No. A23-1940

FILED
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OFFICE OF
APPELLATE COURTS

State of Minnesota
In Supreme Court

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,

Respondents.

RESPONSE BRIEF OF INTERVENOR-RESPONDENTS JENNIFER SCHROEDER AND ELIZER EUGENE DARRIS

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STATEMENT OF THE ISSUES

1. **Standing.** The district court concluded that Petitioners lack standing to challenge the constitutionality of the Re-Enfranchisement Statute because they suffered no injury-in-fact and have not properly invoked this Court's requirements for taxpayer standing. Did the district court correctly conclude that Petitioners lack standing to challenge the constitutionality of the Re-Enfranchisement Statute?

Apposite authorities:

- *Olson v. State*, 742 N.W.2d 681 (Minn. App. 2007)
- *Schroeder v. Simon*, 950 N.W.2d 70 (Minn. App. 2020)

2. **Constitutionality.** The district court concluded that Petitioners' Petition for Writ of Quo Warranto or Declaratory Judgment fails on the merits, because this Court's decision in *Schroeder II* expressly permits what the legislature passed in the Re-Enfranchisement Statute. Did it correctly grant judgment on the pleadings to Respondents, and thus correctly dismiss the Petition for Writ of Quo Warranto or Declaratory Judgment?

Apposite authorities:

- *Schroeder v. Simon*, 985 N.W.2d 529 (Minn. 2023)
- Minn. Cost. Art. VII, § 1
- Minn. Stat. § 201.014, subd. 2a (2023)

3. **Intervention.** The district court granted the Intervenor-Respondents' Motion to Intervene as a matter of right, because they are directly impacted by the relief Petitioners seek—their very disenfranchisement. Did the district court correctly permit the Intervenor-Respondents to intervene?

Apposite authorities:

- Minnesota Rule of Civil Procedure 24.01 and 24.02
- *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197 (Minn. 1986)
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STATEMENT OF THE CASE AND THE FACTS

A. Minnesota's Constitution Broadly Protects The Right To Vote, With Limited Exceptions.

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 protect the right to vote as part of our state's foundational document. Following amendments over time to expand the franchise to achieve universal suffrage, Article VII today 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. Cost. 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 the thresholds for age, duration of residency, or citizenship, all Minnesotans are entitled to vote other than: "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. Cost. Art. VII, § 1. That language has been unaltered since ratification of the Constitution.

In 1962, the Minnesota Legislature passed, and the governor signed, 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 his civil rights by reason of conviction of a crime and is thereafter discharged, such discharge shall restore him to all his 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.

Minn. Stat. § 609.165, subd. 1 (1962).

B. Voters Challenge § 609.165 and Argue That Their Right To Vote Is Automatically Restored Upon Release From Prison.

With increasing use of parole, supervised release, and probation over time, the operation of Minn. Stat. § 609.165 resulted in tens of thousands of Minnesotans being disenfranchised while living in the community.

Four such people—including Respondents Jennifer Schroeder and Elizer Darris (for simplicity, the "Voters")—filed a lawsuit in 2020 to address the injustice of extended disenfranchisement even as they lived, worked, and actively participated in their communities. Both Voters were living in their communities following felony convictions and were prohibited from voting under § 609.165, subd. 1 because their sentences had not been discharged within the meaning of that statute. The Voters sued the Secretary of State to challenge the constitutionality of § 609.165, subd. 1 because it disenfranchised more than 53,000 Minnesota living in the community. That lawsuit resulted in decisions by the Court of Appeals in *Schroeder v. Simon*, 950 N.W.2d 70 (Minn. App. 2020) ("*Schroeder I*") and this Court in *Schroeder v. Simon*, 985 N.W.2d 529 (Minn. 2023) ("*Schroeder II*").

C. This Court Rejects The Voters' Request For Relief, But Holds That The Legislature Has Broad Discretion To Re-Enfranchise Minnesota Voters Living In The Community.

On February 15, 2023, this Court upheld Minn. Stat. § 609.165, subd. 1 and rejected the Voters' constitutional challenge. That decision relied on the Court's holding that the legislature has broad discretion to determine how civil rights and the right to vote are restored following a felony conviction.

Because the language of the Court's opinion controls the outcome of this case, Voters quote it here at length. The Court held:

> **[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 (emphases added). The legislature and Governor Walz did just that following the *Schroeder II* decision.

D. The Re-Enfranchisement Statute Restored The Right To Vote To All Persons Living In The Community

On March 3, 2023, Governor Walz signed into law the Re-Enfranchisement Statute, and it became effective on July 1, 2023. The Re-Enfranchisement Statute amended Minnesota Statutes 2022, section 201.014 by adding this provision to Minn. Stat. § 201.014:

> 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 individual is later incarcerated for the offense, the individual's civil right to vote is lost only during that period of incarceration.

Laws of Minnesota 2023, ch. 12 (emphases added).[1] In enacting this provision, the legislature did precisely what this Court held it possesses the discretion to do: restore the right to vote "upon the occurrence of certain events." *Schroeder II*, 985 N.W.2d at 545.

