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STATE OF MINNESOTA

COUNTY OF ANOKA

DISTRICT COURT

TENTH JUDICIAL DISTRICT

Case Type: Other Civil

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

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.

STATE RESPONDENTS' REPLY MEMORANDUM SUPPORTING MOTION TO DISMISS

Petitioners Minnesota Voters Alliance, Mary Amlaw, Ken Wendling, and Tim Kirk's contentions that they have standing to challenge the constitutionality of a statute that does not injure them and that the constitutional phrase "restored to civil rights" actually means "restored to *all* civil rights" are contrary to all applicable precedent on standing, voting rights, and constitutional interpretation. Most centrally, Minnesota appellate decisions in the *Schroeder v. Simon* litigation have already resolved these issues: the state supreme court and court of appeals expressly held that (1) Petitioners have no legally cognizable interest in the reinstatement of voting rights after a felony criminal conviction and (2) the Minnesota Legislature has broad and general authority to re-enfranchise individuals with felony convictions through legislation.

Because Petitioners' claims are refuted by the *Schroeder* decisions and other more longstanding case law, the petition should be dismissed.

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ARGUMENT

The Secretary established in his principal memorandum that Petitioners' claims fail for two reasons: first, Petitioners lack standing to bring a constitutional challenge against a state statute, and second, nothing in the state constitution bars the legislature from passing legislation making persons with felony convictions eligible to vote once they return to the community. Petitioners' lengthy attempts to avoid these conclusions ignore the binding holdings that the Minnesota Court of Appeals reached in *Schroeder v. Minn. Sec'y of State Steve Simon*, 950 N.W.2d 70 (Minn. Ct. App. 2020) [hereinafter *Schroeder I*] and the Minnesota Supreme Court reached in *Schroeder v. Simon*, 985 N.W.2d 529, 534 (Minn. 2023) [hereinafter *Schroeder II*]. Petitioners' claims cannot survive contact with the *Schroeder* decisions, and as a result the petition should be dismissed.

I. PETITIONERS LACK STANDING TO BRING THE PETITION.

In response to the State Respondents' arguments that Petitioners lack standing, Petitioners contend that *Schroeder I's* taxpayer-standing holdings pertain to a fundamentally different subject than this case does. To the contrary, both *Schroeder I* and the current petition involve the same party attempting to use taxpayer standing to litigate the same issue. Moreover, Petitioners' reliance on other quo warranto cases is misplaced because none of those cases actually provide any precedent on the issue of *who* has standing to bring a quo warranto petition; instead, they either address distinct issues (such as *what* is subject to a challenge) or are unpublished and thus not precedential.

A. *Schroeder I* Demonstrates that Petitioners Lack Standing to Bring This Case.

Standing fundamentally requires that a plaintiff possess either an express statutory grant of authority to file suit or "a sufficient *stake* in a justiciable controversy." *Sec. Bank & Trust Co. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W.2d 491, 496 (Minn. 2018) (emphasis added). As Minnesota courts have noted, such a stake is synonymous with a "legally cognizable interest"

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in the subject of the litigation. *In re Sandy Pappas Senate Comm.*, 488 N.W.2d 795, 797 (Minn. 1992).

Petitioners' interest in the subject of this litigation is not a question of first impression for the Minnesota courts. In 2020, the Minnesota Court of Appeals held, in a precedential and binding decision, that Petitioner Minnesota Voters Alliance (MVA) had no interest in litigation regarding "the reinstatement of voting rights after a felony criminal conviction." *Schroeder I*, 950 N.W.2d at 78. Further, the court rejected MVA's attempt to bootstrap its way to a cognizable legal interest in that case by claiming to oppose particular public expenditures that were tangentially related to reinstating voting rights. *Id.* at 76-77 (noting that, notwithstanding MVA's purported opposition to the costs of "meritless litigation," the subject of the *Schroeder* litigation was "not the expenditure of state funds" and that MVA therefore had no interest to litigate). As the court ruled, the construction and application of Article VII, Section 1, of the state constitution to individuals who have completed felony sentences of imprisonment "has nothing to do with government expenditures." *Id.* at 77.

