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State of Minnesota
10/2/2023 3:06 PM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF ANOKA | TENTH JUDICIAL DISTRICT

Case Type: Other Civil

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

Petitioners,

vs.

Tom Hunt, in his official capacity as elections official for Anoka County; Steve Simon, in his official capacity as Secretary of State; Anoka County; the Office of the Minnesota Secretary of State; Shannon Reimann, in her official capacity as chief executive officer of the Minnesota Correctional Facility – Lino Lakes,

Respondents.

Court File No. 02-CV-23-3416
(Judge Thomas Lehmann)

STATE RESPONDENTS' MEMORANDUM SUPPORTING MOTION TO DISMISS

In 2023, the Minnesota Legislature exercised its discretion to do what twenty-four other states and the District of Columbia do: allow people convicted of a felony to vote when they are living in the community while on probation or supervised release. Petitioners Minnesota Voters Alliance, Mary Amlaw, Ken Wendling, and Tim Kirk now bring a quo warranto petition asking this Court to disenfranchise the approximately 55,000 people who regained their voting rights under this law. They contend that Respondents Secretary of State Steve Simon, the Office of the Secretary of State, and Department of Corrections Warden Shannon Reimann (the State Respondents) lack authority to implement the law. The Court should dismiss the petition because these contentions fail as a matter of law for two reasons. First, Petitioners lack standing because they have not suffered any injury; they merely want to prevent people from voting. Second, their claims fail on the merits because the challenged voting-restoration legislation is constitutional and the State Respondents have authority to implement it.

Filed in District Court
State of Minnesota
10/2/2023 3:06 PM

FACTS

Minnesota's constitution provides that a person convicted of a felony may not vote "unless restored to civil rights." Minn. Const. art. VII, § 1. Restoring voting rights is not automatic; rather, it requires "an affirmative act or mechanism of the government to restore the [person's] right to vote." *Schroeder v. Simon*, 985 N.W.2d 529, 534 (Minn. 2023) [hereinafter *Schroeder II*]. Exercising this authority, for over 160 years, Minnesota's legislature (as the branch intended to be responsive to changes in societal norms and values) has adjusted the requirements and processes for restoring voting rights. *See generally id.* at 541–43 (describing changes in how legislature has restored right since adoption of the constitution). For most of Minnesota's history, voting rights were restored upon completion of a felony sentence, including any term of probation, incarceration, or supervised release. *See, e.g.*, Minn. Stat. § 609.165, subd. 1 (2022).

Most recently, in 2023 the legislature restored the right to vote to a substantial number of Minnesotans. Effective June 1, Minnesota joined twenty-four other states and the District of Columbia that allow people with felony convictions to vote while on probation or on supervised release. 2023 Minn. Laws ch. 12, § 1 (to be codified at Minn. Stat. § 201.014, subd. 2a); 2023 Minn. Laws ch. 62, art. IV, §§ 10, 92 (making law effective June 1, 2023); *Restoration of Voting Rights for Felons*, NAT'L CONF. OF STATE LEGISLATURES (Apr. 6, 2023).[1] Under the new law, a person convicted of a felony has the civil right to vote (assuming the person is otherwise eligible to vote) restored when the person is not incarcerated for the offense. 2023 Minn. Laws

[1] Available at https://perma.cc/A53Y-Z5WJ.

ch. 12, § 1.[2] In other words, the person may vote when in the community on probation or supervised release.[3]

Petitioners are Minnesota Voters Alliance, a self-described "election-integrity" organization, and several of its members. (Compl. ¶¶ 26–29.) Through the years, MVA has brought numerous cases seeking to curtail the right to vote. *E.g.*, *Minn. Voters Alliance v. State*, No. A14-1585, 2015 WL 2457010 (Minn. Ct. App. May 26, 2015) (opposing online voter registration); *Minn. Voters Alliance v. Simon*, 885 N.W.2d 660 (Minn. 2016) (seeking to prevent individuals who certify eligibility to vote from voting); *Minn. Voters Alliance v. Simon*, No. 62-CV-16-5711 (Ramsey Cty. Dec. 22, 2016) (same); *Cilek v. Office of the Minn. Sec'y State*, 941 N.W.2d 411 (Minn. 2020) (seeking access to voters' protected personal data regarding challenges to voter registration, such as for felony convictions); *Minn. Voters Alliance v. State*, No. A20-0469, 2021 WL 416744 (Minn. Ct. App. Feb. 8, 2021) (challenging ability of absentee voters to certify their eligibility to vote); *Schroeder v. Simon*, 962 N.W.2d 471 (Minn. Ct. App. 2021) (seeking to intervene to defend disenfranchisement of individuals with felony convictions) [hereinafter *Schroeder I*]; *Minn. Voters Alliance v. Simon*, 990 N.W.2d 710 (Minn. 2023) (seeking to expand ballot-board members' discretion to reject absentee ballots). In Petitioners' view, "voting conduct"