The Re-Enfranchisement Statute is now estimated to restore the voting rights of 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%

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[1] On May 24, 2023, Governor Walz signed into law House File 1830 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.

[2] Brian Bakst, "*Minnesota Returns Voting Power to Thousands. The question is whether they'll use it*," *available at*: https://www.npr.org/2023/08/27/1195632138/minnesota-felon-voting-rights-restoration.

of the prison population.[3] Other supporters of HF 28 noted Minnesota's history of race-based criminal punishment and that re-enfranchising people with felony convictions would work to offset racial inequities in the criminal justice system.[4] Dr. Christopher Uggen from the University of Minnesota—who submitted expert reports in the *Schroeder* litigation—testified that restoring the franchise to persons living in the community would mitigate racial disparities that disenfranchised 6% of Black and Native American Minnesotans, a rate five times greater than the rate of white Minnesotans who were disenfranchised.[5]

E. The Re-Enfranchisement Statute Allowed The Voters And Other Previously Disenfranchised Minnesotans To Vote.

As of July 1, 2023, Respondents Tom Hunt, Anoka County, Steve Simon, the Office of the Minnesota Secretary of State, and Shannon Reimann have begun taking actions expressly authorized by the legislature to implement the Re-Enfranchisement Statute. That includes revising 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

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[3] https://www.house.mn.gov/comm/docs/PvJrZwrMYEa-zum5W4xMaw.pdf
[4] https://www.house.mn.gov/comm/docs/fKISIzw-JEqhG6hQDAu2Tg.pdf
[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.

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 for the Secretary of State to support the work necessary to implement the Re-Enfranchisement Statute. *Id.*

F. Petitioners File This Lawsuit Expressly Seeking Relief That Would Disenfranchise Tens of Thousands of Minnesotans.

On June 29, 2023, Petitioners filed a Petition for Writ of Quo Warranto or Declaratory Judgment (the "Petition"), alleging that the Re-Enfranchisement Statute violates Article VII, section 1 of the Minnesota Constitution. (Index #1.) That lawsuit has now reached this Court.

Generally, Petitioners alleged that state officials with responsibilities over elections—including Secretary of State Steve Simon, county elections officials, prison officials, and others (collectively, the "State Officials")—were violating various laws or duties by fulfilling the requirements of the Re-Enfranchisement Statute to ensure that persons like the Voters are able to register and vote.

Each of the State Officials moved to dismiss. (*See* Index #31-33.) In addition, the Voters moved to intervene, arguing that as the people whose rights would be impacted if Petitioners prevailed, they are allowed to intervene as a matter of right under Rule 24 of the Minnesota Rules of Civil Procedure. (Index #25.) The Voters also moved for judgment on the pleadings,

arguing that *Schroeder II* controls and precludes Petitioners' requested relief. (Index #35.)

On December 13, 2023, the district court granted the State Officials' respective motions to dismiss, as well as the Voters' motions to intervene and for judgment on the pleadings. (*See generally* Petitioners' Addendum ("Add."), Index #75.) The court's order was well-reasoned, on three different issues.

First, as a threshold matter, the court correctly concluded that the Petitioners lack standing. (*See* Add. at 4-8.) As litigants whose rights are not impacted one whit by the Re-Enfranchisement Statute, Petitioners' only alleged basis for standing is taxpayer standing. But the district court correctly held that Petitioners lack taxpayer standing because they do not challenge a specific disbursement of general funds, which is "generally required" for taxpayer standing. (Add. at 6 (citing *Schroeder I*, 950 N.W.2d at 78)). Because the Petitioners' true interest has "nothing to do with money: namely, the eligibility of some citizens to vote," *id.*, the court rejected the Petitioners' contention that they have standing to challenge the constitutionality of the Re-Enfranchisement Statute. Likewise, the district court rejected the argument 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." (*Id.*) "The expenditure of public funds must be the *focus* of the taxpayer's challenge, not

a mere jumping-off point for unrelated arguments." (*Id.* at 7.) "[S]ince 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." (*Id.*)

Next, the district court ruled that even if the Petitioners have standing, they did not satisfy their burden to plead or prove that the Re-Enfranchisement Statute violates Article VII of the state Constitution. (*See* Add. at 8-11.) The Petitioners' theory was an all-or-nothing argument based on language from Article VII: that the legislature cannot restore voting rights to persons living in the community unless it restores *all* of their "civil rights."

The district court held that this argument cannot survive the plain language of Article VII, this Court's decision in *Schroeder II*, and other interpretive tools such as basic grammar. As the district court reasoned:

> 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. Petitioners' interpretation violates these principles by reading a word into Article VII, section 1, that the framers did not actually use.

(Add. at 9-10 (internal citations omitted).) Importantly and correctly, the district court held that this Court's decision in *Schroeder II* "foreclosed" Petitioners' arguments. (*Id.* at 10). "Nothing in *Schroeder II* suggests that the

right to vote cannot be restored before a felony sentence is discharged, as Petitioners contend." (*Id.*) "Indeed, *Schroeder II* does not suggest that Article VII, section 1 limits the Legislature's authority to restore voting rights in any way." (*Id.* at 10-11.)

