. Chisholm*, 264 N.W. 798, 800 (Minn. 1936).

> Our writ of quo warranto—the modern information in the nature of a quo warranto—may be defined as a proceeding to correct the usurpation, misuser, or nonuser of a public office or corporate franchise; and the objects to be attained by our modern remedy are identical with those which were secured by the ancient writ.

State ex rel. Danielson v. Mound, 48 N.W.2d 855, 863 (Minn. 1951).

Respondents defy decades of this Court's precedent and instead declare this purpose invalid. They would have this Court undo what *Save Lake Calhoun* reaffirmed and instead slam the courthouse door shut. The Court should reject Respondents' invitation.

Rather, consistent with this Court's holding that individuals and associations could challenge the renaming of a Minneapolis lake[1] in Minnesota courts, the Court should hold that (1) Appellants have "direct"[2] standing to sue to enjoin Respondents' illegal actions, Appellants' Br. 24–25; (2) Appellants have taxpayer standing to seek both the writ of quo warranto and a declaratory judgment, *id.* at 25–32; and (3) Appellant MVA has associational standing, *id.* at 29–31. State Respondents[3] argue that taxpayer standing "is limited to

[1] The expenditures related to the renaming of Lake Calhoun to Bde Maka Ska could not reasonably be described as anything more than "incidental."

[2] Appellants use the term "direct" to refer to standing to object to "illegal action on the part of public officials" or actions taken by government officials which "exceed their constitutional or statutory authority."

[3] The Anoka Respondents join the portion of State Respondents' brief "that addresses Appellants' lack of standing." *See* Anoka Br. 3–4.

challenges to expenditures, not substantive laws," and is "unavailable for quo warranto actions." State Br. 6. They arrive there by conflating taxpayer standing derived from *McKee v. Likins* with the writ of quo warranto and then calling *McKee*'s express articulation of standing doctrine "unpersuasive dictum within dictum." State Br. 13.

Appellants have better arguments. This Court's precedent affords Minnesotans seeking the writ of quo warranto or a declaratory judgment standing based on allegations of "illegal action on the part of public officials." Appellants' Br. 25 (quoting *McKee v. Likins*, 261 N.W.2d 566. 571 (Minn. 1977)); *see also* Minn. Stat. § 484.03 (Minnesota courts have the power to issue the writ of quo warranto, among other writs). Further, in *Save Lake Calhoun*, the Court held that allegations "that the Commissioner exceeded the statutory authority of the office" to rename Lake Calhoun were sufficient to seek the writ. 943 N.W.2d at 175. The Court went so far as to hold that its "precedent does not require" an *ongoing* violation of the law—and if the violation is not ongoing, there can be no ongoing expenditure to challenge. *Id.* at 176 n.3.

But even assuming a taxpayer must identify specific disbursements for standing to seek a writ of quo warranto or declaratory judgment, Appellants have identified such expenditures. Appellants' Br. 28–29.[4]

[4] State Respondents thus mischaracterize Appellants' arguments when they say, "Appellants make no argument that they would have standing to

Respondents' theory of standing would slam the courthouse door shut to millions of Minnesotans who wish to challenge unconstitutional or illegal government actions—actions which exceed government actors' authority to commit. Under Respondents' theory of standing, for example, if the legislature were to pass a law that said that 16-year-olds can vote in Minnesota elections, even though Section 1 says one must be 18, the courts are powerless to stop Respondents' clearly unconstitutional actions in implementing that law.

This Court's precedent rejects Respondents' theory and allows everyday Minnesotans to uphold the rule of law in Minnesota courts by holding government officials to the limits of their constitutional authority. Appellants have standing to sue, and the Court should so hold.

A. Respondents' reading of *McKee* ignores half of its standing test.

State Respondents' assertion that "taxpayer standing can be used only to challenge expenditures" is inconsistent and flawed. To illustrate bluntly, they claim that *McKee* is "[t]he seminal case on taxpayer standing," State Br. 6, and then call its articulation of that very doctrine "unpersuasive dictum within dictum," and—somehow—"contrary to established taxpayer-standing doctrine," *id*. at 13.

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challenge the re-enfranchisement law were it not for incidental expenditures." State Br. 14.

McKee quoted *Oehler v. City of St. Paul*, 219 N.W. 760, 763 (Minn. 1928), as follows:

> [I]t is well settled that a taxpayer may, when the situation warrants, maintain an action to restrain unlawful disbursements of public moneys; to recover for the use of the public subdivision entitled thereto money that has been illegally disbursed, as well as to restrain illegal action on the part of public officials.

