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,

and

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

Intervenor-Respondents.

ORDER DENYING PETITION FOR WRIT OF QUO WARRANTO OR DECLARATORY JUDGMENT

Court File No. 02-CV-23-3416

The above-entitled matter came for hearing on October 30, 2023, before the Honorable Thomas R. Lehmann, Judge of District Court, Anoka County Courthouse, Anoka, Minnesota, on Petitioners' June 29, 2023 Petition for Writ of Quo Warranto or Declaratory Judgment (Doc. No. 1), Respondents Tom Hunt and Anoka County's July 20, 2023 Motion to Dismiss (Doc. No. 10), Respondents Steve Simon, the Office of the Minnesota Secretary of State, and Shannon Reimann's (hereafter "State Respondents") October 2, 2023 Amended Motion to Dismiss (Doc. No. 32), and Intervenor-Respondents' August 31, 2023 Motion to Intervene (Doc. No. 25), October 2, 2023

Motion for Leave to File Motion for Judgment on the Pleadings (Doc. No. 35), and Proposed Motion for Judgment on the Pleadings (Doc. No. 36).

James V. F. Dickey, Esq., appeared for and on behalf of Petitioners. Brad Johnson, Anoka County Attorney, and Jason J. Stover and Robert Yount, Assistant Anoka County Attorneys, appeared for and on behalf of Respondents Tom Hunt and Anoka County. Nathan J. Hartshorn and Allen Cook Barr, Assistant Attorneys General, appeared for and on behalf of State Respondents. Craig S. Coleman, Esq., Teresa J. Nelson, Esq., Ehren M. Fournier, Esq., and Cassidy J. Ingram, Esq., appeared for and on behalf of Intervenor-Respondents.

Prior to the hearing, the Court directed the parties to be prepared to argue Intervenor-Respondents' Proposed Motion for Judgment on the Pleadings, and issued an order granting Intervenor-Respondents leave to file opposition to the Petition. The Court has granted Intervenor-Respondents' Motion to Intervene by separate order.

Based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED:**

1. Respondents Tom Hunt and Anoka County's Motion to Dismiss is **GRANTED.**
2. State Respondents' Amended Motion to Dismiss is **GRANTED.**
3. Intervenor-Respondents' Motion for Leave to File Motion for Judgment on the Pleadings is **GRANTED.**
4. Intervenor-Respondents' Motion for Judgment on the Pleadings is **GRANTED.**
5. Petitioners' Petition is **DENIED** and **DISMISSED WITH PREJUDICE.**
6. The Court Administrator shall enter a judgment of dismissal with prejudice.
7. The attached memorandum is incorporated herein by reference.

8. The Court Administrator shall transmit notice of filing of this Order and a copy of this Order by the designated e-filing and e-service system, e-mail, or mail to every party affected thereby or upon such party's attorney of record, whether or not such party has appeared in the action, at the party or attorney's last known mail or e-mail address. Such transmittal shall constitute due and proper notice of this Order for all purposes.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Lehmann, Thomas R. (Anoka Judge) 2023.12.13 14:29:34 -06'00'

Dated:

Thomas R. Lehmann
Judge of District Court

MEMORANDUM

Background

Article VII, section 1 of the Minnesota Constitution provides that a person who has been convicted of a felony may not vote "unless restored to civil rights." As interpreted by the Supreme Court, this means that

> a person convicted of a felony cannot vote in Minnesota unless the person's right to vote is restored *by some affirmative act of, or mechanism established by, the government*. 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*.

Schroeder v. Simon (*Schroeder II*), 985 N.W.2d 529, 545 (Minn. 2023) (emphasis added). Earlier this year, the Legislature did exactly that. The Legislature passed, and the Governor signed, amendments to Minn. Stat. § 201.014 that restore the right to vote to individuals with felony convictions "during any period when the individual is not incarcerated for the offense." 2023 Minn. Laws Ch. 12, § 1.

Notwithstanding the Supreme Court's decision in *Schroeder II*, Petitioners have brought the instant petition for a writ of quo warranto or declaratory judgment, arguing that the Legislature's act was unconstitutional. This petition must be denied for the following reasons.