Petitioners sought appellate review, and this Court granted accelerated review on January 16, 2024.

ARGUMENT

This Court should affirm for either of two alternative reasons given by the district court. First, Petitioners lack standing—whether directly, as taxpayers, or on any other basis. Second, even if, *arguendo*, they possess standing, Petitioners fail to state a claim for a writ of quo warranto because the Re-Enfranchisement Statute is constitutional under a plain reading of Article VII, this Court's decision in *Schroeder II*, and the Re-Enfranchisement Statute. If this Court agrees with either or both bases, it should affirm.

Though it need not address the Voters' intervention to affirm, it should likewise hold that the district court correctly granted intervention as of right to Voters whose very right to participate in the political process would be denied by the relief Petitioners seek.

I. The Court Should Affirm The District Court's Conclusion That Petitioners Lack Standing.

The Court should affirm the district court's conclusion that none of the Petitioners have standing. This is true both as to the individual Petitioners—Mary Amlaw, Ken Wendling, and Tim Kirk—as well as the Minnesota Voters Alliance ("MVA").

To seek a writ of quo warranto or a declaratory judgment, a party must first have standing to seek the writ. *See Free Minn. Small Bus. Coal. v. Walz*, 2021 WL 1605123, *5 (Minn. App. Apr. 26, 2021) (nonprecedential) (affirming dismissal of a quo warranto petition based on a lack of standing) (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. App. 2003). To have standing to seek a declaratory judgment

that a state statute is unconstitutional, 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. Village of Rogers*, 61 N.W.2d 508, 512 (Minn. 1953). Because standing is jurisdictional, it must be decided "before a court can exercise jurisdiction." *In re Custody of D.T.R.*, 796 N.W.2d 509, 512-13 (Minn. 2011).

A. The District Court Correctly Concluded That The Individual Petitioners Lack Standing.

Individual Petitioners are Mary Amlaw, Ken Wendling, and Tim Kirk. They are residents and taxpayers of Anoka County, Minnesota. (App. Br. at 25-29.) Petitioners obviously recognize that they cannot claim to be injured by the act of others voting, so the only basis upon which they claim to have standing to challenge the Re-Enfranchisement Statute is their purported standing as taxpayers. (*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. App. 2007); *Channel 10, Inc. v. Indep. Sch. Dist. No. 709, St. Louis County*, 215 N.W.2d 814, 820 (Minn. 1974). Taxpayers can only bring a lawsuit as taxpayers if they seek to "restrain[] the

'unlawful disbursements of public money'" or "'illegal action on the part of public officials'." *Olson*, 742 N.W.2d at 684 (quoting *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977)).

As the district court correctly noted, various advocacy groups have for years "repeatedly asked our appellate courts to expand taxpayer standing" so they can challenge all manner of statutes they don't like. (Add. at 6.) But "in each and every instance [our appellate courts] have declined to do so," *id.*, because 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." *Olson*, 742 N.W.2d at 685 (quoting *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. App. 2004)). When taxpayer challenges "'are based primarily on [a] 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 (quoting *Rukavina*, 684 N.W.2d at 531).

Here, the district court concluded that Petitioners "do not challenge a specific disbursement of public funds," but instead merely *referenced* $14,000 appropriated by the legislature under the Re-Enfranchisement Statute to then pivot and "challenge something that has nothing to do with [that] money: namely, the eligibility of some citizens to vote." (Add. at 6.) The

individual Petitioners' theory was 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." (*Id.*). But as the district court correctly held, "[c]ase law contradicts this theory." (*Id.*)

The district court found the decision in *Schroeder I* to be "particularly persuasive" (Add. at 8), and it was right to do so. In *Schroeder I*, the Court of Appeals affirmed denial of a motion to intervene brought by one of the same parties—MVA—claiming standing based on the same opposition to persons living in the community on probation, parole, or supervised relief having the right to vote. (*Id.* at 8, citing *Schroeder I*, 950 N.W.2d at 77-78.) *Schroeder I* held that "a challenge to 'a specific disbursement' is required to invoke taxpayer standing," and that where "the subject of the underlying action is not the expenditure of state funds," but "[r]ather, the *subject* of the underlying action is the reinstatement of voting rights after a felony criminal conviction," MVA lacked standing as a taxpayer. *Id.* at 78. It thus affirmed denial of MVA's motion to intervene in that case. There can hardly be more persuasive authorities than *Schroeder I.*

The district court likewise rejected Petitioners' attempt to read the few cases affording taxpayers standing as broadly conferring standing here. Most cases that recognize taxpayer standing "have involved a direct challenge to

the legality of an expenditure." (Add. at 8 (citing cases).) That is not the case here. Petitioners are not challenging the legislature's expenditure of $14,000 to help revise voter education materials, and they are not injured by that limited expenditure. Indeed, that expenditure long since occurred, mooting any claim for relief related to it and negating any possible injury from it. Instead, this case is like others that reject taxpayer standing where the "true subject of the action was not the expenditure of public funds." (*Id.* at 8.)