[2] Petitioners correctly note that the law will affect elections this year. (Pet. ¶ C.) Indeed, a primary election already occurred on August 8. *Elections Calendar*, MINN. SEC'Y OF STATE, https://www.sos.state.mn.us/election-administration-campaigns/elections-calendar/ (last visited September 22, 2023).

[3] Probation is supervision imposed by a court as an alternative to imprisonment, but a court may revoke probation and execute the prison sentence for violating any probation conditions. Minn. Stat. §§ 609.135, subd. 1, .14 (2022). Supervised release is akin to parole. After serving a term of imprisonment, the remainder of the sentence is served in the community on supervised release, subject to conditions and to revocation of release for violating conditions. Minn. Stat. §§ 244.101, 244.05, subds. 1b, 3 (2022). The presumptive term of imprisonment is two-thirds of the executed sentence, but that term may be extended (and the supervised-release term commensurately shortened) for prison discipline. *Id.* § 244.101, subd. 1.

Filed in District Court
State of Minnesota
10/2/2023 3:06 PM

by people with felony convictions creates a "risk" to society. Andy Cilek, *Minnesota Voters Alliance Launches Historic Court Battle to Defend the Minnesota Constitution Against a Legislative Attack on Election Integrity*, MINN. VOTERS ALLIANCE (July 1, 2023) (claiming that denying voting rights "helps protect all of us from those who have a history of actively undermining the safety and welfare of the community").[4]

Following enactment of the voting-rights-restoration legislation, Petitioners sought a writ of quo warranto against the State Respondents. (Pet. 1.) Petitioners seek to have the State Respondents identify by what authority they are implementing the law. (*See generally id.* ¶ 23.) Recognizing the obvious (that this statute and other election laws give the State Respondents express authority to implement the legislative changes), Petitioners frame their claim as a constitutional one: according to Petitioners, the legislature cannot restore the right to vote unless all civil rights are restored, and therefore any action by the State Respondents based on such statutes is done without authority.

ARGUMENT

The Court should dismiss the petition. Statutes are presumed constitutional, and thus Minnesota courts exercise their power to declare statutes unconstitutional "with extreme caution and only when absolutely necessary." *Fletcher Props., Inc. v. City of Minneapolis*, 947 N.W.2d 1, 9 (Minn. 2020). The party challenging a statute bears the burden of proof. *Sheridan v. Comm'r of Revenue*, 963 N.W.2d 712, 716 (Minn. 2021). When (as here) the party makes a facial challenge, the party bears a "heavy burden" to prove that the statute is unconstitutional in all applications. *Carlson v. Simon*, 888 N.W.2d 467, 470 n.3 (Minn. 2016). Here, the Court need not even reach the constitutional question, because Petitioners lack standing to bring their petition. And even if

[4] Available at https://perma.cc/TC99-3YJG.

Filed in District Court
State of Minnesota
10/2/2023 3:06 PM

they had standing, the Minnesota Constitution allows the legislature to restore the right to vote without restoring all civil rights. As a result, the State Respondents have authority to implement the new legislation.

I. PETITIONERS LACK STANDING TO BRING THIS CASE.

For the Court to have jurisdiction over Petitioners' claim, Petitioners must establish standing. *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 645 n.7 (Minn. 2012); *see also State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. Ct. App. 2007) (noting jurisdictional requirements such as standing apply in quo warranto cases). But in this case, Petitioners do not meet the requirements for standing. They have no individualized injury and do not satisfy the requirements for taxpayer standing. Therefore, the Court must dismiss their petition.

