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State of Minnesota
In Supreme Court

Minnesota Voters Alliance, et al.,

Appellants,

v.

Anoka County election official Tom Hunt, in his official capacity et al.,

Respondents,

Jennifer Schroeder et al.,

Intervenor-Respondents.

BRIEF OF AMICUS CURIAE
LEAGUE OF WOMEN VOTERS MINNESOTA

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INTRODUCTION AND INTERESTS OF AMICUS CURIAE[1]

The League of Women Voters Minnesota (the "League") is a nonpartisan nonprofit organization that has been fiercely committed to securing the sacred right to the elective franchise for more than a century. The League grew out of 80 years of protest over women not being allowed to vote. It was founded in 1919 with the purpose of helping 20 million women fulfill their responsibilities as new voters following the ratification of the 19th Amendment. Today, the League empowers voters and defends democracy through voter education and engagement, public policy advocacy, encouraging civic participation, and supporting local League leaders and members. The League envisions a democracy where every person has the desire, right, knowledge, and confidence to participate.

A significant obstacle to that vision is the disenfranchisement of people who have been convicted of a felony. This form of disenfranchisement has a history of racism, disproportionately affects people of color, and undermines rehabilitation and successful re-entry into the community for individuals who are no longer incarcerated. *Schroeder v. Simon*, 985 N.W.2d 529, 548, 553, 557 (Minn. 2023); *id.* at 562 n.2, 566-67 (Hudson, J., dissenting).

The Minnesota Constitution allows restoration of the right to vote to people convicted of a felony. Specifically, Article VII, Section 1 of the Minnesota Constitution

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[1] Pursuant to Minn. R. Civ. App. P. 129.03, the League certifies that no counsel for any party in this action authored this brief in whole or in part and that no party or entity other than *amicus curiae* made any monetary contribution to the presentation or submission of this brief.

provides that "a person who has been convicted of treason or felony" shall not be entitled or permitted to vote in any election in this state "unless restored to civil rights."

Under Minnesota's prior statutory scheme, a person convicted of a felony was not restored the right to vote until his or her sentence was "discharged," including any period of probation or supervised release in the community. *See* Minn. Stat. § 609.165. Several Minnesotans who were denied the right to vote under this system challenged the constitutionality of Minn. Stat. § 609.165. *See Schroeder v. Simon*, 985 N.W.2d 529 (Minn. 2023). Last year, the Court determined that the statute was constitutional, but recognized "the troubling consequences, including the disparate racial impacts, flowing from the disenfranchisement of persons convicted of a felony." *Id.* at 557. The Court made clear that the Legislature was empowered to address these policy concerns implicating the fundamental right to vote by passing a law "that generally restores the right to vote upon the occurrence of certain events." *Id.* at 556-57.

Less than a month later, the Legislature did precisely that. On March 3, 2023, the Governor signed into law an amendment to Minn. Stat. § 201.014 that restores 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.

On June 29, 2023, Appellants filed a "Petition for a Writ of Quo Warranto or, in the Alternative, for a Declaratory Judgment." Appellants challenge the following acts of the Legislature which aim to educate Minnesotans about the change in the law and to update voter applications and certifications to reflect the new law:

- The Legislature amended Minn Stat. § 201.071, which sets forth requirements for voter registration applications. The certification of voter eligibility in the application must now state that the applicant is "not currently incarcerated for a conviction of a felony offense." 2023 Minn. Laws Ch. 12, § 2.

- The Legislature enacted Minn. Stat. § 201.276, which provides: "The secretary of state shall develop accurate and complete information in a single publication about the voting rights of people who have been charged with or convicted of a crime. This publication must be made available electronically to the state court administrator for distribution to judges, court personnel, probation officers, and the commissioner of corrections for distribution to corrections officials, parole and supervised release agents, and the public." 2023 Minn. Laws Ch. 12, § 3.

- The Legislature amended Minn. Stat. § 204C.08, subd. 1d, which sets forth the form of a "Voter's Bill of Rights" that the county auditor must provide to each polling place and elections judges must post in a conspicuous location. Section 8 of the Voter's Bill of Rights now says: "You have the right to vote if you are not currently incarcerated for conviction of a felony offense." 2023 Minn. Laws Ch. 12, § 4.

