No. A23-1940

STATE OF MINNESOTA

IN SUPREME COURT

Minnesota Voters Alliance, et al.,

Appellants,

vs.

Tom Hunt, et al.,

Respondents,

Steve Simon, et al.,

Respondents,

Jennifer Schroeder, et al.,

Respondents.

STATE RESPONDENTS' BRIEF

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STATEMENT OF THE CASE

The Minnesota Constitution prohibits individuals with felony convictions from voting "unless restored to civil rights." This case challenges the legislature's decision to restore voting rights to such individuals while they are not currently incarcerated, including when they are on probation, supervised release, or work release.

Appellants, Minnesota Voters Alliance and several of its members, petitioned for a writ of quo warranto. They allege that State Respondents Minnesota Secretary of State Steve Simon, the Office of the Secretary of State, and Lino Lakes Warden Shannon Reimann's implementation of that decision violates the state constitution. The district court dismissed the petition, concluding that Appellants lacked standing and that restoring the right to vote while an individual is still under correctional supervision is constitutional.

FACTS

Minnesota's constitution provides that a person convicted of a felony may not vote "unless restored to civil rights." Minn. Const. art. VII, § 1. Restoring voting rights is not automatic; rather, it requires "an affirmative act or mechanism of the government to restore the [person's] right to vote." *Schroeder v. Simon*, 985 N.W.2d 529, 534 (Minn. 2023). The Minnesota Legislature, as the branch intended to be responsive to changes in societal norms and values, has exercised this authority for over 160 years by adjusting the requirements and processes for restoring voting rights. *See generally id.* at 541–43 (describing changes in how legislature has restored right since adoption of the constitution). For most of Minnesota's history, voting rights were restored upon completion of a felony sentence,

including any term of probation, incarceration, or supervised release. *See, e.g.*, Minn. Stat. § 609.165, subd. 1 (2022).

Most recently, in 2023 the legislature restored the right to vote to a substantial number of Minnesotans. Effective June 1, 2023, Minnesota joined twenty-four other states and the District of Columbia in allowing people with felony convictions to vote while on probation, supervised release, or work release. 2023 Minn. Laws ch. 12, § 1 (codified at Minn. Stat. § 201.014, subd. 2a (Supp. 2023)); 2023 Minn. Laws ch. 62, art. IV, §§ 10, 92 (making change effective June 1, 2023); *Restoration of Voting Rights for Felons*, NAT'L CONF. OF STATE LEGISLATURES (Apr. 6, 2023).[1] Under the new law, a person convicted of a felony has the civil right to vote (assuming the person is otherwise eligible to vote) restored when the person is not incarcerated for the offense. Minn. Stat. § 201.014, subd. 2a. In other words, the person may vote when in the community on probation, supervised release, or work release.[2]

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[1] Available at https://perma.cc/A53Y-Z5WJ.

[2] Probation is supervision imposed by a court as an alternative to imprisonment, but a court may revoke probation and execute the prison sentence for violating any probation conditions. Minn. Stat. §§ 609.135, subd. 1, .14 (2022). Supervised release is akin to parole. After serving a term of imprisonment, the remainder of the sentence is served in the community on supervised release, subject to conditions and to revocation of release for violating conditions. *Id.* §§ 244.101, 244.05, subds. 1b, 3 (2022). The presumptive term of imprisonment is two-thirds of the executed sentence, but that term may be extended (and the supervised-release term commensurately shortened) for prison discipline. *Id.* § 244.101, subd. 1. Work release is an extension of the limits of confinement to work at paid employment, seek employment, or participate in a vocational training or educational program. *Id.* § 241.26, subd. 1 (2022).

Appellants are Minnesota Voters Alliance, a self-described "election-integrity" organization, and several of its members. (Compl. ¶¶ 26–29.) Through the years, Minnesota Voters Alliance has brought numerous cases seeking to curtail the right to vote.[3]

After the legislature enacted the re-enfranchisement law, Appellants petitioned for a writ of quo warranto, challenging State Respondents' authority to implement the statutory directive to restore voting rights. Recognizing that the statute passed by the legislature explicitly gives State Respondents that authority, Appellants framed their claim as a constitutional one: according to Appellants, the legislature cannot restore the right to vote unless *all* civil rights are restored, and therefore any action by State Respondents based on such statutes is unlawful. (Doc. 1, ¶ 1.) Following cross dispositive motions, the district court granted Respondents' motions to dismiss. The court held that Appellants lacked

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[3] *E.g.*, *Minn. Voters Alliance v. Ellison*, No. 0:23-CV-02774 (D. Minn. Sept. 11, 2023) (challenging prohibition on threats or falsehoods intended to keep people from voting); *Minn. Voters Alliance v. Simon*, 990 N.W.2d 710 (Minn. 2023) (seeking to expand ballot-board members' discretion to reject absentee ballots); *Cilek v. Office of the Minn. Sec'y of State*, 941 N.W.2d 411 (Minn. 2020) (seeking access to voters' protected personal data regarding challenges to voter registration, such as for felony convictions); *Minn. Voters Alliance v. Simon*, 885 N.W.2d 660 (Minn. 2016) (seeking to prevent individuals who certify eligibility in polling place from voting); *Schroeder v. Simon*, 962 N.W.2d 471 (Minn. Ct. App. 2021) (seeking to intervene to defend disenfranchisement of individuals with felony convictions); *Minn. Voters Alliance v. State*, No. A20-0469, 2021 WL 416744 (Minn. Ct. App. Feb. 8, 2021) (challenging ability of absentee voters to certify their eligibility to vote); *Minn. Voters Alliance v. State*, 955 N.W.2d 638, 640 (Minn. Ct. App. 2021) (seeking to invalidate administrative rule for failing to force party balance on city and county officials who are members of ballot boards); *Minn. Voters Alliance v. State*, No. A14-1585, 2015 WL 2457010 (Minn. Ct. App. May 26, 2015) (opposing online voter registration); *Minn. Voters Alliance v. Simon*, No. 62-CV-16-5711 (Ramsey Cty. Nov. 7, 2016) (seeking to prevent individuals who certify eligibility in polling place from voting).

standing and that the re-enfranchisement law is constitutional. Appellants obtained accelerated review of that dismissal from this Court.

ARGUMENT

Appellants challenge the district court's holdings that they lack standing and that the re-enfranchisement law is constitutional. These are questions of law that this Court reviews de novo. *In re Gillette Children's Specialty Healthcare*, 883 N.W.2d 778, 784 (Minn. 2016) (holding questions of standing are reviewed de novo); *Johnson v. State*, 992 N.W.2d 389, 391 (Minn. 2023) (holding questions of constitutionality are reviewed de novo). The Court should affirm the district court. Appellants lack standing for two independent reasons: first, taxpayer standing is only a basis to challenge government expenditures, not substantive actions, and second, taxpayer standing is not a basis for standing to petition for a writ of quo warranto. Moreover, even if Appellants had standing, the constitution allows the legislature to restore voting rights while individuals are under correctional supervision in the community.

