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State of Minnesota
10/16/2023 4:08 PM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF ANOKA | TENTH JUDICIAL DISTRICT

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

Petitioners,

v.

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,

Jennifer Schroeder, an individual; and Elizer Eugene Darris, an individual,

[Proposed] Intervenor-Respondents.

Case Type: Civil
File No. 02-cv-23-3416
The Honorable Thomas R. Lehmann

PROPOSED INTERVENOR-RESPONDENTS' OPPOSITION TO ISSUANCE OF THE WRIT OF QUO WARRANTO

INTRODUCTION

The right to vote is the cornerstone of our constitutional democracy and unequivocally recognized as a foundational and fundamental right. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

Indeed, Minnesota has a long tradition of vigorously safeguarding the franchise and protecting the right to vote:

> The right to vote on a basis of reasonable equality with other citizens is a fundamental and personal right essential to the preservation of self-government. Fundamental rights may be lost by dilution as well as by outright denial. To whatever extent a citizen is disinfranchised by denying him reasonable equality of representation, to that extent he endures taxation without representation and the democratic process itself fails to register the full weight of his judgment as a citizen. The importance of the franchise right is recognized by the Bill of Rights in Minn. Const. art. 1, s 2, M.S.A., and the principle of equality of representation has been preserved with respect to the legislature, art. 4, s 2.

State ex rel. S. St. Paul v. Hetherington, 61 N.W.2d 737, 740 (Minn. 1953). Minnesota has long tasked the courts with carefully protecting the right to vote from infringements of all kinds. "It is undisputed that the right to vote is a fundamental right under both the federal and state constitutions, and under both constitutions any potential infringement is examined under a strict scrutiny standard of review." *Kahn v. Griffin*, 701 N.W.2d 815, 832 (Minn. 2005).

Notwithstanding these fundamental constitutional principles and the need for courts to protect the right to vote in our constitutional system, the Petition requests that this Court take the extraordinary and extreme measure of striking down a state law that extends the franchise to an estimated 55,000 Minnesotans.[1] To be clear, Petitioners are asking this Court to disenfranchise tens of thousands of Minnesotans, including stripping the right to vote from thousands of people of color in this state who were disproportionately disenfranchised by the previous statutory scheme. Petitioners' effort to use the Court as an instrument to disenfranchise Minnesotans seeks to upend the role of the courts as the ultimate institutional safeguard and guarantor of voting rights.

[1] January 11, 2023 meeting of the House Elections Finance and Policy Committee, available at https://www.house.mn.gov/hjvid/93/896058 at 43:36.

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

Petitioners have no sound legal basis to seek such an unprecedented act of judicial activism in their effort to disenfranchise voters. Petitioners do not merely attempt to uphold preexisting legislative restrictions on who may vote. Instead, relying on a tortured reading of the Minnesota Supreme Court's very recent decision in *Schroeder v. Simon*, 985 N.W.2d 529 (Minn. 2023), Petitioners seek to strip away the fundamental right to vote of over *thousands* of their fellow Minnesotans—a right expressly restored to those citizens by the Legislature, upon legal authority recognized by the court in *Schroeder*. Failing to identify any concrete injury to themselves save for the alleged expenditure of taxpayer funds to support efforts to implement the amended Minn. Stat. § 201.014, Petitioners seek to disenfranchise neighbors, coworkers, mothers, fathers, brothers, sisters, friends, and fellow citizens and deprive them of their fundamental right to choose the legislators who will make the laws all Minnesotans must live under. For the reasons set forth in further detail below, the Court should quickly and summarily reject the arguments in Petitioners' Motion for a Writ of Quo Warranto (the "Petition").

FACTUAL BACKGROUND

Article VII of the Minnesota Constitution was drafted and approved by Minnesotans with the State's first Constitution in 1857. Its express purpose was to enshrine protection of voting rights in the Constitution. Following amendments over time to expand the franchise to achieve universal suffrage, Article VII broadly protects the right to vote: "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." Minn. Const. art. VII, § 1.

Article VII's broad guarantee of the fundamental right to vote is subject to specific, limited exceptions. Other than those persons not meeting thresholds for age, duration of residency, or

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

citizenship, the only persons not entitled to vote under the state constitution are: "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." Minn. Const. art. VII, § 1. That language has been unaltered since ratification of the Constitution, and there is no record that it was considered, justified, explained, or debated during the 1974 process to modernize the Constitution's language or during any of the Article VII amendments.

