No. S-24-563

IN THE NEBRASKA SUPREME COURT

STATE EX REL. JOHN THOMAS JEFFREY KING, ET AL.,
Relators,

v.

ROBERT EVNEN, IN HIS OFFICIAL CAPACITY AS NEBRASKA SECRETARY OF STATE, ET AL.,
Respondents.

Original Action

RESPONSE BRIEF OF SECRETARY EVNEN

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STATEMENT OF JURISDICTION

Relators filed an Application for Leave to Commence an Original Action and Verified Petition for Writ of Mandamus on July 29, 2024. This Court granted leave to commence an original action on August 6, 2024. This Court has jurisdiction under Neb. Const. art. V, § 2, and Neb. Rev. Stat. § 24-204 (Reissue 2016).

STATEMENT OF THE CASE

Nature of the Case. Relators seek a writ of mandamus compelling Secretary of State Robert Evnen to prescribe voter registration applications that permit felon re-enfranchisement and to "effectuate the automatic removal of disqualification" for felons who wish to vote. Petition 1. Relators also seek a writ of mandamus compelling the election commissioners for Douglas and Hall Counties to accept their voter registration applications. Petition 23–24.

Scope of Review. Whether the writ should issue depends on the constitutionality of L.B. 53, 99th Leg., 1st Sess. (2005), and L.B. 20, 108th Leg., 2d Sess. (2024), a question of law decided *de novo*. *State ex rel. Wagner v. Evnen*, 307 Neb. 142, 149, 948 N.W.2d 244, 252 (2020). The writ of mandamus is "an extraordinary remedy, not a writ of right." *Id.*

PROPOSITIONS OF LAW

1. "[T]he constitution is the fundamental law, [and] an act of the legislature repugnant thereto is not merely voidable by the courts, but is absolutely void and of no effect whatever." *Planned Parenthood of the Heartland, Inc. v. Hilgers*, 317 Neb. 217, 224, 9 N.W.3d 604, 610 (2024) (quoting *Van Horn v. State*, 46 Neb. 62, 82–83, 64 N.W. 365, 372 (1895)).

2. "No person shall be qualified to vote who is non compos mentis, or who has been convicted of treason or felony under the laws of the state or of the United States, unless restored to civil rights." Neb. Const. art. VI, § 2.

3. The "power to remit fines and forfeitures and to grant respites, reprieves, pardons, or commutations in all cases of conviction for offenses against the laws of the state, except treason and cases of impeachment," is vested in a board composed of "[t]he Governor, Attorney General and Secretary of State." Neb. Const. art. IV, § 13.

4. "The powers of the government of this state are divided into three distinct departments, . . . and no person or collection of persons being one of these departments shall exercise any power properly belonging to either of the others." Neb. Const. art. II, § 1.

5. "A pardon is an act of 'officially nullifying punishment or other legal consequences of a crime.'" *Kocontes v. McQuaid*, 279 Neb. 335, 352, 778 N.W.2d 410, 424 (2010) (quoting *Pardon*, Black's Law Dictionary (9th ed. 2009)).

6. Executive "officers are . . . not bound to obey an unconstitutional statute, and the courts, sworn to support the constitution, will not, by mandamus, compel them to do so." *Van Horn*, 46 Neb. at 83, 64 N.W. at 372.

BACKGROUND

I.A. "[T]he practice of disenfranchising those convicted of crimes is of ancient origin," dating at least to ancient Athens and the Roman Republic. *Hayden v. Pataki*, 449 F.3d 305, 316 (2d Cir. 2006) (en banc). "[I]t can scarcely be deemed unreasonable for a state to decide that perpetrators of serious crimes shall not take part in electing the legislators who make the laws, the executives who enforce these, the prosecutors who must try them for further violations, or the judges who are to consider their cases." *Green v. Bd. of Elections*, 380 F.2d 445, 451 (2d Cir. 1967). "The manifest purpose is to preserve the purity of the ballot box, which is the only sure foundation of republican liberty." *State ex rel. Olson v. Langer*, 256 N.W. 377, 386 (N.D. 1934).

B. Felon disenfranchisement in Nebraska predates ratification of the 1875 state constitution. An 1873 statute provided:

> Any person sentenced to be punished for any felony (when sentence shall not have been reversed or annulled), shall be deemed incompetent to be an elector, or juror, or to hold any office of honor, trust, or profit, within this state, unless said convict shall receive from the governor of this state a general pardon, under his hand and the seal of the state, in which case said convict shall be restored to his civil rights and privileges.

Neb. Gen. Stats. ch. 58, § 258, p. 783 (1873). The 1875 Constitution likewise included a felon disenfranchisement section that remains today: "No person shall be qualified to vote who is non compos mentis, or who has been convicted of treason or felony under the laws of the state or of the United States, unless restored to civil rights." Neb. Const. art. VI, § 2; Neb. Const. art. VII, § 2 (1875).

The Nebraska Constitution also ties certain persons' eligibility for public office to becoming "restored to civil rights." A felon is ineligible to hold public office "unless he shall have been restored to civil rights." Neb. Const. art. XV, § 2; Neb. Const. art. XIV, § 2 (1875). Likewise, a person convicted of violating or swearing falsely to an oath of office is disqualified from holding office "unless he shall have been restored to civil rights." Neb. Const. art. XV, § 1; Neb. Const. art. XIV, § 1 (1875). The 1873 statute providing that offenders are "restored to [their] civil rights" and thus re-enfranchised through "a general pardon" remained in place after the 1875 Constitution's ratification. Neb. Rev. Stat. § 8912 (1913); *see also id.* § 8913; Neb. Comp. Stat. § 29-112 (1929); *id.* § 29-113.

The Constitution additionally creates executive and legislative clemency. The 1875 Constitution vested in the Governor a power to grant pardons, commutations, and reprieves for all crimes except treason and impeachment. Neb. Const. art. V, § 13 (1875). It also created a narrow legislative clemency power for treason alone. *Id.* The Legislature may grant a pardon or commutation for treason if the Governor has suspended the offender's sentence. *Id.*

The felon re-enfranchisement statute was revised to reflect the 1920 amendment's transfer of the clemency power to the Board of Pardons but continued to condition felon re-enfranchisement on receipt of "a general pardon." 1951 Neb. Laws, L.B. 21, § 1, p. 249. The statute was amended again in 1959 to require the Board to issue a "warrant of discharge" restoring civil rights to felons whose sentence did not include incarceration upon receipt of a certificate showing satisfaction of the felon's sentence. 1959 Neb. Laws, L.B. 305, §§ 1–2, pp. 448–49. In 2001, the Attorney General opined that the amended statute unconstitutionally

"mandate[d] that the Board of Pardons exercise [its] power." Op. Att'y Gen. No. 01-011, at 5 (Mar. 23, 2001). "[T]he restoration of any civil rights which are forfeited by an offender upon conviction of a felony is a matter within the discretion of the Board of Pardons." *Id.* at 2. Apparently agreeing, the Legislature amended the statute the next year to give the Board discretion to "enumerate[] or limit[]"civil rights restored. 2002 Neb. Laws, L.B. 1054, §§ 3–4, p. 567.

C. After 132 years of the State's re-enfranchising felons through executive clemency, the Legislature considered a bill in 2005 that circumvented the Board of Pardons to re-enfranchise felons. 2005 Neb. Laws, L.B. 53, § 1, p. 82. The bill made felon re-enfranchisement automatic two years after completing a sentence. *Id.* Several objections were raised to the bill's constitutionality. Secretary of State John Gale testified that after consulting with the Attorney General's Office and two attorneys general, he concluded there was "an enormous constitutional barrier" to "legislatively" re-enfranchise felons. Transcript, Comm. on Gov't, Mil., & Veterans Affairs, L.B. 53, 99th Leg., 1st Sess. 46 (Jan. 20, 2005). He advocated for expanded felon re-enfranchisement but through the Board of Pardons' process, not statute. *Id.* at 46–47. At least one state senator also voiced constitutional concerns. Floor Debate, L.B. 53, 99th Leg., 1st Sess. 663–64, 681–85 (Feb. 8, 2005) (statements of Sen. Smith).

After the bill passed, Governor Dave Heineman vetoed it, calling the bill "constitutionally suspect." Legislative Journal, 99th Leg., 1st Sess. 787–88 (Mar. 9, 2005) (veto statement). The Governor's veto statement added that "it is in the best interest of Nebraska's citizens, and consistent with their views as expressed in our Constitution, to have the Nebraska Board of Pardons continue to make the important decision on whether to restore this

civil right on a case-by-case basis." *Id.* at 788. The Legislature overrode the Governor's veto while some legislators maintained doubts about the bill's legality. *See* Floor Debate, L.B. 53, 99th Leg., 1st Sess. 1801 (Mar. 10, 2005) (statement of Sen. Smith) ("[T]he Governor . . . has very adequately and appropriately pointed out the constitutional concerns."). L.B. 53's constitutionality was never tested in court.

In 2017, the Legislature debated a bill that would have removed L.B. 53's two-year waiting period. L.B. 75, 105th Leg., 1st Sess. (2017). Once again, multiple senators questioned the constitutionality of legislative re-enfranchisement. *E.g.*, Floor Debate, L.B. 75, 105th Leg., 1st Sess. 4–5 (Mar. 31, 2017) (statement of Sen. Murante). L.B. 75 passed but was vetoed by Governor Pete Ricketts. Legislative Journal, 105th Leg., 1st Sess. 1271–73 (Apr. 27, 2017) (veto statement). Like Governor Heineman, Governor Ricketts explained that "[t]he sole power to restore civil rights lost by someone who is convicted of a felony is granted to the Board of Pardons." *Id.* at 1272. According to Governor Ricketts, L.B. 75 would "further erode[] the exclusive authority vested in the Nebraska Board of Pardons, violating the separation of powers provision found in Article II, Section 1." *Id.* "[T]he Legislature may not circumvent the Nebraska Constitution to automatically restore a voting right in state law." *Id.* The Legislature sustained Governor Ricketts's veto with less than half the body voting to override the veto. *Id.* at 1377–78.

