STATE OF MINNESOTA
IN SUPREME COURT

Minnesota Voters Alliance; Mary Amlaw; Ken Wendling; Tim Kirk,

Petitioners,

v.

Tom Hunt, in his official capacity as elections official for Anoka County; Steve Simon, in his official capacity as Secretary of State; Anoka County; the Office of the Minnesota Secretary of State; Shannon Reimann, in her official capacity as chief executive officer of the Minnesota Correctional Facility – Lino Lakes,

Respondents,

and

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

Intervenor-Respondents.

Appellate Court File No.: A23-1940

PETITION FOR ACCELERATED REVIEW

Judgment Entered:
December 15, 2023

Appealable Order Entered:
December 13, 2023

Petitioners Minnesota Voters Alliance, Mary Amlaw, Ken Wendling, and Tim Kirk brought this quo-warranto action to challenge Respondents' implementation of the 2023 Minnesota laws which purport to restore "the civil right to vote" to felons who are "not incarcerated" without restoring them to the "civil rights" lost upon felony conviction. *Compare* Minn. Stat. § 201.014, subd. 2a (2023) ("Felon Voting Law") *with* MINN. CONST. art. VII, § 1. Petitioners argue that the constitutional prohibition against felons voting "unless restored to civil rights" requires either (1) the Legislature or Governor to restore those convicted of felonies to the "civil rights" lost upon conviction, or (2) the people of Minnesota to amend the Constitution to remove the disability imposed.

In the 2023 legislative session, the Minnesota Legislature did neither. The Felon Voting Law only attempts to restore "the civil right to vote." The felony sentence continues to deprive non-incarcerated felons of their other lost "civil rights." Thus, the Felon Voting Law failed to accomplish its stated purpose. Respondents cannot, therefore, implement the law without violating the Constitution, so their implementation of the law exceeds their authority.

Because this case involves the constitutionality of state statutes, the interpretation of the Minnesota Constitution related to the elective franchise, and will impact Minnesota's elections in 2024 and beyond, it presents questions of such imperative public importance as to justify deviation from the normal appellate procedure and to require immediate determination by this Court, as

soon as possible. Petitioners thus request accelerated review.

STATEMENT OF LEGAL ISSUES

1. **Whether Respondents exceed their authority by implementing laws which grant Minnesotans convicted of felonies "the civil right to vote" but do not "restore" them to the "civil rights" lost because of felony conviction.**

The district court dismissed the petition for a writ of quo warranto and held that Respondents' actions do not exceed their authority under the Minnesota Constitution. Add. 8–11 (Judgment 8–11).

2. **Whether Petitioners have standing to petition for a writ of quo warranto against Respondents, where Respondents are implementing laws that Petitioners allege violate the Minnesota Constitution, and where the Legislature has appropriated tax monies to implement those laws.**

The district court also dismissed the petition for a writ of quo warranto by holding that Petitioners lack standing to seek the writ or a declaratory judgment. Add. 4–8 (Judgment 4–8).

3. **Whether Minnesota courts, like federal courts in the Eighth Circuit, presume that putative intervenors are adequately represented by government where the government, as a sovereign, is defending laws conferring on the putative intervenors the rights they seek to vindicate through intervention.**

The district court held that Minnesota courts do not apply the Eighth Circuit's presumption of adequacy to intervention where government defendants are already defending the constitutionality of state law. Add. 15 (Order 4).

4. **Whether the district court erred by granting intervention as of right to the Intervenor-Respondents.**

The district court granted Intervenor-Respondents' motion for intervention of right under Minn. R. Civ. P. 24.01. Add. 15–16 (Order 4–5).

CRITERIA SUPPORTING PETITION

The Court should review this case because it meets multiple criteria for review under Rules 117 and 118. First, it is an important case—the issues include who may vote in Minnesota elections and whether taxpayers have a say in stopping unconstitutional actions by officials. Minn. R. Civ. App. P. 117, subd. 2(a). Second, it involves the constitutionality of statutes, on which the district court ruled, including section 201.014, subd. 2a. Minn. R. Civ. App. P. 117, subd. 2(b). Third, whether felons still deprived of some civil rights may vote under our Constitution is an urgent question of statewide importance. Minn. R. Civ. App. P. 117, subd. 2(d)(2). Finally, the 2024 election looms on the horizon, in less than a year. Early voting for the state primaries will begin on June 28, 2024. Early voting for the general election will begin September 20, 2024. It is imperative that this Court review this case now so that Minnesotans have complete clarity over voter eligibility by the time those elections arrive. Minn. R. Civ. App. P. 118.