In 1962, the Minnesota State Legislature passed a law stating that "all civil rights" for people convicted of felonies are automatically restored once a criminal sentence has been discharged:

> 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.

Minnesota Statute § 609.165, subd. 1 (1962).

In 2020, Proposed Intervenor-Respondents Jennifer Schroeder and Elizer Eugene Darris—each of whom have been convicted of a felony but now live in the community—filed a lawsuit against the State of Minnesota challenging the constitutionality of Minn. Stat. § 609.165, subd. 1. They specifically argued that Minn. Stat. § 609.165, subd. 1 was unconstitutional because, among other things, the Minnesota Constitution provides that civil rights—including the right to vote—are automatically restored once a person convicted of a felony returns to the general community, not upon discharge of their criminal sentence. That lawsuit made its way to the Minnesota Supreme Court. *Schroeder*, 985 N.W.2d 529.

On February 15, 2023, the Minnesota Supreme Court upheld Minn. Stat. § 609.165, subd. 1. Critically, the Minnesota Supreme Court expressly held that the legislature has broad discretion to determine how civil rights and the right to vote are restored following a felony conviction. In

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

fact, the Supreme Court explained that a government act restoring civil rights—or a government act restoring civil rights piecemeal, such as the singular right to vote—could take various forms:

> **[W]e conclude that the rule under Article VII, Section 1, of the Minnesota Constitution is as follows: 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.** For instance, that affirmative act could be an absolute pardon that nullifies the felony conviction upon which the constitutional deprivation of the right to vote is based **or a legislative act that generally restores the right to vote upon the occurrence of certain events**.

Id. at 545 (emphasis added). Thus, the Minnesota Supreme Court stated precisely what Article VII, Section 1 means. The government must merely take "some affirmative act" to restore a person's right to vote. The "government" (or more specifically, here, the legislature and governor) did just that following the *Schroeder* decision.On March 3, 2023, Governor Tim Walz signed into law the Re-enfranchisement Statute, and it became effective July 1, 2023. The Re-enfranchisement Statute amended Minnesota Statutes 2022, section 201.014 by adding subdivision 2.a. below:

> 201.014 ELIGIBILITY TO VOTE.
>
> Subd. 1. Requirements. Except as provided in subdivision 2, an individual who meets the following requirements at the time of an election is eligible to vote. The individual must:
> (1) be 18 years of age or older;
> (2) be a citizen of the United States; and
> (3) maintain residence in Minnesota for 20 days immediately preceding the election.
>
> Subd. 2. Not eligible. The following individuals are not eligible to vote. Any individual:
> (1) convicted of treason or any felony whose civil rights have not been restored;
> (2) under a guardianship in which the court order revokes the ward's right to vote; or
> (3) found by a court of law to be legally incompetent.
>
> **Subd. 2a. Felony conviction; restoration of civil right to vote.** 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

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

> individual is later incarcerated for the offense, the individual's civil right to vote is lost only during that period of incarceration.
>
> Subd. 3. Penalty. Any individual who votes who knowingly is not eligible to vote is guilty of a felony.

Laws of Minnesota 2023, ch. 12. Thus, the Re-enfranchisement Statute tied the right to vote to not being incarcerated, so voting rights are restored upon release from incarceration and re-entering life in the community.

Further, on May 24, 2023, Government Walz signed into law House File 180 adding the following clarifying language to Subdivision 2a.: "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 of Minnesota 2023, ch. 62, art. 4, sec. 10.

The Re-enfranchisement Statute is estimated to impact approximately 55,000 Minnesotans.[2] While considering the Re-enfranchisement Statute, the Minnesota Legislature received testimony from organizations such as the African American Leadership Forum, which advised the House Elections Finance and Policy Committee that while Black Americans comprised 12% of the U.S. adult population, they comprised 33% of the prison population.[3] Other supporters of HF28 noted Minnesota's history of race-based criminal punishment and that re-enfranchising felons would work to offset the bias present in the criminal justice system.[4] The House Elections Finance and Policy Committee, in its January 11, 2023 meeting, Dr. Chris Uggen from the University of Minnesota noted that restoring the franchise to felons would offset racial disparity—