Earlier this year, the Legislature revisited L.B. 75's policy and amended the felon re-enfranchisement statute to remove the two-year waiting period. L.B. 20, 108th Leg., 2d Sess. (2024). Governor Jim Pillen allowed the bill to become law without his signature. *See* Neb. Const. art. IV, § 15. In a letter to the Legislature, the Governor explained that "[t]he Attorney General and

Secretary of State have identified significant potential constitutional infirmities regarding the bill." Legislative Journal, 108th Leg., 2d Sess. 1804 (April 17, 2024). The Governor "encourage[d] the Attorney General and the Secretary of State to promptly take such measures as are appropriate in light of the constitutional infirmities." *Id.* at 1805.

D. Last month, the Attorney General answered an opinion request from the Secretary of State on the constitutionality of legislative re-enfranchisement. *See* Op. Att'y Gen. No. 24-004, at 1 (July 17, 2024). The opinion concluded that the power to re-enfranchise felons belongs to Board of Pardons alone. *Id.* Secretary Evnen accepted the opinion, and consistent with his authority as the State's chief elections officer, announced he would not enforce L.B. 53 and L.B. 20 prospectively. Secretary Evnen reverted the voter registration form to the language required by the Legislature's pre–L.B. 53 statutes. Joint Stipulation ¶ 12; *see* Neb. Rev. Stat. § 32-312 (Reissue 2004). He also directed county election officials to discontinue the voter registration of felons who have not received executive clemency. Joint Stipulation Ex. 7. Secretary Evnen has not removed anyone from the voter rolls because of their felony conviction. Joint Stipulation ¶ 10; *id.* Ex. 7. The parties have not stipulated to the number of presently registered felons who have not received clemency.

II.A. About one week after L.B. 20's effective date, three convicted felons and a non-profit organization sought leave to file an original action in this Court. Relators named as respondents Secretary Evnen and the election commissioners for Douglas and Hall Counties. Petition ¶¶ 51–53. This Court granted Relators' application and issued an alternative writ of mandamus to Secretary Evnen on August 6, 2024. Secretary Evnen answered the alternative writ by noting the unconstitutionality of L.B. 53 and

L.B. 20 and raising other defenses. Resp. in Answer to Alt. Writ (Aug. 8, 2024). The Court ordered the parties to negotiate a joint stipulation of facts, which the parties filed. At the same time, Secretary Evnen answered Relators' petition. Answer to Verified Petition (August 13, 2024). The Court has also ordered the election commissioner respondents to file answers to Relators' petition by September 6, 2024.

B. The individual relators are convicted felons who wish to register to vote. Relator Gregory Spung was convicted of a felony under Nebraska law in 2022 and discharged from his term of probation in 2023. Joint Stipulation ¶ 28. The parties stipulate that Mr. Spung has completed all terms of his sentence and paid all financial obligations related to his conviction. *Id.* ¶¶ 28–29. If allowed, Mr. Spung intends to register to vote in Douglas County. *Id.* ¶ 26. Relator Jeremy Jonak was convicted of a felony under federal law in 2020 and released from probation in 2024. *Id.* ¶¶ 38–40. He was separately convicted of a felony under Nebraska law in 2019 and released from probation in 2022. *Id.* ¶ 37. The parties stipulate that Mr. Jonak has completed all terms of his sentences and paid all financial obligations related to his convictions. *Id.* ¶¶ 37, 40–41. If allowed, Mr. Jonak intends to register to vote in Hall County. *Id.* ¶ 32, 35.

A third individual relator, John T.J. King, was convicted of multiple felonies under Nebraska, Iowa, and Florida law between 1993 and 2016. *Id.* ¶ 18. Mr. King voluntarily dismissed his claims on August 16, 2024. Finally, Relator Civic Nebraska is a registered non-profit corporation based in Lincoln. *Id.* ¶ 52. Civic Nebraska's petition claims its mission is to register voters and that it intended to register convicted felons to vote on L.B. 20's effective date. Petition ¶ 103. The parties have not stipulated to those facts.

SUMMARY OF THE ARGUMENT

For 132 years, Nebraska re-enfranchised felons exclusively through executive clemency. The last 19 years of automatic legislative re-enfranchisement are an unconstitutional aberration. Legislative re-enfranchisement is unconstitutional because the Legislature cannot re-enfranchise felons. *First*, re-enfranchisement is clemency. It nullifies a legal consequence of a conviction, the definition of a pardon. *Second*, because re-enfranchisement is clemency, only the Board of Pardons can re-enfranchise. Three provisions in the Nebraska Constitution establish this: To start, Article VI conditions a felon's re-enfranchisement upon becoming "restored to civil rights." That phrase refers to the exercise of executive clemency. By contrast, many other state constitutions omit this phrase and some expressly create automatic re-enfranchisement or give the Legislature re-enfranchisement power.

Next, the separation-of-powers clause precludes the Legislature from re-enfranchising felons since re-enfranchisement is an exercise of the executive clemency power. Finally, L.B. 53 and L.B. 20 exceed the Constitution's limits on legislative clemency. That power applies only to treason and only after the Governor suspends an offender's sentence. The legislative re-enfranchisement statutes satisfy neither condition. Relators also fail to identify a limiting principle for their argument, suggesting their interpretation would authorize even more expansive encroachments on the executive clemency power.

Even if the Legislature could re-enfranchise, there is still a second fatal flaw in the legislative re-enfranchisement statutes. L.B. 53 and L.B. 20 do not make felons "restored to civil rights," Article VI's requirement for a felon's re-enfranchisement. Because the Constitution uses the plural "civil *rights*," this

condition requires the reinstatement of multiple rights before a felon regains the franchise. The Constitution's use of this phrase outside the disenfranchisement clause as well as other jurisdictions' case law interpreting "restored to civil rights" support what the rules of grammar make clear. L.B. 53 and L.B. 20 are unconstitutional because they purport to restore only the right to vote and thus do not satisfy the Constitution's condition for re-enfranchisement: making a felon "restored to civil *rights*."

Our arguments vindicate the framers' policy choice that executive clemency is the superior vehicle for the restoration of the franchise. All agree the franchise is most the "precious" right "in a free country." Petition ¶ 7 (quoting *Williams v. Rhodes*, 393 U.S. 23, 31 (1968)). Our Constitution disenfranchises felons because of the people's judgment that they lack sufficient respect for the law. It also provides for re-enfranchisement-by-clemency, acknowledging that felons can reform themselves. The judgment that such a person merits re-enfranchisement is necessarily individualized. The Board of Pardons' case-by-case process permits democratically accountable officials to make a judgment on an offender's fitness to exercise the franchise. It also protects victims' constitutional right to participate in pardon proceedings.

Given these statutes' invalidity, Secretary Evnen acted appropriately in reverting the voter registration form to the language the Legislature dictated for the form before L.B. 53. Relators suggest Secretary Evnen was powerless to take that step absent a court order. But precedent from this Court dating to the 19th century confirms Relators' rule would make "the constitution . . . utterly ineffectual." Secretary Evnen acted consistent with his oath of office, in which he pledged loyalty to the Constitution—not the Legislature. Relators also contend Secretary Evnen has a duty to automatically re-qualify felons to vote. Not

so. His office is not informed when all felons' sentences end, and he could not perform the function urged by Relators even if their interpretation of the statute were correct. We conclude by explaining why Relators' remaining arguments are premature or improper.

ARGUMENT

I. The Voter Registration Form Is Consistent with Law.

There are two reasons the legislative re-enfranchisement statutes are unconstitutional. The first is that they exercise a power assigned by the Constitution to the Board of Pardons. But even if the Legislature could constitutionally re-enfranchise felons, L.B. 53 and L.B. 20 are invalid. Article VI permits re-enfranchisement only if a felon is "restored to civil rights," and the legislative re-enfranchisement statutes do not accomplish that. They restore one civil right, breaking with other jurisdictions' interpretation of this term. Given these statutes' unconstitutionality, Secretary Evnen acted appropriately in reverting the voter registration form to the text required by pre–L.B. 53 law. As this Court recognized just last month, "the constitution is the fundamental law, [and] an act of the legislature repugnant thereto is not merely voidable by the courts, but is absolutely void and of no effect whatever." *Planned Parenthood of the Heartland, Inc. v. Hilgers*, 317 Neb. 217, 224, 9 N.W.3d 604, 610 (2024) (quoting *Van Horn v. State*, 46 Neb. 62, 82–83, 64 N.W. 365, 372 (1895)).

A. The Constitution forbids legislative re-enfranchisement.

The legislative re-enfranchisement statutes are unconstitutional because the Constitution makes executive clemency the

exclusive vehicle to re-enfranchise felons. Our analysis proceeds in two steps: *First*, we show that re-enfranchisement is clemency. *Second*, we establish that three provisions of the Constitution independently make re-enfranchisement exclusive to the Board of Pardons: (1) Article VI's conditioning re-enfranchisement upon being "restored to civil rights," (2) Article II's separation-of-powers clause, and (3) Article IV's limits on legislative clemency.

