No. A23-1940

STATE OF MINNESOTA
IN SUPREME COURT

Minnesota Voters Alliance, *et al*.,
Petitioners,

vs.

Tom Hunt, *et al.*,
Respondents,

Steve Simon, *et al.*,
Respondents,

Jennifer Schroeder, *et al.*,
Respondents.

AMICI CURIAE BRIEF OF LEGAL SCHOLARS IN SUPPORT OF RESPONDENTS

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STATEMENT OF *AMICI CURIAE*[1]

Amici Curiae Professors Miriam Seifter and Robert Yablon are teachers and scholars of state constitutional law and the law of democracy. They have researched and published leading articles in these areas, and they currently serve as Faculty Co-Directors of the State Democracy Research Initiative at the University of Wisconsin Law School.[2] Their interest is in promoting a proper understanding of the constitutional and democratic principles at issue in this case.

Amici submit that the District Court correctly held that Minnesota Statute § 201.014, subdivision 2a, is a lawful exercise of the Legislature's authority under Article VII, Section 1, of the Minnesota Constitution to re-enfranchise individuals with felony convictions. Accordingly, *Amici* respectfully urge the Court to affirm the District Court's judgment.

INTRODUCTION

Under the Minnesota Constitution, citizens with felony convictions can regain their right to vote by being "restored to civil rights." Minn. Const. art. VII, § 1. As this Court recently observed, this constitutional provision gives the Legislature "broad, general discretion" to choose whether, when, and how to restore voting rights. *Schroeder v. Simon* ("*Schroeder II*"), 985 N.W.2d 529, 556 (Minn. 2023). Last year, the Legislature exercised its restoration authority to re-enfranchise such individuals so long as they are not currently

[1] Pursuant to Rule of Civil Appellate Procedure 129.03, *amici* state that no counsel for a party authored the brief in whole or in part and no other person or entity, other than the *amici curiae*, their members, or their counsel, made a monetary contribution to the preparation or submission of the brief.

[2] Institutional affiliation provided for identification purposes only.

incarcerated. *See* 2023 Minn. Laws Ch. 12, § 1 (amending Minn. Stat. § 201.014, subd. 2a). Upholding this law, the District Court correctly rejected Appellants' cramped reading of the Legislature's re-enfranchisement power. Both the overarching democratic commitments of the Minnesota Constitution and the prevailing practice and precedent of other states strongly support this result.

I. Without taking a position on the threshold question of whether Appellants have standing, *amici* encourage the Court to take account of the judiciary's important role in resolving election-related controversies and helping the state's democratic system function smoothly. Such democracy-informed standing analysis follows straightforwardly from this Court's justiciability precedents. The Court should consider, for instance, whether and to what the extent resolving Appellants' claim now could promote confidence in the electoral system and minimize the potential for future problems, such as heated post-election disputes about the validity of ballots.

II. If this Court reaches the merits, it should affirm the constitutionality of the challenged re-enfranchisement statute. The Minnesota Constitution's overarching democratic commitments powerfully reinforce the strong textual and precedential case for upholding the law. The Constitution establishes a fundamentally inclusive system of popular self-government. It would be inappropriate to read Article VII, Section 1, in a manner that impedes the people's ability, through their elected representatives, to bring their fellow Minnesotans back into the fold as citizens by restoring their fundamental right to vote.

III. Looking to other states further bolsters the conclusion that the Legislature had the authority to act as it did. The phrase "unless restored to civil rights," used in Article VII, Section 1, of the Minnesota Constitution, appears in very similar form in at least 11 other state constitutions. None of these states has embraced Appellants' position that lawmakers cannot restore the right to vote unless they issue a blanket restoration of *all* civil rights. To the contrary, the longstanding practice in these states has been to adopt laws that speak specifically of restoring the right to vote. And where the issue has been litigated, judicial decisions have consistently accepted this approach. This Court should reject Appellants' invitation to constrain the Legislature's re-enfranchisement authority in ways that would make Minnesota a lone outlier.

ARGUMENT

I. THE COURT SHOULD CONDUCT A DEMOCRACY-INFORMED STANDING ANALYSIS.

Amici take no position on whether Appellants have standing in this case. Instead, *amici* merely encourage this Court, like other state courts, to adhere to a pragmatic approach to standing that is attentive to the practical realities of election-related disputes. State courts are not miniature federal courts, and in deciding which cases to resolve, state courts have long considered their solemn duty to safeguard self-government rather than reflexively imposing formalistic federal-style standing hurdles.