261 N.W.2d at 571. Contrary to Respondents' arguments, what had been "well settled" in *Oehler* nearly 50 years earlier *is* the "established doctrine."

McKee went further, and in its final word on standing *does not even reference* expenditures and taxes:

> Taxpayers are legitimately concerned with the performance by public officers of their public duties. Accordingly, we hold that a taxpayer suing as a taxpayer has standing to challenge administrative action which allegedly is rulemaking adopted without compliance with the statutory notice requirements.

261 N.W.2d at 571.

State Respondents never explain why *Oehler* and *McKee* both acknowledge that "illegal actions on the part of public officials" can support taxpayer standing. State Respondents' gerrymandered interpretation of *McKee* relies instead on a subset of post-*McKee* cases to substantiate their "established doctrine"—neglecting earlier cases where merely being a citizen or a taxpayer was the only conceivable basis for standing to challenge illegal actions.

B. This Court's historical standing doctrine related to the writs of injunction, mandamus, and quo warranto has never required disbursements as injuries to remedy.

Contrary to Respondents' characterization, in the decades prior to *McKee*, this Court upheld citizen-taxpayer standing in numerous cases seeking to restrain not the expenditure of dollars, but unlawful actions. For these unlawful actions, allegations of illegal expenditures could not have been the focus; the unlawful expenditures were merely attendant or "incidental" to the unlawful actions.

One such type of action is a writ of injunction, commonly used to challenge actions like the moving of a county seat. In such cases, the only "expenditures" would be the public officials' salaries for doing their jobs and the cost of implementing the challenged actions. *Nichols v. Walter*, 37 Minn. 264 (1887) (taxpayer-citizen seeking to stop the unlawful moving of a county seat); *Todd v. Rustad*, 43 Minn. 500 (1890) (same); *Foss v. Bd. of Comm'rs*, 93 Minn. 238 (1904) (same); *Moore v. Mayer*, 174 Minn. 397 (1928) (same). Other writs of injunction were allowed to restrain election-related activity. *Gile v. Stegner*, 92 Minn. 429 (1904) (taxpayer-citizen challenging the allegedly unlawful holding of a "moot election"). And others related to stopping entry into contract based on the lack of authority to do so. *Norton v. Duluth*, 54 Minn. 281 (1893) (taxpayer-citizen suing to restrain city, on statutory grounds, from entering into contract for printing); *Rippe v. Becker*, 56 Minn. 100 (1894) (taxpayer suing to

restrain state, on constitutional grounds, from constructing a grain elevator).

Another such type is an action for a writ of mandamus. *State ex rel. Currie v. Weld*, 39 Minn. 426, 428 (1888) (a taxpayer—"any private person"—has standing "to enforce a public duty"). Mandamus and injunction are writs like quo warranto and provided for in the same statute, though mandamus has particular statutory procedures. Minn. Stat. §§ 484.03, 586.01 *et seq*.

The reason for taxpayer-citizen standing for these civil actions is simple. Where public officials take actions which exceed their authority, or fail to take actions required by the law, citizens and taxpayers are injured by those actions or omissions. Absent a taxpayer-citizen remedy to enjoin official actions which exceed their authority, the injury caused to taxpayers by those official actions cannot be redressed. Thus, in *Gile*, the Court held that taxpayer-citizens could sue because "[t]he injury to taxpayers and to public interests by such an election cannot be remedied by an election contest." 92 Minn. at 431 (citing *Streissguth v. Geib*, 67 Minn. 360 (1897)). The injury to taxpayers was not a money injury, but rather an exceeding-official-authority injury. *See id.*

Hence the availability of the writs of mandamus and quo warranto, affirmed repeatedly in recent years by this Court. *See Spann v. Minneapolis City Council*, 979 N.W.2d 66 (Minn. 2022) (taxpayer-citizens can seek mandamus to uphold police-force-minimum in Minneapolis City Charter); *Save Lake Calhoun*, 943 N.W.2d 171 (taxpayer-citizens can seek the writ of quo warranto to

restrain the renaming of a lake). Without standing, citizens and taxpayers cannot use such remedies—they are entirely stripped of their value. And that would defy the very purpose of the writ of quo warranto: "that for every wrong there should be a remedy." *State ex rel. Stuntz*, 264 N.W. at 800.

This is the "well-settled" standing doctrine declared in *Oehler*, reaffirmed in *McKee*, and reaffirmed again in *Save Lake Calhoun*. This Court has historically held that taxpayer-citizens can sue, in their capacity as such, to remedy violations of law regardless of any expenditure involved, whether the unlawful action be of omission (writ of mandamus) or commission (writ of injunction) or exceeding authority (writ of quo warranto).