I. APPELLANTS LACK STANDING.

To bring a lawsuit, a party must have standing. *State by Humphrey v. Philip Morris, Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). Generally, to have standing, a person bringing an action must have suffered some damage or injury that is unique from the damage or injury sustained by the general public. *Channel 10, Inc. v. Indep. Sch. Dist. No. 709*, 215 N.W.2d 814, 312 (Minn. 1974). If, however, a claimed injury is shared with the general public, a person lacks standing. *Id.*

The Court should affirm the district court's dismissal for a lack of standing. Appellants do not even pretend to have suffered an injury that is unique to them. Indeed, other than identifying themselves as parties, Appellants' names are not in their petition. (Doc. 1, ¶¶ 26–29.) Instead, Appellants rely entirely on a narrow exception to the general standing rule: taxpayer standing. Under that doctrine, taxpayers have standing to sue to "restrain the unlawful use of public funds." *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977). But this standing is limited to challenges to expenditures, not substantive laws. It is also unavailable for quo warranto actions. For both of these independent reasons, Appellants lack standing.

A. Taxpayer Standing Requires That an Expenditure Be the Subject Matter of the Dispute.

To understand why taxpayer standing can be used only to challenge expenditures and not substantive laws, it is necessary to trace the history of the doctrine in Minnesota. The seminal case on taxpayer standing in Minnesota is *McKee v. Likins*. In *McKee*, the plaintiff challenged the "use of [state] funds for elective, nontherapeutic abortions." 261 N.W.2d at 568. The plaintiff had no unique injury due to the use of the funds; instead, he alleged that his injury-in-fact was "expenditure of tax monies." *Id.* at 570. The Court nevertheless held that the plaintiff had standing, recognizing that in other jurisdictions "it generally has been recognized that a state or local taxpayer has sufficient interest to challenge illegal expenditures." *Id.* But the Court also repeatedly emphasized that the targets of such suits must be expenditures:

- "It generally has been recognized that a state or local taxpayer has sufficient interest to challenge illegal expenditures." *Id.*

- "A taxpayer has sufficient interest to enjoin illegal expenditures of both municipal and state funds." *Id.* at 571.
- "The right of a taxpayer to maintain an action in the courts to restrain the unlawful use of public funds cannot be denied." *Id.*

Since *McKee*, the Court has addressed taxpayer standing in only one other case, which it decided more than thirty years ago. *In re Pappas Senate Comm.*, 488 N.W.2d 795 (Minn. 1992). In that case, an individual filed a complaint against a political candidate with the Minnesota Ethical Practices Board. *Id.* at 796. The board and the candidate entered into a conciliation agreement, but the complainant, dissatisfied with the terms of the agreement, sought a writ of certiorari from the court of appeals. *Id.* at 796–97. The complainant argued that he had standing to petition as a taxpayer. *Id.* at 798. Reemphasizing that *McKee* was limited to giving standing to "a taxpayer . . . 'to restrain the unlawful use of public funds,'" the Court held that the complainant lacked standing because the board had no authority to withhold public election funds, and thus no such funds were at issue. *Id.* (quoting *McKee*, 261 N.W.2d at 571).

Unfortunately, absent further guidance from this Court, over time, the doctrine has become muddled. Lower courts have misconstrued *McKee* regarding the scope of taxpayer standing, more recently leading to results inconsistent with earlier decisions.

1. Early post-*McKee* taxpayer standing cases rightly required a direct challenge to an expenditure.

Early on, the court of appeals hewed closely to *McKee's* requirement that expenditures must be the target of a taxpayer-standing suit, not merely a way to get in the courthouse door. For example, in what appears to be the first appellate case to cite *McKee*

for its taxpayer-standing holding, the court of appeals rejected a taxpayer challenge to MnDOT's decision to lift a debarment (an order prohibiting state contractors from subcontracting with a company) of its competitor. *Mankato Aglime & Rock Co. v. City of Mankato*, 434 N.W.2d 490, 491–92 (Minn. Ct. App. 1989). Much like Appellants in this case, the *Aglime* plaintiffs argued that *McKee* gave them standing to challenge "the unlawful expenditure of tax monies, and also to challenge *any* illegal conduct by a public official." *Id.* at 493 (emphasis added). The court of appeals correctly held that the plaintiffs lacked standing—notwithstanding that, in light of the commissioner's decision, taxpayer dollars would flow to the competitor in a way that would otherwise be illegal. *Id.*

Next, in *Thuma v. Kroschel*, a taxpayer sought a declaration that a mayor acted without authority by entering into a contract. 506 N.W.2d 14, 21 (Minn. Ct. App. 1993). The court rightly affirmed a denial of taxpayer standing because the taxpayer did not seek to enjoin any expenditure. *Id.* And in *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, the court affirmed a denial of standing because there were not "public funds" at issue. 603 N.W.2d 143, 145 (Minn. Ct. App. 1999). In doing so, the court recognized that the "heart" of whether taxpayer standing exists is whether "the moneys . . . constitute 'public funds,' giving the taxpayers a sufficient stake to challenge the legality of their use." *Id.* at 146.

One other early decision bears mentioning for its marked similarity to this case (and later contradiction by more recent court of appeals decisions). In *Hageman v. Stanek*, the plaintiffs attempted to the challenge the constitutionality of a state statute via taxpayer standing. No. A03-2045, 2004 WL 1563276, at *1 (Minn. Ct. App. July 13, 2004). Noting the stark difference between "a taxpayer [having] standing to challenge spending of tax

money by the state legislature on constitutional grounds" and the facts of *McKee*, the court rejected the challenge on standing grounds. *Id.* at *2. Foreshadowing much of the analysis of the district court in this case, the *Hageman* court noted that "the *McKee* case does not offer an open door to taxpayer standing on any issue." *Id.*

2. Recent cases have distorted the taxpayer standing doctrine.

Despite these initial recognitions by the court of appeals, as time has passed the lower courts have slowly but surely deviated from *McKee*. Consequently, taxpayer standing has expanded to cover more and more government actions. The first known case to grant taxpayer standing came thirty years after *McKee*, and the substantive issue of the case was expenditures themselves, rather than other substantive agency action. *See Citizens for Rule of Law v. Senate Comm. on Rules & Admin.*, 770 N.W.2d 169, 175 (Minn. Ct. App. 2009) (challenging per diem payments to legislators). But in granting standing, the court noted that "Minnesota courts have limited *McKee* closely to its facts." *Id.*

Regrettably, the well-recognized limitations of *McKee* did not last. Since the mid-to-late 2010s, the court of appeals has begun permitting taxpayer standing to challenge substantive government actions. It has done so even when there was nothing illegal about the expenditure itself (i.e., the use of taxpayer funds that formed the basis of the taxpayer's alleged injury). In a 2015 case involving many of the same parties as this case, Minnesota Voters Alliance challenged the Secretary's substantive action of making online voter registration available to Minnesotans. *Minn. Voters Alliance v. State*, No. A14-1585, 2015 WL 2457010, at *1 (Minn. Ct. App. May 26, 2015). Despite the court of appeals' prior recognition that *McKee* should be closely limited to its facts, the court held that a

concession that "taxpayer funds were used to create, maintain, and operate the online-voter-registration system"—which is true of any government action—was enough to establish taxpayer standing. *Id.* at *3.