STATEMENT OF THE CASE

Petitioners appeal from the dismissal of their petition for a writ of quo warranto challenging Respondents' implementation of the Felon Voting Law as exceeding their authority under the Minnesota Constitution, as well as the district court's order granting Intervenor-Respondents' motion to intervene as of right. The facts below are undisputed and present pure legal issues for the Court's consideration.

I. The Minnesota Constitution and *Schroeder*.

Article VII, section 1, of the Minnesota Constitution states that those convicted of a felony crime may not be "entitled or permitted" to vote in Minnesota elections "unless restored to civil rights." This means that a felony conviction does not strip a person of the right to vote for all time; rather, the Legislature may, in order to restore the right to vote to convicted felons, restore their "civil rights" lost by virtue of the conviction and sentence.

Consistently, this Court held in *Schroeder v. Simon*, 985 N.W.2d 529 (Minn. 2023), that 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, by means of "a legislative act that generally restores the right to vote upon the occurrence of certain events," *id*. at 534.

The Court did not define what these "certain events" must be, but held:

> [T]he very fact that probation and conditional release did not exist in 1858 means that release from incarceration was the completion of a sentence. Accordingly . . . . one way to interpret the framers' understanding of the phrase "unless restored to civil rights" is that restoration occurs upon completion of the sentence.

Id. at 544. Thus, the prior felon voting law, which, upon discharge from a felony sentence, restored a person "to all civil rights and to full citizenship, with full right to vote and hold office," "the same as if such conviction had not taken place," accomplished just that. Minn. Stat. § 609.165 (2021). In the face of a challenge from the Intervenor-Respondents here and others, the Court upheld the constitutionality of the former law because it was a choice available to the Legislature under Article VII, section 1. *Schroeder*, 985 N.W.2d at 545.

The Court also noted that even after leaving incarceration, "the constitutional rights of parolees and probationers may be limited in ways that the rights of persons who have completed their sentences may not be." *Id.* at 544–45. And the Court clearly stated that the "right to vote" was included as *one* of the "civil rights," not the whole body of those rights. *Id.* at 533, 544, 552 (majority); *id.* at 557–58, 561 (Anderson, J., concurring).

II. The Legislature passed the Felon Voting Law.

This past session, the Legislature passed two acts which purport to restore "the civil right to vote" but fail to restore the "civil rights" lost by a felon upon conviction. Minn. Laws 2023, chs. 12, 62.

Chapter 62, which amended Chapter 12, was signed on May 24, 2023, and its article 4, section 10 created Minn. Stat. § 201.014, subd. 2a:

> An individual who is ineligible to vote because of a felony conviction has the civil right to vote restored during any period when the individual is not incarcerated for the offense. If the individual is later incarcerated for the offense, the individual's civil right to vote is lost only during that period of incarceration. For purposes of this subdivision only, an individual on work release under section 241.26 or 244.065 or an individual released under section 631.425 is not deemed to be incarcerated.

This purports to restore the right to vote to those convicted of felony crimes who have not completed their sentence and are still on supervised release, probation, or work release.[1] The law specifically says that it only restores "the civil right to vote."

The law also commands the Respondents to implement it. Respondents must modify voter rolls, notify citizens of the effect of changes in the law, remove challenge designations from the voter rolls, change the oath required in voter registration and ballot applications, and aid those still under felony sentences in registering to vote, among other things. *E.g.,* Petition ¶ 23 (Doc. 1);

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[1] Under Minnesota law, for all purposes except as deemed by chapter 62 of the Felon Voting Law, those on work release are deemed incarcerated. Minn. Stat. § 241.26 ("Release under this subdivision is an extension of the limits of confinement . . . ."); Minn. Stat. § 244.01, subd. 2 (defining "inmate" as inclusive of those on work release); Minn. Stat. § 244.065 (referring to section 241.26); Minn. Stat. § 631.425, subd. 3 ("an inmate employed"), subd. 4 (confinement when not employed), subd. 5 (earnings collected by government and garnished for some purposes), subd. 7 (remand to "actual confinement" for violations of condition of work release).