The current lawsuit is fundamentally no different. The subject of the instant lawsuit is the same as the subject of *Schroeder I*: the reinstatement of voting rights after a felony criminal conviction. *See id.* at 78. Just like the plaintiffs' claims in the *Schroeder* litigation, the fundamental function and purpose of the challenged statute here is the re-enfranchisement of individuals with felony convictions—and binding precedent from the court of appeals holds that that subject has nothing to do with government expenditures. *Id.* at 77. Moreover, MVA's posture in the current litigation with regard to its alleged interest is no different than it was in *Schroeder*: though the core purpose of the instant petition is to strike down the re-enfranchisement statute as unconstitutional, Petitioners attempt to fabricate a legally cognizable interest for themselves by gesturing at

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particular government expenditures that are, at most, tangentially related to the allegedly unconstitutional statute.[1]

Declaring individuals with felony convictions eligible to vote under particular circumstances, as the state legislature did in the challenged statute, is a purely legal act that imposes no costs on the taxpayers of Minnesota whatsoever. The distantly related state expenditures that Petitioners cite do not substantiate a legally cognizable interest in the constitutionality of that statute—any more than MVA's purported concern for the costs of "meritless litigation" gave them an interest in *Schroeder. See Schroeder I*, 950 N.W.2d at 80.

B. No Minnesota Precedent Holds that Taxpayer Status Provides Standing for Quo Warranto Actions.

For the above reasons, all of these procedural facts about the current litigation demonstrate the extensive parallels between *Schroeder* and the current case. But just as significant are the diametric differences that these facts demonstrate between the current petition and the caselaw that Petitioners rely on to argue that they have standing.

None of the cases that Petitioners rely on granted a plaintiff standing to state a constitutional challenge to a duly enacted statute. Even more important, none of the cases involved a challenge to an allegedly illegal act based on expenditures that are *downstream* of the alleged

[1] The petition includes a list of downstream consequences of re-enfranchisement that Petitioners assert are improper. (Pet. ¶ 23.) Every item on the list presents at least two immediate problems for any claim that it is an "unlawful expenditure" granting Petitioners standing: in each instance, either (1) the act in question costs Minnesota taxpayers nothing (*see, e.g.*, *id.* ¶ 23(j) (citing Secretary's certification of vote totals that "include votes cast by those who are serving [post-imprisonment] felony sentences")) or (2) it constitutes an act explicitly authorized by the Minnesota Legislature, and Petitioners have provided no legal basis to conclude that that authorization lies outside of the legislature's constitutional authority *even if* the re-enfranchisement legislation were invalid (*see, e.g.*, *id.* ¶ 23(a) (citing new statutory language directing Secretary "to create a document which will mislead those serving [post-imprisonment] felony sentences that they may vote"). Most consequentially, every item on the list is entirely incidental to the actual subject of this litigation: the constitutionality of the new Minn. Stat. § 201.014, subd. 2a, and its re-enfranchisement of individuals with felony convictions who return to the community.

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illegality. Instead, in each case Petitioners cite the challenged expenditure *was* the illegal act; if the expenditure had not taken place, there would not have been a legal issue to dispute.

Petitioners identify three cases that are precedential decisions to support their standing arguments: *Save Lake Calhoun v. Strommen*, 943 N.W.2d at 171 (Minn. 2020), *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312 (Minn. 2007), and *State ex rel. Palmer v. Perpich*, 182 N.W.2d 182 (Minn. 1971). But *Save Lake Calhoun* and *Palmer* did not deal with standing at all. Indeed, neither decision even uses the word "standing." Instead, both cases dealt with *which actions* are subject to quo warranto challenges, not *who* may bring such challenges. Moreover, in *Save Lake Calhoun*, the commissioner of natural resources expended public resources conducting an administrative process to determine whether to grant a county request to change the name of a lake in Minneapolis. 943 N.W.2d 171, 174 (Minn. 2020). Its petitioners alleged that this expenditure was unlawful. *Id.* Again, just as in every quo warranto case in which the petitioner's standing was based on a public expenditure, the expenditure *was* the alleged illegality: had the commissioner never spent the public funds (and thus never embarked on the administrative procedure necessary to rename the lake), there would never have been an allegedly unlawful act for the petitioners to complain about.