1. Re-enfranchisement is clemency.

The re-enfranchisement of a felon is by itself an act of clemency. "A pardon is an act of 'officially nullifying punishment *or* other legal consequences of a crime.'" *Kocontes v. McQuaid*, 279 Neb. 335, 352, 778 N.W.2d 410, 424 (2010) (emphasis added) (quoting *Pardon*, Black's Law Dictionary (9th ed. 2009)). Article VI makes disenfranchisement a "legal consequence[] of a crime." *Id.* It states: "No person shall be qualified to vote . . . who has been convicted of treason or felony under the laws of the state or of the United States." Neb. Const. art. VI, § 2. Re-enfranchisement "officially nullif[ies]" this "legal consequence[]" of a felony conviction. *Kocontes*, 279 Neb. at 352, 778 N.W.2d at 424. Thus, re-enfranchisement is the exercise of the pardon power.

Before L.B. 53, section 29-112 recognized that the restoration of one civil right by itself (including the franchise) is a pardon. It stated that a felon "is incompetent to be an elector or juror or to hold any office of honor, trust, or profit within this state, unless such person receives from the Board of Pardons of this state a warrant of discharge, in which case such person shall be restored to such civil rights and privileges *as enumerated or limited* by the Board of Pardons." Neb. Rev. Stat. § 29-112 (Cum. Supp. 2004) (emphasis added). As will be shown, the Constitution forecloses restoration of the franchise by itself. *See* Part I.B. But by

recognizing the Board's authority to "enumerate[] or limit[]" the "civil rights and privileges" "restored," *id.*, the Legislature acknowledged that the reinstatement of one civil right, like eligibility for jury service, is clemency.

To the extent the Court disagrees with our plural "civil rights" argument, the pre–L.B. 53 statute would recognize the Board's authority to reinstate the franchise alone. Even after L.B. 53 and L.B. 20, section 29-112 continues to recognize that a felon's eligibility for public office or jury service can be "enumerated or limited by the Board of Pardons." If doing so is not clemency, the statute is unconstitutional. The Board's only authority under the Constitution is to exercise clemency. Neb. Const. art. IV, § 13.

Article VI conditions a felon's re-enfranchisement on becoming "restored to civil rights." That phrase refers to the exercise of clemency. Authority from the time of the 1875 Constitution's ratification described "restoring to civil rights" as a function of clemency. The U.S. Supreme Court stated that "[a] pardon . . . removes the penalties and disabilities, and restores [an offender] to all his civil rights." *Ex parte Garland*, 71 U.S. 333, 380 (1866); *see also Austin v. United States*, 155 U.S. 417, 428 (1894) ("[A] full pardon . . . restored to him all his civil rights."); *Hart's Adm'r v. United States*, 15 Ct. Cl. 414, 426 (1879) ("A pardon restores to civil rights.").

As the Iowa Attorney General put it, "[t]he so called restoration to citizenship is generally considered as an incident to the pardoning, and without the right to pardon, I do not think the right to restore to citizenship could be exercised." Op. Iowa Att'y Gen., 1898 WL 37740, at *1 (Nov. 17, 1898). The Iowa executive order cited by Relators crystalizes this point. Relators Br. 24. It re-enfranchised felons through an exercise of the pardon power.

See Governor of Iowa, Exec. Order No. 7, at 1 (Aug. 5, 2020) (citing Iowa Const. art. IV, § 16), https://perma.cc/L254-TPFG.

Relators attempt to distinguish re-enfranchisement-by-pardon, which they admit is an executive function, from "a discretion-free, automatic system," which they cast as a legislative function. Relators Br. 24–25. But they cite nothing defining clemency as requiring case-by-case discretion. And the Iowa executive order they cite disproves their presumption. It grants clemency classwide. Governor of Iowa, Exec. Order No. 7. Again, the defining feature of a pardon is "nullif[ication] [of] punishment or other legal consequences of a crime." *Kocontes*, 279 Neb. at 352, 778 N.W.2d at 424. Because the Constitution makes disenfranchisement a "legal consequence[] of a crime," re-enfranchisement fits within the pardon power.

2. Only the Board of Pardons can re-enfranchise.

a. Having established that re-enfranchisement is an exercise of the pardon power, we turn to the authorities that make the exercise of this power exclusive to the Board of Pardons. The first is Article VI's conditioning re-enfranchisement on a felon's becoming "restored to civil rights." This condition places re-enfranchisement in the exclusive province of the Board of Pardons.

Above, we reviewed authorities linking the phrase "restoration to civil rights" to the pardon power. Citing this phrase, the Florida Supreme Court recognized executive clemency as the exclusive vehicle to effectuate "restoration to civil rights." *Singleton v. State*, 38 Fla. 297, 303–04 (1896). A statute purported to make an offender "restored to civil rights." *Id.* at 299 (quoting Fla. Acts 1895, ch. 4457). The Court noted that the State Constitution conditioned re-enfranchisement on becoming "restored to civil rights"

and that the Constitution created an executive clemency power. *Id.* at 303. From those facts, it deduced that "it is not competent for the legislature to exercise [the clemency] power" and deemed the statute to be invalid. *Id.* at 303–04. More recent authority in Florida continues to recognize that "[t]he authority to restore civil rights belongs solely to the executive branch and cannot be infringed upon by the legislative or judicial branches." *Parker v. State*, 263 So. 3d 192, 194 (Fla. Dist. Ct. App. 2018).

This "restored to civil rights" condition distinguishes our Constitution from other states. Some expressly authorize legislative re-enfranchisement. The Mississippi Constitution, for example, authorizes the "Legislature" to "restore the right of suffrage to any person disqualified by reason of crime." Miss. Const. art. XII, § 253. The Utah Constitution disenfranchises "any person convicted of a felony . . . until the right to vote or hold elective office is restored as provided by statute." Utah Const. art. IV, § 6. And the Connecticut Constitution requires the "general assembly" to "prescribe the offenses on conviction of which the right to be an elector . . . shall be forfeited and the conditions on which and methods by which such rights may be restored." Conn. Const. art. VI, § 3. Our Constitution instead uses a phrase that refers to executive clemency.

Nebraska's 1873 felon re-enfranchisement statute preceding the Constitution's 1875 ratification is again relevant. "[L]ongstanding practices of government . . . can inform a determination of whether a particular" separation-of-powers arrangement "is constitutional." *State v. Gnewuch*, 316 Neb. 47, 73–74, 3 N.W.3d 295, 316 (2024). More specifically, "contemporaneous legislative exposition of the Constitution . . . acquiesced in for a long term of years, fixes the construction to be given its provisions." *Printz v. United States*, 521 U.S. 898, 905 (1997) (omission in

original) (quoting *Myers v. United States*, 272 U.S. 52, 175 (1926)). As explained, the 1873 law mandated felon re-enfranchisement through a "general pardon," and this statute remained unaltered for the 76 years following the Constitution's ratification. *See* p. 18, *supra*. That strongly suggests clemency is the only authority that can re-enfranchise felons.

Statutes enacted during the Constitution's first 130 years establish no precedent for legislative re-enfranchisement. It was not until 2005, generations after the 1875 Constitution's ratification, that a statute first attempted to re-enfranchise felons outside of executive clemency. Because "earlier [Legislatures] avoided use of this highly attractive power, [this Court] would have reason to believe that the power was thought not to exist." *Printz*, 521 U.S. at 905. Indeed, "[p]erhaps the most telling indication of the severe constitutional problem . . . is the lack of historical precedent for" statutory felon re-enfranchisement. *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 505, (2010) (quoting *Free Enter. Fund*, 537 F.3d 667, 699 (D.C. Cir. 2008) (Kavanaugh, J., dissenting)). Because Article VI makes "restored to civil rights" the sole condition for re-enfranchisement, the Board of Pardons is the sole authority that can re-enfranchise.

b. Because re-enfranchisement is an exercise of clemency, the separation-of-powers clause also makes felon re-enfranchisement necessarily exclusive to the Board of Pardons. That clause states: "The powers of the government of this state are divided into three distinct departments, . . . and no person or collection of persons being one of these departments shall exercise any power properly belonging to either of the others." Neb. Const. art. II, § 1. This Court has recognized that this clause makes the state separation-of-powers doctrine more "rigorous" than the federal

doctrine. *State v. Philipps*, 246 Neb. 610, 614, 521 N.W.2d 913, 916 (1994).

Relators acknowledge that the Board of Pardons "has authority" to effectuate "voting rights-restoration" through "a discretionary pardon or clemency process." Relators Br. 23. And we have shown that re-enfranchisement is by itself an exercise of clemency. *See* Part I.A.1. Relators do not dispute that the Board of Pardons is an Executive Branch entity. *See Otey v. State*, 240 Neb. 813, 825, 485 N.W.2d 153, 163 (1992). These facts make L.B. 53 and L.B. 20's statutory re-enfranchisement unconstitutional. Our Constitution mandates that "separation between the legislative and executive branches . . . should be 'kept as distinct and independent as possible.'" *Polikov v. Neth*, 270 Neb. 29, 35, 699 N.W.2d 802, 807 (2005) (quoting *State ex rel. Shepherd v. NEOC*, 251 Neb. 517, 532, 557 N.W.2d 684, 695 (1997)). Contrary to Relators' argument that "two separate mechanisms of voting rights-restoration . . . can easily coexist," Relators Br. 23, this Court is reluctant "to find overlapping responsibilities among the three branches of government," *In re Neb. Cmty. Corr. Council*, 274 Neb. 225, 229, 738 N.W.2d 850, 854 (2007).