Analysis

I. Petitioners Lack Standing

"A standing analysis focuses on whether the plaintiff is the proper party to bring a particular lawsuit." *Olson v. State*, 742 N.W.2d 681, 684 (Minn. Ct. App. 2007). "Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court." *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. Ct. App. 2004). "A sufficient stake may exist if the party has suffered an 'injury-in-fact' or if the legislature has conferred standing by

statute." *Olson*, 742 N.W.2d at 684. Petitioners' claim of standing in this case depends on the individual Petitioners' status as taxpayers.[1]

"[T]axpayer 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." *Id.* "Taxpayers without a personal or direct injury may still have standing but only to maintain an action that restrains 'unlawful disbursements of public money . . . [or] illegal action on the part of public officials.' " *Id.* (quoting *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977)). Case law makes clear that the rule articulated in *McKee* "is not limitless." *Olson*, 742 N.W.2d at 684. "Minnesota courts have limited *McKee* closely to its facts." *Citizens for Rule of Law v. Senate Committee on Rules & Admin.*, 770 N.W.2d 169, 175 (Minn. Ct. App. 2009). In *Citizens*, the Court of Appeals characterized the "confines of taxpayer standing" as "narrow." *Id.* "[T]he *McKee* case does not offer an open door to taxpayer standing on any issue." *Hageman v. Stanek*, 2004 WL 1563276, at *2 (Minn. Ct. App. July 13, 2004) (nonprecedential). "[T]he line is drawn where a taxpayer seeks to challenge what the taxpayer perceives to be an illegal expenditure or waste of tax monies." *Olson*, 742 N.W.2d at 684−85. "[A] challenge to 'a specific disbursement' is generally required to invoke taxpayer standing." *Schroeder v. Simon* (*Schroeder I*), 950 N.W.2d 70, 78 (Minn. Ct. App. 2020) (citation omitted). "Simple disagreement with policy or the exercise of discretion by those responsible for executing the law does not supply the 'unlawful disbursements' or 'illegal

[1] Petitioners also claim that Minnesota Voters Alliance (hereafter "MVA") has associational standing, but they are mistaken. As the Court of Appeals has noted, "MVA asserts an independent interest in preserving the integrity of elections. Because MVA's interest is no different in character than that of the citizenry in general, MVA must derive any potential standing from its members." *Minnesota Voters Alliance v. State*, 2021 WL 416744, at *3 (Minn. Ct. App. Feb. 8, 2021) (nonprecedential). Accordingly, this analysis focuses on the individual Petitioners. Since they lack "standing to sue in their own right," *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977), MVA lacks standing as well.

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 . . . 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. Advocacy groups have repeatedly asked our appellate courts to expand taxpayer standing, but in each and every instance they have declined to do so. *See Hageman*, *supra* at *3 (declining to remove restrictions on taxpayer standing "because this would constitute an unwarranted intrusion on the authority of the legislature").

Despite the principles summarized above, Petitioners do not challenge a specific disbursement of public funds. *See Schroeder I*, 950 N.W.2d at 78 (a challenge to a specific disbursement is generally required). Instead, they cite amounts appropriated by the Legislature in 2023 Minn. Laws Chs. 12 & 62 and then proceed to argue that those appropriations furnish them with standing, as taxpayers, to challenge something that has nothing to do with money: namely, the eligibility of some citizens to vote. *Cf. id.* ("[T]he subject of the underlying action is not the expenditure of state funds. Rather, the *subject* of the underlying action is the reinstatement of voting rights after a felony criminal conviction." [Emphasis in original.]).

Petitioners' theory of taxpayer standing posits that any incidental expenditure of public funds related to the implementation of a law confers standing on any taxpayer who wishes to bring a lawsuit challenging any aspect of that law.[2] Case law contradicts this theory. *See Olson*, 742 N.W.2d at 684−85 (a taxpayer has standing only to challenge a perceived illegal expenditure or waste of tax dollars; taxpayers lack standing to bring challenges that are primarily based on policy

[2] *See* Doc. No. 53, Petrs.' Mem. 12 ("Petitioners have alleged that they are taxpayers and that Respondents have illegally spent state money by implementing the Acts at issue. . . . Petitioners need allege no more to establish standing here.").

disagreements). The expenditure of public funds must be the *focus* of the taxpayer's challenge, not a mere jumping-off point for unrelated arguments.[3]

Furthermore, as Respondents and Intervenor-Respondents point out, since practically every law entails at least *some* public expenditure, Petitioners' expansive notion of taxpayer standing would render the very concept of taxpayer standing meaningless: every taxpayer would have standing to bring a lawsuit challenging any law, for any reason whatsoever. It is worth noting that, in response to this argument, Petitioners do not identify any limitation on taxpayer standing that would exist under their theory. Petitioners' theory of taxpayer standing is fundamentally inconsistent with the case law summarized above, which holds that taxpayer standing is "narrow," limited, "not an open door," and requires a challenge to "a specific disbursement." Accepting Petitioners' theory would be a dramatic expansion of taxpayer standing, at odds with the fact that our appellate courts have consistently declined to expand the doctrine. *See Hageman*, *supra* at *3.

