

STATE OF MINNESOTA
COUNTY OF ANOKA

DISTRICT COURT
TENTH JUDICIAL DISTRICT
CASE TYPE: Other Civil

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| <p>Minnesota Voters Alliance; Mary Amlaw; Ken Wendling; Tim Kirk,</p> <p>Petitioners,</p> <p>v.</p> <p>Tom Hunt, in his official capacity as elections official for Anoka County; Steve Simon, in his official capacity as Secretary of State; Anoka County; the Office of the Minnesota Secretary of State; Shannon Reimann, in her official capacity as chief executive officer of the Minnesota Correctional Facility – Lino Lakes,</p> <p>Respondents.</p> | <p>Court File No. 02-CV-23-3416</p> <p>PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF ISSUANCE OF THE WRIT OF QUO WARRANTO</p> |
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INTRODUCTION

Under the Minnesota Constitution, Article VII, section 1, those convicted of a felony crime may not vote “unless restored to civil rights.” That’s “civil rights,” plural, not just the singular right to vote. The Constitution does not allow the Legislature, or any executive acting on authority purportedly granted by the Legislature, to restore the singular right to vote before “civil rights,” plural, are restored to an individual convicted of a felony.

On February 15, 2023, the Minnesota Supreme Court in *Schroeder v. Simon* expressly acknowledged this reading of the Constitution. The Court said:

Even if we assume that the words “civil rights” as used in Article VII, Section 1, were intended to broadly include any right that a person has, it does not follow from the fact that *some* of those rights may be restored upon release from incarceration that *all* civil rights must be restored. Different rights may be restored at different times (and may be limited in different ways at different times). Indeed . . . 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.

Schroeder v. Simon, 985 N.W.2d 529, 544–45 (Minn. 2023).

The Court also observed:

[T]he very fact that probation and conditional release did not exist in 1858 means that release from incarceration was the completion of a sentence. Accordingly, . . . 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 final sentence encapsulates the correct interpretation of the Constitution as understood by those who framed it and those living when it was adopted. That interpretation endures. Restoration to “civil rights,” plural, means discharge of the whole felony sentence. It means that a person can only vote after felony conviction if, by an act of the Legislature or the Governor, each of that person’s civil rights is restored.

It is important to note here that the framers of our Minnesota Constitution do believe in second chances. That is why our Constitution does not permanently revoke the right to vote for those who have committed crimes so serious that they are characterized as felonies. But the Constitution is clear that those who have committed felonies must fully pay their debts to society before the right to vote may be restored. And while the Legislature has broad and general authority to change sentencing practices and restore all civil rights to felons at earlier times than Minnesota’s laws currently provide, the Legislature cannot skip those steps and declare the Constitution satisfied.

Despite the Supreme Court’s February 2023 interpretation of Article VII, section 1 in the *Schroeder* case, the Legislature passed several provisions into law in the 2023 legislative session which granted those no longer in custody, but still under felony sentence, the right to vote (collectively, the “Acts”). Because the Constitution prohibits this, those individuals do not, constitutionally, have the right to vote. Yet the Acts require Respondents to perform numerous actions to enable voting during felony sentences, as described below—even voting for those still in the “confinement” portion of their

sentences, who clearly have not been restored to their civil rights. Petitioners therefore ask the Court to issue the writ of quo warranto and order Respondents to stop taking action consistent with the Acts described in the Petition and this memorandum.

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.

This section of the Constitution is only about “Elective Franchise,” as the title to Article VII states. It is only about the right to vote. Thus, the framers could have, had they chosen, stated that the restoration of the “right to vote,” alone, renders a person eligible to vote again. They did not. Instead, Article VII, section 1 conditions the right to vote of individuals convicted of felony crimes on the restoration of “civil rights.” “Civil rights” is rendered in the plural, signifying that more than one of the individual’s rights must be restored before individuals convicted of felony crimes may regain their right to vote.

This past legislative session, Minnesota enacted the Acts, which disregard the requirements of Article VII, section 1. These laws relate to (a) citizens’ eligibility to vote, and (b) notice related to the changes to eligibility.

A. Minnesota’s 2023 session laws attempt to enable those convicted of felonies who are still on supervised release, probation, and work release to vote.

Laws of Minnesota 2023 (“Laws 2023”), chapter 12, was enacted on March 3, 2023, and it amended Minn. Stat. § 201.014, to include subdivision 2a, which states:

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.

This purports to restore the right to vote to those convicted of felony crimes who have not completed their sentence and are still on supervised release or probation. The law specifically says that it only restores “*the* civil right to vote.” *Id.* (emphasis added).

Laws 2023, chapter 62 was enacted on May 24, 2023, and its article 4, section 10 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. 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.

This purports to restore the right to vote to those convicted of felony crimes who are on work release.

B. Based on the unconstitutional changes to eligibility to vote, the 2023 session laws also created new provisions altering what information is maintained on voters, what notices must be provided to voters, and affecting challenges to voter eligibility on Election Day.

In addition to the eligibility provisions described above, the Acts also required Respondents, in an ongoing fashion, to modify voter rolls, notify citizens of the effect of changes in the law, and aid those under still felony sentences in registering to vote, among other things. These changes include the following, which were listed in the Petition:

- 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. Laws 2023, ch. 12, § 3.
- 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 have the right to vote. *Id.*
- 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.