[2] Brian Bakst, "Minnesota Returns Voting Power to Thousands. The question is whether they'll use it." https://www.npr.org/2023/08/27/1195632138/minnesota-felon-voting-rights-restoration.
[3] https://www.house.mn.gov/comm/docs/PvJrZwrMYEa-zum5W4xMaw.pdf
[4] https://www.house.mn.gov/comm/docs/fKISIzw-JEqhG6hQDAu2Tg.pdf

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

his testimony identified 6% of Black and Native American Minnesotans were disenfranchised, a rate five times greater than the rate of white Minnesotans who were disenfranchised.[5]

As of July 1, 2023, Respondents have begun taking actions expressly authorized by the legislature to implement the Re-enfranchisement Statute such as amending the voter registration application, developing a single publication about the voting rights of people who have been convicted of a crime, amending the Voter's Bill of Rights, amending the voter certificate, and providing notice of the change in voter eligibility. *See* Laws of Minnesota 2023, ch. 12. The legislature approved a one-time appropriation of $14,000 in the fiscal year 2023 from the general fund of the Secretary of State to support the work necessary to implement the Re-enfranchisement Statute. *Id.*

ARGUMENT

I. THE MINNESOTA SUPREME COURT'S INTERPRETATION OF ARTICLE VII, SECTION 1, EXPRESSLY RECOGNIZING THE LEGISLATURE'S RIGHT TO RESTORE VOTING RIGHTS TO PERSONS LIVING IN THE COMMUNITY FOLLOWING FELONY CONVICTIONS, IS BINDING ON THIS COURT.

The petition for writ of quo warranto is a special proceeding designed to correct the unauthorized assumption or exercise of power by a public official or corporate officer. *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 318 (Minn. Ct. App. 2007). The writ requires an official to show before a court of competent jurisdiction by what authority the official exercised the challenged right or privilege. *Id.*[6] Although Minnesota district courts have original jurisdiction and the discretion to issue a writ of quo warranto as "necessary to the execution of the laws and the

[5] Hearing of the House Elections Finance and Policy Committee, January 11, 2023, available at https://www.house.mn.gov/hjvid/93/896058 at 49:23.

[6] For example, if election officials began designating polling places in bars across the State, this would exceed his authority and justify a quo-warranto petition. *See* Minn. Stat. § 204B.16 ("No polling place shall be designated in any place where intoxicating liquors or nonintoxicating malt beverages are served or in any adjoining room.").

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

furtherance of justice," the discretion is "exercised . . . infrequently and with considerable caution." *Rice v. Connolly*, 488 N.W.2d 241, 244 (Minn. 1992). This Petition fails because the power exercised by public officials under the Re-enfranchisement statute is expressly *authorized* by the Court's decision in *Schroeder*. Petitioners only assert bald legal conclusions that Respondents have acted in excess of their authority. Therefore, dismissal on the pleadings is required.

The Petition asserts that Respondents are acting "in excess of their authority under the Minnesota Constitution" by implementing the Re-enfranchisement Statute. (Mot at 9.) The entire basis of their Petition hinges on this Court accepting Petitioners' misreading of the Minnesota Supreme Court's decision in the *Schroeder* case. Petitioners are wrong.

The *Schroeder* Court plainly held that voting rights may be restored by any affirmative act of the government that the legislature deems appropriate. The Court's holding reads in full:

> For the reasons stated above, we conclude that the rule under Article VII, Section 1, of the Minnesota Constitution is as follows: 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*. For instance, that affirmative act could be an absolute pardon that nullifies the felony conviction upon which the constitutional deprivation of the right to vote is based or a legislative act that generally restores the right to vote upon the occurrence of certain events. The constitution does not provide that the right to vote is automatically restored upon release from prison.

Schroeder, 985 N.W.2d at 545 (emphasis added). Petitioners' Motion and Memorandum ignores this key language from *Schroeder*.

In reaching its decision, the Court unequivocally and repeatedly stated that an act of the government is necessary *and sufficient* to restore civil rights and that the legislature has broad discretion to restore different civil rights at different times and under different circumstances:

> 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*

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

> *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.

Id. at 544–45 (emphasis added).

The Petition flies directly in the face of the *Schroeder* decision and advances an argument that is wholly unwarranted by existing law. Contrary to the text of Article VII and *Schroeder* Court's recognition that the legislature has broad authority to determine how to restore voting rights after a felony conviction, Petitioners seek to rewrite Article VII. By Petitioners' reading, the legislature can only restore voting rights if "all" civil rights are restored. That is not what Article VII says, and Petitioners have no basis or justification for misinterpreting the Constitution to limit the right to vote.