Following *Minnesota Voters Alliance* was a series of cases finding taxpayer standing, each one more attenuated from actual disbursements of public funds than the last. The next taxpayer standing case to reach the court of appeals was *Save Lake Calhoun v. Strommen*, 928 N.W.2d 377 (Minn. Ct. App. 2019), *aff'd in part on other grounds, rev'd in part* 943 N.W.2d 171 (Minn. 2020).[4] There, the court of appeals affirmed taxpayer standing based on "allegations of financial resources being expended related to the DNR's exercise of authority to promote the name change and assert[ions that] DNR acted illegally by changing the lake name." *Id.* at 384. Notably, these expenditures involved DNR publishing a map with the Bde Maka Ska name and paying employee salaries to "promote, change, and engage in other associated efforts to promote the name Bde Maka Ska." Petition ¶¶ 4–5, *Save Lake Calhoun v. Landwehr*, No. 62-CV-18-2891 (Ramsey Cty. June 15, 2018) (ECF No. 1). In other words, the expenses were for routine costs germane to DNR's regular duties. There was no allegation that the expenses themselves were illegal. Instead, the petitioners' theory was that the name change was illegal, and therefore any costs of DNR's routine acts even tangentially related to that name (such as printing maps and maintaining park signs) constituted illegal expenditures. *E.g.*, *id.* ¶ 11 ("[T]he

[4] The Commissioner of Natural Resources did not seek review of the court of appeals' taxpayer-standing holding in *Save Lake Calhoun*. As a result, this Court did not have occasion to address the issue in that case. *See* Pet. for Review, *Save Lake Calhoun*, 943 N.W.2d 171 (No. A18-1007).

Commissioner and DNR disburse public funds illegally promoting and publishing the changed name of Bde Maka Ska."). The court nevertheless held the petitioners had taxpayer standing.

Finally, the court of appeals recently found taxpayer standing in a challenge to Minneapolis Public School's collective bargaining agreement. *Clapp v. Cox*, No. A23-0360, 2023 WL 8359923 (Minn. Ct. App. Dec. 4, 2023). Reaching a conclusion diametrically opposed to its decision in *Hageman* twenty years prior, the court of appeals held that taxpayer standing *did* provide a basis to allege violations of the state's equal-protection clause. *Compare id.* at *2–3 ("According to . . . complaint, Article 15 violates equal protection under the state constitution . . . . [T]he complaint was sufficient to show the existence of taxpayer standing."), *with Hageman*, 2004 WL 1563276, at *2 ("[N]o court in Minnesota has held that taxpayer standing for an equal-protection claim exists under the circumstances presented by appellants' complaint.").[5]

3. Under the proper test, Appellants lack taxpayer standing.

All of this brings us to the current case, where Appellants believe that the line of cases departing from *McKee* gives them taxpayer standing to disenfranchise more than 55,000 Minnesotans. But they are mistaken.

Appellants candidly admit that, under their theory of taxpayer standing, almost any conceivable government action would be subject to a taxpayer-standing challenge. "Frankly," they concede, "it is impossible that taxpayer funds are *not* being used to

[5] Because *McKee* and its predecessors did not address equal protection, no court in Minnesota had held that taxpayer standing exists for an equal-protection claim whatsoever.

implement the Felon Voting Law." (Appellants' Br. 28.) But this undisputed and uncontroversial observation is equally true of nearly every government action, from murder prosecutions to memorial-highway designations. If Appellants' theory of taxpayer standing were adopted, taxpayer standing claims would flood courthouses. Taxpayers could sue a prosecutor any time the taxpayer believed a prosecution violated a defendant's constitutional rights, or a sue a township on the theory that disproportionate park-bench dedications violated equal protection by favoring one group over another. In short, standing would no longer place any substantive limitation on private lawsuits against the government whatsoever.[6]

Appellants' theory is also inconsistent with this Court's decision in *Pappas*. That case denied taxpayer standing because there was "no actionable claim against the Board for disbursement of . . . public . . . funds." *Pappas*, 488 N.W.2d at 798. The *Pappas* petitioner had claimed, however, that the Ethical Practices Board applied an "improper interpretation" that resulted in an inadequate assessment of Pappas' violations. *Id.* at 797. Under Appellants' view of taxpayer standing, this alleged illegal action (which incidentally used taxpayer funds insofar as any board resources were used whatsoever) would have been sufficient to grant taxpayer standing. As a result, the fact that this Court rejected taxpayer standing in *Pappas* demonstrates that Appellants' position cannot be correct.

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[6] Such reasonable limitations are especially important in our divisive political landscape, where lawsuits challenging the constitutionality of acts that plaintiffs disagree with are becoming more common. *See* Ryan Faircloth, *Lawsuits Pile Up Against Actions Taken by DFL-Controlled Minnesota Legislature*, STAR TRIB. (July 6, 2023) (highlighting numerous challenges to laws enacted in 2023), https://www.startribune.com/lawsuits-pile-up-against-actions-taken-by-dfl-controlled-minnesota-legislature/600287879/.

Appellants also rely heavily on this Court's statement in *McKee* that "'it is well-settled that a taxpayer may, when the situation warrants, maintain an action to restrain unlawful disbursements of public moneys, . . . *as well as to restrain illegal action on the part of public officials.*'" 261 N.W.2d at 571 (emphasis added) (quoting *Oehler v. City of St. Paul*, 219 N.W 760, 763 (Minn. 1928)). (Appellant's. Br. 25.) But this is unpersuasive dictum within dictum and is, moreover, contrary to established taxpayer-standing jurisprudence. In this passage, the *McKee* Court quoted its prior decision in *Oehler* to address the use of taxpayer money to fund abortions. But it was dictum in *McKee*, because in that case taxpayer funds were clearly at issue.

Moreover, it was further dictum in *Oehler*. That case involved several plaintiffs challenging Saint Paul's appointment of a water department engineer. *Oehler*, 219 N.W.2d at 760. Before commencing its taxpayer standing discussion, the *Oehler* Court noted that Saint Paul actually had an ordinance giving "specific authority for an action by a taxpayer such as has been here instituted." 219 N.W. at 763. Thus, common-law principles of taxpayer standing were unnecessary to the Court's decision. Additionally, *Oehler's* statement that taxpayer standing for such claims is "well-settled" is dubious in itself: It is notably unsupported by any citation. And multiple treatises note that taxpayer standing must be linked to expenditures; it does not grant "unfettered access to the courts to citizens unhappy with all actions taken by local governing bodies." 64A C.J.S. *Mun. Corps.* § 2400 (2023); *see also* 74 AM. JUR. 2D *Taxpayer Actions* § 7 (2024).