A. Petitioners Have No Injury That Is Distinct From the General Public.

Absent a statutory grant, a party must suffer an "injury-in-fact" to establish standing. *Sec. Bank & Trust Co. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W.2d 491, 496 (Minn. 2018). That injury must be "special or peculiar" to that individual, as opposed to a "damage or injury sustained by the general public." *Channel 10, Inc. v. Indep. Sch. Dist. No. 709*, 215 N.W.2d 814, 820 (Minn. 1974).

Petitioners have no such injury and do not claim one. Indeed, other than being identified as parties, Petitioners' names do not appear in the petition at all. (Pet. 1, ¶¶ 26–29.) Certainly, Petitioners do not allege any supposed injury specific to them as opposed to the general public. Because they have no injury, the Court should dismiss the petition.

B. Taxpayer Standing Is Unavailable to Petitioners in This Case.

In apparent recognition of this lack of specific injury, the individual petitioners contend they have taxpayer standing (and MVA contends it has associational standing due to those individuals' taxpayer standing) to bring a petition for a writ of quo warranto. (Pet. ¶¶ 40–41.) But

Filed in District Court
State of Minnesota
10/2/2023 3:06 PM

Petitioners do not meet the requirements for taxpayer standing; and even if they did, taxpayer standing is unavailable in quo warranto cases.[5]

1. Petitioners Are Collaterally Estopped from Claiming Taxpayer Standing in This Case.

Petitioners are collaterally estopped from making taxpayer standing arguments in this case because they previously raised and lost identical arguments in a prior case that directly involved restoring voting rights after a felony conviction. In this case, Minnesota Voters Alliance asserts taxpayer standing in litigation involving when those convicted of a felony receive voting rights. But the organization unsuccessfully claimed taxpayer standing in prior litigation on that same issue. It, along with its members, are thus collaterally estopped from rehashing those arguments here.

Collateral estoppel applies when: (1) the issue is identical to one in a prior adjudication, (2) the adjudication was final on the merits, (3) the party to be estopped was a party to or in privity with a party in the prior adjudication, and (4) the party to be estopped was given a full and fair opportunity to be heard on the issue. *Husten v. Schnell*, 969 N.W.2d 851, 859 (Minn. Ct. App. 2021). A nonparty is in privity with a party when the nonparty has its "interests . . . represented by a party to the action." *Margo-Kraft Distribs., Inc. v. Minneapolis Gas Co.*, 200 N.W.2d 45, 48 (Minn. 1972). Applying similar reasoning, federal courts have held that when an association brings claims on behalf of its members, a decision may collaterally estop the members so as to prevent the association from "evad[ing] preclusion continually by averring that unidentified members are not bound and bringing successive suits." *Midwest Disability Initiative v. JANS Enters., Inc.*, 929

[5] The State Respondents do not concede that quo warranto is even an appropriate vehicle by which to challenge the constitutionality of a statute. But to promote a speedy resolution of this matter that will quickly dispel the confusion regarding voter rights that Petitioners have created by bringing this case, State Respondents have elected not to raise that argument.

Filed in District Court
State of Minnesota
10/2/2023 3:06 PM

F.3d 603, 609 (8th Cir. 2019); *see also Final Exit Network, Inc. v. Ellison*, 370 F. Supp. 3d 995, 1018 (D. Minn. 2019).

The requirements of collateral estoppel are met here. In 2020, individuals who were disenfranchised under the prior law sued the Secretary of State, alleging they were constitutionally entitled to vote while on probation or supervised release. *Schroeder I*, 950 N.W.2d at 74**.** The Minnesota Supreme Court ultimately upheld the law. *Schroeder II*, 985 N.W.2d at 532. But before the district court, Minnesota Voters Alliance sought to intervene as a party, arguing that it had taxpayer standing. *Schroeder I*, 950 N.W.2d at 78 n.5**.** The district court denied intervention, holding the case "has nothing to do with money, let alone taxpayer funds." *Id.* The Minnesota Court of Appeals affirmed, holding that litigation regarding the reinstatement of voting rights after a felony criminal conviction is not litigation regarding the expenditure of state funds. *Id.* at 78. This case therefore involves the same issue: Minnesota Voters Alliance's and its members' ability, as an association of taxpayers, to litigate the restoration other people's voting rights following a felony conviction. That claim of taxpayer standing received a full and fair hearing in *Schroeder I*, and the court of appeals issued a final adjudication on the merits of the issue (which MVA then unsuccessfully sought review of in the Minnesota Supreme Court). Order, *Schroeder I*, 950 N.W.2d 70 (No. A20-0272). Collateral estoppel also applies to the individual petitioners because they are in privity with MVA. As Petitioners acknowledge, "MVA advocates for the interests asserted by [its members]"—including the individual petitioners, who are "long-time supporters and volunteers." (Pet. ¶ 26.)