C. Minnesota courts have afforded taxpayer standing to litigants in Appellants' position because they contest "illegal actions" which are nondiscretionary in nature.

State Respondents appear to rely on a subset of cases citing *McKee* from 1989 to 2009 which only granted standing to taxpayers where targeted expenditures were themselves the illegal actions at issue. *See* State Br. 7–8. To Respondents, cases outside of this subset, which *did* take up *McKee's* "illegal actions" clause, therefore strayed from the "established doctrine."

But this argument presumes Respondents' self-contradictory jigsaw reading of *McKee* debunked above. It also presumes these cases implicitly held that the "illegal actions" clause is not a different source of standing than the expenditures portion of *McKee* and *Oehler*'s holdings. This is contrary to basic

interpretive principles. And as the historical cases above show, this theory sharply breaks from the past. But the present is no help to Respondents, either.

Contrary to Respondents, in recent years, Minnesota courts have afforded litigants like Appellants standing to object to nondiscretionary actions which exceed official authority, most recently in *Save Lake Calhoun*. There, the court of appeals rejected a challenge to Save Lake Calhoun's standing to seek the writ of quo warranto. The court of appeals relied on "allegations of financial resources being expended related to the DNR's exercise of authority to promote the name change ***and*** assert[ions] DNR acted illegally by changing the lake name." *Save Lake Calhoun v. Strommen*, 928 N.W.2d 377, 384 (Minn. Ct. App. 2019), *rev'd on other grounds by Save Lake Calhoun*, 943 N.W.2d 171 (emphasis added).

This Court did not disturb that holding, and it could have. "The question of standing, which can be raised by this court on its own motion, is essential to our exercise of jurisdiction." *Annandale Advocate v. City of Annandale*, 435 N.W.2d 24, 27 (Minn. 1989). The Court's decision not to revisit standing in *Save Lake Calhoun* speaks volumes.

Likewise, in 2015, the court of appeals held that Minnesota Voters Alliance had standing to seek the writ of quo 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." *Minn. Voters All. v. State*, No. A14-1585, 2015 Minn. App. Unpub. LEXIS 495, at *7 (May 26, 2015) (citation omitted). There was no specific expenditure at issue there—the focus was the Secretary of State's *creation* of the state online voter registration system, without legal authority. *Id.* The use of taxpayer funds was merely "incidental," in the State's terminology. Yet standing existed based on what State Respondents claim is insufficient to confer standing here.

These quo-warranto cases have in common allegations of a violation of officials' ***nondiscretionary*** duties, just like with a writ of injunction or writ of mandamus. Looking back to *McKee*, the Court said that "the activities of governmental agencies engaged in public service ought not to be hindered merely because a citizen does not agree with ***the policy or discretion*** of those charged with the responsibility of executing the law." 261 N.W.2d at 571 (emphasis added).

An expenditure of funds without legal authority is an obvious example of an action that an official has no discretion to do. Likewise, creating an online voting system without legislative authority is something the Secretary has no discretion to do. Likewise, renaming a lake without the authority to do so is beyond the DNR's discretion. And if the Secretary or a county official allows felons to register and vote despite their civil rights not being restored, there is no

discretion to do that, either, under the Minnesota Constitution. The same is true if these Respondents were to allow 16-year-olds to vote because of a new law that says they can. Where officials do not have discretion to act, and they do so anyway, taxpayers can challenge those actions in Minnesota courts.

D. Appellants have also identified specific disbursements to implement the laws, and State Respondents admit they spend taxpayer dollars to implement them.

Even if the Respondents were correct that only disbursements can be challenged (they are not), Appellants have pleaded disbursements that support taxpayer standing. Appellants identified allocations of dollars in the Acts which Respondents have spent and are spending to implement the Acts. *See* Appellants' Br. 28–29; Pet. ¶ 23. Respondents admit they are using these funds to implement the Felon Voting Law. *See* State Br. 15 ("State Respondents do not dispute that they use taxpayer funds to implement the re-enfranchisement law."). In *Save Lake Calhoun* and MVA's online-voter-registration-system case, discussed above, those admissions were enough to confer standing on taxpayer plaintiffs.

To avoid this straightforward application of precedent, State Respondents imagine a world in which their actions don't ever cost anyone anything so long as they use general-fund dollars. What they appear to refer to are decisions involving their discretion: when a certain amount of money is allocated to the Secretary's general fund, the Secretary has choices as to how to spend it within

the confines of his constitutional and statutory duties. But what he *cannot* do, and what taxpayers *can* challenge, are actions expressly funded by tax dollars which are beyond his legal authority and therefore beyond his discretion. That is what Appellants have alleged here.