This Court should reject Appellants' attempt to remove all conceivable limitations on taxpayer standing. It should make clear that taxpayer standing continues to require that

the challenged substantive act be an expenditure, not a substantive government program that only incidentally involves expenditures. Put another way, when standing would not otherwise exist to challenge a substantive law, a plaintiff cannot manufacture standing by pointing to expenditures that are incidental to implementing the law. Here, for example, Appellants make no argument that they would have standing to challenge the re-enfranchisement law were it not for incidental expenditures. *See also Schroeder v. Simon*, 950 N.W.2d 70, 77–78 (Minn. Ct. App. 2020) (recognizing Minnesota Voters Alliance had no independent interest in voting rights restoration).

The above test is consistent with this Court's decisions in *McKee* and *Pappas*, and it provides workable boundaries that avoid converting taxpayer standing into standing to challenge any government action—a situation this Court has already repeatedly recognized as untenable. *See, e.g.*, *Channel 10*, 215 N.W.2d at 312 ("Rights of a public nature are to be enforced by public authority rather than by individual citizens . . . ."). For example, *McKee* challenged payments for abortions; if those payments were zeroed out, there would be no government action left to challenge; and thus *McKee* properly found taxpayer standing. 261 N.W.2d at 568. Similarly, *Citizens for Rule of Law* found standing in a challenge to particular increases in per diem payments to legislators; if the payments were never made, again there would be no action left to challenge. 770 N.W.2d at 171. On the other hand, *Save Lake Calhoun* found taxpayer standing to challenge the DNR's substantive activities of issuing an order to change Bde Maka Ska's name and printing maps with the new name. 928 N.W.2d at 384. But if those acts were free, the DNR would

still have engaged in the substantive acts of issuing the order and printing the maps; thus, there should not have been taxpayer standing.

The same is true in this case. State Respondents do not dispute that they use taxpayer funds to implement the re-enfranchisement law. But if (for example) election officials updated Statewide Voter Registration System records for free, the expenditure basis for Appellants' standing would disappear, while the substantive act they challenge—restoring the right to vote—would remain. Crucially, the legislature's decision to re-enfranchise 55,000 Minnesotans costs the state and its taxpayers nothing. Only the downstream governmental activities *implementing* that decision on the ground—so that corrections officials, election officials, and Minnesotans with felony convictions alike are not left in the dark regarding the new legal standard and how it applies—involve an expenditure.[7]

For these reasons, Appellants are not in fact challenging an expenditure; they are challenging the legislature's substantive decision to restore the right to vote. The Court should not extend taxpayer standing to such challenges.

B. Taxpayer Standing Is Unavailable for Quo Warranto Actions.

Even if Appellants had taxpayer standing, they lack standing in this case because standing in quo warranto actions cannot be based on taxpayer status. Instead, this Court's

[7] The expenditure Appellants purport to challenge in this case is also strikingly minuscule: the entire basis for Appellants' standing claim is a one-time legislative appropriation of $14,000 to allow the State Respondents to implement the re-enfranchisement statute. (Doc. 1, ¶ 23(o).) That amount represents just over twenty-five cents per re-enfranchised Minnesotan—or, from another angle, less than one dollar expended for every 400 Minnesota citizens. That is the degree to which Appellants assert re-enfranchisement injures them and therefore justifies their access to the courts for the purpose of ending it.

precedent and the history of the writ demonstrate that standing to petition for a writ of quo warranto requires the traditional individualized interest in a case. As previously noted, Appellants lack such an interest, and therefore have no standing, even if they do satisfy the requirements for taxpayer standing. Respondents raised this argument below, and it provides an alternative basis on which Court may affirm.[8] *See McGuire v. Bowlin*, 932 N.W.2d 819, 828 (Minn. 2019).

The writ of quo warranto is a carryover from English law, and the writ's history and use in both England and Minnesota demonstrate need for an individualized interest to seek it. Quo warranto is an ancient writ, dating to at least 1218. Helen M. Cam, *The Evolution of the Mediaeval English Franchise*, 32 SPECULUM J. OF MEDIAEVAL STUD. 427, 439 (1957). In historical England, only government officials—the Attorney General (acting on behalf of the Crown) and the Master of the Crown (on behalf of a private individual)—could petition for it. *State ex rel. Young v. Village of Kent*, 104 N.W. 948, 950 (Minn. 1905). For a time, both could seek the writ without the leave of any other party, but abuses by the Master of the Crown led to a requirement that he obtain leave of the court before proceeding; the Attorney General, however, retained the unfettered right to proceed without leave. *Id.*

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[8] This argument also disposes of Appellants' alternative declaratory judgment claim, because "a complaint requesting declaratory relief must present a substantive cause of action that would be cognizable in a nondeclaratory suit," and without their quo warranto claim Appellants have no such underlying cause of action. *Weavewood, Inc. v. S. & P. Home Inv., LLC*, 821 N.W.2d 576, 579 (Minn. 2012) (internal quotation marks omitted).

This distinction carried over into American law and Minnesota. For example, this Court recognized that the Attorney General has inherent authority to seek a writ of quo warranto. *Id.* at 952. But the Court also held that whether a private relator should be "permitted to use the name of the state for the purpose of inquiring by what warrant an individual holds and exercises a public office . . . is subject to the regulated discretion of the court." *Id.* at 952 (quoting *State v. Brown*, 5 R.I 1, 5 (1857)). The Court specifically identified an individualized interest in the case as a factor to consider in the exercise of that discretion, stating that courts should not "allow the name of the state to be used, and its own time to be occupied . . . merely to feed the grudge of a relator who has no interest in the matter of inquiry." *Id.* (quoting *Brown*, 5 R.I. at 5).

This Court made the point that private individuals were not entitled to seek a writ of quo warranto without an individualized interest even more starkly in *In re Barnum*, 8 N.W. 375 (Minn. 1881). There, a private petitioner sought the writ—without the consent of the Attorney General—to challenging the respondent's right to the office of lieutenant governor. *Id.* at 375. The Court held that the petitioner's allegations, even if true, did not entitle him to the writ unless he could show that he was the one injured by the unauthorized action—that is, that the relator was the one properly entitled to the office. *See id.* This was so despite the fact that, if the respondent improperly held the office of lieutenant governor, the state was certainly making improper payments to him. In other words, an illegal expenditure (i.e., taxpayer standing) was insufficient to establish standing.

Since *Barnum* and *Village of Kent*, the Court has expanded the type of conduct the writ may encompass to include not just whether an office is properly held, but also whether

an official's actions exceeded the official's authority. *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 176 (Minn. 2020). But the Court has never held that an interest as a taxpayer is a sufficient basis to bring a petition. Expanding the law to permit taxpayer standing for quo warranto actions would undercut the status of the writ as an "extraordinary" remedy. *Page v. Carlson*, 488 N.W.2d 274, 278 (Minn. 1992).