Standing is "one of the most amorphous concepts in the entire domain of public law," and it "is filled with complexities and uncertainties." *Rukavina*, 684 N.W.2d at 531 (citations and internal quotation marks omitted). There are, to be sure, a few cases like the Court of Appeals' decision in *Save Lake Calhoun v. Strommen*, 928 N.W.2d 377 (Minn. Ct. App. 2019), where the Court held that the petitioner had standing based on an allegation that public funds were being used in connection with the challenged name change. But those cases are outliers, and may depend on their specific facts. The greater weight of authority supports the conclusion that Petitioners

[3] This case is similar to *Center for Biological Diversity v. Minn. Dept. of Nat. Resources*, 2013 WL 2301951 (Minn. Ct. App. May 28, 2013) (nonprecedential). There, the petitioners, seeking to challenge rules related to wolf hunting and trapping, claimed taxpayer standing based on the fact that the implementation of the rules involved the expenditure of public funds—specifically, "the printing of [a] wolf-regulation booklet and establishment of [an] electronic-licensing system." *Id.* at *4. The Court of Appeals rejected this argument and held that the petitioners lacked standing, in part, because it was "apparent that petitioners' disagreement [was] with the legislature's policy decision to permit wolf hunting." *Id.*

lack standing. The majority of the taxpayer-standing cases have involved a direct challenge to the legality of an expenditure. *See Citizens*, 770 N.W.2d 169 (per diem payments for legislators); *Sayer v. Minn. Dept. of Transp.*, 769 N.W.2d 305 (Minn. Ct. App. 2009) (claim that contract for construction of new 35W bridge was awarded illegally); *Byrd v. Indep. Sch. Dist. No. 194*, 495 N.W.2d 226 (Minn. Ct. App. 1993) (claim that school district awarded construction contract in violation of bidding requirements); *Arens v. Village of Rogers*, 61 N.W.2d 508 (Minn. 1953) (operation of municipal liquor store). And our appellate courts have turned aside attempts to claim taxpayer standing where, as here, the true subject of the action was not the expenditure of public funds. *See Doe v. State*, 2020 WL 6011443, at *3 (Minn. Ct. App. Oct. 12, 2020) (nonprecedential) ("The subject of this action is abortion-related laws, not the unlawful expenditure of public money"); *Schroeder I*, 950 N.W.2d at 78 ("[T]he subject of the underlying action is not the expenditure of state funds. Rather, the *subject* of the underlying action is the reinstatement of voting rights after a felony criminal conviction." [Emphasis in original.]).

Schroeder I confirms that this outcome is correct. Because that case involved MVA, voting rights, and similar arguments on the issue of standing, the Court of Appeals' decision in that case is particularly persuasive.

For all of these reasons, Petitioners lack standing, and their petition must be denied. In the interests of thoroughness, however, the Court will also address the petition on its merits.

II. Petitioners Have Not Met Their Burden to Demonstrate That Minn. Stat. § 201.014, subd. 2a, Is Unconstitutional

Courts presume statutes to be constitutional. *See Minn. Automatic Merchandising Council v. Salomone*, 682 N.W.2d 557, 561 (Minn. 2004) ("Every presumption is invoked in favor of the constitutionality of a statute."). The "power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary." *In re Haggerty*, 448 N.W.2d

363, 364 (Minn. 1989). "The challenger of the constitutional validity of a statute must meet the very heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional." *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000). The challenger must negate "every conceivable basis" that might support the statute. *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973).

Petitioners argue that Minn. Stat. § 201.014, subd. 2a (the newly-enacted provision restoring the right to vote to individuals with felony convictions "during any period when the individual is not incarcerated for the offense") is unconstitutional because, they say, the phrase "unless restored to civil rights" in Article VII, section 1 of the Constitution means that a felon is constitutionally prohibited from voting until he or she has been restored to *all* civil rights.[4] Minn. Stat. § 609.165, subd. 1, provides that an individual who has been convicted of a crime is restored "to all civil rights" upon the discharge of their sentence. Reading Article VII, section 1, and § 609.165 together, Petitioners contend that the Legislature cannot restore the right to vote to felons who have not yet been discharged from their sentences.