- The Legislature amended Minn. Stat. § 204C.10, which requires an "individual seeking to vote [to] sign a polling place roster or voter signature certificate" representing that they meet certain voter eligibility criteria. That certificate now includes a statement that the individual "has the right to vote because, if the individual was convicted of a felony, the individual is not currently incarcerated for that conviction." 2023 Minn. Laws Ch. 12, § 5.

- The Legislature appropriated $14,000 in fiscal year 2023 to the Secretary of State to implement the above notifications and form changes. 2023 Minn. Laws Ch. 12, § 8.

- The Legislature appropriated $200,000 in fiscal year 2024 to the Secretary of State to "develop and implement an educational campaign relating to the restoration of the right to vote to formerly incarcerated individuals, including voter education materials and outreach to affected individuals." 2023 Minn. Laws Ch. 62, art. 1, § 6.

- The Legislature enacted Minn. Stat. § 243.205, which requires the chief executive officer of each state and local correctional facility and probation officers to provide people who are released from incarceration for a felony-level offense notice that their right to vote has been restored and a voter registration application. 2023 Minn. Laws Ch. 12, § 6.

- The Legislature amended Minn. Stat. § 201.145, subds. 3-4, which require the commissioner of corrections and the state court administrator to submit reports on certain individuals whose right to vote have been restricted or restored to the Secretary of State, who in turn prepares lists for the county auditor so that the statewide voter registration system is kept up to date on voter eligibility status. 2023 Minn. Laws Ch. 62, art. 4, §§ 21-22.[2]

Appellants seek a writ of quo warranto enjoining Anoka County elections official Tom Hunt, Secretary of State Steve Simon, and Department of Corrections Warden Shannon Reimann from complying with the above-cited statutes. Appellants argue that complying with the statutes "exceeds Respondents' authority because the Minnesota Constitution forbids those serving felony sentences from voting." (Pet. at p.14.) In the alternative, Appellants request a declaratory judgment stating that the actions "which would implement" the above laws are unconstitutional. (*Id.* at p. 15.) The district court correctly denied Appellants' petition and granted Respondents' Rule 12 motions.

ARGUMENT

I. The Court Should Confirm that the Writ of Quo Warranto Does Not Grant Special Interest Groups a Backdoor to Challenge Laws They Do Not Like.

Appellants' action is primarily styled as a petition for a writ of quo warranto. Quo warranto is a Latin phrase meaning "by what authority?" or "by what warrant?" *E.g.*, *State ex rel. Burnquist v. Vill. of N. Pole*, 6 N.W.2d 458, 461 (Minn. 1942); *Quo Warranto*, Black's Law Dictionary (11th ed. 2019). The ancient writ of quo warranto requires that "respondents in such a case show, before a court of competent jurisdiction at a stated time

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[2] Appellants also challenge amendments to Minn. Stat. § 201.022, subd. 1 (enacted in 2023 Minn. Laws Ch. 62, art. 4, § 11) and Minn. Stat. § 201.121, subd. 1 (enacted in 2023 Minn. Laws Ch. 62, art. 4, § 19). (App. Br. at 7.) Neither amendment pertains to the restoration of voting rights for people convicted of a felony.

and place designated in the writ, 'by what warrant' they exercised the powers claimed." *Burnquist*, 6 N.W.2d at 461; *see also, e.g.*, *State ex rel. Young v. Vill. of Kent*, 104 N.W. 948, 950 (Minn. 1905) (explaining that quo warranto was "a writ of right for the King, against him who claims or usurps any office, franchise, or liberty, to inquire by what authority he supports his claim, in order to determine the right."). In other words, "in its form and purpose, the writ is analogous to an order to show cause." *Burnquist*, 6 N.W.2d at 461.