- 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.
- e. They, by virtue of allowing those still serving felony sentences to vote and register to vote, 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* Laws 2023, ch. 62, art. 4, §§ 11, 19, 22.
- f. They, by virtue of allowing those still serving felony sentences to vote and register to vote pursuant to Minn. Stat. § 201.061, direct Respondent Hunt to violate Minn. Stat. § 201.054, subd. 2, by including as eligible voters on the SVRS those who are serving felony sentences.
- g. They, by virtue of allowing those still serving felony sentences to vote and register to vote, direct Respondent Hunt to illegally modify the SVRS county master list pursuant to Minn. Stat. § 201.091 to include as eligible voters those who are serving felony sentences.
- h. They, by virtue of allowing those still serving felony sentences to vote and register to vote, direct Respondent Hunt and those election judges and absentee ballot board members serving in Anoka County to accept ballots cast illegally by those who are serving felony sentences.
- i. They, by virtue of allowing those still serving felony sentences to vote and register to vote, direct Respondents Simon and OSS to certify vote totals reported by county auditors which include votes cast by those who are serving felony sentences.
- j. They, by virtue of allowing those still serving felony sentences to vote and register to vote, direct Respondents Simon and OSS to incorrectly determine, under Minn. Stat. § 201.145, subd. 3, that those serving felony sentences are actually eligible to vote, and report to the county auditors an incomplete list of those ineligible to vote. *See* Laws 2023, ch. 62, art. 4, § 22.
- k. They, by virtue of allowing those still serving felony sentences to vote and register to vote, forbid Respondent Hunt pursuant to Minn. Stat. § 201.145 from including as “challenged” on the SVRS those who are serving felony sentences. *Id.*¹
- l. They forbid Respondent Hunt from reporting to the county attorney pursuant to former Minn. Stat. § 201.145, subd. 3(d), those who illegally voted while serving a felony sentence. Laws 2023, ch. 62, art. 4, § 21.
- m. They appropriate \$14,000 to Respondent OSS to implement the provisions of Laws of Minnesota, chapter 12, including the provision allowing those serving felony sentences to vote. Laws 2023, ch. 12, § 8.
- n. They appropriate \$200,000 to Respondent OSS “to develop and implement an educational

¹ The “challenge status” related to a voter is important because it 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.

campaign relating to the restoration of the right to vote to formerly incarcerated individuals.” Laws 2023, ch. 62, art. 1, § 6.

These new notice and list-modification changes allow those serving felony sentences to vote without prosecution for illegal voting. They thus conflict with the language of the Minnesota Constitution forbidding it.

II. Regardless of Whether a Person Is on Supervised Release, Probation, or Work Release, Their Felony Sentence Still Restricts and Suspends Civil Rights During the Sentence.

Those convicted of felonies 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.” Laws 2023, ch. 12, sec. 7. Minn. Stat. § 609.165 thus continues to acknowledge that only the full discharge of the felony sentence restores those convicted of felonies to all “civil rights.” 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.” Minnesota Statutes chapter 609B lists a litany of deprivations and collateral consequences imposed on those convicted of felonies. A felon’s civil rights are decidedly not restored by virtue of leaving prison or obtaining “work release.”

Supervised release has become a major part of Minnesota’s criminal sentencing structure after amendments to the Minnesota Statutes in 1993. Under Minnesota law, felons serve fully *one-third* of their felony sentences under supervised release. Minn. Stat. § 244.01, subd. 8. In other words, generally, someone sentenced to 6 years in prison would be incarcerated for 4 years and serve 2 years of supervised release. Supervised release is not a small portion of a sentence “tacked on” to the end. It is an integral part of the criminal sentence in Minnesota.

Probation works differently for felony convictions. Under Minnesota law, probation for felony sentences can last for up to 5 years and can be imposed instead of jail time. Minn. Stat. § 609.135, subd. 2, *as amended by* Laws of Minnesota 2023, ch. 52, art. 6, sec. 13.

But both supervised release and probation restrict the civil rights of the felon, despite him not being incarcerated. 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

Similarly, those on probation often cannot use or possess firearms, ammunition, or explosives, 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 *during the time* convicted felons are still serving the carceral 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). The default for those on work release is

² “How Supervision Works,” Minnesota Department of Corrections, *available at* <https://mn.gov/doc/community-supervision/> (last accessed Sept. 29, 2023).

³ *E.g.*, “Rights and Responsibilities of Probationer,” Anoka County, *available at* <https://www.anokacountymn.gov/DocumentCenter/View/29090/Probation-Rights-Responsibilities-flyer-2022?bidId=> (last accessed Sept. 29, 2023); “Standard Conditions of Probation for Felony Convictions,” Minnesota Judicial Branch, *available at* https://www.mncourts.gov/mncourtsgov/media/Judicial_Council_Library/Policies/PolicyAttachments/Standard-Conditions-of-Probation-for-Felony-Convictions.pdf (last accessed Sept. 29, 2023)

confinement when they are not employed. And even when they are confined, those on work release have far fewer civil rights than non-convicted members of the public: their daily decisions are entirely made for them by judicial sentence and administered by corrections officials. They do not even retain the right to receive and dispose of their income as they see fit.

Prior to the restoration of their civil rights by discharge of a sentence, those convicted of felonies face substantial restrictions on their civil rights. In addition to the loss of the right to vote, Minn. Stat. § 609B.610, and those other restrictions on travel and other liberties discussed herein, those convicted of felonies also may be struck from a jury for cause, Minn. R. Crim. P. 26.02, subd. 5, and may not be placed on a ballot for public office, Minn. Stat. § 609B.141.

While the new laws purport to restore *the* civil right of voting, a person on supervised release, probation, or work release because of a felony conviction has not been restored to “civil rights.” The Legislature’s decree in the Acts, that a felon has “the right to vote if [he is] not currently incarcerated for conviction of a felony offense,” is factually incorrect and inconsistent with the reality that those on supervised release, probation, or work release after felony conviction do not, as the Minnesota Supreme Court noted, have all of the civil rights a non-felon in Minnesota has. *Schroeder v. Simon*, 985 N.W.2d 529, 544–45 (Minn. 2023) (“Indeed...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.”).