On appeal, Petitioners principally cite two cases, but both are distinguishable. (*See* App. Br. at 25-28 (citing *McKee*, 261 N.W.2d 566; and *Save Lake Calhoun v. Strommen*, 928 N.W.2d 377 (Minn. App. 2019)).) Petitioners rely heavily on *McKee*, a case that has been "limited . . . closely to its facts," *Citizens for Rule of Law*, 770 N.W.2d at 175, and which is distinguishable in any event. In *McKee*, taxpayers brought a lawsuit challenging the authority of state and county welfare officials to use state funds to make welfare payments for medical expenses connected with abortions. 261 N.W.2d at 569-71. The petitioners' claim included an allegation that that the policy bulletin issued by a state official authorizing welfare coverage of abortions constituted a rule within the meaning of the Minnesota Administrative Procedures Act ("APA") and was not issued pursuant to the requisite public hearing and notice requirements. *Id.* This Court issued a narrow holding focused exclusively on plaintiff's standing as a

taxpayer in the rulemaking context of the Minnesota APA: "A taxpayer suing as a taxpayer has standing to challenge administrative action which allegedly is rulemaking adopted without compliance with the statutory notice requirements." *Id.* at 571. Because this case does not involve either rulemaking or an interpretation of Minnesota's APA, *McKee* is inapposite.

Similarly, *Save Lake Calhoun* is inapposite, as the district court correctly held. In that case, the Minnesota Department of Natural Resources ("DNR") sought to change the name of Lake Calhoun, which petitioner argued exceeded the DNR's authority. 928 N.W.2d at 386. The Court of Appeals held that a petitioner had standing based on an allegation that public funds were being used in connection with the challenged name change. *Id.* As the district court recognized, *Save Lake Calhoun* is an "outlier[]," (Add. at 7) and does not grapple with where to draw the line in cases like this, where the main relief requested—disenfranchisement of tens of thousands of Minnesota voters—has nothing to do with any disbursements of funds under the statute.

On appeal, Petitioners do not address the district court's valid concern that their theory of taxpayer standing is boundless and would undercut Minnesota's longstanding limits on standing. As the Voters have pointed 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." (Add. at 7.) The district court noted below that Petitioners "do not identify any limitation on taxpayer standing that would exist under their theory," *id.*, and they have not cured that deficiency on appeal. The district court got it right: it 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.'" (*Id.*) The Court should continue to reject the invitation to use taxpayer standing as an open door for anyone to challenge virtually any statute with which they have a policy disagreement.

B. The District Court Correctly Concluded That MVA Lacks Standing.

MVA is the only other petitioner, and it is a nonprofit corporation that claims to advocate for "election integrity" and provide research, voter education, and advocacy. (App. Br. at 30.) The Court should affirm dismissal as to MVA, because none of its members possess standing (as taxpayers or otherwise), and because it fails to meet the elements of associational standing.

Organizations can establish standing on two grounds: (1) associational standing or (2) direct standing. *Humphrey*, 551 N.W.2d at 497-98. Direct

organizational standing requires that the organization itself—not its members or constituents—has suffered an injury-in-fact. (*Id.*) Here, MVA does not attempt to assert direct organizational standing because it has none. MVA likewise does not claim that it is a taxpayer, so there is no basis for an argument that MVA has taxpayer standing. (*Cf.* App. Br. at 29-31.) In short, MVA's interest in seeking the disenfranchisement of the Voters and others living in the community does not confer standing.

MVA's only claim to standing is that it can sue *indirectly* because some of its *members* have been harmed by the Re-enfranchisement Statute. (*Cf.* App. Br. at 29-31.) This claim of associational standing fails for the simple reason that no individual *member* of MVA has standing to challenge the Re-Enfranchisement Statute, and hence MVA itself cannot do so either. Or as the district court stated, because the individual petitioners [who are members of MVA] "lack standing to sue in their own right," then "MVA lacks standing as well." (Add. at 5 n.1. (internal quotations and citations omitted).)[6] Neither MVA nor its members will suffer cognizable injury by the legislature's decision to re-enfranchise 55,000 Minnesotans.

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[6] MVA incorrectly states in passing that the Voters did not previously challenge this requirement (App.Br. at 29 n.29), but it is wrong. (*See* Intervenor-Respondents Motion for Judgment on the Pleadings, Index 35, at 11.)

Because neither MVA nor any of the individual petitioners has standing, the district court lacks subject-matter jurisdiction, and this Court can affirm on that basis without addressing the merits further.

C. Denying Petitioners Standing Is Consistent With Federal Case Law Protecting The Right to Vote

Though the Court need not proceed further in its standing analysis, if it consults analogous federal decisions in the voting-rights context, those decisions make clear that Petitioners lack standing here.

Federal courts routinely deny standing for those wishing to interfere with the right of others to vote, even when the suits were purportedly brought under the pretextual guise of "election integrity." *See, e.g., Winpisinger v. Watson*, 86 F.R.D. 77, 79 (D.C. Cir. 1980) (holding that plaintiffs lacked standing to assert their claim that public officials misused federal funds for allegedly "improper activities" related to participating 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) (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*, No. 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.").