Appellants strenuously resist this conclusion, relying on the court of appeals' decision in *Save Lake Calhoun* and this Court's decision in *State ex rel. Palmer v. Perpich*, 182 N.W.2d 182 (Minn. 1971). (Appellants' Br. 24.) But neither case is apposite. First, *Save Lake Calhoun* is a court of appeals decision, which is not binding on this Court. *State v. Serbus*, 957 N.W.2d 84, 89 (Minn. 2021). Moreover, Appellants' statement that this Court "did not disturb the appellate court's holding on standing" is both misleading and a tacit admission. It is misleading because the Commissioner of Natural Resources did not appeal the standing decision, and therefore it was not before the Court. Additionally, in recognizing that the Court did not address standing, Appellants tacitly admit that this Court's decision in *Save Lake Calhoun* was only about *what* could be subject to quo warranto petitions, not *who* had standing to file such petitions. *See Save Lake Calhoun*, 943 N.W.2d 175–76 ("The Commissioner argues in three respects that quo warranto is not—or should not be—available in this case. . . . First, the Commissioner argues that Save Lake Calhoun cannot use a writ of quo warranto to challenge official misconduct. . . . Second, the Commissioner . . . argues that a writ of quo warranto is not available because no ongoing action exists. . . . Third, the Commissioner urges that we abolish the common-law writ of quo warranto.").

Palmer similarly did not establish taxpayer status as a basis for standing in a quo warranto action. *Palmer* involved a quo warranto petition by a putatively elected state senator after he was denied his senate seat due to an election contest. *Palmer*, 182 N.W.2d at 183–84. A potential senator denied his seat indisputably has a particularized interest in that senate seat distinct from the general public. Indeed, *Palmer* did not discuss standing, taxpayer or otherwise; like this Court's decision in *Save Lake Calhoun*, it addressed only *what* may be subject to quo warranto proceedings, not *who* may institute such proceedings. *Id.* at 185.

II. THE LEGISLATURE CONSTITUTIONALLY EXTENDED VOTING RIGHTS TO MINNESOTANS WHO ARE UNDER CORRECTIONAL SUPERVISION IN THE COMMUNITY.

Setting aside the standing issues, the substantive question presented in this litigation is whether the Minnesota Legislature has the constitutional authority to make Minnesotans who have felony convictions eligible to vote when they are not imprisoned. The district court correctly held Appellants' challenge to the statute is "fundamentally flawed" and that the statute is constitutional. (Doc. 77, at 9.) The state constitution, both on its face and as interpreted by this Court last year in *Schroeder*, establishes that the legislature has such authority. Appellants' attempts to twist both that decision and the meaning of the franchise section of the constitution to argue the contrary are meritless.

A. The Minnesota Constitution Does Not Require an Individual to be Restored to *All* Civil Rights Before Being Allowed to Vote.

The Minnesota Constitution provides that a person convicted of a felony may not vote "unless restored to civil rights." Minn. Const. art. VII, § 1. Appellants contend that

this language restricts the legislature to restoring "all civil rights," or none of them, at the same time. (*See* Doc. 1, ¶ 1.) This assertion is plainly wrong as a matter of straightforward constitutional construction.

Courts interpret the Minnesota Constitution in the same manner as they do statutes: by beginning with determining whether the language is ambiguous. *Shefa v. Ellison*, 968 N.W.2d 818, 825 (Minn. 2022). If the language is unambiguous, then it is effective as written and the Court does not apply any other rules of construction. *Id.*

Appellants' argument on the merits in this matter is founded on their contention that the phrase "restored to civil rights" in Article VII, Section 1 "mean[s] *all* civil rights that a non-felon possesses. The Constitution does not create legislative authority to restore the singular right to vote before *all* civil rights are restored to an individual convicted of a felony." (Doc. 1, ¶ 1 (emphasis added).) As a straightforward matter of plain-language constitutional construction, this assertion is false. The phrase "restored to civil rights" and the phrase "restored to *all* civil rights" are obviously and self-evidently distinct. The constitutional text is entirely unambiguous on this point: "restored to civil rights" indisputably does not require the legislature to restore *all* civil rights before restoring a particular one.

Appellants also argue that under the plain meaning of "restored," the legislature cannot "restore" what is never lost. (Appellants' Br. 32.) This argument is misplaced. The constitution terminates voting rights "*unless* restored to civil rights," not "*until* restored to voting rights." Minn. Const. art. VII, § 1 (emphasis added). Thus, it does not contemplate that a loss of voting rights for any duration is necessary for them to be restored following

a felony conviction. Instead, the legislature can decide to allow individuals to vote immediately upon conviction, as they have done (for people who are never incarcerated) under the re-enfranchisement law. Because neither Appellants nor the Court has the authority to amend the Minnesota Constitution to insert the word "all," Appellants' legal theory fails.

B. *Schroeder* Conclusively Refutes Appellants' Interpretation of the Constitutional Provision at Issue.

Appellants' legal theory is also decisively refuted by this Court's decision in *Schroeder*. As the authoritative interpreter of the Minnesota Constitution, in *Schroeder* this Court left not the slightest doubt that the state constitution grants the legislature broad authority to restore voting rights. *Schroeder*, 985 N.W.2d at 534-56. Appellants' central legal claim cannot survive contact with *Schroeder*, and as a result the district court correctly dismissed their petition.

In *Schroeder*, this Court provided the definitive interpretation of Article VII, Section 1 of the Minnesota Constitution as it pertains to re-enfranchisement. 985 N.W.2d at 536-57. The Court was not subtle about the authority that the constitution affords to the legislature. "Under Article VII, Section 1," the Court held, "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 (emphasis added). The Court returned to this theme of broad discretion over and over in its decision—holding, for example, that:

- The legislature may, constitutionally, "generally restore[ ] the right to vote upon the occurrence of certain events," *id.* at 534;

- "Different rights may be restored at different times (and may be limited in different ways at different times)," *id.* at 544;

- "For instance, that affirmative act could be . . . a legislative act that generally restores the right to vote upon the occurrence of certain events," *id.* at 545;

- "The basic rule under the constitution is 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 the government restoring the person's right to vote," *id.* at 556;

- Those convicted of a felony could regain the right to vote "by a different process approved by the Legislature," *id.*; and

- "The Legislature retains the power to respond to [the] consequences" of the prior law, *id.* at 557.

These holdings uniformly treat the right to vote, individually, as a matter over which the legislature has broad discretion. They contain not the slightest hint that the legislature's power to reinstate voting rights is contingent on reinstating any—much less all—other rights. *Schroeder* therefore conclusively refutes Appellants' constitutional theory.

In addition to the holdings detailed above, Appellants' novel constitutional theory conflicts with yet another passage of the *Schroeder* decision. This Court noted "*another* choice" that the legislature could constitutionally have made: "to restore voting rights to all Minnesotans immediately following their felony conviction, thus allowing incarcerated Minnesotans to vote." *Schroeder*, 985 N.W.2d at 554 n.21 (emphasis added). Such re-enfranchisement would occur before completion of an individual's prison sentence, eliminating any possibility that that individual had been restored to *all* civil rights.

Appellants' argument thus contradicts *Schroeder's* unambiguous holding, and the Court should reject it.[9]

Finally, this Court closed its analysis in *Schroeder* by explaining why it is fundamentally important that the legislature retain the authority to determine the circumstances under which Minnesotans with felony convictions can regain their right to vote. The Court wrote that, although the statute challenged in *Schroeder* was constitutional,

> we recognize the troubling consequences, including the disparate racial impacts, flowing from the disenfranchisement of persons convicted of a felony. The Legislature retains the power to respond to those consequences. The Minnesota Constitution empowers the Legislature to address the public policy concerns raised by appellants in this case; public policy concerns that the Secretary of State shares and that directly implicate—even if [the discharge statute] does not violate—the fundamental right to vote. We should all take care that persons not be deprived of the ability to participate in the political process out of fear of our fellow citizens.