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

The Legislature expressly appropriated funds for the implementation of Laws 2023, chapters 12 and 62. Moreover, Respondents are already taking unlawful actions, which are ongoing, and which implement the Acts. In fact, in response to this lawsuit, Respondent Simon and OSS made this remark: “we will continue to move forward with implementing the law as approved by the legislature and the

Governor.”⁴

First, the laws appropriate \$14,000 to Respondent OSS to implement the provisions of Laws 2023, chapter 12. Laws 2023, ch. 12, § 8. Second, 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” Laws 2023, ch. 62, art. 1, § 6.

Moreover, Respondents have said they would act according to the Acts, despite the Constitution, are acting on these appropriations and using the powers purportedly granted to them, and appear set to continue to do so absent Court action. On March 3, 2023, MPR News reported the following about the public event at which Governor Walz signed House File 28:

Secretary of State Steve Simon said he would immediately begin working with the Department of Corrections to notify newly eligible people about the change. And he held up a roll of “I Voted” stickers that he said he hoped the new voters would receive.

“I voted. Those are two very powerful words,” Simon said. “And I can't wait to see tens of thousands of newly eligible voters in Minnesota pin this badge of democracy on their chest in the next election.”⁵

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 in excess of their authority under the Minnesota Constitution.⁶ On June 2, 2023, Respondents OSS and Simon issued a release stating that as of June 1, 2023, “[t]he law restoring voting

⁴ Kyle Brown, “Group files lawsuit seeking to reverse Minnesota law that restores voting rights to some felons,” *KSTP*, June 29, 2023, *available at* <https://kstp.com/kstp-news/top-news/group-files-lawsuit-seeking-to-reverse-minnesota-law-that-restores-voting-rights-to-some-felons/> (last accessed Sept. 29, 2023).

⁵ Dana Ferguson, “Voting rights restored to 50,000 under new Minnesota law,” *MPR News*, March 3, 2023, *available at* <https://www.mprnews.org/story/2023/03/03/voting-rights-restored-to-50000-under-new-minnesota-law> (last accessed Sept. 26, 2023).

⁶ Brian Bakst, “Law restoring voting rights to thousands kicks in as sign-ups start,” *MPRNews*, June 1, 2023, *available at* <https://www.mprnews.org/story/2023/06/01/law-restoring-voting-rights-to-thousands-kicks-in-as-signups-start>.

rights to Minnesotans who have left prison behind takes effect today, June 1.”⁷ 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.*

On August 24, 2023, the official Minnesota Secretary of State YouTube channel put out a video on August 24, 2023, that stated “In June of 2023, we welcomed 55,000 Minnesotans back into our democracy by restoring the freedom to vote for those who were convicted in the past of a felony but who left prison behind or never even went to prison.”⁸ Thereafter, on September 1, 2023, the first day of National Voter Registration Month, Respondent Simon posted on his official Minnesota Secretary of State Facebook page, “Remember our new laws: You can vote if you have been convicted of a felony - but are not currently incarcerated.”⁹ The same message was included on an “X” (formerly Twitter) post.¹⁰

Respondents have acted and continue to act in furtherance of this law by posting the following information on the OSS’s 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.¹¹

⁷ “Voting Rights Restored to Formerly Incarcerated Minnesotans,” Office of the Minnesota Secretary of State, *available at* <https://www.sos.state.mn.us/about-the-office/news-room/voting-rights-restored-to-formerly-incarcerated-minnesotans/>.

⁸ “Strengthening Our Democracy,” *available at* <https://youtu.be/hm4cL5bTInY?si=C7IINi4BHruLWm33> (starts at 0:50) (last accessed Sept. 25, 2023).

⁹ *Available at* <https://www.facebook.com/MNSteveSimon/posts/pfbid0uMAAkSdV8TjvxdEwyeQgbwiCLUuBFUq47SvKZEUJGaw2cqh9oidD1oPm2nrZTgocl> (accessed Sept. 25, 2023).

¹⁰ *Available at* <https://x.com/MNSecofState/status/1697625357376016807?s=20> (accessed Sept. 26, 2023).

¹¹ “I Have A Criminal Record,” Office of the Minnesota Secretary of State Steve Simon, *available at*

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.¹²

Respondents Simon and OSS have also modified Minnesota’s voter registration application and are continuing to use it.¹³ These Respondents have similarly modified Minnesota’s mail and absentee ballot applications and are continuing to use them.¹⁴ 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:¹⁵

<https://www.sos.state.mn.us/elections-voting/register-to-vote/i-have-a-criminal-record/> (accessed Sept. 25, 2023); *see also* Register to Vote, Office of the Minnesota Secretary of State Steve Simon, *available at* <https://www.sos.state.mn.us/elections-voting/register-to-vote/> (accessed Sept. 25, 2023) (“To vote you must be: . . . Not currently incarcerated for a felony conviction.”).

¹² “What’s New For 2023,” Office of the Minnesota Secretary of State Steve Simon, *available at* <https://www.sos.state.mn.us/media/5482/whats-new.pdf> (accessed Sept. 25, 2023).

¹³ Minnesota Voter Registration Application, Office of the Minnesota Secretary of State Steve Simon, *available at* <https://www.sos.state.mn.us/media/1587/minnesota-voter-registration-application.pdf> (accessed Sept. 25, 2023).