Respondents' barb that "the legislature's decision to re-enfranchise 55,000 Minnesotans costs the state and its taxpayers nothing" is thus beside the point: Respondents themselves admit that their actions have cost the state and taxpayers money, and the actions mandated by the legislature are funded by a specific allocation of tax dollars, as alleged in the Petition and argued by Appellants throughout this case. And further, as the historical cases described above show, taxpayers can challenge actions like the moving of a county seat not authorized by law even though the only "costs" in moving the county seat are "incidental to" and arise only because of the implementation of the allegedly illegal action.

Finally, the Court should consider the significant negative ramifications of Respondents' regressive view of direct and taxpayer standing. If Respondents' view were adopted, Minnesota's taxpayer standing doctrine would become *more restrictive* than that of the federal courts. While the federal courts have an Article-III-driven "cases or controversies" requirement to trigger federal jurisdiction, Minnesota courts are not bound by such an express restriction. *See Growe v. Simon*, No. A23-1354, 2024 Minn. LEXIS 75, at *16 n.6 (Feb. 7, 2024)

("Article VI of the Minnesota Constitution does not have the same limiting language as Article III of the United States Constitution."). Yet under Eighth Circuit precedent, local taxpayers can sue in federal court to contest unconstitutional provisions of collective-bargaining agreements between public-sector unions and independent school districts. *Huizenga v. Indep. Sch. Dist. No. 11*, 44 F.4th 806, 812 (8th Cir. 2022). If the Court adopts Respondents' view, local taxpayers will have an easier time obtaining federal-court standing than in Minnesota's heretofore friendlier courts.

Again, under Respondents' theory of the case, if the legislature were to pass a law that said that 16-year-olds can vote in Minnesota elections, even though Section 1 says one must be 18, there would be no remedy to stop Respondents' clearly unconstitutional actions in implementing that law. Even if one were to generally agree with that policy goal, eliminating judicial review of such a clearly unconstitutional action would be bad for Minnesota. The Court should, consistently, hold that Appellants have standing here.

II. The Minnesota Constitution Does Not Permit Restoration of the Singular Right to Vote Before Multiple "Civil Rights" Are Restored.

To determine whether Respondents are acting within their constitutional authority, this Court must determine whether the legislature's act of restoring "*the* civil *right* to vote," Minn. Stat. § 201.014, subd. 2a (2023) (emphasis added), complies with Section 1's mandate that a person convicted of a felony

must have their "civil rights"—*plural*—restored before voting. And although statutes enjoy "a presumption of constitutionality," *Sheridan v. Comm'r of Revenue*, 963 N.W.2d 712, 716 (Minn. 2021), "[w]hen [a statute] so conflicts with the constitution, courts have no alternative except to declare it invalid, for the obligation of courts to support the constitution is unceasing and imperative," *State v. Great N.R. Co.*, 100 Minn. 445, 480 (1907).[5]

Related to whether affirmative government action is required to restore lost civil rights, this Court declared that Section 1 is "straightforward." *Schroeder v. Simon*, *("Schroeder II"),* 985 N.W.2d 529, 536 (Minn. 2023). Respondents seem to acknowledge that the Felon Voting Law must comply with the plain meaning of Section 1, *see* State Br. 20; Intervenor Br. 11, but neither party explains *how* this is so. Both the plain meaning of Section 1 and the history related to it support Appellants' interpretation—that the legislature cannot "permit" felon voting unless it "restores" felons to the "civil rights" they lost upon conviction, which the legislature did not do with the Felon Voting Law.

[5] Intervenor-Respondents argue for a special duty of care in a case concerning the right to vote. Intervenor Br. 27–30. That duty appears only to apply to equal-protection claims under this Court's precedent. *See Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 733 (Minn. 2003). The Court should therefore conduct its statutory interpretation in the same manner it did in *Schroeder II*, where it held that the former law did not violate equal protection principles. 985 N.W.2d 529.

A. The plain meaning of Section 1 unambiguously requires "restoration" of what was lost.

The State's argument that the Constitution does not "contemplate that a loss of voting rights for any duration is necessary for them to be restored," writes the word "restored" out of Section 1. State Br. 20; *see Shefa v. Ellison*, 968 N.W.2d 818, 825 (Minn. 2022) (explaining that courts "avoid interpretations that would render a word or phrase superfluous, void, or insignificant"). "Restore" means to "give back, return." *Restore*, Merriam-Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/restore.