2. Petitioners Do Not Meet the Requirements for Taxpayer Standing in This Case.

Moreover, even if collateral estoppel did not apply, *Schroeder I* is binding precedent from the Minnesota Court of Appeals. Its holding—in a case specifically involving felony

Filed in District Court
State of Minnesota
10/2/2023 3:06 PM

disenfranchisement—that taxpayer status does not provide a basis for standing to challenge government actions when expenditures are only incidental applies with equal force here.

Taxpayers have standing to challenge purportedly illegal expenditures of state funds. *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977). But that holding has been "limited . . . closely to its facts," such that taxpayer standing is only available to petitioners challenging "a specific disbursement." *Schroeder v. Minn. Sec'y of State Steve Simon*, 950 N.W.2d 70, 78 (Minn. Ct. App. 2020). The fact that state funds have been used to pay for an allegedly unconstitutional act is insufficient to meet this requirement; instead, the expenditure itself must be an unlawful "specific disbursement." *See id.*

Even if Petitioners were not collaterally estopped by their prior appeal, that court of appeals' decision is still binding precedent. *State v. Chauvin*, 955 N.W.2d 684, 689 (Minn. Ct. App. 2021). And Petitioners' taxpayer standing arguments are precisely the ones that the court rejected in that decision. Indeed, the court specifically stated that litigating "the reinstatement of voting rights after a felony criminal conviction" was not litigating a disbursement and that it was therefore not subject to a taxpayer-standing challenge. *Schroeder I*, 950 N.W.2d at 78.

More generally, in reviewing taxpayer standing jurisprudence, *Schroeder I* recognized that cases granting taxpayer standing involved challenges to direct expenditures, as opposed to substantive programs that only incidentally or indirectly involved expenditures. *See id.* (collecting cases finding taxpayer standing in challenges to "expenditure of tax revenue," "legality of the expenditure of state funds," and "increases in legislative per diem").

Here, the expenditures on which Petitioners base their standing are merely incidental to the substantive law at issue. Put another way, if the cost of registering voters and counting votes were free, Petitioners could not even theoretically have standing because they would have no alleged

Filed in District Court
State of Minnesota
10/2/2023 3:06 PM

injury. But the mere fact that all state actions require the expenditure of some state funds (such as for personnel salaries, changes to I.T. systems, or a host of other activities) does not give Petitioners standing to challenge every state action.

3. Taxpayer Status Is Not a Basis for Standing in Quo Warranto Actions.

Petitioners do not satisfy the requirements for taxpayer standing—but even if they did, the Court would still lack jurisdiction because taxpayer status is not a basis for standing in quo warranto actions.

Quo warranto is an ancient writ, dating to at least 1218. Helen M. Cam, *The Evolution of the Mediaeval English Franchise*, 32 SPECULUM J. OF MEDIAEVAL STUD. 427, 439 (1957). In historical England, only the Attorney General (acting on behalf of the Crown) and the Master of the Crown (on behalf of a private individual) could obtain it. *State ex rel. Young v. Village of Kent*, 104 N.W. 948, 950 (Minn. 1905). For a time, both could seek the writ without the leave of any other party, but abuses by the Master of the Crown led to a requirement that he obtain leave of the court before proceeding; the Attorney General, however, retained the unfettered right to proceed without leave. *Id.*

This distinction carried over into American law and Minnesota. For example, the Minnesota Supreme Court recognized that the Attorney General has inherent authority to seek a writ of quo warranto. *Id.* at 952. But the court also held that whether a private relator should be "permitted to use the name of the state for the purpose of inquiring by what warrant an individual holds and exercises a public office . . . is subject to the regulated discretion of the court." *Id.* at 952 (quoting *State v. Brown*, 5 R.I 1, 5 (1857)). The court specifically identified an individualized interest in the case as a factor to consider in the exercise of that discretion, stating that courts should not "allow the name of the state to be used, and its own time to be occupied . . . merely to

Filed in District Court
State of Minnesota
10/2/2023 3:06 PM

feed the grudge of a relator who has no interest in the matter of inquiry." *Id.* (quoting *Brown*, 5 R.I. at 5.)