This Court has on several occasions applied the separation-of-powers clause to strike down statutes creating clemency outside the Executive. *Philipps*, 246 Neb. at 612, 616, 521 N.W.2d at 915, 917, held that a statute allowing district courts to re-sentence offenders within 120 days of sentencing created an unconstitutional judicial commutation. *State v. Bainbridge*, 249 Neb. 260, 267–68, 543 N.W.2d 154, 160 (1996), held that a statute authorizing courts to "reduce a 15-year license revocation already imposed" created an unconstitutional judicial commutation.

And *State v. Jones*, 248 Neb. 117, 118, 119–20, 532 N.W.2d 293, 295 (1995), held that a statute allowing district courts to

give certain offenders early parole created an unconstitutional judicial commutation. Citing the separation-of-powers clause, *Jones* explained that the statute "clearly permit[ted] the judicial branch to exercise the power of commutation, which belongs to the executive branch." *Id.* Here, it is undisputed that the executive clemency power includes the power to re-enfranchise. Relators Br. 23. As in *Philipps*, *Bainbridge*, and *Jones*, the separation-of-powers clause precludes the Legislature's exercise of the same authority.

c. The final authority precluding statutory re-enfranchisement is the Constitution's limits on legislative clemency. As explained in the background, Article IV creates an expansive clemency power for the Board of Pardons. The "power to remit fines and forfeitures and to grant respites, reprieves, pardons, or commutations in all cases of conviction for offenses against the laws of the state, except treason and cases of impeachment," is vested in a board composed of "[t]he Governor, Attorney General and Secretary of State." Neb. Const. art. IV, § 13. By contrast, the Legislature has an exceedingly narrow clemency power. *First*, it exists for one crime, treason, and *second*, it may be exercised only after the Governor has suspended the offender's sentence. *Id.*

The legislative re-enfranchisement statutes exercise legislative clemency because they nullify a legal consequence of a crime. *See* pp. 26–28, *supra*. But the statutes satisfy neither condition set in the Nebraska Constitution for legislative clemency. The statutes apply to all felonies except treason instead of just treason. And the Governor's suspension of a sentence is not made a prerequisite. The legislative re-enfranchisement statutes thus violate the Constitution's legislative-clemency clause in addition to the separation-of-powers clause and Article VI's "restored to civil rights" condition.

3. The constitutional right of victims

The Board of Pardons' exclusive authority to re-enfranchise felons also protects victims' constitutional right to participate in pardon proceedings. The Constitution guarantees that "[a] victim of a crime . . . shall have . . . the right to be informed of, be present at, and make an oral or written statement at . . . pardon [and] commutation . . . proceedings." Neb. Const. art. I, § 28. Without legislative re-enfranchisement, victims are entitled to participate in the decision to re-enfranchise offenders, like any other pardon proceeding. Legislative re-enfranchisement wrongly denies victims this constitutional right.

4. Nebraska authority

There is *no* judicial or executive authority in Nebraska sanctioning the previous 19 years of legislative felon re-enfranchisement. No court has held that legislative felon re-enfranchisement is constitutional. At the same time, each of the three governors to hold office during the legislative re-enfranchisement era have opposed bills automatically re-enfranchising felons. *See* pp. 19–21, *supra*. And each has done so at least in part because of constitutional concerns. *Id.* In addition, both secretaries of state to hold office since L.B. 53 have stated that legislative felon re-enfranchisement is unconstitutional. *See* pp. 19, 21, *supra*. Secretary Gale advocated for expanded re-enfranchisement in 2005, but through the Board of Pardons. Transcript, Comm. on Gov't, Mil., & Veterans Affairs, L.B. 53, 99th Leg., 1st Sess. 47 (Jan. 20, 2005). The sole Attorney General opinion on this subject likewise deems the practice to be unconstitutional. *See* p. 21, *supra*.

5. Other jurisdictions

Relators' claim of support for their position in out-of-state constitutions, statutes, and other authority paints a misleading picture of the legal landscape. Relators Br. 23–24. Several of their citations support our arguments. The Iowa executive order re-enfranchising felons that Relators rely on invokes the pardon power for authority. Governor of Iowa, Exec. Order No. 7, at 1. It describes "a constitutional amendment" as "the only permanent solution to" felon re-enfranchisement. *Id.* We agree. Kentucky likewise makes clemency the exclusive authority to re-enfranchise felons. *See* Ky. Const. § 145.

Relators also cite Florida authority, but the Florida Supreme Court has recognized that "[a]s early as 1896, [it] committed itself to the proposition that the power of pardon is reposed exclusively in the chief executive." *In re Advisory Op.*, 306 So. 2d 520, 522 (Fla. 1975). In Florida, "it is not competent for the legislature to exercise such power." *Id.* Consistent with the Iowa Governor's observation, Florida's constitution was amended in 2018 to add: "[A]ny disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation." Fla. Const. art. VI, § 4. The addition of this language likewise confirms our argument because, before the amendment, the Legislature could not unilaterally restore felons' right to vote.

Several of the states that Relators cite authorities from have constitutions that authorize legislative re-enfranchisement. North Carolina's constitution prohibits a felon from voting "unless that person shall be first restored to the rights of citizenship *in the manner prescribed by law*." N.C. Const. art. VI, § 2 (emphasis added). Idaho's constitution expressly empowers "[t]he

legislature" to "prescribe qualifications, limitations, and conditions for the right of suffrage, additional to those prescribed in this article." Idaho Const. art. VI, § 4; *see also* Md. Const. art. I, § 4; Mich. Const. art. II, § 2; N.J. Const. art. II, § 1 ¶ 7; Or. Const. art. II, § 3. Our constitution has nothing like these provisions.

Other states' constitutions authorize the Legislature to limit the clemency power. *See, e.g.*, Ala. Const. § 124(b) (authorizing the Legislature to "provide for and regulate the administration of pardons."); Ariz. Const. art. V, § 5 (Executive clemency is "upon such conditions and with such restrictions and limitations as may be provided by law."); Minn. Const. art. V, § 7 (Board of Pardons' "powers and duties shall be defined and regulated by law."). The Nebraska Constitution, by contrast, "entrusts the clemency power exclusively in the executive branch of government." *Otey*, 240 Neb. at 825, 485 N.W.2d at 163. The same section creating executive clemency also creates a board of parole that "shall have power to grant paroles after conviction and judgment, *under such conditions as may be prescribed by law*." Neb. Const. art. IV, § 13 (emphasis added). The absence of the italicized language from the sentence creating executive clemency suggests that the Legislature cannot create conditions for executive clemency.

Executive clemency and legislative re-enfranchisement might co-exist in most states, but Secretary Evnen does not argue that executive clemency's existence by itself precludes legislative re-enfranchisement. We have shown that it is our Constitution's "restored to civil rights" condition that gives the Board of Pardons exclusive control over felon re-enfranchisement. *See* pp. 28–30, *supra*. And only a minority of state constitutions include such a condition. This fact distinguishes Relators' citations to authorities in Arkansas, California, Colorado, Connecticut, Delaware,

Georgia, Hawaii, Indiana, Louisiana, Massachusetts, Missouri, Montana, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, and West Virginia. We have been unable to locate provisions in those states' constitutions that use language like "restored to civil rights" for felon re-enfranchisement. Many leave disenfranchisement to legislative discretion. *See, e.g.*, N.M. Const. art. VII, § 1; N.Y. Const. art. II, § 3; Ohio Const. art V., § 4.

Nor do Relators' Alaska, Kansas, Washington, and Wisconsin citations help them. Those states' constitutions, unlike ours, do not appear to contain express separation-of-powers clauses. *See* Neb. Const. art. II, § 1. That leaves three states: Nevada, North Dakota, and Wyoming. Relators cite nothing upholding the constitutionality of the statutes in these states. "[T]he unchallenged existence of unconstitutional legislation, for any length of time, even after parties have accepted the same and had rights determined thereunder by the courts, cannot clothe such invalid laws with the mantle of validity." *Bd. of Educ. of Memphis City Schs. v. Shelby County*, 339 S.W.2d 569, 584 (Tenn. 1960).

Relators' amici cite cases from North Dakota and Wyoming, but neither supports their argument. Sen. Wayne Br. 14. The Wyoming case held that Wyoming law disenfranchised a man convicted of a felony in Kansas. *Mills v. Campbell Cnty. Canvassing Bd.*, 707 P.2d 747, 748, 751 (Wyo. 1985). It also recognizes that "[i]t is reasonable for our legislature to rule that convicted felons are unfit to vote or hold public office until they have convinced the governor of this state otherwise." And the North Dakota case, *City of Mandan v. Baer*, 578 N.W.2d 559, 560 (N.D. 1998), does not deem legislative re-enfranchisement to be

constitutional. It discussed a defendant's right to be present for juror removal.

6. Relators' cases

a. Relators' other arguments are also unpersuasive. Relators rely heavily on *Ways v. Shively*, 264 Neb. 250, 646 N.W.2d 621 (2002). *Ways* held that a felon's Department of Corrections certificate of discharge from prison did not restore his right to vote because he had not received the warrant of discharge that state law formerly required for re-enfranchisement. *Id.* at 256, 646 N.W.2d at 627. And it states in passing that "[r]estoration of the right to vote is implemented through statute." *Id.* at 255, 646 N.W.2d at 626. This has been true since the Constitution's ratification. *See* p. 17, *supra*. Before Article VI's 1875 ratification and for decades after that date, a statute specified a "general pardon" as the device that re-enfranchises felons. *Id.* When *Ways* was decided, the statute identified "a warrant of discharge" "*from the Board of Pardons*" as the precise vehicle to deliver re-enfranchisement. Neb. Rev. Stat. § 29-112 (Reissue 1995) (emphasis added). Unlike L.B. 53 and L.B. 20, the statute examined in *Ways* re-enfranchised felons through executive clemency. Thus, if anything, *Ways* confirms the legitimacy of re-enfranchisement-by-clemency, consistent with our arguments.