Petitioners further urge this Court to misapply *Schroeder* in a second way. They contend that *Schroeder* stands for the proposition that the only proper interpretation of the Minnesota Constitution is for a person convicted of a felony to have their voting rights restored through the completion of their sentence because under Minnesota law, a discharge of one's sentence is the only government act that *automatically* restores *all* civil rights. (*See* Pet. ¶¶ 3-4.) But this is not what the *Schroeder* opinion says:

> The real dispute about the constitutional language centers on the meaning and effect of the phrase "unless restored to civil rights." On this point, the parties' most basic disagreement is over the functional meaning of those words: What is required to restore a person convicted of a felony to civil rights? . . . The words "unless restored to civil rights" are compatible with the notion that rights are restored only in accordance with a mechanism established by the government (as opposed to the occurrence of an event not identified in the constitution or in any other law).

Id. at 537–38.

The *Schroeder* Court discussed one process of restoring voting rights—reflected in the Minnesota statute at issue in that case: the automatic restoration of all civil rights upon the

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

discharge of a criminal sentence. The Court determined that this was *one* mechanism of restoring the right to vote, not the *only* method of restoring the right to vote. The Court rule that a person convicted of a felony's right to vote or any other civil right may *only* be restored upon discharge of their sentence. *Id.* at 538–39.

Any other reading of Article VII, Section 1, requiring *full* restoration of *all* civil rights before the right to vote may be restored by the Legislature is plainly contrary to the holding in *Schroeder* and yields an absurd result, which the Court does not permit. *Taylor v. Taylor*, 10 Minn. 107, 120–21 (1865) ("When the literal interpretation of an instrument involves any absurdity, contradiction, injustice or extreme hardship, the courts may deviate a little from the received sense and literal meaning of the words, and interpret the instrument in accordance with what may appear to have been the intention and meaning of its framers[.]"). For example, Minnesotans convicted of certain violent felonies who have been released from incarceration *and* completed their probationary sentences cannot purchase a firearm. Minn. Stat. § 609.165 Subd. 1a. Arguably, this restriction infringes upon a civil right. Based on that assumption, Petitioners' reading of *Schroeder* would require such persons to regain their right to purchase a firearm through a court petition before being allowed to vote, since all civil rights must be returned to the individual before they can vote.[7] Particularly given the fact that Article VII does not define the term "civil rights" or provide any basis for Petitioners' interpretation, the Petition provides no justifiable basis to hold that the legislature improperly restored voting rights.

At bottom, the Re-enfranchisement Statute does not run afoul of Article VII, as interpreted by the court in *Schroeder*. Respondents have taken actions expressly authorized by the Minnesota

[7] The firearm possession restoration statute, Minn. Stat. § 609.165 Subd. 1d, allows a person to petition the court to restore their right to possess a firearm so long as the person shows good cause "and has been released from physical confinement."

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

State Legislature and Governor Walz to implement the Re-enfranchisement Statute. The entire Petition rests on a false legal conclusion derived from an improper reading of *Schroeder*, which makes the petition for a writ of quo warranto legally defective and meritless.

Finally, the Petition cannot be squared with the long line of case law holding that courts must protect the fundamental right to vote. *See Kahn v. Griffin*, 701 N.W.2d 815, 832 (Minn. 2005); *see also Ulland v. Growe*, 262 N.W.2d 412, 415 (Minn. 1978); *see also Erlandson v. Kiffmeyer*, 959 N.W.2d 727, 733 (Minn. 2003). The Petition suggests that the Court strike down the Re-enfranchisement Statute because the legislature did not restore *enough* civil liberties. The notion that the Court should disenfranchise voters because the legislature failed to restore all civil liberties is anathema to basic principles of constitutional review. *Id.*

II. PETITIONERS' DISCUSSION OF THE VARIOUS STATUTES GOVERNING PROBATIONARY AND SUPERVISED RELEASE IS IRRELEVANT, FILLED WITH LEGAL CONCLUSIONS AND ARGUMENTS THAT SECOND-GUESS THE POLICY JUDGMENTS OF THE LEGISLATURE.