These decisions are powerfully persuasive, because courts' standing doctrine should not be used to permit litigants to claim injury from others exercising the fundamental right to vote. Nor should the courts countenance the use of litigation by private plaintiffs to disenfranchise voters they disfavor and seek to exclude from democratic participation. The Court should affirm the district court's refusal to recognize MVA's standing to seek the Voters' disenfranchisement.

II. On The Merits, The District Court Correctly Held That The Re-Enfranchisement Statute Is Constitutional.

If the Court reaches the merits, it should likewise affirm the district court's holding that Petitioners did not meet their burden to establish that the Re-Enfranchisement Statute is unconstitutional. (*See* Add. at 8-11.)

In constitutional challenges to a statute, Minnesota courts apply a "**presumption that Minnesota statutes are constitutional** and that [the

Court's] power to declare a statute unconstitutional should be exercised with extreme caution." *See Assoc. Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000) (emphasis added)). Accordingly, "[t]he party challenging the constitutionality of the statute must bears the burden of establishing beyond a reasonable doubt that the statute violates a constitutional right." *Gluba ex rel. Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713, 719 (Minn. 2007) (applying this standard to uphold the constitutionality of a state statute).

Furthermore, in *facial* challenges to the constitutionality of a statute, a plaintiff can *only* succeed "'by establishing that no set of circumstances exist under which the Act would be valid.'" *Minn. Voters All. v. City of Minneapolis*, 766 N.W.2d 683, 688 (Minn. 2009) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449, 128 S. Ct. 1184, 170 L. E. 2d 151 (2008)). Here, Petitioners have failed to come close to meeting that standard.

A. This Court Held In *Schroeder II* That The Legislature Could Do Exactly What It Did—Re-Enfranchise Minnesotans With Felony Convictions By Legislative Enactment.

This Court's decision in *Schroeder II* squarely repudiated Petitioners' constitutional claims. In that case, this Court unequivocally held that the legislature has the authority to restore the voting rights of persons living in the community on probation, parole, or supervised release following a felony

conviction. And that is what it did in passing the Re-Enfranchisement Statute.

The Court stated:

> [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. The constitution does not provide that the right to vote is automatically restored upon release from prison.

Schroeder II, 985 N.W.2d at 545.

In so holding, this Court unequivocally and repeatedly stated that an act of the legislature is both necessary, and sufficient, to restore civil rights. It reasoned 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 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).

Petitioners have no meaningful response to *Schroeder II*. They argue that the language in Article VII, section 1 of the constitution—that a person convicted of a felony may not vote "unless restored to civil rights"—means that they may not be allowed to vote unless restored to *all* civil rights. (*See* App.Br. at 43.) But as the district court correctly held, the "major premise of this argument is fundamentally flawed." (Add. at 9.) The language in Article VII, section 1 does not say "all civil rights." Petitioners' argument improperly reads a word into Article VII, section 1 that is not there. (*Id.* at 9-10.)

Petitioners relatedly argue that even if not *all* civil rights need to be restored, the Constitution at least requires multiple civil "rights" (plural) to be restored, and that the Re-Enfranchisement Statute does not qualify because it restores only *one* civil right—the right to vote. (*See* App. Br. at 41-42.) *Schroeder II* already answered this question when it held that "[t]he 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)." 985 N.W.2d at 538. *Schroeder II* held, in other words, that when the government establishes "a mechanism" to re-enfranchise people—whether a pardon, or the passing of a statute, or something else—that is sufficient under Article VII, section 1 to restore a person to "civil rights." *Id.*

And of course, the legislature took the Court's cue and passed the Re-Enfranchisement Statute weeks later. In doing so, it expressly restored voting rights "during any period when the individual is not incarcerated for the offense." Minn. Stat. § 201.014, subd. 2a (2023). As the district court correctly held, the Re-Enfranchisement Statute "'certainly comes within th[e] extremely . . . broad, general discretion to choose a mechanism for restoring the entitlement and permission to vote to persons convicted of a felony.'" (Add. at 10 (quoting *Schroeder II*, 985 N.W.2d at 556.))

Petitioners' 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 not only contrary to the holding in *Schroeder II*, but also yields an absurd result, which the Court has never permitted. *Taylor v. Taylor*, 10 Minn. 107, 120-21 (Minn. 1865).[7] For example, the legislature's decision to continue limiting certain civil rights following felony convictions does not negate its authority to restore other civil rights, such as voting. *See, e.g.*, Minn. Stat. § 609.165, subd.1a (limiting possession of firearms for "the remainder of a person's lifetime" if convicted of a "crime of violence"). **Given that Article**

[7] "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[.]"

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.

Even if Petitioners are correct that multiple civil "rights" need to be restored by a statute, this statute *does* that, because by restoring voting rights, it also simultaneously restores *other* civil rights that are contingent on the right to vote, such as serving on some boards. *See e.g.* Minn. Const. Art. IV, § 6 ("Senators and representatives shall be qualified voters of the state"); *see also* Minn. Stat. § 204B.19(1) ("any individual who is eligible to vote in this state is qualified to be appointed as an election judge"); *see also* Office of the Minnesota Secretary of State Steve Simon, *Candidate Qualifications*, https://www.sos.state.mn.us/election-administration-campaigns/become-a-candidate/candidate-qualifications/ (listing eligibility to vote in Minnesota as a requirement to run for any position). Accordingly, Petitioners' argument fails on this basis, as well.