Relators read *Ways* to deem statutory re-enfranchisement to be constitutional. That is wrong because *Ways* expressly declined to make a constitutional judgment. *Ways* devotes the first two paragraphs of its analysis to reserving judgment on the constitutionality of automatic felon re-enfranchisement—the issue the parties are litigating today. 264 Neb. at 253–54, 646 N.W.2d at 625–26. Relators claim *Ways* only refused to uphold the constitutionality of the Department of Corrections certificate-of-

discharge statute, implying the case may have approved of the re-enfranchisement statutes' constitutionality. But the State's amicus brief argued that the certificate-of-discharge statute would have unconstitutionally exercised the pardon power if it were interpreted to automatically restore the right to vote. Brief of State of Nebraska as Amicus Curiae at 4, *Ways v. Shively*, 264 Neb. 250, 646 N.W.2d 621 (2002) (S-01-382). And *Ways* would have had no reason to comment on the constitutionality of the re-enfranchisement statute. Mr. Ways did not argue that statute re-enfranchised him. Relators are also wrong to claim that *Ways* held that section 29-112 restored any civil rights. *See* Relators Br. 19. The statute did not, and *Ways* does not say otherwise.

In addition, this sentence in *Ways* is dictum. "A case is not authority for any point not necessary to be passed on to decide the case or not specifically raised as an issue addressed by the court." *Com. Sav. Scottsbluff, Inc. v. F.H. Schafer Elevator, Inc.*, 231 Neb. 288, 300, 436 N.W.2d 151, 160 (1989); *see also Duggan v. Beermann*, 245 Neb. 907, 913, 515 N.W.2d 788, 793 (1994) ("statement . . . was dicta" because it "was unnecessary to the decision"). Nothing about *Ways*'s holding that the petitioner had not obtained a warrant of discharge depended on the constitutionality of that statute. A leading secondary source correctly recognizes that "[w]hether or not [the franchise] must be restored by the Board of Pardons" under the Constitution "has not been addressed by the court." Robert D. Miewald et al., *The Nebraska State Constitution* 254–55 (2d ed. 2009).

b. Next is *State v. Spady*, 264 Neb. 99, 645 N.W.2d 539 (2002). That case upheld the constitutionality of a statute that allows district courts to choose to set aside certain less serious convictions after the offender completes probation and pays any fine. *Id.* at 101–02, 105, 645 N.W. 2d at 541, 543–44. *Spady* is

inapposite. The *Spady* offender was convicted of a Class II misdemeanor—not a felony. *Id.* at 100, 645 N.W.2d at 540. He did not lose his right to vote. Neb. Const. art. VI, § 2; Neb. Rev. Stat. § 29-112 (Reissue 1995). He did not lose his eligibility to hold public office. Neb. Const. art. XV, § 2; Neb. Rev. Stat. § 29-112 (Reissue 1995). Thus, *Spady* does not directly or implicitly decide whether one of the civil rights that the Constitution strips from felons can be reinstated without clemency. That question was not before the Court; Article VI was irrelevant.

The set-aside statute also bears little similarity to the felon re-enfranchisement statutes. The set-aside statute (and an exercise of executive clemency) allows democratically accountable public officials to make case-by-case judgments. The statutes here legislatively re-enfranchise felons, leaving no one accountable for the decision to reinstate any felon's right to vote. The set-aside statute applies to a subset of low-level offenders; *Spady* emphasized the set-aside statute "may be applied only in limited circumstances." 264 Neb. at 104, 645 N.W.2d at 543. Not so with the felon re-enfranchisement statutes. They reinstate the most "precious" right "in a free country," Petition ¶ 7 (quoting *Williams*, 393 U.S. at 31), to the worst offenders of the State's laws. They even re-enfranchise felons convicted of election crimes.

However, if *Spady* is read to place re-enfranchisement outside the pardon power, it should be overruled. *Spady* concluded the set-aside statute "does not act as a pardon" for two reasons: (1) "The party is not exempted from the punishment imposed for the crime," and (2) the set-aside statute "does not nullify all of the legal consequences of the crime committed." 264 Neb. at 104–05, 645 N.W.2d at 543. But these two facts are true for *nearly every* pardon issued by the Board of Pardons. To be sure, a pardon can issue while an offender is serving a sentence and exempt him

from punishment. But that is rare. Instead, the Board's application instructions explain that "[i]t is the usual practice in the granting of pardons to hear only those misdemeanor cases where three (3) years has elapsed and those felony cases where ten (10) years has elapsed upon completion of sentencing." Instructions for Filing an Application, Neb. Pardons Bd., https://perma.cc/7RRK-NJJX (last visited Aug. 8, 2024). Like those whose convictions are set aside under the *Spady* statute, almost every recipient of a full pardon is "not exempted from the punishment imposed for the crime." *Spady*, 264 Neb. at 104, 645 N.W.2d at 543.

Next, *Spady* appears to have incorrectly presumed that full pardons "nullify all of the legal consequences of the crime committed." *Id.* at 105, 645 N.W.2d at 543. They do not. "A pardon does not prevent any and all consequences of the pardoned offense: collateral consequences of the offense may still follow." *Fletcher v. Graham*, 192 S.W.3d 350, 362 (Ky. 2006); *see Hirschberg v. Commodity Futures Trading Comm'n*, 414 F.3d 679, 682 (7th Cir. 2005). At least one Nebraska statute confirms this: Under Neb. Rev. Stat. § 29-2221(3) (Supp. 2023), a conviction that is pardoned for reasons other than innocence can still be used to enhance a sentence under the habitual offender statute. *Spady* presumes that by leaving this and limited other collateral consequences of a felony conviction in place, the set-aside statute left a portion of the constitutional pardon power unexercised. That presumption is false. The set-aside statue "[n]ullif[ied]" certain "legal consequences of a crime," which is a classic feature of a pardon. *Kocontes*, 279 Neb. at 352, 778 N.W.2d at 424.

Spady separately held that the set-aside statute "does [not] allow a court to grant a 'partial pardon.'" 264 Neb. at 105, 645 N.W.2d at 543. *Spady* does not explain why this is so. And *Spady*'s definition of the set-aside statute as "not nullify[ing] all

of the legal consequences of the crime committed because certain civil disabilities enumerated above are not restored," seemingly defined a partial pardon. "A partial pardon is '[a] pardon that exonerates the offender from some but not all of the punishment or legal consequences of a crime.'" *Blount v. Clarke*, 782 S.E.2d 152, 155 (Va. 2016) (quoting *Partial Pardon*, Black's Law Dictionary (10th ed. 2014)); *see also People v. Morris*, 848 N.E.2d 1000, 1003 (Ill. 2006) (same); *Anderson v. Commonwealth*, 107 S.W.3d 193, 196 (Ky. 2003) (same). In short, *Spady* is irrelevant, but if it applies, the case should be overruled. Felon re-enfranchisement is the exclusive authority of the Board of Pardons.

B. L.B. 53 and L.B. 20 do not make felons "restored to civil rights."

The legislative re-enfranchisement statutes are also unconstitutional because they purport to restore one civil right instead of making felons "restored to civil rights." Neb. Const. art. VI, § 2. Under the Constitution, "[n]o person shall be qualified to vote . . . who has been convicted of treason or felony under the laws of the state or of the United States, unless restored to civil rights." *Id.* "Unless" means "[e]xcept on the condition that or under the circumstances that." *Webster's II New College Dictionary* 1207 (1995). Thus, a felon must become "restored to civil rights" to regain the right to vote. Neb. Const. art. VI, § 2. Nebraska, federal, and out-of-state authorities all show this means a felon must regain, at a minimum, the rights to vote and to hold public office before a felon can exercise the franchise.

Rather than making felons "restored to civil rights," L.B. 53 and L.B. 20 unconstitutionally attempt to restore one civil right alone: the franchise. Neb. Rev. Stat. § 29-112, one of the statutes amended by L.B. 53 and L.B. 20, deprives felons' eligibility to

hold public office and serve on a jury unless they receive clemency. It then impermissibly decouples the franchise from these other civil rights and attempts to restore the franchise alone. *Id.* Even if the Legislature can legislatively re-enfranchise felons, it cannot do so while withholding eligibility for public office.

1. The plural "civil rights"

The conclusion that the franchise cannot be restored by itself is required by rules of grammar. Article VI uses the plural "civil rights"—not the singular "civil right." The use of the plural form "denot[es] more than one person or thing." Bryan A. Garner, *Modern English Usage* 1232 (5th ed. 2022); *see also, e.g.*, *Mountain Ranch Ests. v. Utah State Tax Comm'n*, 100 P.3d 1206, 1208–09 (Utah 2004) ("Under a plain language analysis, we interpret 'comparable properties' to mean plural or multiple properties[.]"). The Eleventh Circuit recognized that because a federal statute referencing "restoration of civil rights" "requires the restoration of 'civil rights'—*plural*—more than one . . . civil right[] must be restored to satisfy" it. *United States v. Thompson*, 702 F.3d 604, 607 (11th Cir. 2012) (emphasis added). The same applies to Article VI: Whatever "restored to civil rights" means, it cannot mean the reinstatement of one right by itself.