Petitioners spend approximately seven pages of their Motion discussing the various ways in which the Minnesota statutes governing probationary and supervised release for formerly incarcerated individuals do not fully restore all "civil rights." (Mot. at 6-9, 23-27.) The specific rights granted or not granted by the statutes Petitioners reference are irrelevant and immaterial. The assumption that because these statutes only provide for *certain* rights and, thus, individuals who are subject to probation and supervised release are not restored to "all civil rights" and "full citizenship" is a byproduct of the Petitioners' deliberate misinterpretation of *Schroeder*. As discussed in Part I, above, Petitioners not only misinterpret the plain language of *Schroeder*, but they do so in a way that renders an absurd constitutional construction of Article VII, section 2.

III. PETITIONERS HAVE NO STANDING TO PREVENT OTHERS FROM VOTING

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

To seek a writ of quo warranto or a declaratory judgment, a party must establish standing. *See Free Minnesota Small Bus. Coal. v. Walz*, A20-1161, 2021 WL 1605123 (Minn. Ct. App. Apr. 26, 2021), *review denied* (July 20, 2021) (a writ of quo warranto decision *citing Kennedy v. Carlson*, 544 N.W.2d 1, 6 (Minn. 1996) ("Before a Minnesota court can determine the constitutionality of a statute, a justiciable controversy must exist"); *see also Seiz v. Citizens Pure Ice Co.*, 290 N.W. 802, 804 (Minn. 1940) ("[P]roceedings for a declaratory judgment must be based on an actual [justiciable] controversy."). Standing requires that a party has a "sufficient stake in a justiciable controversy to seek relief from a court." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). "Standing is acquired when a party has suffered some 'injury-in-fact' or when a party is the beneficiary of some legislative enactment granting standing." *Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 18 (Minn. Ct. App. 2003) (emphasis omitted). To have standing to seek a declaratory judgment regarding the constitutionality of a state statute, a party must have a direct interest in the validity of that statute, which is different in character from the interest of the citizenry in general. *Arens v. Vill. of Rogers*, 61 N.W.2d 508, 512 (Minn. 1953). Standing is a jurisdictional issue and may be challenged at any time. *Delorme v. United States*, 354 F.3d 810, 815 (8th Cir. 2004).

A. Individual Petitioners Have No Standing

Individual Petitioners Mary Amlaw, Ken Wendling, and Tim Kirk assert that they are residents and taxpayers of Anoka County, Minnesota. (Mot. at 15-16.) They purport to have standing as taxpayers to seek both a writ of quo warranto. (*Id*.)

"Absent express statutory authority, taxpayer suits in the public interest are generally dismissed unless the taxpayers can show some damage or injury to the individual bringing the action which is special or peculiar and different from damage or injury sustained by the general public." *Olson v. State*, 742 N.W.2d 681, 684 (Minn. Ct. App. 2007); *Channel 10, Inc. v. Indep.*

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

Sch. Dist. No. 709, St. Louis Cnty., 215 N.W.2d 814, 820 (Minn. 1974). Taxpayers without a personal or direct injury may still have standing under the taxpayer standing doctrine, but only to "maintain an action that restrains the unlawful disbursements of public moneys . . . [as well as to restrain] illegal action on the part of public officials." *Olson*, 742 N.W.2d at 684 (citing *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977).

Notably, a "[s]imple 'disagreement with policy or the exercise of discretion by those responsible for executing the law' does not supply the 'unlawful disbursements' or 'illegal action' of public funds required for standing to support a taxpayer challenge. When the taxpayer's individual challenges to the state action 'are based primarily on appellants' disagreement with policy or the exercise of discretion by those responsible for executing the law,' they are insufficient to confer standing." *Olson*, 742 N.W.2d at 685 (internal citations omitted) (quoting *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. Ct. App. 2004).

Here, individual Petitioners Mary Amlaw, Ken Wendling, and Tim Kirk, ordinary citizens of Minnesota (Pet. ¶¶ 27-29), do not allege that they have express statutory authority sufficient for standing. Nor do they allege that they have suffered any damage or injury that is special, peculiar, or different from damage or injury sustained by the general public. In fact, the Petition does not allege that the individual Petitioners are any different than any other individual in Minnesota who disagrees with an act of the Legislature. Recognizing that they lack express authority conferring standing upon them and that they lack a personal or direct injury flowing from the Re-enfranchisement Statute, Petitioners attempt to fit within the narrow confines of the taxpayer exception based upon their amorphous allegation that they seek to stop "unlawful actions" taken by Respondents. (Mot. at 15-16.) This is indistinguishable from the generalized disagreement with the legislature's adopted policy that courts routinely reject as insufficient. At bottom, Petitioners'

EXHIBIT 1

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

complaint is a basic disagreement with the purpose and effect of the Re-enfranchisement Statute, a generalized grievance that is insufficient to confer taxpayer standing.