Moreover, persons free to live in the community have been restored to multiple civil rights, including broad rights to associate, move in the community, consume news, freely exercise religion, and so on.[8] The Re-

[8] Petitioners spend four pages of their brief 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."

Enfranchisement Statute simply restores one more civil right, meeting even Petitioners' strained textual parsing of Article VII.

At bottom, Petitioners' argument is so squarely contrary to *Schroeder II* that it can be rejected out of hand. Or as the district court noted in a more restrained fashion, Petitioners at the very least "cannot meet their 'very heavy burden of demonstrating beyond a reasonable doubt' that Minn. Stat. § 201.014 subd. 2a, is unconstitutional." (Add. at 11 (quoting *Assoc. Builder*, 610 N.W.2d at 299).)

B. Petitioners Cannot Meet The Heavy Burden Necessary To Invalidate The Re-Enfranchisement Statute.

To the extent that *Schroeder II* did not already resolve the question, the Court should soundly reject Petitioners' extraordinary request that the Court use its institutional authority to disenfranchise tens of thousands of people, including the Voters, by striking down the Re-Enfranchisement Statute.

Petitioners seek to stand this Court's understanding of its role in Minnesota's constitutional democracy on its head. The Court reserves its most active judicial review and closest scrutiny for instances in which the

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(App. Br. at 9-13.) 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' misinterpretation of both Article VII and *Schroeder II*.

government has burdened fundamental rights. *See, e.g.*, *Kahn v. Griffin*, 701 N.W.2d 815, 826-28 (Minn. 2005) ("[W]e are and should be the 'first line of defense for individual liberties within the federalist system.'") (quoting *State v. Fuller*, 374 N.W.2d 722, 726 (Minn. 1995)); *Women of State of Minn. by Doe v. Gomez*, 542 N.W.2d 17, 30 (Minn. 1995) (recognizing the role of the Court in furthering Minnesota's "long tradition of affording persons on the periphery of sociate a greater measure" of protection). Here, the legislature has acted to extend the fundamental right to vote to tens of thousands of Minnesotans, remedying a longstanding source of serious racial disparities in access to the ballot box. **Striking down the Re-Enfranchisement Statute would use the power of the Court's judicial review to disenfranchise the Voters and deprive 55,000 other Minnesotans living in the community of the right to vote.**

In seeking such an extraordinary use of the Court's judicial authority, it is striking that Petitioners fail to assess the statute under *any* level of constitutional scrutiny, dispute the legislature's purposes in enacting the Re-Enfranchisement Statute, or assert *any* interest served by their requested relief. While Petitioners dispense with the Court's well-worn rules for adjudicating constitutional challenges, the Re-Enfranchisement Statute must merely survive rational-basis review because it neither burdens a fundamental right nor denies equal protection of the law to a protected class.

See, e.g., *Schroeder II*, 985 N.W.2d at 557; *Kahn*, 701 N.W.2d at 832 (holding that infringement—not protection—of the right to vote is "examined under a strict scrutiny standard of review"). Indeed, the Re-Enfranchisement Statute does not burden the rights or interests of *anyone* in a cognizable way.

The Re-Enfranchisement Statute easily passes rational-basis review because it furthers the governmental interest in electoral participation, ameliorates profound racial disparities in access to the ballot box, and advances the fundamental right to vote. And the legislative record reflects that these interests are advanced while furthering public safety because voting reduces recidivism. The right to vote is the cornerstone of our constitutional democracy and is 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, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964). Indeed, Minnesota has a long tradition of valuing and upholding the right to vote as the foundation of self-government:

> 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 disenfranchised 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).

Moreover, Petitioners' challenge to the statute is facial. Because the Re-Enfranchisement Statute advances the governmental interests in democratic participation and access to the ballot box, Petitioners cannot possibly hope to establish that "no set of circumstances exist under which the Act would be valid." *See, e.g.*, *City of Minneapolis*, 766 N.W.2d at 688. Petitioners' facial challenge is rendered all the worse by the fact that innumerable re-enfranchised voters have registered and participated in elections since passage of the statute, yet Petitioners fail to point to any practical issue with the law. In short, Petitioners seek to strip currently registered voters of the right to vote based on nothing more than an ill-conceived, incorrect, and abstract grammatical parsing of Article VII.

The Court should reject Petitioners' effort to use the Court as an instrument to disenfranchise Minnesotans and to upend the role of the courts as the ultimate safeguard and guarantor of voting rights.

III. The District Court Properly Granted Intervenor-Appellees' Motion to Intervene.

If the Court affirms for either of the two reasons listed above, it can simply end the analysis, without needing to address whether the Voters'

intervention was properly granted by the district court.[9] But because intervention issues in high-profile cases arise with some frequency, the Court should also affirm the district court's decision that the Voters are entitled to intervene as of right under Minnesota Rule of Civil Procedure 24. *See Schroeder I*, 950 N.W.2d at 76 (de novo standard of review).