¹⁴ *See* 2023 Minnesota Absentee Ballot Application, *available at* <https://www.sos.state.mn.us/media/2444/english-regular-absentee-ballot-application.pdf> (accessed Sept. 25, 2023).

¹⁵ Polling Place Posters to Vote, *available at* <https://www.sos.state.mn.us/media/1287/english-polling-place-poster.pdf> (page 11) (accessed Sept. 26, 2023).

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**



OFFICE OF THE MINNESOTA
SECRETARY OF STATE

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

The OSS has 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."¹⁶

For its part, the Minnesota Department of Corrections has released a 2023 Legislative Session DOC Impact Brief, which states:

Restore the Vote

¹⁶ "Know Your Rights factsheet," *available at* <https://www.sos.state.mn.us/media/4695/know-your-rights.pdf> (accessed Sept. 26, 2023).

What: Minnesotans on parole, probation, or supervised release due to a felony conviction have been restored the right to vote upon leaving incarceration. Previously, Minnesota law only restored voting rights after the completion of a person's entire sentence. Now, the right is restored immediately after release from incarceration, assuming other eligibility criteria are met, such as citizenship, age, and other requirements.

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.¹⁷

According to the DOC, therefore, Respondent Reimann is acting according to the new laws, but in excess of the authority she has under the Constitution.

Given these public statements and the laws' requirements, those ineligible to vote under the Minnesota Constitution because they have not been discharged from their felony sentence are registering to vote in an ongoing fashion in Anoka County, Minnesota, and through the Office of the Secretary of State. 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. Laws 2023, 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). And given these actions and the laws' requirement to allow those still serving felony sentences to vote, constitutionally ineligible voters will vote in the 2023 elections taking place on November 7, 2023 and thereafter.

IV. The Individual Petitioners Are State and Local Taxpayers.

Each of the individual Petitioners in this case is a resident of Anoka County, Minnesota, and is a state and local taxpayer to Minnesota and Anoka County, respectively. Petitioner Minnesota Voters

¹⁷ Minnesota Department of Corrections, *available at* <https://mn.gov/doc/about/legislative-info/impact-brief.jsp> (accessed Sept. 25, 2023).

Alliance is a Minnesota nonprofit corporation which advocates for the interests asserted by the individual Petitioners, who are each long-time supporters and volunteers with MVA. Decl. of Andrew Cilek, Sept. 30, 2023; Decl. of Mary Amlaw, Oct. 1, 2023; Decl. of Ken Wendling, Oct. 2, 2023; Decl. of Tim Kirk, Sept. 30, 2023.

ARGUMENT

I. Purpose of and Procedure for a Writ of Quo Warranto.

The purpose of the writ of quo warranto is to “rein in government officials who exceed their constitutional or statutory authority.” *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 176 (Minn. 2020). Thus, in *Rice v. Connolly*, 488 N.W.2d 241 (Minn. 1992), after the Legislature passed laws which authorized off-track parimutuel betting and the Minnesota Racing Commission enacted rules consistent with those laws, the Minnesota Supreme Court issued the writ of quo warranto against those applying those laws and rules, the members of the Minnesota Racing Commission, because the Minnesota Constitution only authorized on-track betting. *Id.* at 244–48.

Petitioners file actions for the writ of quo warranto in district court so that appellate courts, when considering the writ, do so upon a developed record. *Id.* at 244. The Court issues the writ where it appears, upon information presented by the Petitioners, that the Respondents are acting beyond their authority under state law or the state Constitution—it is “analogous to an order to show cause.” *State ex rel. Burnquist v. Village of Nash Pole*, 6 N.W.2d 458, 461 (Minn. 1942). A petition for writ of quo warranto is adequately pleaded, and the writ should be ordered by a court, when the petition presents “information containing allegations sufficient to make a prima facie case”; thereafter the court should “determine[] the issues of law and fact upon the merits as in ordinary proceedings.” *State ex rel. Young v. Kent*, 104 N.W. 948, 955 (Minn. 1905).

If there are any facts as to Respondents’ actions still in dispute, the Court can order an evidentiary hearing to resolve them so that the appellate courts have a full record. But if there are no facts in

dispute, and the Court agrees that the Writ should issue, no hearing will be needed, and the Court should enjoin the Respondents' actions. *See Rice*, 488 N.W.2d at 248 (“Wagering at facilities remote from the racetrack or by telephonic means are beyond the scope of the activities authorized by the voters and are therefore impermissible Writ of quo warranto shall issue to the Minnesota Racing Commission.”).

Petitioners will be surprised if Respondents are able to point to any disputed fact—after all, Petitioners have merely alleged that Respondents do not have the authority to implement the laws they are implementing, and yet they are doing so. Thus, if the Court issues the Writ here, it should do so in a way that indicates that no further hearing is required, and the Respondents shall cease any and all actions in furtherance of Chapter 12 and 62 of the session laws which authorize felons who have not completed their sentences to vote.

II. Petitioners Have Standing to Seek the Writ of Quo Warranto.

Petitioners have standing to bring their writ of quo warranto because Respondents have taken and continue to take illegal actions beyond their constitutional power to implement the provisions of Laws 2023, chapters 12 and 62. *See* Petition ¶¶ 22, 34–38, 41. Specifically, the individual Petitioners have standing as taxpayers, and Petitioner MVA has associational standing on behalf of those for whom it advocates, including the individual Petitioners. *See* Petition ¶¶ 25–28, 39–40. Taxpayer standing is an extraordinarily low bar in quo-warranto actions, where taxpayers need not assert a “personal or direct injury” to have standing. *Minn. Voters All. v. State*, No. A14-1585, 2015 Minn. App. Unpub. LEXIS 495, at *6–7 (May 26, 2015).