Voting rights cannot be given back if they were *never* lost. *See Schroeder II*, 985 N.W.2d at 538 (explaining that "an affirmative act of government is required to *restore* what the government has *taken away*" (emphasis added)). The fact that Section 1 does not say "*until* restored to civil rights," simply means that the legislature is not obligated to restore the right to vote at all. *See id.* at 544. But, if the legislature chooses to restore the right to vote, it can only do so if it was first lost. *Id.* at 550 (explaining that those regulated by the old felon voting law "*lost* their right to vote *because* they were convicted of a felony" (emphasis added)). The Acts impermissibly write out the loss of voting rights from Section 1.

B. Section 1, beyond a reasonable doubt, requires restoration of *more than* the right to vote, and the Felon Voting Law only purports to restore the *singular* right to vote.

Section 1's use of the plural "rights" unambiguously indicates more than one right. At minimum, the Legislature's act of restoring only one singular right—the right to vote—fails to restore convicted felons to "civil rights," plural. Appellants have consistently argued that Section 1 requires restoration of the body of "civil rights" lost by virtue of conviction. *See* Doc. 40 at 1, 18, 21–23.[6] In Minnesota, that includes the rights to vote, hold office, and serve on a jury. *See* Minn. Const. Art. VII, §§ 1, 6; Minn. Gen. R. Prac. 808(b)(6).

As a result, the State's argument that the constitutional text "indisputably does not require the legislature to restore *all* civil rights before restoring a particular one" misses the point. State Br. 20. The proper consideration is whether the text unambiguous requires "civil rights," plural, to be restored before the legislature can "restor[e] a particular one," i.e. the right the vote. *See id.* Had the framers intended to empower the legislature to restore the *singular* right to vote on its own, they would have said so. *See Buzzell v. Walz*, 974 N.W.2d 256, 265 (Minn. 2022) (rejecting an interpretive argument because Legislature would have chosen a more direct textual path). Section 1's use of the plural

[6]. While Appellants have consistently made this argument, even if it could be considered "refined," it is not waived. *See Jacobson v. $55,900 in United States Currency*, 728 N.W.2d 510, 522–23 (Minn. 2007) (considering a "refined argument").

phrase "civil rights," shows, beyond a reasonable doubt, that more than one right must be restored before the right to vote can be. The Acts only purport to restore *one right* and *one is not enough*.

Respondents' only answer is that the legislature, without saying so in the law, covertly restored the right to hold office to felons on probation, parole, or work release. The legislature clearly never intended to restore the right to hold office. First, it amended Minn. Stat. § 609.165, subd. 1, but maintained that only the complete discharge of a sentence restores "civil rights," plural. *See* Minn. Stat. § 609.165, subd. 1 (2023); *see also* Minn. Stat. § 609.165, subd. 2 (defining "discharge"). Second, the legislature left untouched the requirement that "civil rights," plural be restored to run for elected office. *See* Minn. Stat. § 609B.141. The Legislature did not attempt to restore "civil rights," including the right to hold office, before discharge.

To argue that the legislature somehow did is endlessly circular. According to the State, once the singular right to vote is restored, an individual is "therefore restored to civil rights" based on Article VII, Section 6 of the Minnesota Constitution. State Br. 32–33. Such an interpretation of Section 6 turns Section 1 on its head. It cannot be that the restoration of the singular right to vote is itself sufficient to restore "civil rights," plural, when the very restoration of those "civil rights" is required for the right to vote to be returned. *See Schroeder II*, 985 N.W.2d at 537 ("[S]uch a person is permanently prohibited from *voting*

'unless restored to civil rights.'" (emphasis added)). Moreover, Section 6 only authorizes those "who by the provisions *of this article* is entitled to vote" to hold office. For those convicted of a felony, it is only after "restor[ation] of civil rights" that they are entitled to vote. The State cannot bootstrap the failed restoration of the right to hold public office into a qualifying "civil right"—because the right to vote itself was not properly restored.

C. Respondents' historical evidence demonstrates that Section 1 contemplates a plurality of civil rights.

The "common understanding," *State v. Hartman*, 700 N.W.2d 449, 454 (Minn. 2005), of the phrase "civil rights," plural are the "rights accorded to an individual by virtue of his citizenship in a particular state." *United States v. Cassidy*, 899 F.2d 543, 549 (6th Cir. 1990); *see* Appellants' Br. 37–39. These rights encompass *at least* the rights to vote, hold office, and serve on a jury. *See id.*; *Logan v. United States*, 552 U.S. 23, 28 (2007). And they are lost when under "punishment by law for a criminal act." *Civil Rights (Civil Liberties)*, Wolters Kluwer Bouvier Law Dictionary Desk Edition (2012).[7]

The State's historical sources say the same. *See Black's Law Dictionary* 208 (1st ed. Saint Paul, West Pub. Co. 1891) (defining "civil rights" as "rights appertaining to a person by virtue of his citizenship in a state or community").