2023 Minn. Laws ch. 12; *id.* ch. 62, art. 4, §§ 11, 19, 21, 22 (affecting Minn. Stat. §§ 201.014, subd. 2a; 201.276; 201.071; 204C.10; 243.205; 201.021; 201.022; 201.121; 201.145; 201.061; 201.054; 201.091). The law specifically appropriates money to implement these provisions: $14,000 to Respondent Secretary of State to implement the provisions of Chapter 12, including the provision allowing those serving felony sentences to vote, 2023 Minn. Laws, ch. 12, § 8, and $200,000 to Respondent Secretary of State "to develop and implement an educational campaign relating to the restoration of the right to vote to formerly incarcerated individuals," *id.* ch. 62, art. 1, § 6.

III. The Petitioners object to Respondents exceeding their constitutional authority.

Petitioners are taxpayers who object to the Respondents exceeding their constitutional authority by enabling and permitting voting by convicted felons whose civil rights have not been restored. Docs. 1 (Petition ¶¶ 26–29, 40–42), 41–43 (Petitioners' declarations).

The Felon Voting Law was originally slated to become effective on July 1 of this year. 2023 Minn. Laws ch. 12, § 9. Months after the signing of chapter 12, the Governor signed chapter 62 into law on May 24, 2023, which moved up that effective date to June 1. 2023 Minn. Laws ch. 62, art. 4, § 10. Petitioners filed this action less than a month later, on June 29. Doc. 1. It is undisputed that Petitioners requested merits determination from the district court prior

to September 22, the beginning of early voting for the November 2023 elections. Doc. 54 (Decl. of James V. F. Dickey, Oct. 16, 2023, ¶ 2 & Ex. 1). The district court only had October 30 available for a hearing date, so that is when the petition and Respondents' cross-motions were heard. *Id.*

On December 13, the district court ordered the dismissal of the petition and granted Intervenor-Respondents' motion to intervene as of right. Judgment was entered on December 15. Petitioners filed this appeal on December 20, and this petition for accelerated review follows.

ARGUMENT

Accelerated review is warranted because this case presents issues of substantial statewide importance, especially whether the Respondents may constitutionally implement the Felon Voting Law, which impacts voter eligibility for the 2024 elections. Without accelerated review, Minnesotans will be left with uncertainty as to voter eligibility, and Respondents (and others in like positions across the state) will also face uncertainty as to their constitutional authority and obligations for these important elections.

I. Timing is of the essence in this case, and normal appellate review is unlikely to yield a final decision on the important issues presented prior to the August 2024 primary election.

In 2024, Minnesota will hold at least three elections at which eligible voters may register and cast ballots: the 2024 United States presidential primary on

March 5, 2024,[2] the state primary election on August 13, 2024, and the general election on November 5, 2024. *Elections Calendar*, Office of the Minnesota Sec'y of State, https://www.sos.state.mn.us/election-administration-campaigns/elections-calendar/. Early voting begins on January 19 for the March 5 primary, on June 28 for the August 13 primary, and on September 20 for the November 5 general election. *Id.*

Because the Legislature has passed the Felon Voting Law, which purports to restore "the civil right to vote" but does not restore the "civil rights" a felon loses upon conviction, there is uncertainty about who may legally vote in these elections. Voters and those responsible for administering Minnesota's elections—including Respondents and county and city officials across Minnesota—must know who is eligible to vote in these elections. According to the Secretary of State, the Felon Voting Law, if upheld, would allow approximately 55,000 Minnesotans to register and vote. *Voting Rights Restored to Formerly Incarcerated Minnesotans*, Office of the Minnesota Sec'y of State, https://www.sos.state.mn.us/about-the-office/news-room/voting-rights-

[2] This Court recently held that the U.S. presidential primary is an "internal party election to serve internal party purposes, and winning the presidential nomination primary does not place the person on the general election ballot as a candidate for President of the United States." Order at 3, *Growe v. Simon*, No. A23-1354 (Minn. Nov. 8, 2023). Regardless of whether timing is of the essence for the U.S. presidential primary, the later August primary is not merely an internal party election, and the general election is certainly not.

restored-to-formerly-incarcerated-minnesotans/.