The procedural posture of the current case is precisely the opposite. Here, the alleged illegality is the *legislature's* decision to pass a law rendering individuals eligible to vote under particular circumstances. *See* 2023 Minn. Laws ch. 12, § 1 (to be codified at Minn. Stat. § 201.014, subd. 2a). The $14,000 appropriation that Petitioners purport to be concerned about (*see* Pet. ¶ 23(o); H.F. 28, § 8) is entirely separate from that allegedly unconstitutional statute: unlike *Save Lake Calhoun* and every other case that Petitioners cite, eliminating that expenditure would have no effect on the actual subject of this litigation. The new statute re-enfranchising particular

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individuals with felony convictions makes a purely legal change that costs Minnesotans nothing. As a result, the expenditure Petitioners purportedly oppose and the allegedly illegal act they are actually challenging are only distantly connected to one another. *See also Palmer*, 182 N.W.2d at 184–85 (discussing *types* of cases courts may hear, not *who* may bring them).

Petitioners' reliance of on *Sviggum* is similarly misplaced. Unlike *Save Lake Calhoun* and *Palmer*, *Sviggum* actually discussed standing as part of its discussion of justiciability. 732 N.W.2d at 321. But *Sviggum* concluded the matter was not justiciable. *Id.* at 323. And although *Sviggum's* standing analysis is intertwined with its mootness discussion, its holding that the quo warranto petition was not justiciable self-evidently does not establish that taxpayer status is a basis for standing in quo warranto actions.

Petitioners next rely on the unpublished court of appeals decision in *Minnesota Voters Alliance v. State*, No. A14-1585, 2015 WL 2457010 (Minn. Ct. App. May 26, 2015) [hereinafter *MVA 2015*]. As an unpublished decision, this case has no precedential value. *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 29 (Minn. Ct. App. 2006). Moreover, it is readily distinguishable. In that case, the Secretary used public funds to create an online registration portal that was allegedly not authorized by state law. *MVA 2015*, 2015 WL 2457010, at *3.[2] As a result, in that case the expenditure at issue *was* the alleged illegality; if the Secretary had never spent public funds building an online registration system, there would have been nothing for the petitioners to challenge. Here, by contrast, there is no dispute that the expenditures Petitioners purportedly contest are both separate from the alleged illegality and expressly authorized by the legislature.

[2] The *MVA 2015* court of appeals never reached the question of whether the expenditures on the online registration system actually were unlawful—because the legislature passed a law rendering the issue moot months before the case reached the court. *MVA 2015*, 2015 WL 2457010, at *5 n.4.

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Finally, Petitioners allude to other district court decisions that the State Defendants believe (though cannot confirm due to Petitioners' failure to include docket numbers or dates in the citations) to be from *Minnesota Voters Alliance v. City of Minneapolis*, No. 27-CV-20-12752 (Hennepin Cty. Mar. 29, 2021) and *Minnesota Voters Alliance v. Lake County*, No. 38-CV-20-348 (Lake Cty. Aug. 3, 2021). (Pet'rs' Response Mem. 11.) Once again, as district court decisions, these cases have no precedential value. *Green v. BMW of N. Am., Inc.*, 826 N.W.2d 530, 537 n.5 (Minn. 2013). Both cases involved a challenge to who could serve on an absentee ballot board. And although the *Lake County* court found standing, it nevertheless recognized that "it seems incongruous for taxpayer standing to emanate merely from 'illegal action' of a public official, rather than from a challenge to the unlawful expenditure of funds." Order, *Lake County*, No. 38-CV-20-348, at 11.

With due respect to the *Lake County* court, that incongruousness should have done more than give the court pause. Rather, as discussed above, *Schroeder I* makes clear that taxpayer status only provides a basis for standing to challenge specific expenditures. Taxpayer standing does not provide a broader basis to generally challenge any government action whenever taxpayer funds are tangentially involved. The State Respondents have previously made this point in their opening and response briefs, but it bears repeating: a contrary holding would convert the writ of quo warranto into a general writ to challenge practically *any* government action, regardless of an individual's personal stake in the case. Minnesota courts have rightly rejected such a holding as far back as 1881, when the supreme court rejected a quo warranto challenge on the basis that the only private party who could petition for a writ of quo warranto to challenge an officeholder's claim to the office was the person who would otherwise be entitled to the office. *In re Barnum*, 8

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N.W. 375, 375 (Minn. 1881). The Court should adhere to this long history and deny the petition on the basis that Petitioners lack standing.