Petitioners claim 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." (Mot. at 16.) Relying on *Minnesota Voters All. v. State*, A14-1585, 2015 WL 2457010, at *2–3 (Minn. Ct. App. May 26, 2015), Petitioners claim that they have taxpayer standing based on the right to stop illegal disbursements of public money. (Mot. at 16.) *Minnesota Voters Alliance* is plainly distinguishable.[8] There, MVA challenged an act of the secretary of state to implement online voter registration when a preexisting state statute limited voter registration submissions to mail or hand delivery. *See Minnesota Voters Alliance*, 2015 WL 2457010, at *1 (noting that appellants challenged the secretary of state's implementation of online voter registration); *Verified Petition for Writ of Quo Warranto*, 2013 WL 5950071, at ¶¶ 18-20 (Nov. 4, 2013) (citing Minn. Stat. § 201.061, subd. 1). Here, the actions taken by Respondents were *expressly authorized by the Minnesota Legislature and signed into law by the Governor*. Petitioners' claims are *political* disagreements with the Legislature's actions, not an attempt to prevent a rogue government official from overstepping their discretion.

For example, the Petition complains that Respondents are unlawfully "modify[ing] the 'Voter's Bill of Rights' and post[ing] it at all polling places in Anoka County informing those still serving felony sentences that they have the right to vote." (Mot. at 12.) Nothing is unlawful about that action, as it is expressly authorized by the Re-enfranchisement Statute:

[8]*Minnesota Voters Alliance* is an unpublished opinion and, under Minn. Stat. § 480A.08(3), it cannot be cited as precedent "except as law of the case, res judicata, or collateral estoppel." For this additional reason, *Minnesota Voters Alliance* does not *require* the Court to agree with Petitioners or confer upon them standing to challenge the Re-enfranchisement Statute.

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

> Subd. 1d. **Voter's Bill of Rights.** The county auditor shall prepare and provide each polling place sufficient copies of a poster setting forth the Voter's Bill of Rights as set forth in this section. Before the hours of voting rights are scheduled to begin, the election judges shall post it in a conspicuous location or locations in the polling place. The Voter's Bill of Rights is as follows: . . . (8) ~~If you have been convicted of a felony but your felony sentence has expired (been completed) or you have been charged from your sentence,~~ You have the right to vote if you are not currently incarcerated for conviction of a felony offense.[9]

Laws of Minnesota 2023, ch. 12. In contrast, it would be plainly unlawful and inconsistent with the Re-enfranchisement Statute for Anoka County to *fail* to amend the Voter's Bill of Rights and continue circulating a version that did not conform to the Re-enfranchisement Statute. The Motion refers to a litany of other officials' actions with which Petitioners disagree (*see* pp. 4-5), but none of these are *unauthorized*. In fact, the claim that a writ of quo warranto is even proper in this instance relies upon the mistaken assumption that the Re-enfranchisement Statute is unconstitutional and, thus, the actions of state officials are *ultra vires*. The opposite is true.

At bottom, Respondents are taking actions expressly authorized and required by the Re-enfranchisement Statute.[10] None of their actions involve any unwarranted exercise of discretion. Petitioners filed this action solely because they disagree with the law and with what the law authorizes. They suffer no injury. They have no standing.

[9] Stricken-through text shows the language that was deleted in the Voter's Bill of Rights as directed by the Re-enfranchisement Statute; underlined text shows the language that was added to the Voter's Bill of Rights as directed by the Re-enfranchisement Statute.

[10] For this reason, Petitioners' reliance on *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171 (Minn. 2020) is also inapposite and, frankly, helpful to Respondents and Third-Party Respondents. In *Save Lake Calhoun*, the Minnesota Supreme Court sided *with* the government agency, citing that the Department of Natural Resources' actions in changing the name of Lake Calhoun to Bde Maka Ska were *expressly authorized* by statute. *Save Lake Calhoun*, 943 N.W.2d at 177–78.