Any standing concerns here are put to rest by the court of appeals' decision on a petition for a writ of quo warranto related to Minnesota's online-voter-registration system. *Minn. Voters All. v. State*, 2015 Minn. App. Unpub. LEXIS 495 (May 26, 2015). There, the court of appeals held that the same Petitioner Minnesota Voters Alliance, among other petitioners, had standing to challenge the system:

But taxpayers without a personal or direct injury may still have standing to maintain an action that restrains the “unlawful disbursements of public moneys . . . [or] illegal action on the part of public officials.” *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977) (quotation omitted).

Appellants challenged the online-voter-registration system, which was an ongoing pursuit that appellants believed the secretary of state went beyond his power to create. *See State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 320 (Minn. App. 2007) (stating that the quo warranto remedy may be applied to ongoing exercise of power). Respondents conceded that taxpayer funds were used to create, maintain, and operate the online-voter-registration system. Appellants thus had standing to petition for the writ.

Id.

If that were not enough, the Minnesota Supreme Court in *Save Lake Calhoun* made clear that “a writ of quo warranto is an available remedy to challenge whether an official’s action exceeded the official’s statutory authority.” 943 N.W.2d at 176. And while the Supreme Court’s “precedent does not require” allegations of ongoing action, *id.* at 176 n.3, Petitioners have alleged ongoing actions as well.

In *Save Lake Calhoun*, the petitioners argued that the DNR Commissioner could not change Lake Calhoun’s name to Bde Maka Ska, and doing so was beyond the Commissioner’s authority. *Id.* at 176–77. Those allegations were sufficient for standing. *Id.* Petitioners have mirrored those allegations here in all relevant parts, and so they have standing to seek the writ of quo warranto.¹⁸

Here, Petitioners have alleged that Respondents have unlawfully disbursed public monies in furtherance of their illegal actions to implement the laws purporting to allow felons not finished with their sentences to vote, and Respondents continue to act in excess of their constitutional authority. Petitioners exhaustively listed the various actions taken by Respondents because of the new laws, and

¹⁸ Petitioners also have standing to seek a declaratory judgment, but this brief only focuses on the writ of quo warranto, which is affirmatively before the Court. Petitioners anticipate that Respondents will move to dismiss their declaratory-judgment action, and will respond to any standing or similar arguments if presented.

which 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. These include, but are not limited to, the provisions which direct Respondents to process registrations for felons under sentence, removal of those individuals from the “challenge” lists, and processing of ballots case by case by those individuals. *See supra* facts section I.B. Petitioners have standing.

III. Respondents’ Illegal Actions Are Ongoing and In Furtherance of the Acts.

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. Petition ¶ 16. Here, while the Supreme Court’s “precedent does not require” allegations of ongoing action, *Save Lake Calhoun*, 943 N.W.2d at 176 n.3, Petitioners have alleged ongoing actions by Respondents to perform these actions, which exceed the scope of their authority under Article VII, Section 1 of the Minnesota Constitution. *See* Petition ¶ 22. Petitioners have exhaustively listed these actions in the facts section above, and thus invite the Court’s attention to facts section III.

Based on these and other allegations stated in their Complaint, Petitioners have adequately alleged that Respondents are committing ongoing acts that exceed their statutory authority under the Minnesota Constitution. The Court should therefore issue the writ of quo warranto.

IV. The Text and Structure of Article VII, Section 1 of the Minnesota Constitution Require the Restoration of Multiple “Civil Rights” Before the Right to Vote Is Restored to Those Convicted of Felony Crimes.

The heart of the issue before the Court is the interpretation of “civil rights” in Article VII, Section 1, of the Minnesota Constitution. That section states, in part, that:

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.

This means that a person convicted of a felony must have their “civil rights”—*rights plural*—restored before they can become eligible to vote at any election in the State of Minnesota.

“When a statute is unambiguous, [the Court] appl[ies] the plain meaning of the statute.” *Minn. Voters All. v. Cty. of Ramsey*, 971 N.W.2d 269, 275 (Minn. 2022). The Court “will not ‘go beyond the plain language of the statute to determine the intent of the legislature’ when the language is unambiguous.” *Id.* (quoting *Robmiller v. Hart*, 811 N.W.2d 585, 589 (Minn. 2012)). To determine plain meaning, the Court “interpret[s] statutes ‘so as to give effect to each word and phrase,’ and [the Court] may consult dictionary definitions to determine a word’s plain meaning.” *Mittelstaedt v. Henney*, 969 N.W.2d 634, 639 (Minn. 2022) (quoting *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016)). Finally, in “interpreting the plain language of a statute, [the Court] read[s] words in context.” *Minn. Voters All.*, 971 N.W.2d at 279.

A statute 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.* (internal quotation mark omitted). Ambiguity in a statute also “permits [the Court] to consider not just the current language of the [statute], but also prior versions of the law, ‘the occasion and necessity for the law,’ ‘the circumstances under which it was enacted,’ ‘the mischief to be remedied,’ ‘the object to be obtained,’ and ‘the contemporaneous legislative history.’” *Id.* at 76 (quoting Minn. Stat. § 645.16).

Petitioners submit that the unambiguous language of Article VII, section 1 of the Minnesota Constitution requires the restoration of all “civil rights” lost by a convicted felon before the right to vote is restored. In other words, any legislative act intending to restore the right to vote must cause “the occurrence of certain events” which have the same impact that the discharge of a sentence has under Minn. Stat. § 609.165, subd. 1. Alternatively, if Article VII, Section 1 is ambiguous, then the text,

history, and structure, along with the provision’s purpose, support Petitioners.