As discussed further in Part II, the Minnesota Constitution, like other state constitutions, is deeply committed to democratic self-government, and state courts have a vital role to play in protecting and sustaining state democratic systems. In light of that role,

state courts have conducted standing analysis sensitive to the danger that unresolved election-related controversies have the potential to cloud the democratic process.

Minnesota's standing precedents readily accommodate this sort of democracy-informed analysis. As its approach to taxpayer standing illustrates, this Court takes a broader, less rigid view of standing than the federal courts. *See, e.g.*, *McKee v. Likins*, 261 N.W.2d 566, 570-71 (Minn. 1977) (comparing state taxpayer standing with the narrower federal version). More broadly, this Court has declined to "apply the doctrines of justiciability mechanically." *State ex rel. Ford v. Schnell*, 933 N.W.2d 393, 402 (Minn. 2019). And it has accepted that it is sometimes appropriate to adjudicate questions of statewide significance or matters of great public importance even before potential harms materialize fully if waiting could prove more disruptive to the state and its people. *See, e.g.*, *Dean v. City of Winona*, 868 N.W.2d 1, 6 (Minn. 2015) ("We have the discretion to consider a case that is technically moot when the case is 'functionally justiciable' and presents an important question of 'statewide significance that should be decided immediately.'" (quoting *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984))); *Winget v. Holm*, 187 Minn. 78, 244 N.W. 331 (1932) (holding that the Court could address the validity of the form of a proposed constitutional amendment before submission to a vote).

Courts in numerous other states have taken a similar approach to standing in election cases. Their rulings recognize that "'election cases are special'" in ways that can justify a "bar for standing [that] is lower" than in other contexts. *League of Women Voters of Mich. v. Sec'y of State*, 957 N.W.2d 731, 744 (Mich. 2020) (quoting *Deleeuw v. State Bd. of Canvassers*, 688 N.W.2d 847, 853 (Mich. Ct. App. 2004)); *see also Reclaim Idaho v.*

Denney, 497 P.3d 160, 173 (Idaho 2021) (applying "relaxed standing" where "(1) the matter concerns a significant and distinct constitutional violation, and (2) no party could otherwise have standing to bring a claim"); *McConkey v. Van Hollen*, 783 N.W.2d 855, 857-61 (Wis. 2010) (concluding that the "policy considerations" underlying standing doctrine warranted resolving a voter's claim about the validity of a constitutional amendment, even though "the precise nature of [the] alleged injury [was] difficult to define").

Among other things, it can sometimes be extremely valuable to resolve election-law controversies and clarify legal uncertainties at an early stage, perhaps before broadly shared grievances have crystalized into discrete individualized harms. Providing such resolution and clarity can avoid the potential for disputes to reemerge when time is shorter, stakes are higher, and the risk of becoming enmeshed in a politicized tumult is most acute—for example, when particular candidates battle just before or after an election over whether particular votes should or should not be counted. *Cf.* M. Ryan Harmanis, *States' Stances on Public Interest Standing*, 76 Ohio St. L.J. 729, 760-63 (2015) (tallying more than twenty states that employ a flexible approach to standing in cases of "great public importance" or substantial "public interest").

Again, *amici* merely seek to encourage this Court to undertake a democracy-informed standing analysis, without suggesting how that analysis should ultimately come out here. The Court should consider, for example, whether there are any individuals or groups who may have a stronger standing claim than Appellants and who are likely to bring litigation that could quickly settle the legal status of Minnesota Statute § 201.014,

subdivision 2a. The Court should also consider how problematic or unproblematic it could be to leave the legal status of this provision unresolved for now. If the Court believes that other litigants are not likely to be waiting in the wings and that this controversy could potentially boil over later (e.g., in post-election disputes about the validity of ballots cast by individuals re-enfranchised under the statute), those are reasons to find standing and decide the case now. Conversely, if the Court believes that more concretely affected litigants are likely to step in and/or that any uncertainty about the legality of Minnesota Statute § 201.014, subdivision 2a, poses little danger, then it may be appropriate to deny standing and dismiss the case.

II. UPHOLDING THE CHALLENGED RE-ENFRANCHISEMENT STATUTE ACCORDS WITH THE MINNESOTA CONSTITUTION'S CORE DEMOCRATIC COMMITMENTS.