"The petition for a writ of quo warranto and an information in the nature of quo warranto have enjoyed a unique and varied history in this state and arise both pursuant to statutory authority and at common law." *Rice v. Connolly*, 488 N.W.2d 241, 243 (Minn. 1992) (footnotes omitted). Throughout the early half of the last century, quo warranto was frequently used to determine the validity of annexation of certain territory, the organization of villages, and entitlement to office. *See, e.g.*, *State ex rel. Hilton v. Vill. of Kinney*, 178 N.W. 815, 816 (Minn. 1920); *State ex rel. Town of Stuntz v. City of Chisholm*, 264 N.W. 798, 799 (Minn. 1936); *State ex rel. Maffett v. Turnbull*, 3 N.W.2d 674, 675 (Minn. 1942).

In 1959, the writ of quo warranto was abolished in the district court with the adoption of the Rules of Civil Procedure—although the Court retained original jurisdiction over such writs. *See* Minn. R .Civ. P. 81.01(2) (1959); *Williams v. Rolfe*, 101 N.W.2d 923, 928 (Minn. 1960). Thereafter, far fewer quo warranto petitions were filed and, even when they were, the Court would remand or deny such petitions in favor of declaratory judgment actions instead. *See, e.g.*, *Latola v. Turk*, 247 N.W.2d 598 (Minn. 1976); *AFSCME Councils 6, 14, 65 and 96, AFL–CIO v. Sundquist*, 338 N.W.2d 560 (Minn. 1983).

In 1992, the Court "determined that quo warranto jurisdiction as it once existed in the district court must be reinstated and that petitions for the writ of quo warranto and information in the nature of quo warranto shall be filed in the first instance in the district court." *Connolly*, 488 N.W.2d at 244. The writ of quo warranto has seen a recent resurgence, especially related to issues of political salience.

In *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 174 (Minn. 2020), the Court substantively discussed the contours of the quo warranto doctrine for the first time in over twenty years. The Court declined to abolish the common-law writ of quo warranto and held that the writ remained "an available remedy to challenge official action not authorized by law." *Id.* at 174-76.

The Court should take this opportunity to clarify the scope and requirements of the writ of quo warranto. Here, there is no question "by what warrant" Respodents are acting. The Legislature explicitly commanded them to take the actions to which Respondents object. Accordingly, Appellants are not asserting that the Respondents have exceeded their legal authority. Instead, Appellants do not like the law the legislature passed. That is not a grievance the writ of quo warranto was designed to remedy. *See, e.g.*, *State ex rel. Lommen v. Gravlin*, 295 N.W. 654, 655 (Minn. 1941) (holding that "the writ of quo warranto is not allowable as preventive of, or remedy for, official misconduct and can not be employed to test the legality of the official action of public or corporate officers" (internal quotation marks and citation omitted)).

Moreover, allowing Appellants to use the writ of quo warranto to attack the constitutionality of the Legislature's laws creates confusion about the appropriate burdens.

A writ of quo warranto requires that "*respondents* in such a case show, before a court of competent jurisdiction at a stated time and place designated in the writ, 'by what warrant' they exercised the powers claimed." *Burnquist*, 6 N.W.2d at 461 (emphasis added). But a litigant challenging the facial constitutionality of a statute—as Appellants do here—must meet the "very heavy burden" to prove that the statute is unconstitutional "in all applications" and "beyond a reasonable doubt." *Carlson v. Simon*, 888 N.W.2d 467, 470 n.3 (Minn. 2016); *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000).

In sum, the Court should make clear that the ancient writ of quo warranto does not provide individuals who otherwise lack standing a backdoor to challenge the constitutionality of duly enacted laws with which they do not agree. A petition for a writ of quo warranto must assert that a state official is acting without legal authority, not that the law the official is carrying out is unconstitutional or otherwise invalid, and the petitioner is not exempt from the requirements of standing.

II. Appellants Have Not Met Their "Heavy Burden" to Show that Minn. Stat. § 201.014 Is Unconstitutional.

Statutes are presumed constitutional. *Fletcher Props., Inc. v. City of Minneapolis*, 947 N.W.2d 1, 9 (Minn. 2020). Accordingly, Minnesota courts exercise their power to declare statutes unconstitutional "with extreme caution and only when absolutely necessary." *Id.* (quotation marks and citation omitted). Facial challenges to statues "are disfavored." *Carlson*, 888 N.W.2d at 470 n.3. As mentioned above, a party challenging the facial constitutionality of a statute bears the "very heavy burden" to prove that the

statute is unconstitutional "in all applications" and "beyond a reasonable doubt." *Id.; Associated Builders*, 610 N.W.2d at 299.