By enacting the Acts, the Minnesota Legislature attempted to restore “*the civil right to vote*” to those convicted of felony crimes who have not completed their sentence and are still on supervised release, probation, or work release. Laws 2023, ch. 62, art. 4, § 10 (amending Minn. Stat. § 201.014, subd. 2a). This does not satisfy the Constitution’s requirement of “restored to civil rights” for two reasons: it does not restore those convicted of felony crimes to their civil rights, and the restoration of civil rights for such individuals can only be effected upon the full discharge of their felony sentence.

A. The term “civil rights” unambiguously includes *more than* the right to vote.

The *Schroeder* Court declared the language of Article VII, Section 1, of the Minnesota Constitution “straightforward”: an individual convicted of a felony crime “is permanently prohibited from voting ‘unless restored to civil rights.’” *Id.* at 536–37 (“When the text of the constitution is clear, we go no further and ‘there is no room for the application of rules of construction.’”) (quoting *Kernan v. Holm*, 34 N.W.2d 327, 329 (Minn. 1948)).

A plain reading of Section 1’s use of the plural “rights” unambiguously indicates more than one right. Had the framers intended to signify one right, i.e., the right to vote, they could have more clearly conveyed that by the phrase “unless restored to the right to vote.” See *Buzzell v. Walz*, 974 N.W.2d 256, 265 (Minn. 2022) (rejecting an interpretive argument on the basis that, had the Legislature intended a particular meaning, it would have chosen a more direct textual path). Instead, the framers recognized that those convicted of felony crimes lose more than just their right to vote, and the most reasonable interpretation is that the framers intended to condition re-eligibility to vote upon the restoration of *all* those “civil rights” that the convicted person lost.

The *Schroeder* Court itself repeatedly acknowledges the plurality of the “civil rights” at issue. 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.”).

The “whole-act” structure of Article VII, Section 1 requires this reading, as well. *Occhino v. Grover*, 640 N.W.2d 357, 360 (Minn. Ct. App. 2002) (“textual or plain meaning canons . . . include conventions of grammar and syntax, ordinary usage, and whole-act structure”). The “whole act” here is Article VII, Section 1, which relates to who has the singular right to vote in Minnesota’s elections. It says, in relevant 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*.

(emphasis added). The framers could have, but did not, state that the restoration of the “right to vote,” alone, renders a person eligible to vote again. Instead, Article VII, Section 1 conditions the right to vote of individuals convicted of felony crimes on the restoration of “civil rights.” “Civil rights” is rendered in the plural, signifying that more than one of the individual’s rights must be restored before the right to vote may be. Put differently, the restoration of all civil rights is the condition precedent to the restoration of the right to vote. The right to vote may be part of a person’s civil rights, but it is not all of them.

Finally, to allow restoration of the right to vote alone, without restoring all civil rights, to convicted felons not presently incarcerated renders Article VII, Section 1 meaningless as to whole

classes of “persons” to whom it is meant to apply. The section states that “persons” are not entitled to vote if they have been “convicted of treason or felony.” As the Court in *Schroeder* held, an affirmative act of the Legislature or Governor is required to subsequently *restore* that “person’s” civil rights before they can vote. But the Acts purport to *never* disqualify a “person” convicted but serving a felony sentence outside of prison—they say the right is “restored” to those with felony convictions “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.” Laws 2023, ch. 62, art. 4, § 10. The Act therefore appears to conflict with itself by using the phrase “restore” to mean “never loses” for any person not sentenced to prison; “restore” means “give back, return” by its plain meaning. *Restore*, Merriam-Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/restore> (last visited Oct. 2, 2023). And it clearly conflicts with the plain meaning of Article VII, Section 1, which, by use of the phrase “restore,” did not contemplate that a person convicted of treason or felony would *never* lose the right to vote.

B. “Civil rights” means “the whole of the rights and liberties” to which Minnesotans are entitled when “not under a punishment by law for a criminal act.”

In light of the plurality of the “civil rights” at issue, the Legislature’s attempt to restore *only* the right to vote to those still under sentence (whether on parole, probation, or work release) cannot possibly satisfy the constitution’s condition of “restored to civil rights.” The question, then, is: what are the “civil rights” which must be restored? According to the Bouvier Law Dictionary, other than the civil right to vote “civil rights” includes:

The rights and freedoms accorded free individuals in the state. Civil rights are the whole of the rights and liberties that are provided by law to any person who is required to obey the laws and is not under a punishment by law for a criminal act.

“Civil Rights (Civil Liberties),” Wolters Kluwer Bouvier Law Dictionary Desk Edition (2012). The United States Supreme Court has likewise interpreted “civil rights,” plural, under federal law to mean “the rights to vote, hold office, and serve on a jury.” *Logan v. United States*, 552 U.S. 23, 28

(2007) (Ginsburg, J., for a unanimous U.S. Supreme Court); *see also State ex rel. Brady v. Bates*, 112 N.W. 1026, 1029 (Minn. 1907) (“If a violation of the act had been made a felony, then any person convicted of the offense, until restored to civil rights, would not be entitled to vote or to hold any office.”) (citing Const. art. 7, § 2);¹⁹ *United States v. Cassidy*, 899 F.2d 543, 549 (6th Cir. 1990) (“The fact that Congress used the term ‘civil rights’ . . . indicates that Congress intended to encompass those rights accorded to an individual by virtue of his citizenship in a particular state. These rights include the right to vote, the right to seek and hold public office and the right to serve on a jury.”). Even the former version of Minn. Stat. § 609.165 (2022) acknowledged both the plurality of the “civil rights” as well as the voting right’s inclusion as but one among them: “discharge shall restore the person to *all* civil rights and to full citizenship, with full right to vote *and hold office* . . .” (emphasis added).