The supreme court made the point that private individuals were not entitled to seek a writ of quo warranto without an individualized interest even more starkly in *In re Barnum*, 8 N.W. 375 (Minn. 1881). There, a private petitioner sought the writ—without the consent of the Attorney General—to test the respondent's right to the office of lieutenant governor. *Id.* at 375. The court held that the relator's allegations, even if true, did not entitle him to the writ unless he could show that he was the one injured by the unauthorized action—that is, that the relator was the one properly entitled to the office. *See id.* This was so despite the fact that, if the respondent improperly held the office of lieutenant governor, the state was certainly making improper payments to him.

Since *Barnum* and *Village of Kent*, Minnesota courts have expanded the writ to encompass not just whether an office is properly held, but also whether an official's actions exceeded the official's authority. *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 176 (Minn. 2020). This state's courts, however, have never held that quo warranto is proper when the petitioner's only interest in the case is as a taxpayer. Expanding the law to permit taxpayer standing for quo warranto actions would undercut the status of the writ as an extraordinary remedy.

Because taxpayer standing is not available in a quo warranto action, and Petitioners allege no other basis for standing, Petitioners lack standing to bring their petition. Moreover, without their quo warranto claim, Petitioners are left with a declaratory judgment action that lacks any underlying right. But "[a] party seeking a declaratory judgment must have an independent, underlying cause of action based on a common-law or statutory right." *Alliance for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 916 (Minn. Ct. App. 2003). Accordingly, that claim must also be dismissed.

Filed in District Court
State of Minnesota
10/2/2023 3:06 PM

Because Petitioners do not have standing, the Court lacks jurisdiction to hear their claims. Accordingly, the Court should dismiss the petition.

II. THE MINNESOTA CONSTITUTION DOES NOT PROHIBIT THE LEGISLATURE FROM EXTENDING VOTING RIGHTS TO MINNESOTANS WHO ARE UNDER CORRECTIONAL SUPERVISION IN THE COMMUNITY.

If the Court reaches the merits, it should dismiss the petition. The Minnesota Constitution allows those convicted of a felony to vote when they are "restored to civil rights." Minnesota Const. Art. VII, § 1. This phrase does not require restoration of "all" civil rights for a person to vote in an election for myriad reasons—including the plain meaning of this phrase as it was understood by the delegates to the state constitutional convention, Minnesota Supreme Court interpretations of the phrase, discussion at the constitutional convention of the phrase's intent, historical practice in Minnesota, and practices in other states with the same or similar language. Accordingly, Petitioners' claims are meritless.

A. "Restored to Civil Rights" in Article VII Unambiguously Means "Restored to Voting Rights."

The Minnesota Supreme Court has already indicated that "restored to civil rights" means "restored to voting rights." Addressing a prior voting-rights case brought by Minnesota Voters Alliance, the court described the laws that govern voter registration and eligibility to vote. *Minn. Voters Alliance v. Simon*, 885 N.W.2d 660, 662 (Minn. 2016). After quoting the "restored to civil rights" language, the court's very next sentence recognized that "the Legislature has identified the circumstances under which the voting rights of felons and wards are restored." *Id.* The court made no suggestion that the constitution limits selection of those circumstances or requires "all" rights to be restored, as Petitioners suggest. This lack of other discussion clearly indicates the court equates restoration of the right to vote with the restoration referenced in the constitution.

Filed in District Court
State of Minnesota
10/2/2023 3:06 PM

Moreover, even if the court had left the door open as to the meaning of "restored to civil rights," an independent analysis confirms it means "restored to voting rights." Courts interpret the Minnesota Constitution in the same manner as they do statutes: by beginning with determining whether the language is ambiguous. *Shefa v. Ellison*, 968 N.W.2d 818, 825 (Minn. 2022). If the language is unambiguous, then it is effective as written and the Court does not apply any other rules of construction. *Id.*