[7] Minnesota history demonstrates that the right to serve on a jury was similarly limited to "qualified electors," Minn. Stat. § 94 (1878), and still is to this day, Minn. Gen. R. Prac. 808(b)(6).

Black's uses the plural for an obvious reason: those rights encompass *more than* the singular right to vote. It would be entirely illogical for the framers to use a plural phrase known to encompass multiple rights to refer to only the singular right to vote.

The State's only other newly found historical source is a summary of the Transportation Act of 1768 in Great Britain. The law itself does not use the phrase "restored to civil rights." *See* 8 Geo. 3, c.15 (Gr. Brit.). Instead, individuals were not "restored to civil rights until expiration of his term." George Crabb, *A Digest and Index with a Chronological Table of All the Statutes from Magna Carta to the End of This Last Session* 138 (London 1841). There is nothing in that summary to indicate that "contemporary individuals understood that being 'restored to civil rights' before servitude was complete was possible." State Br. 25. Rather, the summary confirms that limitations on civil rights commonly lasted for the entire sentence.

Another citation from the same book confirms this. It summarizes the Civil Rights of Convicts Act of 1828 similarly: "[f]elons who have endured their punishment to be restored to their civil rights." Crabb, *supra* at 981. The Act clarified that once a sentence was complete, the effect was like a pardon and civil rights were restored. 9 Geo. 4, c.32, s. 3 (Gr. Brit), *available at* https://archive.org/details/np212725_0011/page/378/mode/2up. At Minnesota's founding, since there was no probation or supervised release, the same thing was

true: when the sentence ended, all lost civil rights were restored. *Schroeder II*, 985 N.W.2d at 541.

Until 2023, that is how restoration worked in Minnesota.[8] Thus the 1867 felon voting law provided for "restoration of the rights of citizenship" at the end of a sentence. *Schroeder II*, 985 N.W.2d at 541 (quotation omitted). In response, the State claims that the 1867 law does not say anything about what the Constitution means. State Br. 27. But the 1867 law demonstrates a "practical construction of the constitution," *Clark v. Pawlenty*, 755 N.W.2d 293, 306 (Minn. 2008), on which this Court thought fit to rely in *Schroeder II*. *See* 985 N.W.2d at 541 (discussing 1867 law).

To Appellants' knowledge, *every statute before 2023* required the restoration of more than the singular right to vote. *See Schroeder II*, 985 N.W.2d at 543 (explaining that a 1907 statute demonstrated that "the Legislature equated the restoration of civil rights with the right to vote and hold office"); *see* Minn. Stat. § 5262 (1909) (limiting the jury right, two years later, to "qualified voter[s]"). This ensured compliance with Section 1. And, to Appellants'

[8] Intervenors appear to argue that limiting restoration to discharge is absurd. *See* Intervenor Br. 25. The Court expressly held in *Schroeder II* that "one way to interpret the framers' understanding of the phrase 'unless restored to civil rights' is that restoration occurs upon completion of the sentence." 985 N.W.2d at 544. This Court's statement was not absurd.

knowledge, it was *never* done without the restoration of *at least* the right to hold office.

Finally, the ratification debates support Appellants. One delegate suggested striking out all language that would have given the Governor or Legislature the ability "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) [hereinafter *Debates & Proceedings*]. Another delegate, Mr. Colburn, objected because "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 of Governor to restore him." *Id.* at 540–41. In other words, because Section 1 took away the right to vote for those convicted of a felony, the State needed an affirmative grant of the power to restore that right. Colburn's mention of the singular right to vote says *nothing* about the mechanism the delegates ultimately decided on—the restoration of "civil rights," plural.

D. *Schroeder II* did not endorse limitless legislative discretion.

In *Schroeder II*, this Court simply answered whether, under Section 1, voting rights are restored automatically upon release from prison or if an affirmative act is required. Its answer: "in accordance with an affirmative act or mechanism of the government restoring the person's right to vote." 985 N.W.2d

at 534. This Court did not say what such a mechanism would do, it just held that some mechanism could satisfy Section 1. The absence of a detailed explanation of the "certain events" required to satisfy the constitution, when the issue was not before the Court, cannot be considered a permission slip for the legislature to tear up Section 1 and do whatever it wants.