A. The *Schroeder* Opinion Disposes of Appellants' Argument.

One year ago, the Court issued *Schroeder v. Simon*, 985 N.W.2d 529, 545 (Minn. 2023). In that case, the Court answered the same question Appellants now put forward: What is required to restore a person convicted of a felony to the right to vote under the Minnesota Constitution? *Id.* at 538-39. The Court repeatedly held that Article VII, Section 1 of the Minnesota Constitution allows a person convicted of a felony to regain their right to vote upon "an affirmative act or mechanism of the government restoring the person's right to vote," including a "legislative act that generally restores the right to vote upon the occurrence of certain events." *Id.* at 534, 545, 556. The Court further held that the Minnesota Constitution grants the Legislature "broad, general discretion to choose a mechanism for restoring the entitlement and permission to vote to persons convicted of a felony." *Id.* at 556. This discretion includes "the discretion to refuse to restore the right to vote at all" or the discretion to "restore voting rights to all Minnesotans immediately following their felony conviction, thus allowing incarcerated Minnesotans to vote." *Id.* at 555, n.21, 556; *see also id.* at 565 (Hudson, J., dissenting) (agreeing that Article VII permits "the Legislature to restore to civil rights a person convicted of a felony at the moment of conviction").

Section 201.014 is plainly within the broad range of discretion outlined in *Schroeder*. The Court need go no further than its own recent decision to affirm the district court.

B. Appellants Do Not Even Try to Define the Key Phrase Upon Which Their Argument Relies.

Appellants' constitutional challenge hinges on the phrase "unless restored to civil rights" in Article VII, Section 1. Appellants have advanced shifting interpretations of that phrase over the course of this litigation and have not come close to meeting their "very heavy burden" to show that Minn. Stat. § 201.014 contravenes this language.

In their petition and in the district court, Appellants argued that the phrase "unless restored to civil rights" means a felon is constitutionally prohibited from voting until he or she has been restored to "*all* civil rights that a non-felon possesses." (Pet. ¶ 1 (emphasis added).) The district court correctly rejected Appellants' argument. First, the word "all" does not appear Article VII, Section 1. Basic principles of constitutional interpretation forbid Appellants from adding words to the constitutional provision at issue. *Shefa v. Ellison*, 968 N.W.2d 818, 826-27 (Minn. 2022). Second, the Court's recent decision in *Schroeder* forecloses Appellants' argument. 985 N.W.2d at 545. The Court expressly rejected the notion that "civil rights" in Article VII, Section 1 means "all civil rights":

> 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).

Id. at 544-45.

On appeal, Appellants appear to have abandoned their argument that "all civil rights" must be restored. Appellants now argue that "civil rights" is plural, and, therefore,

a felon must be restored to multiple civil rights before they can vote. According to Appellants, Minn. Stat. § 201.014 is unconstitutional because it fails restore more than one civil right. (App. Br. at 33.) But Appellants do not attempt to define what "civil rights" means, only that they involve "more than one right." (App. Br. at 34, 36.) Appellants cannot meet their "very heavy burden" to prove a statute is unconstitutional "in all applications" and "beyond a reasonable doubt" if they do not even explain to the court what the key phrase at issue means. *Carlson*, 888 N.W.2d at 470 n.3; *Associated Builders*, 610 N.W.2d at 299.

III. Declaring Minn. Stat. § 201.014 Unconstitutional Would Cause Significant Confusion and Chaos During the Upcoming Election this November.

Holding that Minn. Stat. § 201.014 is unconstitutional would also have disastrous public policy consequences.