In determining whether language is ambiguous, courts apply rules of grammar and consider common and approved usage when the language was adopted. *See* Minn. Stat. § 645.08(1) (2022); *State v. Hartmann*, 700 N.W.2d 449, 454 (Minn. 2005). Legal dictionaries from the 1850s, the period during which the Minnesota Constitution was drafted and ratified, do not define "civil rights;" the closest term they contain is "civil."[6] *Bouvier's Law Dictionary* 231 (6th ed. Phila., Childs & Peterson 1856) (defining "civil" in part as "indicat[ing] a state of society reduced to order and regular government"). Similarly, "restored to civil rights" does appear in scattered sources from around the time period, but the State Respondents have been unable to locate any formal definition. One such appearance of the phrase, however, is in a compilation of English laws from the Magna Carta to 1841. 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).[7] It describes a

[6] The first edition of *Black's Law Dictionary*, published thirty-four years after the Minnesota Constitution was adopted, defined "civil rights" to mean "[r]ights appertaining to a person in virtue of his citizenship in a state or community. . . . Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the constitution, and by various acts of congress made in pursuance thereof." *Black's Law Dictionary* 208 (1st ed. Saint Paul, West Pub. Co. 1891). And "civil rights" first appears as a definition in *Bouvier's Law Dictionary* in 1883, with a definition identical to the second one quoted from *Black's Law Dictionary*. *Bouvier's Law Dictionary* 319 (15th ed. Phila., J.B. Lippincott & Co. 1883).

[7] Available at https://www.google.com/books/edition/A_Digest_and_Index_with_Chronological_Ta/Rk8DAAAAQAAJ.

statute that imposed the death penalty on individuals found in England before having completed their fourteen-year term of servitude in America as "[f]elon transported not to be restored to civil rights until the expiration of his term." *Id.*; *see also* Transportation Act 1768, 8 Geo. 3 c. 15 (Gr. Brit.).[8] That the description needed to note that rights were not restored until after a servitude term was complete suggests that contemporary individuals understood that being "restored to civil rights" before a servitude term was complete—that is to say, before *all* civil rights were restored—was a possibility.

In light of this lack of definition, the best evidence of what "restored to civil rights" meant to the convention's delegates is how the phrase was used by them at Minnesota's constitutional conventions.[9] During discussions of the text that would ultimately become Article VII, Section 1, delegates debated whether disenfranchisement should be permanent or whether they should leave a path for a pardon or legislative act to restore voting rights *Debates & Proceedings of the Constitutional Convention for the Territory of Minnesota* 540 (George W. Moore, Saint Paul, 1858) [hereinafter *Debates & Proceedings*].[10] For example, a delegate justified his opposition to striking language giving the governor or the legislature the power to "restore any such person to civil rights" on the basis that "where there is a Constitutional provision[ ] that no person shall vote at any election who shall have been convicted of a particular offense, it is not in the power of the Legislature or Governor to restore him." *Id.* at 540–41.

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[8] Available at https://archive.org/details/statutesatlarge26britgoog/page/n39.

[9] Because of the contentious political climate, Democratic and Republican delegates held separate meetings during the constitutional convention and then resolved differences through a conference committee. *State v. Lessley*, 779 N.W.2d 825, 838 (Minn. 2010). The conventions' debates were separately published. *See id*. at 838–39. Only the Republican delegates substantively discussed the provision at issue in this case. *Schroeder II*, 985 N.W.2d at 539 ("The Democratic delegates spent no time debating the language prohibiting persons convicted of a felony from voting.").

[10] Available at https://perma.cc/G322-TSXD.

Filed in District Court
State of Minnesota
10/2/2023 3:06 PM

This discussion makes clear that, to the delegates, "restoration of civil rights" meant "restoration of voting rights." Notably lacking is any concern that striking the restoration provision would have impacted any other civil rights. If, as Petitioners claim, the delegates understood "restored to civil rights" to mean the restoration of all rights, one would expect that they would have also raised those rights during this discussion. That they did not do is thus strong evidence that they understood "restored to civil rights" to mean restoration solely of the right to vote.

This interpretation of "restored to civil rights" also comports with the dictionary definition of "civil" from the same time period: "[Civil] is used in contradistinction to *barbarous* or *savage*, to indicate a state of society reduced to order and regular government; thus we speak of civil life, civil society, civil government, and civil liberty." *Bouvier's Law Dictionary* 231. Specifically, the definition's focus on society and government indicate that "civil rights" refers to the right to participate in that government through the act of voting.