Minn. R. Civ. P. 24.01 sets forth four requirements to intervene as a matter of right: "(1) a timely application; (2) an interest in the subject of the action; (3) an inability to protect that interest unless the applicant is a party to the action; and (4) the applicant's interest is not adequately represented by existing parties." *League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636, 641 (Minn. 2012). "The rule seeks to protect persons who claim an interest relating to the property or subject at issue in the litigation from having that interest adversely affected by litigation taking place without their participation." *Miller v. Miller*, 953 N.W.2d, 489, 493 (Minn. 2021); *see Avery v. Campbell*, 157 N.W.2d 42, 45 (Minn. 1968). Minnesota courts "encourage intervention whenever possible." *Norman v. Refsland*, 383 N.W.2d 673, 678 (Minn. 1986).

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[9] Ms. Schroeder's sentence has recently been discharged following reform of Minnesota's probationary sentences. Mr. Darris's right to vote continues to hinge on the Re-Enfranchisement Statute as he awaits discharge of his sentence.

Petitioners challenge only the last two requirements for intervention: "an inability to protect that interest unless the applicant is a party to the action" and "the applicant's interest is not adequately represented by existing parties." (App.Br. at 50-52.) Their argument lacks merit.

A. The Voters Will Be Unable To Protect Their Rights To Vote Unless They Are Parties To The Case.

On this element, the district court correctly concluded that the Voters "easily" made the showing that "'as a practical matter, the disposition of the action may impair or impede [their] ability to protect [their] stated interest.'" (Add. at 3) (quoting *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986)).) Courts examine this factor "from a practical standpoint rather than one based on strict legal criteria." *Schumacher*, 392 N.W.2d at 207.

The Voters satisfy this element, quite simply, because the relief sought by Petitioners would prevent them from exercising their fundamental right to vote. This is not a difficult conclusion to reach, because Petitioners seek to invalidate the Re-Enfranchisement Statute that has restored the Voters' right to participate in elections. If Petitioners win, the Voters lose. After having worked for *years* to lobby the legislature to pass the Re-Enfranchisement Statute, the Voters have demonstrated an interest in securing and exercising the right to vote. (*See* Schroeder Decl., Index #27 ¶¶

16-17; Darris Decl., Index #28 ¶¶ 13-15.) Opposing Petitioners' efforts to disenfranchise them is essential to protecting that interest.

In response, the Petitioners argue that the State Officials will adequately protect their interests. (App. Br. at 50-51.) But the third element focuses on something else: whether resolution of the action may "impair or impede [their] ability to protect" their interests. Petitioners seek relief that would directly obstruct the Voters' interests, so this prong of the intervention analysis is plainly satisfied. And the Voters have no opportunity to protect their interests from the relief Petitioners seek without participating in this litigation.

B. The State Officials Do Not Adequately Represent The Interests Of The Voters.

That leaves only the final element—whether existing parties will not "adequately protect" the Voters' interests. On that too, the district court was right: other parties do not *adequately* represent the Voters' interests.

The district court concluded that this element was satisfied because the Voters have a "personal interest at stake in this case," their right to vote, which is "not the same as the government's general interest in upholding the constitutionality of statutes." (Add. at 15.) That, too, is correct.

In response, Petitioners argue that intervention as of right is only permitted when the desired outcome is "*different from* or *opposed to* that of

the other parties in a case." (App. Br. at 50.) But that is not the law. Petitioners cite this Court's decision in *Schumacher*, but *Schumacher* merely held that when the parties seek opposing outcomes, intervention is an *easy* question. 392 N.W.2d at 208. Nothing in *Schumacher* addresses situations where putative intervenors have outcome that overlap with one or more existing parties.

Thankfully, this Court has already explained the standard to apply when there are overlapping interests between or among intervenors and existing parties. If the putative intervenor's interest "is similar to, but not identical with that of one of the parties, a *discriminating judgment* is required on the circumstances of the particular case, but he ordinarily should be allowed to intervene *unless it is clear* that the party will provide adequate representation for the absentee." *Costley v. Caromin House, Inc*, 313 N.W.2d 21, 28 (Minn. 1981) (emphasis added) (internal citation omitted). *Costley* establishes a presumption in favor of intervention even with overlapping interests; to overcome the presumption, the party opposing intervention must demonstrate that "*it is clear*" that the other parties can adequately protect the interest of the putative intervenors. Petitioners failed to make that showing.

Petitioners also focus on the overlapping *arguments* made by the State Officials and the Voters. (*See* App. Br. at 52.) But, as *Costley* suggests, courts

rightly focus on the whether the interests are shared at the same level of specificity. *See* 313 N.W.2d at 28.[10] As the district court here held, the State Officials are concerned with something much more general and abstract: enforcement of state statutes. The Voters' interest is more specific, tangible, and personal: the right to participate in the democratic process. As a result, litigation positions may diverge for innumerable reasons throughout the litigation, whether related to discovery, relief, proof offered in dispositive hearings, or potential settlement. Accordingly, Minnesota courts have long recognized that such distinct interests warrants inclusion of an intervening party in the litigation.