The normal appellate procedure, even if expedited in the court of appeals, would continue the uncertainty created by the Felon Voting Law possibly into the primary season or beyond. The imminence of these elections and the imperative public importance of the questions presented justify deviation from the normal appellate procedure and require immediate determination by this Court.

II. Whether Respondents exceed their authority by enforcing the Felon Voting Law is an urgent issue of statewide importance that this Court did not reach in *Schroeder*.

Schroeder resolved whether the Legislature could condition the restoration of the right to vote to felons on the discharge of the felony sentence, or "whether Article VII, Section 1, requires that persons convicted of a felony be restored to the right to vote upon being released or excused from incarceration . . . ." 985 N.W.2d at 533.

On this precise question, the Court held that the prior law, Minn. Stat. § 609.165 (2021), which conditioned the restoration of the right to vote on discharge of the felony sentence, was constitutional. *Id.* at 533–34. It held, as Petitioners have acknowledged throughout this case, that the Legislature can restore the right to vote to felons by passing a law which conditions re-enfranchisement on "the occurrence of certain events." *Id.* at 534.

But the Court did not (nor could it have, given that the law had not been

passed) answer the follow-up question raised by the passage of the Felon Voting Law: whether laws which grant felons "the civil right to vote" but do not "restore" them to the "civil rights" lost because of felony conviction are sufficient to "enable[]" or "permit[]" a person to vote in Minnesota elections. Below, the district court held that this Court's decision in *Schroeder* "does not suggest that Article VII, section 1, limits the Legislature's authority to restore voting rights *in any way*." Add. 10–11 (emphasis added). This is certainly wrong, given that our written Constitution creates express conditions precedent to the restoration of the right to vote.

So the district court's decision begs these questions, which this Court should answer, and as soon as possible: can the Legislature "restore" the civil right to vote by passing a law that "restores" absolutely nothing for some—because for those serving suspended sentences or only probation for felony crimes, nothing is lost? And can the Legislature "enable," or force Respondents to "permit," felons to vote who continue to be deprived of the "civil rights" they lost upon conviction and sentencing for felony crimes? In other words, what, exactly, must be restored to re-enfranchise a felon? Is it just "the civil right to vote," or is it "civil rights," plural? The use of the plural "civil rights" indicates that multiple rights—not only the right to vote, but the civil rights that the felon possessed prior to sentencing—must be restored in order to restore the right to vote.

The Court has already held that a view similar to Petitioners' is reasonable: "one way to interpret the framers' understanding of the phase 'unless restored to civil rights' is that restoration occurs upon the completion of the sentence." *Schroeder*, 985 N.W.2d at 544. But the question remains, is this the correct interpretation under the canons of construction? *E.g., Spann v. Minneapolis City Council*, 979 N.W.2d 66, 73 (Minn. 2022). This is a crucial question for Minnesotans that merits accelerated review.

III. Whether petitioners have standing to challenge unconstitutional actions for which the Legislature explicitly appropriated tax dollars is a question of statewide importance that will recur absent a decision by this Court.

This Court recently affirmed the continuing viability of the writ of quo warranto and upheld its availability to petitioners with less evidence of taxpayer expenditures than these Petitioners have presented. In fact, in *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171 (Minn. 2020), the Court clarified that, for the writ of quo warranto, its "precedent does not require" a showing that "ongoing action exists"—and that calls into question whether there is *any* requirement to show *any* disbursement that continues with the actions alleged to be illegal in the petition. *Id.* at 176 n.3. Yet the district court's decision indicates ongoing confusion about how standing for the writ is obtained. This confusion will recur absent this Court's intervention.

This Court bluntly held in *Save Lake Calhoun* that "a writ of quo warranto is an available remedy to challenge whether an official's action exceeded the official's statutory authority." *Id.* at 176. That's what the Petitioners have alleged here. The court of appeals held in a precedential decision in that same case that the petitioner, who merely sought to stop the changing of the name of a lake, without any clear expenditures associated with that, had standing to seek the writ of quo warranto. *Save Lake Calhoun v. Strommen*, 928 N.W.2d 377, 383–84 (Minn. Ct. App. 2019). This Court did not disturb the court of appeals' holding on standing.