Schroeder II, upon which Petitioners rely to justify their contorted reading of the Minnesota Constitution, further supports this interpretation. In that case, the court repeatedly held that it is the legislature's prerogative to determine when the right to vote is restored under the constitution. *Id.* at 534, 538, 543–46, 548, 554, 556. For example, the court expressly held that the "affirmative act [restoring voting rights] could be . . . a legislative act that generally restores the right to vote upon the occurrence of certain events." 985 N.W.2d at 545. The court subsequently emphasized the legislature's "broad, general discretion to choose a mechanism for restoring the entitlement and permission to vote to persons convicted of a felony." *Id.* at 556. The supreme court has therefore already rejected Petitioners' argument that the legislature was required to retain in perpetuity Petitioners' preferred mechanism—completion of sentence—as the means by which voting rights are restored.

Filed in District Court
State of Minnesota
10/2/2023 3:06 PM

B. If "Restored to Civil Rights" Is Ambiguous, the Court Should Resolve That Ambiguity in Favor of the State Respondents.

Precedent and the plain meaning establish that "restored to civil rights" means "restored to voting rights." But even if the Court believes that past cases or the language leave some ambiguity, the tools for resolving that ambiguity uniformly support the State Respondents' interpretation.

When constitutional text is ambiguous, courts resolve the ambiguity "to give effect to the intent of the constitution as indicated by the framers and the people who ratified it." *Kahn v. Griffin*, 701 N.W.2d 815, 825 (Minn. 2005); *see also Sheridan*, 963 N.W.2d at 719. This requires reviewing the circumstances when the constitution was adopted in order to determine "the mischief addressed and the remedy sought by the particular provision." *Kahn*, 701 N.W.2d at 825. The Court also gives great weight to constructions "adopted and followed in good faith by the legislature and people for many years." *Clark v. Pawlenty*, 755 N.W.2d 293, 306 (Minn. 2008).

The discussion from the 1857 constitutional convention reinforces that the delegates intended the legislature to have broad discretion in deciding when and how people with felony convictions have their voting rights restored. As initially proposed, the language prohibited individuals from voting if the individual had been convicted of treason or any felony, voted or attempted to vote more than once in any election, or procured or induced any person to vote illegally. *Debates & Proceedings* 540. Discussion ensued due to concerns these prohibitions were "rather a sweeping piece of legislation," "very stringent," and "would work a great hardship." *Id.* Based on these concerns, one delegate advocated for striking the section entirely on the basis that the prohibitions were "a matter wholly within the province of the Legislature." *Id.* Although the convention elected not to do so, it clearly recognized this broad legislative prerogative. Following the decision not to strike the section entirely, another delegate made a successful motion that—initially—removed the legislature's ability to restore individuals to civil rights. *Id.* Immediately

afterward, however, the delegates amended the amendment to put the restoration authority back in. *Id.* at 540–41. Based on this discussion, it is clear that the "mischief addressed" by the restoration provision was the hardship that would result from the loss of voting rights, not other civil rights. And to avoid that result, the "remedy sought" was to vest the legislature with broad authority to determine the means by which voting rights are restored.

Turning to longstanding interpretations, historical practice in the 166 years since the Minnesota Constitution was adopted also indicates that restoring the right to vote does not require restoration of all civil rights. For example, in 1911, the legislature directed that upon final discharge from parole, the Board of Parole should make a recommendation to the governor as to whether individuals should be "restored to *any* of the rights and privileges of citizenship," and based on that recommendation the governor had discretion to restore "any or all" of the rights. Minn. Stat. § 9275 (1913) (emphasis added). Thus, over 100 years ago, state law provided that voting rights could be restored even if not all civil rights were restored. Similarly, since 1975 Minnesota has restricted the firearm-possession rights of individuals convicted of crimes of violence. *Id.* § 624.713, subd. 1(b) (Supp. 1975). At the time of enactment, this prohibition was effective for ten years *after* "the person has been restored his civil rights." *Id.* Again, there was an explicit recognition that voting rights would be restored even if not all civil rights (such as the right to firearm possession) were restored. And this recognition continued. Indeed, under the predecessor re-enfranchisement law that restored voting rights after completion of sentence, people who regained voting rights did not automatically regain firearm rights. *See id.* §§ 609.165, subd. 1, 624.173, subd. 1(10)(i) (2022). The Minnesota Supreme Court has rejected constitutional challenges with significantly shorter histories of legislative interpretation. *See Clark*, 755 N.W.2d at 306 (citing 59-year legislative understanding of constitutional provision).