Appellants' claims, under which 55,000 Minnesotans are to be denied suffrage, amounts to a heedless attack on the legislature's authority to make a policy decision. The district court was correct to reject Appellants' legal theory.

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[9] Appellants assert that this holding is dicta. (Appellants' Br. 44.) But the passage in the *Schroeder* decision noting the legislature's authority to restore voting rights immediately upon conviction is not noteworthy, here, for its specific legal holding; it is noteworthy for the clear demonstration it provides of this Court's interpretation of the state constitution more broadly. Because, under *Schroeder*, the legislature could constitutionally restore the vote while the voter remained incarcerated, Appellants' notion that the right to vote can only be restored if it is accompanied by "all" other civil rights cannot be correct.

C. The Historical Record Demonstrates that Article VII Unambiguously Authorizes the Legislature to Restore Voting Rights Without Restoring All Civil Rights.

Article VII, Section 1, both on its face and as interpreted by *Schroeder,* conclusively refutes Appellants' assertion that the legislature must restore "all civil rights" to individuals when it restores their right to vote. But things only get worse for Appellants once one digs into the historical usage of "restored to civil rights." As understood at the time of ratification, that usage confirms that the legislature may restore voting rights even while individuals have not had all civil rights restored.

As noted above, courts interpreting constitutional language begin with the question of whether the language is ambiguous. *Shefa*, 968 N.W.2d at 825. In determining whether language is ambiguous, courts apply rules of grammar and consider common and approved usage when the language was adopted. *See* Minn. Stat. § 645.08(1) (2022); *State v. Hartmann*, 700 N.W.2d 449, 454 (Minn. 2005).

Legal dictionaries from the 1850s, the period during which the Minnesota Constitution was drafted and ratified, do not define "civil rights"; the closest term they contain is "civil."[10] *Bouvier's Law Dictionary* 231 (6th ed. Phila., Childs & Peterson 1856)

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[10] The first edition of *Black's Law Dictionary*, published thirty-four years after the Minnesota Constitution was adopted, defined "civil rights" to mean "[r]ights appertaining to a person in virtue of his citizenship in a state or community. . . . Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the constitution, and by various acts of congress made in pursuance thereof." *Black's Law Dictionary* 208 (1st ed. Saint Paul, West Pub. Co. 1891). And "civil rights" first appears as a definition in *Bouvier's Law Dictionary* in 1883, with a definition identical to the second one quoted from *Black's Law Dictionary*. *Bouvier's Law Dictionary* 319 (15th ed. Phila., J.B. Lippincott & Co. 1883).

(defining "civil" in part as "indicat[ing] a state of society reduced to order and regular government"). Similarly, although "restored to civil rights" does appear in scattered sources from around the time period, State Respondents have been unable to locate any formal definition. One such appearance of the phrase, however, is in a compilation of English laws from the Magna Carta to 1841. George Crabb, *A Digest and Index with a Chronological Table of All the Statutes from Magna Carta to the End of This Last Session* 138 (London 1841).[11] It describes a statute that imposed the death penalty on individuals found in England before having completed their fourteen-year term of servitude in America as "[f]elon transported not to be restored to civil rights until the expiration of his term." *Id.*; *see also* Transportation Act 1768, 8 Geo. 3 c. 15 (Gr. Brit.).[12] That the description needed to note that rights were not restored until after a term of servitude was complete suggests that contemporary individuals understood that being "restored to civil rights" before servitude was complete was possible. In other words, being "restored to civil rights" before the restoration of *all* civil rights was a possibility.

Further evidence of what authority is granted by the "restored to civil rights" language is how the convention delegates used the phrase at Minnesota's constitutional conventions.[13] During discussions of the text that would ultimately become Article VII,

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[11] Available at https://www.google.com/books/edition/A_Digest_and_Index_with_Chronological_Ta/Rk8DAAAAQAAJ.

[12] Available at https://archive.org/details/statutesatlarge26britgoog/page/n39.

[13] Because of the contentious political climate, Democratic and Republican delegates held separate meetings during the constitutional convention and then resolved differences through a conference committee. *State v. Lessley*, 779 N.W.2d 825, 838 (Minn. 2010). The (Footnote Continued on Next Page.)

Section 1, delegates debated whether disenfranchisement should be permanent or whether they should leave a path for a pardon or legislative act to restore voting rights. *Debates & Proceedings of the Constitutional Convention for the Territory of Minnesota* 540 (George W. Moore, Saint Paul, 1858) [hereinafter *Debates & Proceedings*].[14] For example, a delegate justified his opposition to striking language giving the governor or the legislature the power to "restore any such person to civil rights" on the basis that "where there is a Constitutional provision[ ] that no person shall vote at any election who shall have been convicted of a particular offense, it is not in the power of the Legislature or Governor to restore him." *Id.* at 540–41.

This discussion makes clear that, to the delegates, restoration of voting rights could occur without restoration of *all* civil rights. If, as Appellants claim, the delegates understood "restored to civil rights" to mean the restoration of all rights, one would expect that they would have identified those rights when discussing what was (or was not) withing the legislature or governor's power to restore. But such discussion, or indeed, any concern for such rights whatsoever, is notably lacking from the discussion of article VII, section 1. This is strong evidence convention delegates did not—contrary to Appellants' argument—understand "restored to civil rights" to permit restoration of voting rights only if all civil rights were restored.

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conventions' debates were separately published. *See id.* at 838–39. As Appellants note, only the Republican delegates substantively discussed the provision at issue in this case. Appellants' Br. 45 n.35; *see also Schroeder*, 985 N.W.2d at 539.

[14] Available at https://perma.cc/G322-TSXD.

Additionally, this Court has already addressed the historical meaning of "restored to civil rights" in *Schroeder*. There, the Court considered a 1907 statute providing for "restor[ation] to all their civil rights and to full citizenship with full right to vote and hold office." *Schroeder*, 985 N.W.2d at 542–43 (quoting 1907 Minn. Laws ch. 34, § 1 (codified at Minn. Stat. ch. 93, § 4777–1 (Supp. 1909)). The Court held that this "statute clarifies that in 1907, the Legislature equated the restoration of civil rights with the right to vote and hold office." *Id.* at 543. As discussed in more detail below, the restoration of voting rights by the re-enfranchisement law necessarily also restores the right to hold office. Thus, it restores civil rights as that phrase was understood in 1907.

Appellants' historical arguments to the contrary are misplaced. (Appellants' Br. 38–39.) Appellants rely on an 1867 law that provided for the "restoration of the rights of citizenship" upon completing the "whole term of service [in prison]." Minn. Stat. ch. 120, § 85 (1878). But this in no way suggests that the *constitution* limited the restoration power to the completion of sentence, only that the legislature chose to do so in that particular statute. Appellants' citation of the 1907 statute is similarly unhelpful to their position. First, as discussed above, this Court has already construed the statute in *Schroeder* to refer only to voting and office-holding rights. But the statute also calls into question the fundamental premise of Appellants' arguments because it equates "all their civil rights" with the "full right to vote and hold office." *Id.* ch. 93, § 4777–1 (Supp. 1909). This places in significant doubt Appellants' suggestion that "all civil rights" would mean anything other than those two rights, even if "all" could be read into Article VII, Section 1's "restored to civil rights" language.