We also know the framers did not intend "civil rights" to mean the franchise alone because the Constitution uses different, franchise-specific terms to describe the right to vote. "[W]here [a legal] document has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea." Antonin Scalia & Bryan A. Garner, *Reading Law* 170 (2012). The felon re-enfranchisement section itself refers to those "qualified to vote." Neb. Const. art. VI, § 2; *id.* art. VII, § 2 (1875). Its neighboring section calls the right

to vote "the right of suffrage." *Id.* art. VI, § 3; *id.* art. VII, § 3 (1875). And Article I refers to the right to vote as "the elective franchise." *Id.* art. I, § 22; *id.* art. I, § 22 (1875). Each phrase uses franchise-specific terms to refer to voting. Had the framers intended to condition the right to vote on regaining the right to vote, they would not have used the different, much more expansive phrase "unless restored to civil rights." Instead, the Constitution would have disenfranchised a felon "unless restored to the right of suffrage" or "unless restored to the exercise of the elective franchise" or "unless restored to the right to vote."

2. Articles VI and XV

Reading Article VI together with Article XV also supports the multiple-rights interpretation. The phrase "restored to civil rights" appears first in Article VI, which conditions a felon's right to vote on being "restored to civil rights." Neb. Const. art. VI, § 2. Next, like Article VI, Article XV makes a felon ineligible for public office "unless he shall have been restored to civil rights." Neb. Const. art. XV, § 2. And a different section in Article XV makes a person convicted of an oath-of-office offense ineligible for public office "unless he shall have been restored to civil rights." Neb. Const. art. XV, § 1.

"The Constitution as amended must be construed as a whole." *Jaksha v. State*, 222 Neb. 690, 695, 385 N.W.2d 922, 925 (1986) (quoting *Elmen v. State Bd. of Equal. & Assessmen*t, 120 Neb. 141, 149, 231 N.W. 772, 776 (1930)). "[I]t is the duty of this court to interpret the constitution in its entirety . . . giving to each word and phrase the definition which will make it consistent and harmonious with other words and phrases contained in it upon the same subject." *Finlen v. Heinze*, 70 P. 517, 517 (Mont. 1902).

Interpreting Articles VI and XV together shows that the framers paired the right to choose the State's leaders with the right to be chosen to lead. There is "no justification" for construing the same phrase "to mean one thing when first used and an entirely different mandate when employed a second time." *McIntosh v. Standard Oil Co.*, 121 Neb. 92, 103, 236 N.W. 152, 157 (1931). Because the Constitution conditions the reinstatement of two rights—the rights to vote and to hold public office—on becoming "restored to civil rights," a felon must regain both to exercise one. The statutory restoration of one alone is necessarily void.

The 1873 statute enacted just two years before the 1875 Constitution adds support for the bundling of these rights (and reveals a third potential "civil right" for the bundle—the right to serve on a jury). "The language of the Constitution is to be interpreted with reference to the established laws, usages, and customs of the [State] at the time of its adoption." *State ex rel. Caldwell v. Peterson*, 153 Neb. 402, 405, 45 N.W.2d 122, 125 (1950) (quoting *In re Hammond*, 83 Neb. 636, 643, 120 N.W. 203, 205 (1909)). "[S]ince this statute was enacted by the Legislature near the time when the Constitution containing the same term was adopted by the people, the Act of the Legislature carries great weight in determining what was meant by the use of the same term in the Constitution." *Hill County v. Sheppard*, 178 S.W.2d 261, 263 (Tex. 1944).

Both the 1873 statute and 1875 Constitution condition felon re-enfranchisement on becoming "restored to civil rights." The 1873 statute, however, helpfully adds two details: *First*, it says felons are restored to civil rights through a "general pardon" instead of more circumscribed clemency or some other vehicle. Neb. Gen. Stats. ch. 58, § 258, p. 783 (1873) (reproduced at p. 17,

surpa). *Second*, the statute bundles together three rights—eligibility to vote, hold public office, and serve on a jury—that are taken and restored as a unit. *Id.* The general pardon and three-rights language remained in the statute for more than 75 years after the 1875 Constitution's ratification, suggesting a symmetry between the 1873 statute and 1875 Constitution. *See* p. 18, *supra*. Such "longstanding practices of government . . . inform a determination of whether a particular" separation-of-powers arrangement "is constitutional." *Gnewuch*, 316 Neb. at 73–74, 3 N.W.3d at 316.

3. "Restored to civil rights" is a term of art.

We have shown that "restored to civil rights" is a term of art that refers to the exercise of clemency. *See* pp. 28–30, *supra*. As in Nebraska's 1873 statute, it also refers to the reinstatement of three rights: the rights to vote, hold public office, and serve on a jury. Federal and out-of-state authorities confirm this. At least two federal statutes refer to "restoration of civil rights" or "civil rights restored." *E.g.*, 18 U.S.C. § 921(a)(20), (a)(33)(B)(ii), (a)(33)(C); 28 U.S.C. § 1869(h). *Logan v. United States*, 552 U.S. 23, 28 (2007), interpreted a statute that disregarded a prior conviction if the offender "has had civil rights restored." 18 U.S.C. § 921(a)(20) (2000 ed.). *Logan* identified "the civil rights relevant under the above-quoted provision [as] the rights to vote, hold office, and serve on a jury." 552 U.S. at 28. And several state courts have followed *Logan*'s conclusion. *See, e.g.*, *Van Oudenhoven v. Wis. Dep't of Justice*, --- N.W.3d ----, 2024 WL 2828422, at *8–9 (Wis. App. June 4, 2024); *Barr v. Snohomish Cnty. Sheriff*, 440 P.3d 131, 134 n.5 (Wash. 2019) ("[T]his order does not restore his civil rights for purposes of 18 U.S.C. § 921(a)(20) because 'the

civil rights relevant under [that] provision are the rights to vote, hold office, and serve on a jury.'") (quoting *Logan*, 552 U.S. at 28).

Interpreting the same restoration-of-civil-rights statute before *Logan*, the First Circuit held that "'[c]ivil rights,' within the meaning of [the statute], have been generally agreed to comprise the right to vote, the right to seek and hold public office, and the right to serve on a jury." *United States v. Caron*, 77 F.3d 1, 2 (1st Cir. 1996). The Sixth Circuit likewise concluded "a felon has not had his 'civil rights' restored unless, pursuant to the law of the state of conviction, he possesses the right to vote, to serve on a jury and to seek and hold public office." *United States v. Breckenridge*, 899 F.2d 540, 542 (6th Cir. 1990). In the Tenth Circuit, "the rights to vote, serve on a jury, and hold public office, as well as the right to possess firearms, must all be restored under § 921(a)(20) before a prior conviction may be excluded on the basis of restoration of civil rights." *United States v. Flower*, 29 F.3d 530, 536 (10th Cir. 1994).

Authorities in other state courts likewise connect the term "restored to civil rights" to the reinstatement of multiple rights, most often also linking the term to the exercise of the pardon power. *Page v. Watson*, 192 So. 205, 207–08 (Fla. 1938), for example, explains that "a pardon restores one to the customary civil rights which ordinarily belong to a citizen of the State, which are generally conceded or recognized to be the right to hold office, to vote, to serve on a jury, to be a witness." *See also State v. Bates*, 112 N.W. 1026, 1029 (Minn. 1907) (Start, C.J., concurring) ("[A]ny person convicted of the offense, until restored to civil rights, would not be entitled to vote or to hold any office.").

4. The franchise is not an inferior right.

Finally, tying the franchise with eligibility to hold public office (and perhaps eligibility for jury service) interprets Article VI consistent with common sense. The common denominator among the rights to vote, to hold public office, and to serve on a jury is public participation in the administration of law. Voters choose public officeholders who enforce, apply, and create law. And jurors apply the law, sitting in judgment of those accused of breaking the law. A willingness to be bound by the law is necessary for the appropriate exercise of each of these rights.

But every felony conviction demonstrates the opposite: indifference towards and sometimes contempt for the law. "It is not unreasonable to suppose that those who have committed serious crimes may be presumed to lack . . . trustworthiness and loyalty." Roger Clegg, *Who Should Vote?*, 6 Tex. Rev. L. & Pol. 159, 172 (2001). Or as Chief Justice John Jay put it: "He is not a good citizen who violates his contract with society." *Henfield's Case*, 11 F. Cas. 1099, 1105 (C.C.D. Pa. 1793). Those who show contempt for the law are unfit for any role in administering the laws that govern our society.

Allowing someone who lost these three civil rights by defying the law to regain only one suggests an inferiority of that right. And if any of the three is inferior to the others, it is not the franchise. Relators correctly explain that "[n]o 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." Petition ¶ 7 (quoting *Williams*, 393 U.S. at 31). A "set of anomalies would arise" if felons were restored to the right vote or to "run for public office" or to "serve on

juries" but not to all three. *Hopkins v. Watson*, 108 F.4th 371, 391 (5th Cir. 2024). It would mean that someone could be deemed unfit to prosecute the laws but fit to choose who should prosecute the laws.

5. *Ways v. Shively*

Relators will likely answer this wall of authority by claiming that one half of one sentence from *Ways* decided that the plural "civil rights" means the singular "right to vote." That is wrong. *Ways* asserted that "the restoration referred to in Neb. Const. art. VI, § 2, is the restoration of the right to vote." 264 Neb. at 255, 646 N.W.2d at 626. That statement is undeniably true, though incomplete. As we have shown, "restored to civil rights" also refers to eligibility to hold public office and perhaps jury service as well. Relators' likely interpretation wrongly adds the word "alone" to the end of this sentence.