In summary, Petitioners cite no caselaw whatsoever in which a litigant has been held to have standing to contest the constitutionality of a statute based on an expenditure that is incidental to and downstream of the challenged provision. Neither do they cite a single case in which an expenditure that was expressly authorized by the legislature—as is the case here—provides a basis for standing to bring a quo warranto action. To the Secretary's knowledge, no Minnesota case exists matching either of the above descriptions. As a result, Petitioners' standing argument fails.

II. PETITIONERS' INTERPRETATION OF THE MINNESOTA CONSTITUTION IS CONTRARY TO BINDING PRECEDENT AND THE HISTORICAL RECORD.

Setting aside Petitioners' attempts to derive standing from the existence of tangentially related expenditures authorized by the legislature, the central legal question presented in this litigation is whether the Minnesota Legislature has the constitutional authority to make Minnesotans who have felony convictions eligible to vote when they are not imprisoned. *Schroeder II* clearly establishes that the legislature has such authority. And Petitioners' attempts to twist both that decision and the history of the franchise section of the constitution to the contrary are meritless.

A. *Schroeder II* Conclusively Disproves Petitioners' Interpretation of the Constitutional Provision at Issue.

As they did with the standing inquiry, Petitioners pretend that the nature of the legislature's power to restore voting rights is a question of first impression in Minnesota courts. It is not. The state supreme court's decision in *Schroeder II* in February forecloses any colorable argument—whether under Petitioners' novel reformulation of the rules of constitutional interpretation or any other legal theory—that the legislature lacks the constitutional authority to enact the re-enfranchisement statute at issue in this case. In light of the clear and binding terms of *Schroeder II*,

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a landmark decision that Petitioners have all but disregarded throughout their filings in this case, Petitioners' claims are facially frivolous.

The plaintiffs in *Schroeder* were individuals who had been convicted of a felony but who were living in the community while on probation or supervised release. *Schroeder II*, 985 N.W.2d at 533. They contended that Minn. Stat. § 609.165 (2022), which restored their right to vote only upon the discharge of their felony sentences (including probation and other non-incarceration sanctions), violated their right to vote and their right to equal protection under the state constitution. *Id.* The state supreme court rejected their claim, holding that the state constitution did not require the automatic restoration of the franchise whenever not incarcerated. *Id.* at 533-34. Instead, the court repeatedly held, a person's right to vote

> is restored in accordance with *an affirmative act or mechanism of the government* restoring the person's right to vote, such as an absolute pardon or *a legislative act that generally restores the right to vote upon the occurrence of certain events.*

Id. at 534 (emphasis added); *see also id.* at 545 (reiterating court's explicit endorsement of legislative act generally restoring right to vote upon occurrence of certain events), 556 (same). Moreover, the court held that, under Article VII, Section 1, of the state constitution, the state legislature has "broad, general discretion to choose a mechanism for restoring the entitlement and permission to vote to persons convicted of a felony." *Id*. at 556.[3]

[3] *See also Schroeder II*, 985 N.W.2d at 557 (emphasis added):

> [A]lthough [the challenged discharge statute], on the claim raised here, passes constitutional muster, we recognize the troubling consequences, including the disparate racial impacts, flowing from the disenfranchisement of persons convicted of a felony. *The Legislature retains the power to respond to those consequences. The Minnesota Constitution empowers the Legislature to address the public policy concerns raised by appellants in this case*; public policy concerns that the Secretary of State shares and that directly implicate . . . the fundamental right to vote.

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These holdings conclusively disprove Petitioners' constitutional theory, which would require state courts to amend Article VII, Section 1, of the state constitution by inserting the word "all" before the term "civil rights" so that the section renders individuals with felony convictions ineligible to vote until they have been "restored to *all* civil rights."