Nevertheless, the district court cast aside these binding decisions as mere "outliers." Add. 7–8. The district court sidestepped the *Save Lake Calhoun* court of appeals' statement that it is sufficient to allege or prove that "financial resources [are] being expended related to the DNR's exercise of authority to promote the name change and [the] DNR acted illegally by changing the lake name." 928 N.W.2d at 384. Instead of determining whether the appropriations at issue here—which nobody disputes exist—are "related to" the Respondents' actions (they are), the district court announced a new rule which contradicts *Save Lake Calhoun*: "[t]he expenditure of public funds must be the *focus* of the taxpayer's challenge" and not "incidental" to the claims of illegal action. Add. 6–7 (emphasis in original).

The district court's decision, if left undisturbed, would eviscerate Minnesota's taxpayer-standing doctrine. Under the district court's rule, no citizen could ever bring a lawsuit to challenge the implementation of any unconstitutional law, even where the Legislature appropriates money for executives to implement it, except for a tiny subset of laws only concerned with direct expenditures for a discrete purpose, like in *Citizens for Rule of Law v. Senate Committee on Rules & Administration*, 770 N.W.2d 169 (Minn. Ct. App. 2009).

But under the district court's rule, the Legislature is free to pass any law it wants expanding voting rights—forget the Constitution—because *nobody* can challenge its implementation. It creates a type of "independent state legislature" doctrine immunizing a wide swath of laws from judicial review. *See Moore v. Harper*, 143 S. Ct. 2065 (2023). It is a one-way jurisdictional ratchet: any time the Legislature restricts voting rights, those impacted by such a law clearly have standing. But if the Legislature passes a law that, say, allows Wisconsinites to vote in Minnesota elections, nobody has standing to challenge it, no matter how clearly unconstitutional, because the expenditure of money associated with such a law is merely "incidental" to it.

Thus, whether Petitioners have standing to challenge actions like Respondents' in implementing unconstitutional laws for which appropriations are made by the Legislature is an important question on which the Court should rule now.

IV. Whether Minnesota courts apply the presumption of adequate representation to putative intervenors whose interests are represented by government defendants is a question of statewide importance that will also recur.

Minnesota district courts are now split on whether there is a presumption that putative intervenors are adequately represented by government where the government, as a sovereign, is defending laws conferring on the putative intervenors the rights they seek to vindicate through intervention.

The district court recognized that the Ramsey County District Court has applied that presumption but declined to apply it, stating "[t]hat is not the law in Minnesota." Add. 15 (Order 4) (quoting *N.D. ex rel. Stenehjem v. United States*, 787 F.3d 918 (8th Cir. 2015). The court's decision creates a split between the Second and Tenth Judicial Districts on this important issue. *Compare id. with DSCC & DCCC v. Simon*, No. 62-CV-20-585, 2020 Minn. Dist. LEXIS 220, at *54 (July 28, 2020) (following *Stenehjem* and applying presumption of adequacy); *Doe v. Minnesota*, No. 62-CV-19-3868, 2023 Minn. Dist. LEXIS 4731, at *38 (Mar. 14, 2023) (same).

The Court should resolve this important issue, which often arises where outside parties are concerned about whether the government has their best interests in mind, or they fear a "sue-and-settle" type of case. *See DSCC & DCCC*, 2020 Minn. Dist. LEXIS 220, at *54.

Upon granting accelerated review of this matter, the Court should apply the rule it announces to the facts at issue here, which are not in dispute, to determine whether Intervenor-Respondents may intervene as of right in this case, where the State Respondents and the Attorney General, who are defending the Felon Voting Law, have stated their clear agreement with Intervenor-Respondents' position on the law for years.

CONCLUSION

For these reasons, the Petitioners request accelerated review of this appeal now pending in the Court of Appeals.

Respectfully submitted,

UPPER MIDWEST LAW CENTER

Dated: December 22, 2023

/s/ James V. F. Dickey

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CERTIFICATE OF COMPLIANCE
WITH MINN. R. CIV. APP. P. 118, SUBD. 2

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Dated: December 22, 2023

/s/ James V. F. Dickey

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