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[10] Federal courts also allow intervention even when there are overlapping arguments if one party's interests are more general than the putative intervenors' interests. *See, e.g., Mille Lacs Band of Chippewa Indians v. Minn.*, 989 F.2d 994, 1001 (8th Cir. 1993); *Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996) (holding that the government's representation of the general public interest did not adequately represent the intervenor's narrower private interests, despite the similarity in their goals); *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1255-56 (10th Cir. 2001) ("In litigating on behalf of the general public, the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of [a private party] intervenor."); *Fund for Animals v. Norton*, 322 F.3d 728, 736 (D.C. 2003) ("governmental entities do not adequately represent the interests of aspiring intervenors." (footnote omitted)); *see also Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 321 (D.C. Cir. 2015) ("we look skeptically on government entities serving as adequate advocates for private parties.").

Petitioners claim that it is "only the extremely rare case in which an intervenor seeking the same result as a government party might be allowed to intervene." (App.Br. at 51.) Not so, as the cases cited above show.

Petitioners then pivot to urging the Court to adopt a heightened standard seldom applied in federal court presuming that the government will represent the interests of all citizens. (*See* App. Br. at 55-57 (citing *DSCC v. Simon*, No. 62-CV-20-585, 2020 WL 4519785 (D.C. Minn. July 28, 2020)).) But as the district court correctly held, that is not the standard in Minnesota.

To be sure, Minnesota appellate courts have from time-to-time affirmed denials of requests to intervene, including in *Schroeder I*. But Petitioners' reliance on *Schroeder I* is off point because there MVA did not even have an *interest in the subject of the lawsuit in the first instance. See* 950 N.W.2d at 77 ("MVA does not profess an interest in the subject of the lawsuit. Nor does it allege any harm that it has suffered or will suffer—other than the expenditure of public funds defending the suit—as a result of the action."). Thus, *Schroeder I* does not help Petitioners.[11]

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[11] Petitioners' reliance on an unpublished case, *Doe v. State*, No. 62-CV-19-3898, 2020 WL 6011443 (Minn. App. Oct. 12, 2020), is misplaced. The court in *Doe* denied intervention because the defense the proposed intervenors sought to interpose in that case was meritless, which is not the situation here. Likewise, the court in *Doe* found the proposed intervenors had no interest in the underlying suit based simply on tax expenditures. *Doe* thus lacks even persuasive value here.

If that weren't enough, there is an additional reason that the State Officials will not adequately protect the Voters' interests: they are subject to election, where changes in the official may prompt changes in litigation position. If the Court had not granted accelerated review, it would be entirely possible that there would be an intervening election where the State Officials here could change by popular vote. If that were to happen, new State Officials could decide to change litigation position. Allowing intervention as of right recognizes that potential future changes in government officials should not delay or impair the judiciary from deciding cases. *Cf, e.g., League of Women Voters of Michigan v. Johnson*, 902 F.3d 572, 580 (6th Cir. 2018).

C. Alternatively, The Court May Affirm Because The District Court Would Have Been Within Its Discretion To Grant Permissive Intervention.

Below, the Voters also argued that they should be allowed to intervene permissively, even if not allowed to intervene as a matter of right. The district court found it unnecessary to address this argument given its conclusion that the Voters could intervene as a matter of right.

Normally, where a district court is presented with an argument within its discretion but does not decide the issue, this Court may remand so the district court can exercise that discretion in the first instance. *See In re Stuart*, 646 N.W.2d 520, 526 (Minn. 2002) (remanding to district court to

exercise discretion in determining eligibility for public defender services). Here, however, it would be inefficient and futile to do so.

This Court has already granted accelerated review to decide the important issues presented by the case. It serves no one—not Petitioners, the State Officials, nor the Voters—to remand so the district court can decide whether to allow permissive intervention. Instead, "[w]here a decision is correct it need not be sustained for the same reason or for all the reasons relied upon by the trial court." *Liebsch v. Abbott*, 122 N.W.2d 578, 585 (Minn. 1963) (internal quotation marks and quoting citation omitted).

The Voters would satisfy any reasonable application of the standard for permissive intervention. The rule on permissive intervention states:

> Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a common question of law or fact. . . In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Minn. R. Civ. P. 24.02. Permissive intervention requires only that the proposed intervenors have "a common question of law or fact with the action." *League of Women Voters of Minn.*, 819 N.W.2d at 642 (internal quotation marks and quoting citation omitted). That standard is easily satisfied here, because the Voters presented defenses that share many common questions of law and fact with the claims and defenses of the parties. (*See* Index #7.)

Indeed, applying analogous federal cases, it would be an abuse of discretion on this record for the district court *not* to allow permissive intervention. *See League of Women Voters of Michigan*, 902 F.3d at 572. In light of that reality, it would be an unnecessary waste of time to remand for the district court to address permissive intervention when this Court can do so now.

CONCLUSION

The district court's orders dated December 13, 2023, should be affirmed.

Dated: February 27, 2024

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01 for a brief produced with a proportional font. The length of this brief is 8,836 words. This brief was prepared using Microsoft Word 365 software.

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