The Minnesota's constitution use of "restored to civil rights" to refer to the right to vote is consistent with how that phrase has been interpreted in other states' constitutions. Many other states have similar provisions in their constitutions that allow for the restoration of civil rights following a felony conviction. Of those states, seven have explicitly recognized that voting rights may be restored under "restored to civil rights" language even if not all civil rights are restored. Nev. Const. art. 2, § 1 ("restored to civil rights"); Nev. Rev. Stat. § 213.157 (2021); N.D. Const. art. 2, § 2 ("civil rights are restored"); N.D. Cent. Code § 12.1-33-01 (2022); Wash. Const. art. VI, § 3 ("restored to their civil rights"); Wash. Rev. Code § 29A.08.520(1) (2022); Ky. Const. § 145 ("restored to their civil rights"); *Anderson v. Commonwealth*, 107 S.W.3d 193, 196 (Ky. 2003) ("Governor['s] . . . order was specifically limited to restoring [individual's] rights to vote and hold office. It was well within the Governor's prerogative to so limit the rights restored."); Neb. Const. art. VI, § 2 ("restored to civil rights"); *Ways v. Shively*, 646 N.W.2d 621, 626 (Neb. 2002) ("[T]he restoration referred to in Neb. Const. art. VI, § 2, is the restoration of the right to vote."); Wis. Const. art. III, § 2 ("restored to civil rights"); *State ex rel. Law Enf't Standards Bd. v. Vill. of Lyndon Station*, 295 N.W.2d 818, 827 (Wis. Ct. App. 1980) ("The clause 'unless restored to civil rights' as used in the constitution is generally understood to refer to the right to vote.") (quoting E.E. Brossard, *Restoration of Civil Rights* 1946 WIS. L. REV. 281, 288–89 (1946)); Fla. Const. art. VI, § 4 (1968)[11] ("restoration of civil rights"); Fla. R. Exec. Clemency § 4(E) (1975) ("Restoration of civil rights restores to the applicant *all or some* of the rights of citizenship . . . ." (emphasis added)). And no state has taken the contrary position, urged by Petitioners, that the phrase "restored to civil rights" in an elections clause of a constitution means restored to all civil rights. This

[11] Florida has since amended its constitution to provide for the automatic restoration of voting rights upon completion of sentence. Fla. Const. art. VI, § 4.

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State of Minnesota
10/2/2023 3:06 PM

uniform interpretation throughout the country further underscores that "restored to civil rights" refers to restoration of voting rights.

For all the foregoing reasons, Petitioners' claim that the legislature cannot restore the right to vote unless it restores all civil rights is unfounded. Consequently, the actions that the State Respondents have taken and are statutorily required to take pursuant to such restoration have ample legal authority. The Court should therefore dismiss the petition.

CONCLUSION

The Court lacks jurisdiction because Petitioners lack standing. Alternatively, Petitioners' claims fail on the merits because the constitution gives the legislature the authority to determine when voting rights are restored. For these reasons, the State Respondents respectfully request that the Court dismiss the petition.

Dated: October 2, 2023

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/**Allen Cook Barr**
ALLEN COOK BARR
Assistant Attorney General, Atty. Reg. # 0399094

NATHAN J. HARTSHORN
Assistant Attorney General, Atty. Reg. # 0320602

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2134
(651) 757-1252 (Voice)
(651) 297-1235 (Fax)
nathan.hartshorn@ag.state.mn.us
allen.barr@ag.state.mn.us

ATTORNEYS FOR RESPONDENTS
STEVE SIMON, OFFICE OF THE
MINNESOTA SECRETARY OF STATE,
AND SHANNON REIMANN

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MINN. STAT. § 549.211 ACKNOWLEDGMENT

The parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed.

Dated: October 2, 2023

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/**Allen Cook Barr**
ALLEN COOK BARR
Assistant Attorney General
Atty. Reg. No. 0399094

NATHAN J. HARTSHORN
Assistant Attorney General
Atty. Reg. No. 0320602

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2134
(651) 757-1252 (Voice)
(651) 297-1235 (Fax)
nathan.hartshorn@ag.state.mn.us
allen.barr@ag.state.mn.us

ATTORNEYS FOR RESPONDENTS
STEVE SIMON, THE OFFICE OF THE
MINNESOTA SECRETARY OF STATE,
AND SHANNON REIMANN

|#5529996