Needless to say, there are still other “civil rights.” *See, e.g., State ex rel. Beek v. Wagener*, 80 N.W. 633, 634 (Minn. 1899) (“The rights to labor, to contract, and to engage in lawful business, when not harmful to the community, are essential attributes of free citizenship under the state and federal constitutions.”); *Thiede v. Scandia Valley*, 14 N.W.2d 400, 405 (1944) (discussing rights and privileges secured to citizens under Minn. Const. art. 1, § 2). But the Court need not compose an exhaustive list because it is clear that individuals on supervised release, probation, or work release are not restored to all their “civil rights” because they remain restricted in their civil rights despite not being physically in a jail cell. As the *Schroeder* Court observed, “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.” *Schroeder*, 985 N.W.2d at 544–45.

In addition to these civil rights discussed by courts, we also noted above some other obvious examples of civil rights suspended during a felony sentence. They include limitations on the

¹⁹ 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*, 985 N.W.2d at 536, n. 5.

constitutional right to travel, the right to hold office, the right to serve on a jury, limitations on how income may be used, and reporting requirements to parole or probation officers or supervised release agents, among others. *See supra* facts section II.

Therefore, Section 1’s “civil rights” consists of more than one civil right. Individuals on probation, parole, or work release remain restricted in their civil rights, meaning that the restoration of the single right to vote to those individuals does not restore them to “civil rights,” which is what the Constitution requires. The Court need not delineate every single “civil right” because of how the Legislature acted here; in other words, it is clear here that the Legislature has attempted to restore only *one* civil right—the right to vote. The restoring of this one civil right cannot possibly satisfy the Constitution’s requirement of restoring multiple “civil rights”—and it most certainly cannot do so when it is the very civil right whose restoration *depends* on the restoration of the others.

C. Restoration to “civil rights” requires the discharge of the whole felony sentence.

In *Schroeder*, the court addressed a question closely related to the matter before the Court here: “What is required to restore a person convicted of a felony to civil rights?” 985 N.W.2d at 537–38. 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.” *Id.* at 545. The court stated that under Article VII, 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,” *Schroeder*, 985 N.W.2d 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.” The court also correctly noted that the Legislature has broad discretion to fashion the mechanism for restoring the right to vote. But the court’s holding

did not—indeed, could not—remove the constitutional requirement that an individual convicted of a felony first be restored to *all* their civil *rights* before they could become eligible to regain their right to vote. 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 all “civil rights.” The court’s statements cannot be read to authorize the Legislature to skip the required restoration of all civil rights in order to add voters to Minnesota’s voter roll.

In response to the *Schroeder* Court’s decision, the Legislature attempted to restore the right to vote to those convicted of felonies who are still serving their sentences so long as they are no longer incarcerated for their offenses or else on work release. It certainly took an “affirmative action” in passing the Acts. But the Acts do not comply with the plain language of Section 1. For convenience, again, they state, in part:

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. 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.

Laws 2023, ch. 62, art. 4, sec. 10. This purports to restore the right to vote to those convicted of felony crimes who are on probation, supervised release, or work release.

The Acts fail to restore those convicted of felony crimes to their “civil rights”; thus, they do not satisfy the requirement of Section 1.²⁰ But the constitution is explicit in conditioning the restoration

²⁰ The Respondents will likely argue that the Legislature satisfied the *Schroeder* Court’s requirements by conditioning the restoration of the right to vote upon the occurrence of release from incarceration. But this is a disingenuous reading of *Schroeder*, one which effectively reads *Schroeder* out of context and as superseding the Constitution’s requirement that “civil rights” must be restored before the right to vote to be restored. The *Schroeder* Court’s decision only clarified the necessary means of restoration. It did not—indeed, could not—override the constitution’s requirement that the affirmative act of restoration must address “civil rights,” not the right to vote only.

of the right to vote on the restoration of “civil rights.” As discussed above, this means that *all* “civil rights” must be restored.

The Legislature itself acknowledged, by amending Minn. Stat. § 609.165, a section aptly titled “Restoration of Civil Rights,” that only the full discharge of the felony sentence restores those convicted of felonies to their “civil rights”:

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.

Laws 2023, ch. 12, § 7. 1 (italics added). Despite the legislative amendments above, this provision still provides “[t]he statutory mechanism for restoring voting rights” because it is the only “statutory mechanism to restore *civil rights* of persons convicted of a felony.” *Schroeder*, 985 N.W.2d at 533 (emphasis added), 546. Indeed, so long as individuals convicted of felony crimes remain under their sentence, it is impossible that they should be “restored to civil rights”; they must first be discharged from their sentence or pardoned.

“Discharge” is defined in Minn. Stat. 609.165, subd. 2, as occurring either “by order of the court following stay of sentence or stay of execution of sentence” or “upon expiration of sentence.” Neither probation, nor parole, nor work release satisfies either of these occurrences. That is, none of them effects the discharge of the individual’s sentence.

Indeed, discharge has been the condition for restoration of “civil rights” since the ratification of the Minnesota Constitution. With regard to the post-1858 history of legislative enactments, the *Schroeder* Court summarized their commonality as follows:

In summary, each of these legislative enactments require 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 543 (emphasis added). The court’s summary accounts for the years up to 1919, and, as the emphasized portion above highlights, completion of one’s sentence was consistently understood as the prerequisite to the restoration of one’s civil rights.