Additionally, the Court's discussion of other mechanisms the legislature could have chosen does not endorse the Felon Voting Law. For example, in the equal-protection part of *Schroeder II*, this Court remarked in passing that the legislature could "allow[] incarcerated Minnesotans to vote." *Id.* at 554 n.21. Even if that dictum carries as much weight as the State claims, State Br. 23 n.9, the Court could not have possibly meant to endorse throwing the text of Section 1 out the window. In other words, the legislature could only restore the civil right to vote to those currently incarcerated if it also managed to restore those commonly understood "civil rights," plural, detailed above and in the principal brief. Given that the legislature was unwilling to bear the political consequences of restoring the right to serve on a jury and hold office to those still on probation, parole, or work release, the Felon Voting Law fails, beyond a reasonable doubt, to comply with Section 1.

E. If the Court concludes that Section 1 is ambiguous, history supports Appellants' interpretation.

Appellants have a better reading than Respondents of the "mischief addressed and remedy sought." *Kahn v. Griffin*, 701 N.W.2d 815, 825 (Minn. 2005). The State relies on a delegate moving to strike the entire section of the constitution because the consequences of a conviction are "wholly within the province of the Legislature," and it could "work great hardship." *Debates & Proceedings*, *supra* at 540. Notably, "[t]he motion was not agreed to." *Id.* If anything, the rejection of this suggestion by the rest of the delegates enforces the opposite point: the constitutional disability remained as a bulwark *against* a broad legislative prerogative to restore voting rights by any means.

Furthermore, the construction of Section 1 followed for many years supports Appellants. *See Schroeder II*, 985 N.W.2d at 543 ("[E]ach of these legislative enactments require[d] an affirmative act . . . to restore the person's civil rights upon completion of a sentence and release from incarceration."). To Appellants' knowledge, the Legislature *never* authorized restoration of the *right to vote* by itself. The 1911 statute cited by the State did allow the Board of Parole to recommend to the governor whether individuals should be "restored to any of the rights and privileges of citizenship." Minn. Stat. § 9275 (1913). But as this Court held in *Schroeder II*, "the power to restore a person to civil rights was limited to prisoners granted absolute release." 985 N.W.2d at 542 n.9. Other

statutes passed during that same legislative session also referenced plural "civil rights." *See, e.g.*, Minn. Stat. § 9309 (1913) (providing that when a convict is released without violating the rules of discipline, he or she is "restored to his rights and privileges forfeited by conviction"); *Id.* § 8500 (after felons have paid applicable fines and served their sentence they "shall be restored to all their civil rights and to full citizenship, with full right to vote and hold office").

Restrictions on firearm possession do not affect this case, either. The Eighth Circuit did not hold that the right to possess firearms is a "civil right" as understood in Section 1. *See Hood v. United States*, 342 F.3d 861, 864 (8th Cir. 2003). Instead, the U.S. Supreme Court has interpreted the Gun Control Act's firearm-restoration provision to require "restoration of civil rights," meaning "the rights to vote, hold office, and serve on a jury," separate from and prior to the restoration of gun rights. *Logan*, 552 U.S. at 28; *accord Caron v. United States*, 524 U.S. 308, 316 (1998). And "most federal courts have interpreted 'civil rights restored' to mean that all civil rights that have been *lost* must be restored for the exception to apply." *Johnson v. Dep't of State Police*, 161 N.E.3d 161, 171–72 (IL 2020) (emphasis original) (collecting cases). This reading of "civil rights," plural, as referring to multiple civil rights derives from the common-sense understanding of what a plural noun signifies—multiples. *See, e.g., Walker v. United States*, 800 F.3d 720, 727 (6th Cir. 2015) ("the language of the statute refers to having multiple "civil rights" restored, not just one civil right.

On the most natural interpretation of the statutory language, having only one civil right restored is insufficient.").