Besides rewriting *Ways*, reading this sentence to say "the right to vote alone" would make Nebraska an outlier among federal and state courts that have interpreted the phrase "restored to civil rights." *See* pp. 45–46, *supra*. It would give the phrase "restored to civil rights" multiple meanings within the Constitution. *See* pp. 43–44, *supra*. And it would ignore the framers' use of the plural "civil rights," treating that sentence as though it used the entirely different term "right of suffrage." *See* pp. 42–43, *supra*.

Regardless, *Ways*'s sentence is dictum for all the reasons its neighbor is dictum. *See* p. 38, *supra*. Nothing about *Ways*'s holding turned on Article VI's meaning. And the Court did not consider the argument that "restored to civil rights" has the same meaning in Article VI and Article XV. It had no occasion to, and the argument was not put before the Court. Nothing in *Ways*

announces that the Constitution's three references to "restored to civil rights" have two meanings.

To summarize: "Civil rights" are not restored unless more than one civil right is restored. Because Article VI, Section 2 conditions a felon's right to vote upon being "restored to civil *rights*," a felon must be restored to more than one civil right before exercising the franchise. Neither L.B. 53 nor L.B. 20 accomplishes that. The statutes attempt to restore one right, the franchise, while the statute they amend expressly withholds eligibility for public office and jury service. Even if the Legislature can constitutionally re-enfranchise felons, L.B. 53 and L.B. 20 are unconstitutional because they do not make felons "restored to civil rights" as required by the Constitution.

C. The voter registration form is correct.

L.B. 53 and L.B. 20's amendments to the voter-registration-form statute are also unconstitutional. That statute states: "The registration application prescribed by the Secretary of State . . . shall provide the instructional statements and request the information from the applicant as provided in this section." L.B. 20, § 4, 108th Leg., 2d Sess. (2024) (to be codified at and hereinafter Neb. Rev. Stat. § 32-312). This includes an oath that requires registrants to affirm they meet the State's felony-conviction requirements for voters. *Id.* Before L.B. 53, this statute mirrored Article VI, Section 2, of the Constitution: "I have not been convicted of a felony or, if convicted, my civil rights have been restored." Neb. Rev. Stat. § 32-312 (Reissue 2004). L.B. 53 rewrote this line to implement that statute's automatic re-enfranchisement. *See* 2005 Neb. Laws, L.B. 53, § 4, p. 84. Today, the statute reads: "I have not been convicted of a felony or, if convicted, I have completed my sentence for the felony, including any parole term." Neb. Rev.

Stat. § 32-312. After determining that legislative re-enfranchisement is unconstitutional, Secretary Evnen reverted the voter registration form to the text required by the statute as unamended by L.B. 53. *See* Stip. ¶ 12.; *id.* Ex. 8.

The voter registration form as published by Secretary Evnen is consistent with law. We have already established that the legislative re-enfranchisement of felons is unconstitutional. *See* Part I.A. Conforming the voter registration form to L.B. 20's amendments of section 32-312 would mislead prospective voters as to the State's requirements for felony re-enfranchisement. It would also permit felons who have completed their sentences to attempt to improperly register themselves without exposing themselves to the election falsification penalties specified by the Legislature. *See* Neb. Rev. Stat. § 32-1508 (Reissue 2016).

D. Secretary Evnen acted lawfully in modifying the form.

Independent of their argument that legislative felon re-enfranchisement is constitutional, Relators contend Secretary Evnen acted unlawfully by modifying the form without a court order. Relators Br. 26. This argument is immaterial; the case should be decided on the constitutionality of L.B. 53 and L.B. 20. But Realtors are wrong even if their argument did bear on their entitlement to mandamus. Executive Branch officials take an oath of office to the Constitution—not the Legislature. They cannot implement a statute after making a good-faith judgment it is unconstitutional.

1.a. This Court has already rejected Relators' argument that officials must implement a statute until a court holds it is unconstitutional. Accepting Relators' argument would require the Court to overrule *Van Horn v. State*, 46 Neb. 62, 84, 64 N.W. 365,

372 (1895), which explained that "[i]f an act must be respected until its validity is declared by the judiciary in a proper proceeding, then the constitution is utterly ineffectual." *Van Horn* involved a state statute that required certain counties to reorganize their governments. *Id.* at 67, 64 N.W. at 366. A county board of supervisors deemed the statute to be unconstitutional and refused to implement it. *Id.* The county's attorney then sought a writ of mandamus to compel the board to carry out the statute. *Id.* Like Relators, the *Van Horn* relator "contend[ed] with vigor that, irrespective of [the constitutional] question, the writ should issue." *Id.* at 82, 64 N.W. at 371. He disputed that "a ministerial officer, having no personal interest, can justify his refusal to act under a statute on the ground that the statute is in conflict with the constitution." *Id.* at 82, 64 N.W. at 371–72.

This Court disagreed. In reasoning repeated by this Court just last month, *Van Horn* held that "the constitution is the fundamental law, [and] an act of the legislature repugnant thereto is not merely voidable by the courts, but is absolutely void and of no effect whatever." *Planned Parenthood*, 317 Neb. at 223–24, 9 N.W.3d at 610 (quoting *Van Horn*, 46 Neb. at 82–83, 64 N.W. at 372). "It is no law, and binds no one to observe it." *Id.* at 224, 9 N.W.3d at 610 (quoting same). To be sure, "ministerial officers" must "exercise the greatest caution on [constitutional] questions." *Van Horn*, 46 Neb. at 83, 64 N.W. at 372. And a mere "doubt as to the validity of a statute would not justify them in disregarding it." *Id.* "[B]ut when they do disregard them, and the question is presented to the court as to whether or not obedience will be compelled, . . . obedience will not be compelled if the act is unconstitutional." *Id.*

Van Horn explains that this follows from the fact that "[t]he officers of this state are sworn to support the constitution."

Id. Secretary Evnen has pledged that he "will support . . . the constitution of the State of Nebraska." Neb. Const. art. XV, § 1. He and other "officers are therefore not bound to obey an unconstitutional statute, and the courts, sworn to support the constitution, will not, by mandamus, compel them to do so." *Van Horn*, 46 Neb. at 83, 64 N.W. at 372. This is not a case of an officer refusing to implement a statute on a mere "doubt as to the validity of a statute." *Id.* Secretary Evnen requested an opinion from the Attorney General on the constitutionality of legislative felon re-enfranchisement after his predecessor, three governors, and numerous state senators concluded the statutes were unconstitutional. He received in response an 18-page opinion that reached the same conclusion. On that record, Secretary Evnen made a good-faith judgment that the legislative re-enfranchisement statutes are unconstitutional. He thus acted properly in not implementing them.

Two statutes that govern elections further clarify the appropriateness of Secretary Evnen's conduct. It is a "dut[y]" of the Secretary of State to "make uniform interpretations of the [Election Act]," including the re-enfranchisement statutes, "[w]ith the assistance and advice of the Attorney General." Neb. Rev. Stat. § 32-202(4) (Supp. 2023). Another statute mandates that "[t]he Secretary of State shall decide disputed points of election law." *Id.* § 32-201 (Reissue 2016). By statute, those "decisions shall have the force of law until changed by the courts." *Id.* As explained, Secretary Evnen's oath of office suffices to justify his refusal to implement L.B. 53 and L.B. 20. These statutes add support.

b. Secretary Evnen's action is backed by decades of practice in the State. As examples, in 2019, Governor Pete Ricketts made a good-faith judgment that a statute requiring him to

appoint the election commissioners for certain counties was unconstitutional. *State ex rel. Peterson v. Shively*, 310 Neb. 1, 6–7, 963 N.W.2d 508, 514 (2021). He subsequently "refuse[d] to exercise his statutory appointment authority" even though no court had ruled on the question. *Id.* In 2018, Secretary of State John Gale made a good-faith judgment that a statute imposing minimum signature requirements on independent candidates was unconstitutional. Stipulation, *Bernbeck v. Gale*, No. 4:18-cv-3073, ECF No. 13, ¶¶ 1–2 (D. Neb. June 13, 2018). No court had ruled on that question, but Secretary Gale still stipulated to the statute's unconstitutionality after he was sued. *Id.*

In 2012 and 1997, the Nebraska Accountability and Disclosure Commission made good-faith judgments that statutes requiring it to enforce campaign finance rules were unconstitutional. *See State ex rel. Bruning v. Gale*, 284 Neb. 257, 261, 817 N.W.2d 768, 772 (2012); *Moore*, 258 Neb. at 740, 605 N.W.2d at 442. It too refused to implement the statutes even though no court had ruled on the questions. *Gale*, 284 Neb. at 261, 817 N.W.2d at 772; *Moore*, 258 Neb. at 740, 605 N.W.2d at 442. In 1989, the Board of Trustees of the Nebraska State Colleges made a good-faith judgment that a statute requiring the board to transfer Kearney State College to the University system was unconstitutional. *See State ex rel. Spire v. Beermann*, 235 Neb. 384, 386, 455 N.W.2d 749, 750 (1990). The Board refused to implement the statute even though no court had ruled on the question. *Id.*

And in 1977, the State's Director of Insurance made a good-faith judgment that a statute requiring medical malpractice claimants to present their claims to a medical review panel was unconstitutional. *See Prendergast v. Nelson*, 199 Neb. 97, 100, 102, 256 N.W.2d 657, 662, 663 (1977). He refused to implement the statute even though no court had ruled on the question. *Id.* at

100, 256 N.W.2d at 662. In the end, this Court disagreed with several of these officials' decisions. But none of these cases doubted officials' authority to refuse to enforce a statute that they believe to be unconstitutional. Although it ultimately rejected the Director of Insurance's conclusion that the medical review panel statute was unconstitutional, this Court noted it "ha[d] no question as to the right of the Director of Insurance to question the act as [unconstitutional]." *Id.*

The Legislature has also recognized that officials will at times refuse to implement statutes that they see as unconstitutional. A bill was introduced in 1977 that would have required officials to implement statutes until the Court deemed them to be unconstitutional. L.B. 45, 85th Leg., 1st Sess. (1977); *see also* Op. Att'y Gen. No. 77-073 (Apr. 13, 1977). The Legislature instead enacted into law a statute requiring litigation if a state official refused to implement a state statute based on an Attorney General opinion stating that an act is unconstitutional. Neb. Rev. Stat. § 84-215 (Cum. Supp. 1978).