The 1867 law examined by the court stipulated that the convicted party must first “pass the whole term of his service” before becoming eligible for restoration of civil rights, *id.* 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))); the 1887 law required “an absolute release from imprisonment,” *id.* at 542 (quoting Act of Mar. 2, 1887, ch. 208, 1887 Minn. Laws 329, § 16, 334); the 1907 law required the convicted party to have “completed their sentence,” *id.* (citing Act of Mar. 12, 1907, ch. 34, 1907 Minn. Laws 40, 40–41; § 1, 40); the 1919 law required the termination of the “jurisdiction, custody or supervision” over the convicted party, Act of Apr. 17, 1919, ch. 290, 1919 Minn. Laws 299, § 1 299; *Schroeder*, 985 N.W.2d at 543. Prior to the most recent Acts, the former version of Minn. Stat. § 609.165, subd. 1, had been in place since 1963. Laws of Minnesota 1963, ch. 753, art. 1, sec. 609.165, at 1198.

Significantly, even in 1911, “when Minnesota passed a general indeterminate sentencing law and created a parole board with authority to determine when persons convicted of felonies should be released on parole or released absolutely,” discharge was still maintained as the condition for the restoration of those persons’ civil rights. *Schroeder*, 985 N.W.2d at 542, n. 9 (citing Act of Apr. 20, 1911, ch. 298, 1911 Minn. Laws 412, 412–17). As the *Schroeder* Court noted, “Importantly, the statute authorized the parole board to release a person into the community on parole, but the power to restore a person to civil rights was limited to prisoners granted *absolute release*.” *Id.* (emphasis added). This flies in the face of the current Legislature’s attempt to restore the right to vote to those still under sentence.

Thus, since the ratification of the Minnesota Constitution, the Minnesota Legislature has consistently understood that Article VII, Section 1’s restoration of “civil rights” may only be conditioned upon discharge of the felony sentence. The current Legislature’s attempt to circumvent this condition

by directly restoring the right to vote to those convicted of felony crimes must be rejected as incompatible with the Constitution's requirement.

Petitioners' interpretation is consistent with the Constitution and *Schroeder*. Petitioners agree fully with the *Schroeder* Court that the Legislature has broad discretion as to how it crafts laws related to the mechanism for restoring civil rights, such as those laws related to sentencing, probation, supervised release, and so on. Since 1993, the Legislature has seen fit to make felony sentences two-third prison time and one-third supervised release. Minn. Stat. § 244.01, subd. 8. It does not need to do so; it could cause felony sentences to end at the end of incarceration, at which time civil rights would be restored. In addition, partisans on both sides of the political spectrum have decried lengthy probation sentences,²¹ and the Legislature took action to cap them to a maximum of five (5) years in this past session. Laws 2023, ch. 52, art. 6, §§ 13–14. Those with lengthy probation sentences can also now apply for resentencing, which could cause those sentences to be terminated for time served as a result. Laws 2023, ch. 52, art. 6, § 14.

In summary, the Legislature has broad discretion to “reimagine” sentencing laws and restore convicted felons to civil rights sooner than current law provides. But the Legislature may not declare the Constitution satisfied when its actions fail to substantively satisfy it. The Constitution “is not ‘alterable when the legislature shall please to alter it.’” *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 673 (Paul H. Anderson, J., dissenting) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)). Here, the Legislature has attempted to alter the Constitution without putting an amendment to the

²¹ C.J. Ciaramella, *Minnesota Caps Length of Probation Sentences*, Reason.com, May 26, 2023, available at <https://reason.com/2023/05/26/minnesota-caps-length-of-probation-sentences/> (last visited Oct. 2, 2023); C.J. Ciaramella and Lauren Krisai, *The U.S. Probation System Has Become a Quagmire*, Reason.com, March 2023, available at <https://reason.com/2023/01/26/the-u-s-probation-system-has-become-a-quagmire/> (last visited Oct. 2, 2023).

voters. Because it may not do so, the Court should issue the writ of quo warranto enjoining Respondents' actions which are in excess of their authority under the Minnesota Constitution.

CONCLUSION

For the reasons set forth herein, Petitioners request the Court to issue the writ of quo warranto prohibiting Respondents from taking any action pursuant to the Acts. Alternatively, if the Court believes additional factfinding to be necessary, the Court should issue the writ of quo warranto with a return date for an evidentiary hearing, and then upon finding facts consistent with Petitioners' allegations in the Petition, immediately enjoin Respondents from further action consistent with the Acts.

Respectfully submitted,

Dated: October 2, 2023

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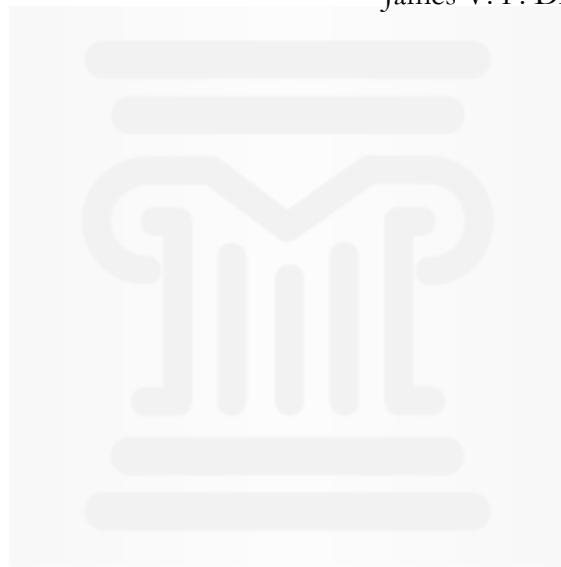
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ACKNOWLEDGMENT

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

Dated: October 2, 2023

By: /s/ James V. F. Dickey
James V. F. Dickey, #393613



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