Finally, the State and *amici* cite what other states have done, in quote-grabbing fashion. *See, e.g.*, *State ex rel. Law Enf't Standards Bd. v. Vill. of Lyndon Station*, 295 N.W.2d 818, 827 (Wis. Ct. App. 1980) (quoting a law review article before holding that a convicted felon could not serve as a public officer); *Ways v. Shively*, 646 N.W.2d 621, 626–27 (Neb. 2002) (holding that a felon's right to vote was not restored even if *other* civil rights were). But the only authoritative interpretation cited from another state is *Madison v. State*, 163 P.3d 757 (Wash. 2007), where the state Supreme Court held that the felon disenfranchisement scheme was constitutional. Although the court did state that it is the "province of the legislature to determine the best policy approach for re-enfranchising Washington's felons," it is worth exploring the laws actually in place. *Id.* at 773. The restoration of civil rights was only available "when the felon has completed 'all requirements of the sentence, including any and all legal financial obligations.'" *Id.* at 763 (quoting Wash. Rev. Code § 9.94A.637(1)(a)). Washington has since amended its law, and it has not been evaluated in court. *See* Wash. Rev. Code. § 29A.08.520.

Importantly, many other states do not restore the right to vote until additional civil rights are restored. *See, e.g.*, Ariz. Rev. Stat. § 13-904(A) (suspending the right to vote, hold office, and serve as a jury for a felony conviction); *Id.*

§§ 13.906, 13.907 (describing the process to restore "civil rights," plural); N.D. Cent. Code. § 12.1-33.01 (stating that incarcerated felons cannot vote *or* hold office); *Id.* § 27-09.1-08 (stating that those who have "lost the right to vote" are disqualified from jury service). Point being, Minnesota's purported restoration of the singular right to vote *only* while an offender is still under sentence is an anomaly, not a paradigm.

III. The District Court Erred in Granting Intervenor-Respondents' Motion to Intervene.

Intervenor-Respondents do not meet the requirements of Minnesota Rule of Civil Procedure 24.01 because their involvement in this lawsuit is not necessary to protect their interests, and they are adequately represented by existing Respondents.

The State agrees with Appellants that this Court should adopt the federal presumption of adequacy.[9] State Br. 34; *see N.D. ex rel. Stenehjem v. United States*, 787 F.3d 918, 921 (8th Cir. 2015). Intervenor-Respondents' only real argument to the contrary is that Minnesota's officials are subject to election

[9] The State's waiver argument as to Appellants' arguments for limitation on the presumption of adequacy is preposterous and should be withdrawn. Appellants clearly argued, and the cited case law also supports, that the presumption shouldn't apply when the State throws a case because there's clear evidence that the representation of the State's interest is inadequate. Appellants' Br. 50–57, *citing among other cases DSCC & DCCC v. Simon*, No. 62-CV-20-585, 2020 Minn. Dist. LEXIS 220, at *54 (Minn. Dist. Ct. July 28, 2020) (quoting *Stenehjem*, 787 F.3d at 921).

which could result in a change in their position on the Felon Voting Law. *Schroeder* puts this concern to rest. There, the State parties had publicly advocated against the old Felon Voting Law for years and even decades, *see* Appellants' Br. 18–22, but still defended its constitutionality, and won, before this Court.

Moreover, even under current case law, Intervenor-Respondents cannot satisfy Rule 24.01 because "it is clear" that the government will, and has, provided adequate representation. *Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28 (Minn. 1981). In *Costley*, the original parties were a developer trying to build a home for mentally disabled adults and resident-plaintiffs who opposed the construction. *Id.* at 23. The Court allowed a group of potential residents to intervene because they had a "vital interest in being able to live in and participate in this community," while the developer had "no ties to this particular neighborhood." *Id.* at 28.

Obviously, the developer could have decided to simply try to build a development elsewhere and given up the case. Not so in the case of a government defendant, where the attorney general is required to "act as the attorney for all state officers." Minn. Stat. § 8.06. Furthermore, this Court has later clarified that when proposed intervenors "seek[] to advance" a litigation position that is "substantially the same" as another party, intervention is improper. *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 643 (Minn. 2012).

Finally, Intervenor-Respondents argue that even if the district court was wrong to grant intervention as of right, this Court should just hold that permissive intervention would have been proper. Intervenor-Respondents cite no support for this position. *See Luthen v. Luthen*, 596 N.W.2d 278, 284 (Minn. App. 1999) (reversing because intervention as of right was improperly granted). It is for the district court to weigh if intervention "will unduly delay or prejudice the adjudication," Minn. R. Civ. P. 24.02, and Appellants would, if this issue was remanded, argue that intervention has resulted in significant prejudice by exponentially increasing the burden of briefing this case. *See Nash v. Wollan*, 656 N.W.2d 585, 591 (Minn. App. 2003) ("Permissive intervention lies within the district court's discretion and" may only be granted "after considering whether intervention will unduly delay or prejudice the rights of the other parties.").

CONCLUSION

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

Respectfully submitted,

Dated: March 5, 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 6,992 words. This Brief was prepared using Microsoft Word 365, Version 2402.

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