The statute did *not* say that officers must carry out challenged acts until litigation concludes. *Id.* Instead, it presumed that Executive Branch officers would adhere to *Van Horn* and not enforce a statute they consider unconstitutional. And while the statute was repealed this year, nothing about that repeal altered the *Van Horn* principle. *See* L.B. 287, § 81, 108th Leg., 2d Sess. (2024) (enacted). This case unfolded in the same way constitutional issues were litigated before section 84-215 was enacted—an executive refused to implement a statute based on its unconstitutionality and an injured party sued to serve the issue before the Court. *See, e.g.*, *Prendergast*, 199 Neb. at 100, 256 N.W.2d at 662; *Van Horn*, 46 Neb. at 67, 64 N.W. at 366.

c. Relators suggest that Secretary Evnen usurped the judiciary's role. Relators Br. 26. They are wrong. *Van Horn* recognizes that because of justiciability requirements, it will often be true that litigation "can never arise until some one refuses obedience to the act." 46 Neb. at 84, 64 N.W. at 372. Or as Governor Exon put it, "it may very well be that the only way to establish a constitutional test will be for the executive officer to refuse to implement the legislation so that suit can be brought against that officer." Legislative Journal, 85th Leg., 1st Sess. 1635 (Apr. 26, 1977) (veto statement). The Minnesota Supreme Court illustrated this earlier this month in a case brought by an association of voters arguing that the State's felony re-enfranchisement statute unconstitutionally restored only one civil right. *Minn. Voters Alliance v. Hunt*, --- N.W.3d ----, 2024 WL 3681675, at *6 (Minn. Aug. 7, 2024). Unlike Secretary Evnen, Minnesota's chief elections officer has implemented the statute. *Id.* at *2. And the Court was unable to reach the merits of the voters' argument because they lacked standing. *Id.* at *6. Executive officers' non-implementation of statutes *facilitates* judicial rulings on the constitutionality of statutes.

In addition, Relators wrongly assert that Secretary Evnen has "re-disenfranchised thousands of Nebraska voters." Relators Br. 18. This is false. Joint Stipulation Ex. 7. None of the registered voters affected by Secretary Evnen's announcement have been removed from the voter rolls. Instead, he announced that he will not take further action to reverse L.B. 53's implementation until this Court makes a ruling. Joint Stipulation Ex. 7. Secretary of State will not remove existing voter registrations of individuals with felony convictions for now. News Releases, Neb. Sec'y of State (Aug. 15. 2024), https://perma.cc/BU4Y-LU82. By reverting the voter registration form, Secretary Evnen took the

action needed to permit litigation to materialize while postponing other steps that would cause greater disruption.

d. Nothing that Relators cite changes this conclusion. Relators cite the Constitution's supermajority rule, which states that "[n]o legislative act shall be held unconstitutional except by the concurrence of five judges." Neb. Const. art. V, § 2. But Relators take this section out of context. It applies to decisions of this Court alone. If it applied to the Executive, it would apply to district courts too. There is no known "example of a district court refusing to hold a statute unconstitutional simply because the supreme court must do so with five of its seven judges." Miewald et al., *supra*, at 222. And this Court has also held that the fact a case raises constitutional issues does not by itself create original jurisdiction. *State ex rel. Wieland v. Moore*, 252 Neb. 253, 260–62, 561 N.W.2d 230, 235–36 (1997). But if the supermajority requirement did apply outside this Court, all constitutional challenges to statutes would need to be brought as original actions in this Court.

Next is Relators' citation to the statute requiring the Governor to order an agency to implement an act of the Legislature if it has not done so with certain exceptions. Neb. Rev. Stat. § 84-731 (Reissue 2014). *First*, Relators do not and cannot argue this statute controls. The Governor has not issued such an order to Secretary Evnen. *Second*, assuming this statute is constitutional, it does not help Relators because it expressly contemplates state agencies *not* implementing a state statute *before* this Court rules on a statute's constitutionality. By its terms, the statute does not apply if there is "an action challenging the constitutionality of the act . . . pending in a court of competent jurisdiction." *Id.* Relators cite nothing challenging the rule this Court restated last month: "Where a supposed act of the legislature and the constitution

conflict, the constitution must be obeyed and the statute disregarded." *Planned Parenthood*, 317 Neb. at 224, 9 N.W.3d at 610 (quoting *Van Horn*, 46 Neb. at 82–83, 64 N.W. at 372).

2. Regardless, Relators' argument fails at the threshold because it does not change their entitlement to mandamus. "[A]n appellate court is not obligated to engage in an analysis which is not needed to adjudicate the case and controversy before it." *Kelly v. Kelly*, 246 Neb. 55, 61, 516 N.W.2d 612, 616 (1994). If this Court accepts our argument that legislative felon re-enfranchisement is unconstitutional, then a writ compelling Secretary Evnen to implement L.B. 20 would wrongly compel him to perform an illegal act. *See State ex rel. Sch. Dist. of Grand Island v. Bd. of Equal. of Hall Cnty.*, 166 Neb. 785, 793–94, 90 N.W.2d 421, 427 (1958). If this Court rejects our constitutional arguments, that suffices to hold that L.B. 20 should be implemented.

* * *

The legislative felon re-enfranchisement statutes are unconstitutional. That requires dismissing Relators' petition for a writ of mandamus. "An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; and it is, in legal contemplation, as inoperative as though it had never been passed." *United Cmty. Servs. v. Omaha Nat. Bank*, 162 Neb. 786, 805, 77 N.W.2d 576, 589 (1956) (quoting *Bd. of Educ. Lands & Funds v. Gillett*, 158 Neb. 558, 561 64 N.W.2d 105, 108 (1954)).

II. L.B. 20 Does Not Impose a Duty to Remove Voter Disqualifications.

Secretary Evnen does not dispute that he must publish a voter registration form. Relators appear to argue that Secretary

Evnen also has a duty to automatically re-enfranchise felons when they complete their sentences. Relators Br. 29–30. The statute provides: "Any person sentenced to be punished for any felony, when the sentence is not reversed or annulled, is not qualified to vote until such person has completed the sentence, including any parole term. The disqualification is automatically removed at such time." Neb. Rev. Stat. § 29-112.

The disqualification that the statute claims to remove is created by Article VI, not Secretary Evnen. These sentences do not impose a duty on Secretary Evnen, and Relators admit the statute "does not specifically name the Secretary." Relators Br. 29. More importantly, Secretary Evnen has no way to remove a disqualification "once the voter completes the sentence." *Id.* Secretary Evnen's office receives some information about the completion of sentences, but it is incomplete. And even if his office did have complete information, it is unclear what ministerial "act" the Secretary is supposed to perform. Neb. Rev. Stat. § 25-2156 (Reissue 2016). To the extent this Court disagrees with Secretary Evnen's constitutional arguments, it still should not construe the statute to impose a duty on Secretary Evnen that he cannot carry out.

III. Relators' Arguments on Their Claims Against the Election Commissioners Are Premature.

Relators devote one subpart of their brief to arguing their claims against the election-commissioner respondents. Relators Br. 30–32. The Court should not consider these claims. The election commissioners have not filed answers, which are not due until September 6, 2024. This Court did not order the election commissioners to submit jointly stipulated facts. Nor did the Court permit them to file briefs. Neither Secretary Evnen nor the

Attorney General's Office represents the election commissioners. Relators' arguments on their claims against the election commissioners are premature and should be disregarded.

IV. Civic Nebraska's Claims Should Be Dismissed.

The Court also should not rule on Civic Nebraska's claims. The Court set this case for briefing based on stipulated facts. Order (Aug. 9, 2024). It has not authorized discovery. Nor has it authorized the parties to submit documents into evidence outside the joint stipulation. Secretary Evnen stipulated to facts necessary to establish two individual relators' standing because he desires a ruling on the legislative re-enfranchisement statutes' constitutionality. The parties were unable to stipulate to facts on Civic Nebraska's claims. The Court should either dismiss those claims without prejudice to being re-filed in district court or appoint a special master. John P. Lenich, Nebraska Civil Procedure § 20:15 (2024). These claims are not necessary for this Court to decide the constitutional question on which both sides desire a ruling.

CONCLUSION

The Court should dismiss Relators' petition for writ of mandamus.

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Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface and word-count requirements of Neb. Ct. R. App. P. § 2-103 because it contains 14,952 words excluding this certificate. This brief was prepared using Microsoft Word 365.

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