First, and most importantly, a decision that section 201.014 is unconstitutional would cause widespread confusion during and disruption to the general election in Minnesota this November. More than 50,000 Minnesotans had their voting rights restored when the Legislature amended section 201.014. *See* Alex Derosier, *Minnesota Restores Voting Rights to 50k Felons on Probation*, Pioneer Press, Mar. 3, 2023, available at https://www.twincities.com/2023/03/03/minnesota-restores-voting-rights-to-50k-felons-on-probation. As a result, thousands of Minnesotans with felony convictions who are no longer incarcerated were able to legally vote in the November 2023 elections and will be able to do so again in the March 2024 presidential primaries. A decision from the Court rescinding those voting rights will cause significant chaos in the upcoming local, state, and

national elections, disrupt ongoing voter-registration, voter-education, and polling-place preparations, and leave thousands of Minnesotans unsure of their eligibility to vote. It would also cast into doubt the legitimacy of the November 2023 general election and March 2024 primary elections in which Minnesotans who had previously been incarcerated cast ballots.

Moreover, rescinding the voting rights of people with felony convictions who are in the process of reintegrating into public life and who live, work, and pay taxes in their communities would undermine the rehabilitation process and—in clear contravention of the Legislature's unequivocal policy preferences—"offend our civilized concept that society must make a reasonable effort to rehabilitate those who have erred so they can be assimilated into the community." *Ponticas v. K.M.S. Invs.*, 331 N.W.2d 907, 916 (Minn. 1983).

Finally, a decision from the Court reversing its own explicit directives in *Schroeder* would damage public trust in the Court and in civic groups like the League that relied on the Court's guidance. As explained above, one year ago the Court repeatedly stated in *Schroeder* that the Legislature—not the Court—has the power to enact legislation "that generally restores the right to vote upon the occurrence of certain events." *Schroeder*, 985 N.W.2d at 534, 545, 556. The Legislature followed the Court's explicit direction and duly enacted legislation restoring the right to vote to people with felony convictions once they are released from incarceration. And, in reliance on that legislation and on the Court's confirmation that such acts would be constitutional, the League—along with other esteemed and trusted civic organizations and advocacy groups—committed significant

resources and time to informing newly-eligible voters of their rights and registering them to vote. If the Court now suddenly reverses course and concludes that the Legislature does *not* have the authority to restore the civil right to vote, the League will have to return to those citizens who registered in good faith and inform them that any prior registration was ineffective and that they are not, after all, eligible to vote until their sentence is fully discharged. The League has spent over a hundred years building its reputation for providing accurate, reliable, nonpartisan voter registration, engagement, education, and support. A decision from the Court requiring the League to reverse its most recent engagement and registration efforts would cause lasting harm to the League's reputation, undermine the trust that voters have in organizations like the League, and hinder the League's ability to serve the voting public in future elections.

CONCLUSION

A year ago in *Schroeder*, the Court confirmed that the Legislature—not the Court—has the power to restore the right to vote to Minnesotans with a felony conviction. The Legislature followed that guidance and passed comprehensive legislation restoring the right to vote upon release from incarceration. Consistent with its century-old mission to expand and protect the franchise and ensure a truly representative democracy, the League of Women Voters Minnesota diligently engaged in education and registration efforts to inform Minnesotans with felony convictions who have been released from incarceration of their right to vote and to help them exercise that right.

Appellants disagree with the Legislature's decision to restore the right to vote upon release from prison. Through an improper quo warranto action, they ask the Court to

reverse its own clear, recent decision in *Schroeder*, invalidate the Legislature's duly enacted comprehensive voting-restoration scheme, and nullify the League's extensive work in ensuring that all eligible voters are able to participate in Minnesota's democratic process. The Court should reject that request, confirm its own recent holding in *Schroeder*, and affirm the district court's dismissal of Appellant's petition.

Dated: March 1, 2024

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CERTIFICATE OF COMPLIANCE

This brief complies with the form requirements of Minn. R. Civ. App. P. 132.01, subd. 1. It also complies with the length limitations of Minn. R. Civ. App. P. 132.01, subd. 3(c). This brief was prepared using Microsoft Word Microsoft 365 in a 13-pt. font, which reports that the brief contains 3,600 words.

Dated: March 1, 2024

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