D. Even If "Restored to Civil Rights" Is Ambiguous, the Court Should Resolve That Ambiguity in Favor of Re-Enfranchisement.

Precedent and plain meaning establish that "restored to civil rights" permits voting rights restoration without the restoration of all civil rights. But even if the Court believes that past cases or the language leave some ambiguity, the tools for resolving that ambiguity uniformly support the State Respondents' interpretation.

When constitutional text is ambiguous, courts resolve the ambiguity "to give effect to the intent of the constitution as indicated by the framers and the people who ratified it." *Kahn v. Griffin*, 701 N.W.2d 815, 825 (Minn. 2005); *see also Sheridan v. Comm'r of Revenue*, 963 N.W.2d 712, 719 (Minn. 2021). This requires reviewing the circumstances when the constitution was adopted in order to determine "the mischief addressed and the remedy sought by the particular provision." *Kahn*, 701 N.W.2d at 825. The Court also gives great weight to constructions "adopted and followed in good faith by the legislature and people for many years." *Clark v. Pawlenty*, 755 N.W.2d 293, 306 (Minn. 2008).

The discussion from the 1857 constitutional convention reinforces that the delegates intended the legislature to have broad discretion in deciding when and how people with felony convictions have their voting rights restored. As initially proposed, the language prohibited individuals from voting if the individual had been convicted of treason or any felony, voted or attempted to vote more than once in any election, or procured or induced any person to vote illegally. *Debates & Proceedings* 540. Discussion ensued due to concerns these prohibitions were "rather a sweeping piece of legislation," "very stringent," and "would work a great hardship." *Id.* Based on these concerns, one delegate advocated

for striking the section entirely on the basis that the prohibitions were "a matter wholly within the province of the Legislature." *Id.* Although the convention elected not to do so, it clearly recognized this broad legislative prerogative. Following the decision not to strike the section entirely, another delegate made a successful motion that—initially—removed the legislature's ability to restore individuals to civil rights. *Id.* Immediately afterward, however, the delegates amended the amendment to put the restoration authority back in. *Id.* at 540–41. Based on this discussion, it is clear that the "mischief addressed" by the restoration provision was the hardship that would result from the loss of voting rights. And to avoid that result, the "remedy sought" was to vest the legislature with broad authority to determine the means by which voting rights are restored.

Appellants rely on convention discussions of an entirely unrelated section of the constitution related to dueling. (Appellants' Br. 48.) But insofar as this discussion has any relevance, it reinforces the difference between "civil rights" and "all civil rights." Notably, in describing the rights restored via pardon, the speaker used the phrase "*all* his civil rights." *Id.* at 110 (emphasis added). This clearly distinguishes the discussion from the discussion of the franchise section, where "all" is conspicuously absent. Moreover, that the language under consideration would have removed only the right to hold office and not the right to vote reinforces the conclusion that the framers did not intend to bundle all civil rights together in every instance.

Turning to constructions followed for many years, historical practice in the 166 years since the Minnesota Constitution was adopted also indicates that restoring the right to vote does not require restoration of all civil rights. For over 100 years, Minnesota law

has provided that voting rights could be restored even if not all civil rights were restored. (Appellants' Br. 38–39.) For example, in 1911, the legislature directed that upon final discharge from parole, the Board of Parole should recommend to the governor whether individuals should be "restored to *any* of the rights and privileges of citizenship." Minn. Stat. § 9275 (1913) (emphasis added). And based on that recommendation the governor had discretion to restore "any or all" of the rights. *Id.*

Similarly, since 1975 Minnesota has restricted the civil right of firearm possession for individuals convicted of crimes of violence. *Id.* § 624.713, subd. 1(b) (Supp. 1975); *Hood v. United States*, 342 F.3d 861, 864 (8th Cir. 2003) (recognizing right to possess firearm as a civil right). At the time of enactment, this prohibition was effective for ten years *after* "the person has been restored his civil rights." *Id.* Again, there was an explicit recognition that voting rights would be restored even if not all civil rights (such as the right to firearm possession) were restored. And this recognition continued. Indeed, under the predecessor re-enfranchisement law that restored voting rights after completion of sentence, people who regained voting rights did not automatically regain firearm rights. *See id.* §§ 609.165, subd. 1, 624.713, subd. 1(10)(i) (2022). The Minnesota Supreme Court has rejected constitutional challenges with significantly shorter histories of legislative interpretation. *See Clark*, 755 N.W.2d at 306 (citing 59-year legislative understanding of constitutional provision).

Interpreting the Minnesota Constitution's use of "restored to civil rights" to allow the restoration of the right to vote without the restoration of all other civil rights is consistent with how that phrase has been interpreted in other states' constitutions. Many

other states have similar provisions in their constitutions that allow for the restoration of civil rights following a felony conviction. Of those states, seven have explicitly recognized that voting rights may be restored under "restored to civil rights" language even if not all civil rights are restored. Nev. Const. art. 2, § 1 ("restored to civil rights"); Nev. Rev. Stat. § 213.157 (2021); N.D. Const. art. 2, § 2 ("civil rights are restored"); N.D. Cent. Code § 12.1-33-01 (2022); Wash. Const. art. VI, § 3 ("restored to their civil rights"); Wash. Rev. Code § 29A.08.520(1) (2022); Ky. Const. § 145 ("restored to their civil rights"); *Anderson v. Commonwealth*, 107 S.W.3d 193, 196 (Ky. 2003) ("Governor['s] . . . order was specifically limited to restoring [individual's] rights to vote and hold office. It was well within the Governor's prerogative to so limit the rights restored."); Neb. Const. art. VI, § 2 ("restored to civil rights"); *Ways v. Shively*, 646 N.W.2d 621, 626 (Neb. 2002) ("[T]he restoration referred to in Neb. Const. art. VI, § 2, is the restoration of the right to vote."); Wis. Const. art. III, § 2 ("restored to civil rights"); *State ex rel. Law Enf't Standards Bd. v. Vill. of Lyndon Station*, 295 N.W.2d 818, 827 (Wis. Ct. App. 1980) ("The clause 'unless restored to civil rights' as used in the constitution is generally understood to refer to the right to vote.") (quoting E.E. Brossard, *Restoration of Civil Rights* 1946 WIS. L. REV. 281, 288–89 (1946)); Fla. Const. art. VI, § 4 (1968)[15] ("restoration of civil rights"); Fla. R. Exec. Clemency § 4(E) (1975) ("Restoration of civil rights restores to the applicant *all or some* of the rights of citizenship . . . ." (emphasis added)). And no state has taken the contrary position, urged by Appellants, that the phrase "restored to civil rights" in an

[15] Florida has since amended its constitution to provide for the automatic restoration of voting rights upon completion of sentence. Fla. Const. art. VI, § 4.

elections clause of a constitution means restored to all civil rights. This uniform interpretation throughout the United States further underscores that "restored to civil rights" does not require the restoration of all civil rights.