As the State Respondents explained in their previous filings and reiterate below, Petitioners' constitutional theory has never enjoyed any support in Minnesota law—but even if it had been a colorable hypothesis at some time in the past, *Schroeder II* now definitively refutes it. In short, Petitioners' notion that re-enfranchisement requires restoration to *all* civil rights is disproved by the explicit statements from the *Schroeder II* court that a legislative act solely "restor[ing] *the right to vote*" is sufficient to the task. *See id*. at 534, 545, 556. Petitioners' theory on the merits of the constitutional question is contrary to the explicit holdings of the Minnesota Supreme Court, and their petition must therefore be dismissed.

The conflict between the supreme court's decision and Petitioners' novel theory extends beyond the references in the decision—dispositive as those plainly are—to legislative acts and "the occurrence of certain events" such as release from incarceration. Petitioners' notions about Article VII, Section 1, are also irreconcilable with *Schroeder II* on a deeper analytical level.

Specifically, *Schroeder II* upheld the then-existent language of section 609.165 as a constitutionally permissible means by which the legislature could restore the right to vote. *Id.* at 533–34. But though that section called for the restoration of "all civil rights," including the right to vote, it specifically excepted the civil right to possess firearms and ammunition for individuals convicted of crimes of violence. Minn. Stat. § 609.165, subds. 1, 1a (2022); *see also id.*, subd. 1d

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Petitioners' claims amount to a heedless attack on the legislature's authority to respond to the public policy concerns stemming from the disenfranchisement of persons convicted of a felony.

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(requiring separate petition to regain rights); *Hood v. United States*, 342 F.3d 861, 864 (8th Cir. 2003) (recognizing right to possess firearm as a civil right). *Schroeder II* thus upheld the constitutionality of a restoration statute that restored less than all civil rights. This endorsement is indisputably fatal to Petitioners' argument that only a statute restoring "all" civil rights can be constitutional.

B. Petitioners' Historical Arguments are Meritless.

Even if the *Schroeder II* decision had never been issued, Petitioners' notions about the meaning of Article VII, Section 1, would fail for lack of support in Minnesota law for the reasons explained in the State Respondents' previous filings. Petitioners' attempts to refute those explanations fail.

One point raised in previous briefing deserves particular emphasis: Petitioners attempt to twist the constitutional convention debates into supporting their interpretation of "restored to civil rights" as requiring restoration of all rights. But the colloquy between the delegates makes clear that this was not the delegates' understanding.

As initially proposed, the constitutional language in question stated:

> No person shall be qualified to vote at any election who shall be convicted of treason—or any felony—or of voting, or attempting to vote, more than once at any election—or of procuring or inducing any person to vote illegally at any election; *Provided*, That the Governor or the Legislature may restore any such person to civil rights.

Debates & Proceedings of the Constitutional Convention for the Territory of Minnesota 540 (George W. Moore, Saint Paul, 1858). A delegate then moved to strike out all words after the word felony, such that the provision then would have read "No person shall be qualified to vote at any election who shall be convicted of treason—or any felony." *Id.* at 540. Immediately, another delegate objected that such a revision would "cut off the power of the Legislature to restore civil rights." *Id.* But the right taken away by this section was the singular right to vote; thus the only

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right subject to restoration was that singular right. That delegates nevertheless referred to the restoration of this singular right as "restor[ing] civil rights" is thus strong evidence that "restored to civil rights" means "restored to voting rights."

Petitioners' reliance on discussion regarding an unrelated provision regarding dueling is similarly misplaced. As part of that discussion, one delegate made the unremarkable statement that a pardon restores a person to "all his civil rights." *Id.* at 110. But Petitioners entirely fail to explain how using the phrase "all civil rights" when discussing pardons indicates that the phrase "civil rights"—without the operative "all"—in a different section, means that "restored to civil rights" means restored to all rights. On the contrary, to the extent it has any significance at all (as opposed to being happenstance of word choice), the use of "all civil rights" in one discussion versus just "civil rights" in a different discussion suggests that when delegates were using "civil rights" (without "all") when discussing the electoral franchise, they were *not* referring to all civil rights.

CONCLUSION

For the reasons provided above and in their previous memoranda of law, the State Respondents respectfully request that the Court dismiss the petition for lack of standing. In the alternative, the State Respondents ask that the Court hold that Petitioners' claims fail on the merits because the challenged legislation re-enfranchising Minnesotans is constitutional.

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Respectfully submitted,

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