The major premise of this argument is fundamentally flawed. Contrary to Petitioners' argument, Article VII, section 1, does not say "restored to *all* civil rights." Instead, it says "restored to civil rights." Basic principles of constitutional interpretation require courts to presume that the framers of our Constitution chose language deliberately and used it precisely.[5] Petitioners'

[4] *See* Doc. No. 1, Pet. ¶ 1.

[5] Compare, for example, the precise deployment of "civil rights" and "*all* civil rights" in Minn. Stat. § 609.165, subd. 1: "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, the same as if such conviction had not taken place, and the order of discharge shall so provide." (Emphasis added.) Why did the Legislature use "civil rights" (without the "all") in the first clause, and "all civil rights" in the next? Because the first clause refers not only to felons but, more broadly, to all individuals who have been convicted of crimes—including misdemeanor and gross-misdemeanor offenses. *See* Minn. Stat. § 609.02, subd. 1 (defining "crime"). Obviously, a misdemeanor or gross-misdemeanor conviction does not result in the loss of *all* civil rights. For instance, individuals convicted of those

interpretation violates these principles by attempting to read a word into Article VII, section 1, that the framers did not actually use.[6]

Furthermore, Petitioners' arguments are foreclosed by the Supreme Court's recent decision in *Schroeder II*. As previously noted, the Supreme Court held in that case that under Article VII, section 1,

> 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.

985 N.W.2d at 545. Minn. Stat. § 201.014, subd. 2a, certainly comes within this extremely broad language. "Under Article VII, Section 1, the Legislature has broad, general discretion to choose a mechanism for restoring the entitlement and permission to vote to persons convicted of a felony[.]" *Id.* at 556. Nothing in *Schroeder II* suggests that the right to vote cannot be restored before a felony sentence is discharged, as Petitioners contend.[7] Indeed, *Schroeder II* does not suggest that

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types of crimes do not lose the right to vote. In the first clause, then, the phrase "deprived of civil rights" refers to individuals who continue to possess some, and indeed many, of their civil rights—including the right to vote.

[6] In their briefing, Petitioners seemingly retreat from the argument that "civil rights" means *all* civil rights, and instead suggest that Article VII, section 1, only prohibits felons from voting until "more than one" civil right has been restored. At the same time, however, they continue to insist, sometimes in the same paragraph, that the restoration of *all* civil rights is required. (*See* Doc. No. 40, Petrs.' Mem. 19.) Petitioners' interpretation of Article VII, section 1, is inconsistent. To the extent that Petitioners may have abandoned their initial position that "civil rights" means *all* civil rights, the Court notes that their alternative argument also fails because it leaves unresolved a crucial question: if Article VII, section 1, requires the restoration of *at least two* "civil rights," which rights count toward that total? Petitioners themselves raise this question in their brief filed 10/2/2023, Doc. No. 40, p. 21 ("what are the 'civil rights' which must be restored?"), yet in their brief filed 10/16/2023, Doc. No. 53, pp. 18. n.3 & 26, they suggest that there is no need to answer it. Without establishing what "civil rights" means in Article VII, section 1, Petitioners cannot meet their "very heavy burden of demonstrating beyond a reasonable doubt" that Minn. Stat. § 201.014, subd. 2a, is unconstitutional. *Associated Builders*, 610 N.W.2d at 299.

[7] In *Schroeder II*, the Supreme Court anticipated the very argument that Petitioners advance here, noting that "*one* way to interpret the framers' understanding of the phase 'unless restored to civil rights' is that restoration occurs upon the completion of the sentence." 985 N.W.2d at 544 (emphasis added). The Court did not say that that was the *only* interpretation, nor did it adopt that interpretation. One potential interpretation of Article VII, section 1, is not enough

Article VII, section 1, limits the Legislature's authority to restore voting rights in any way. Simply based on the Supreme Court's decision in *Schroeder II*, Petitioners cannot meet their "very heavy burden of demonstrating beyond a reasonable doubt" that Minn. Stat. § 201.014, subd. 2a, is unconstitutional. *Associated Builders*, 610 N.W.2d at 299.

Conclusion

Petitioners lack standing, but their petition also fails on the merits because they have not met their burden to demonstrate that Minn. Stat. § 201.014, subd. 2a, is unconstitutional. It is not necessary to reach the alternative arguments offered by Respondents and Intervenor-Respondents.

TRL

to meet Petitioners' burden, because they must negate "every conceivable basis" that might support the statute. *Lehnhausen*, 410 U.S. at 364.