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

B. Petitioner MVA Has No Standing

Petitioner MVA purports to be a nonpartisan Minnesota nonprofit corporation that advocates for election integrity and provides research, voter education, and advocacy. (Mot. at 13-14.) MVA alleges that it advocates for the interests asserted by the individual Petitioners, who are long-time supporters and volunteers with MVA. (*Id.*) MVA asserts that it has associational standing to bring the instant action on behalf of its members who include the individual Petitioners relying largely on *Minnesota Voters Alliance*.

Organizations can establish standing on two grounds: (1) associational standing or (2) direct organizational standing. *State by Humphrey*, 551 N.W.2d at 497–98. Direct organizational standing requires that the organization itself—not its members or constituents—suffers an injury-in-fact. *Id.* Here, MVA does not attempt to assert organizational standing, because it has none. The Petition states that MVA "has associational standing to bring this lawsuit on behalf of those for whom it advocates, including the individual Petitioners." (Mot. at 15.) Unlike the individual Petitioners, Petitioner MVA makes no claim or allegation throughout the Petition that it is a taxpayer. (*See, e.g.* Pet. ¶¶ 26-29, 40.) Nor does MVA claim any direct injury or harm to it or its members throughout the Petition. Thus, the Petition contains no allegation to support direct organizational standing on behalf of MVA. Accordingly, the only issue of standing that this Court should consider as it relates to MVA is that of associational standing.

Associational standing requires that: (1) the organization's members have standing as individuals, (2) the interests that the organization seeks to protect are germane to its purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members. *State by Humphrey*, 551 N.W.2d at 497–98. As discussed *supra* in Section I.A, part one

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

of this three-part test is not fulfilled: the individual Petitioners who are members of MVA have no individual standing. Therefore, MVA has no associational standing.

Factor three is intended to ensure "that the remedy sought by the organization will benefit its members." *United Food & Com. Workers Union, Loc. No. 663 v. United States Dep't of Agric.*, 532 F. Supp. 3d 741, 758 (D. Minn. 2021). The remedy sought by MVA—disenfranchising 55,000 other Minnesotans—will not benefit its members. MVA has not alleged that the Re-enfranchisement Statute abridges upon any rights of its members. To the contrary, the Re-enfranchisement Statute restores the right to vote to a group of people who are presumably not part of MVA's membership base: persons convicted of felonies who are no longer incarcerated. Thus, the lawsuit seeks a remedy—taking away the right to vote of others—that will bring no benefit to MVA's individual members. For these additional reasons, MVA has no associational standing.

C. Denying Petitioners Standing is Consistent with Federal Case Law Protecting the Right to Vote

The right to vote is one of the most crucial of civil rights. It serves as the bedrock of our democracy. Voting allows people to determine who will best represent their interests at the federal, state, and local level. Those interests include an array of things that affect peoples' daily lives including, but not limited to, decisions about their children's educations, their access to healthcare, their public safety, and funding for critical infrastructure in their communities. A person's right to vote enshrines a person's voice in their community. It is no wonder why voting is thus an established fundamental right within both our state and federal constitutions. Instead of safeguarding that sacred right, Petitioners seek to take it away from a select group of Minnesotans.

To safeguard the bedrock of our democracy, federal courts routinely deny standing for those wishing to interfere with the right to vote of others, even when the suits were purportedly brought to promote election integrity, as is the case here. *See, e.g., Winpisinger v. Watson*, 86

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

F.R.D. 77, 79 (D.D.C. 1980), *aff'd,* 628 F.2d 133 (D.C. Cir. 1980) (holding that plaintiffs lacked standing to assert their claim that public officials misused federal funds for allegedly "improper activities" that would produce election inequalities that would interfere with their equal right to participate in the electoral process, and commenting that "[h]ow other people vote, in the Court's view, does not in any way relate to plaintiffs' own exercise of the franchise and further does not constitute concrete and specific judicially cognizable injury"; *Daughtrey v. Carter*, 584 F.2d 1050, 1056 (D.C. Cir. 1978) (ruling that plaintiffs had no standing to seek a declaratory judgment premised on their claim that a presidential proclamation that granted pardons to and restored voting rights of draft evaders was unconstitutional because it diluted their votes); *Hotze v. Hollins*, 4:20-CV-03709, 2020 WL 6437668, at *2 (S.D. Tex. Nov. 2, 2020), *aff'd in part, vacated in part sub nom. Hotze v. Hudspeth*, 16 F.4th 1121 (5th Cir. 2021) (finding that plaintiffs had no standing to request an injunction against the use of drive-thru voting machines, stating that "[e]very citizen . . . has an interest in proper execution of voting procedure. Plaintiffs have not argued that they have any specialized grievance beyond an interest in the integrity of the election process."). This Court should do the same here.