E. Restoring the Right to Vote Restores Civil Rights.

For the foregoing reasons, "restored to civil rights" does not require the restoration of "all" civil rights. Appellants nevertheless argue that the re-enfranchisement law is unconstitutional because it supposedly restores only a "singular" right. (Appellants' Br. 36.) But this argument fails because the re-enfranchisement law restores both the civil right to vote and the civil right to hold public office.

Article VII of the Minnesota Constitution does not only address who may vote. It also addresses who is eligible to hold office, which it equates (subject to a geographic and age requirement) with eligibility to vote. Minn. Const. Art. VII, § 6. Thus, by restoring the right to vote to people with felony convictions, the legislature also restored the right to hold office. Individuals subject to the statute are therefore, to use Appellants' own words, restored to "civil rights, plural, not just the singular right to vote." (Doc. 40, at 1.) Thus, even accepting that more than one right must be restored, Appellants' argument still fails.

Appellants attempt to evade this argument by citing statutes that prohibit the placing a person's name on a ballot if the person "has not had the person's civil rights restored." Minn. Stat. § 609B.141 (2022); *see also id.* § 204B.10, subd. 6(1) (2023) ("the person's civil rights have not been restored"). (Appellants' Br. 48–49.) But Appellants' argument merely begs the question of what "civil rights restored" means. And as the analysis in the

preceding section makes clear, upon restoration of voting rights, the constitution also makes a person eligible to hold public office and therefore restored to civil rights.

IV. THE COURT SHOULD ADOPT THE FEDERAL PRESUMPTION-OF-ADEQUACY TEST FOR INTERVENTION.

Appellants also challenge the intervention of Respondents Jennifer Schroeder and Elizer Eugene Darris. State Respondents took no position on their intervention in the district court and also take no position on appeal. State Respondents agree, however, with Appellants' general proposition that the Court should adopt the federal test for intervention in government cases, which assumes that the state's representation adequately represents the interest of all of its citizens. But the Court should reject Appellants' attempts to then carve out exceptions to this well-established presumption.

To intervene as of right, an applicant must show that its interests are not adequately represented by an existing party. Minn. R. Civ. P. 24.01. The predecessor to the current Rule 24.01 contained language taken from the corresponding federal rule. *Sister Elizabeth Kennedy Found., Inc. v. Nat'l Found.*, 126 N.W.2d 640, 644 (Minn. 1964). And the Court has construed the current rule in a manner parallel to the current federal rule. *See Miller v. Miller*, 953 N.W.2d 489, 494 (Minn. 2021).

Consistent with that federal rule, the Court should likewise adopt the federal rule's presumption that "when one of the parties is an arm or agency of the government, and the case concerns a matter of sovereign interest, the bar [for intervention] is raised, because in such cases the government is presumed to represent the interests of all its citizens." *N.D. ex rel. Stenehjem v. United States*, 787 F.3d 918, 921 (8th Cir. 2015); *see also* 7C FED.

PRAC. & PROC. CIV. § 1909 (2023) ("representation will be presumed adequate" when "a governmental body or officer is the named party").

This rule is well justified by the government's parens patriae role, which charges it with protecting the interests of all constituents. *See Stenehjem*, 787 F.3d at 922. The rule is also consistent with this Court's longstanding recognition that the government has broad discretion in determining its litigation strategy in any particular case—discretion that may be compromised when other parties are permitted to interpose. *See Head v. Special. Sch. Dist. No. 1*, 182 N.W.2d 887, 892–93 (Minn. 1970) (recognizing Attorney General's broad discretion in conducting proceedings on behalf of the state).

Under the federal standard, to overcome this presumption, an applicant must make a "strong" showing of inadequate representation by showing that the government has committed misfeasance or malfeasance in protecting the public. *Stenehjem*, 787 F.3d at 922. This requires a "clear dereliction of duty," and merely disagreeing with the government's litigation strategy, or even litigation objectives, is insufficient. *Id.* (citing *Chiglo v. City of Preston*, 104 F.3d 185, 188 (8th Cir. 1997)); *cf. Planned Parenthood of Wisc., Inc. v. Kaul*, 942 F.3d 793, 799 (7th Cir. 2019) (requiring showing of "gross negligence or bad faith" to overcome presumption of adequacy).

This much Appellants and State Respondents agree upon. (Appellants' Br. 55–56.) But Appellants then propose to carve out exceptions "where the government defendant

concedes important legal issues in a contemporaneous legal case" or "abandons a defense of state law." (*Id.* at 56.) The Court should reject these additions beyond the federal test.[16]

As an initial matter, Appellants have not briefed any argument as to why the Court should adopt these exceptions. They have therefore forfeited these arguments and, at a minimum, the Court should not adopt them in this case. *Woischke v. Stursberg & Fine, Inc.*, 920 N.W.2d 419, 422 n.2 (Minn. 2018).

More fundamentally, these carveouts are contrary to the fundamental justifications for the presumption of adequacy. In their parens patriae role, government decisionmakers are tasked with weighing a variety of conflicting interests, such as balancing litigation costs with likelihood of success, how decisions in one case affect future cases, and their roles as representatives of the views of the public. The exceptions to the presumption proposed by Appellants undercut the ability of government parties to balance these factors. Instead, such carveouts effectively place the private interests of the particular applicants for intervention

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[16] As partial support for these exceptions, Appellants attack the Secretary for opposing Minnesota Voters Alliance's intervention in *Schroeder* but taking no position on the Intervenor Respondents' intervention in this case. (Appellants' Br. 53–54.) These attacks are meritless because the interests identified in the cases are distinct. In *Schroeder*, the only interest Minnesota Voters Alliance identified was as a taxpayer, which by definition is not distinct from the general public interest represented by the government. *Schroeder v. Simon*, 950 N.W.2d 70, 76–77 (Minn. Ct. App. 2020). Here, by contrast, Intervenor Respondents would lose their individual right to vote if Appellants prevailed. That injury makes them distinct from the general public.

Moreover, it is difficult to imagine a disparity greater than one between the magnitudes of the respective injury claims here. Each individual Appellant has allegedly been injured in the amount of a small fraction of one cent, as one Minnesotan's share of the $14,000 in state funds that were appropriated in the re-enfranchisement legislation. Each Intervenor Respondent risks being denied the ability to participate in their representative government.

over all of those public interests. The Court should accordingly reject the exceptions to the presumption of adequacy proposed by Appellants.

CONCLUSION

Appellants do not have taxpayer standing to challenge a substantive election regulation restoring the right to vote, and even if they satisfied the requirements for taxpayer standing, such standing is unavailable in quo warranto actions. Appellants' claims also fail on the merits because, as this Court made clear in *Schroeder*, the legislature can restore voting rights without restoring all civil rights. Accordingly, the Court should affirm the dismissal of Appellants' petition.

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Respectfully submitted,

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