IV. THE PETITION SHOULD BE DENIED BECAUSE IT ASKS THE COURT TO DISENFRANCHISE VOTERS IN THE MIDST OF AN ELECTION.

In addition to the Petition's other defects, it is untenable for Petitioners to seek relief during on ongoing election. In *Purcell v. Gonzalez*, 549 U.S. 1 (2006), the U.S. Supreme Court reversed an October decision by the Ninth Circuit Court of Appeals related to voter identification requirements. The decision recognized the risk and confusion entailed in upending election rules with an election impending. *Id.* at 4–5. *See also Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) ("This Court has repeatedly emphasized that lower federal

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

courts should ordinarily not alter the election rules on the eve of an election.") (citing *Frank v. Walker*, 574 U.S. 929, 929 (2014) & *Veasey v. Perry*, 574 U.S. 951, 951 (2014)).

At least in part due to their own delay, Petitioners ask the Court to create an unmitigated electoral fiasco triggering the worst possible *Purcell* concerns. Early voting has already commenced. Active outreach to restored voters is ongoing, and, if successful, the petition would require reversing course to inform those voters that they have once again been disenfranchised. Sowing such confusion, including among marginalized communities, cannot be squared with *Purcell*. The petition should be denied.

Dated: October 16, 2023

/s/ *Craig S. Coleman*

Craig S. Coleman (MN #0325491)
Jeffrey P. Justman (MN #0390413)
Evelyn Snyder (MN #0397134)
Erica Abshez Moran (MN #0400606)
FAEGRE DRINKER BIDDLE & REATH LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Phone: (612) 766-7000
craig.coleman@faegredrinker.com
jeff.justman@faegredrinker.com
evie.snyder@faegredrinker.com
erica.moran@faegredrinker.com

Ehren M. Fournier (MN #0403248)
Cassidy J. Ingram (*pro hac vice*)
FAEGRE DRINKER BIDDLE & REATH LLP
320 South Canal Street, Suite 3300
Chicago, IL 60606
Phone: (312) 569-1000
ehren.fournier@faegredrinker.com
cassidy.ingram@faegredrinker.com

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

Teresa J. Nelson (MN #0269736)
David P. McKinney (MN #0392361)
AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA
2828 University Avenue SE, Suite 160
Minneapolis, MN 55414
Phone: (651) 645-4097
tnelson@aclu-mn.org
dmckinney@aclu-mn.org

-and-

Julie A. Ebenstein (pending *pro hac vice*)
Sophia L. Lakin (pending *pro hac vice*)
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, NY 10004
Phone: (212) 607-3300
jebenstein@aclu.org
slakin@aclu.org

Attorneys for Intervenor-Respondents Jennifer Schroeder and Elizer Darris

ACKNOWLEDGMENT

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

/s/ Craig S. Coleman
Craig S. Coleman

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State of Minnesota
10/16/2023 4:08 PM

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

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

Petitioners,

v.

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,

Jennifer Schroeder, an individual; and Elizer Eugene Darris, an individual,

[Proposed] Intervenor-Respondents.

Case Type: Civil
File No. 02-cv-23-3416
The Honorable Thomas R. Lehmann

[PROPOSED] ORDER DENY PETITION FOR ISSUANCE OF WRIT OF QUO WARRANTO

The above matter came on for hearing on October 30, 2023, before the undersigned Judge of Anoka County District Court upon Motion for Leave to Opposition to Issuance of the Writ of Quo Warranto by Proposed Intervenor-Respondents Jennifer Schroeder and Elizer Eugene Darris.

Based upon the file, records, arguments of counsel and proceedings herein, and having been fully advised in the premises,

IT IS HEREBY ORDERED as follows:

The Petition for Issuance of the Writ of Quo Warranto is DENIED and DISMISSED WITH PREJUDICE.

Filed in District Court
State of Minnesota
10/16/2023 4:08 PM

Dated: _____, 2023

BY THE COURT:

_____
Honorable Thomas R. Lehmann
Judge of Anoka County District Court

MINNESOTA JUDICIAL BRANCH

EXHIBIT 1