If it finds that Appellants do have standing and proceeds to the merits, this Court should uphold the challenged law. In doing so, the Court should emphasize that the Minnesota Constitution's overarching democratic commitments inform the Legislature's re-enfranchisement authority under Article VII, Section 1. In short, where the Legislature limits or burdens electoral participation, judicial review should be rigorous and skeptical. But where, as here, a law fosters political inclusion among Minnesotans, it should enjoy a strong presumption of constitutionality, to be overcome only if lawmakers have breached an unmistakable textual limitation on their authority. Article VII, Section 1, contains no such limitation.

The Minnesota Constitution is built around bedrock principles of popular sovereignty, political equality, and majority rule. *See* Jessica Bulman-Pozen & Miriam

Seifter, *The Democracy Principle in State Constitutions*, 119 Mich. L. Rev. 859, 865 (2021) (detailing how "text, history, and structure" evince "interrelated state constitutional commitments to popular sovereignty, majority rule, and political equality" that together comprise a "democracy principle"). It is no accident that the document begins by affirming that "[g]overnment is instituted for the security, benefit and protection of the people, in whom all political power is inherent." Minn. Const. art. I, § 1. After enshrining an array of individual rights that help to undergird and sustain self-government, *see id*. §§ 2-17, the Constitution establishes the state's governing institutions and subjects them to popular control through regular legislative, executive, and judicial elections, *see id*. arts. IV-VI. Then, devoting an entire Article—Article VII—to the "Elective Franchise," the Constitution broadly confers and robustly protects the fundamental right to vote. *See, e.g.*, *Erlandson v. Kiffmeyer*, 659 N.W.2d 727, 733 (Minn. 2003) (describing the right to vote as "a fundamental and personal right essential to the preservation of self-government" (quoting *State ex rel. S. St. Paul v. Hetherington*, 240 Minn. 298, 303, 61 N.W.2d 737, 741 (1953))).[3] The sum of these parts is a constitutional system designed to enable the state's sovereign people to govern themselves as political equals, acting through elected officials who exercise authority in their name.

[3] *See also Schroeder II*, 985 N.W.2d at 545 ("There is no doubt that the right to vote is fundamental."); *Ulland v. Growe*, 262 N.W.2d 412, 415 (Minn. 1978) ("It is well established that the exercise of the political franchise is a 'fundamental right.'"); *Hanlon v. Towey*, 274 Minn. 187, 196, 142 N.W.2d 741, 746 (1966) (referring to the right to vote as a "fundamental right indigenous to self-government and preservative of other civil and political rights, including the right to equal representation").

For its part, this Court has long recognized that the Constitution's democratic commitments, including to the elective franchise, properly guide legal interpretation. The Court has written, for example, that "the fundamental nature of the right to vote inescapably requires the application of fundamental principles." *Hanlon v. Towey*, 274 Minn. 187, 196, 142 N.W.2d 741, 746 (1966). Elsewhere, the Court described it as "rule of universal application that all statutes tending to limit the citizen in the exercise of his right of suffrage must be construed liberally in his favor," to prevent anyone from being deprived of the vote "upon doubtful construction of election laws." *Silberstein v. Prince*, 127 Minn. 411, 415, 149 N.W. 653, 654 (1914); *see also* Richard L. Hasen, *The Democracy Canon*, 62 Stan. L. Rev. 69, 71-72 (2009) (discussing the widely followed "democracy canon" outlined in *Silberstein*).

Here, the Minnesota Constitution's underlying democratic precepts strongly reinforce this Court's conclusion in *Schroeder II* that, under Article VII, Section 1, the Legislature has "broad, general discretion to choose a mechanism for restoring the entitlement and permission to vote to persons convicted of a felony." *Schroeder II*, 985 N.W.2d at 556. Meanwhile, those same democratic precepts strongly refute Appellants' assertion that the re-enfranchisement effectuated by Minnesota Statute § 201.014, subdivision 2a, exceeds the Legislature's authority.

Because the Constitution establishes a government of, by, and for the people, the constitutional default is political inclusion. Consistent with this, Article VII, Section 1, affirmatively confers the right to vote on all of the state's adult citizen residents, excepting only "a person who has been convicted of treason or felony, unless restored to civil rights;

a person under guardianship, or a person who is insane or not mentally competent." Minn. Const. art. VII, § 1; *see also id*. art. I, § 2 ("No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.").[4] As this text makes plain, the disenfranchisement of individuals with felony convictions is immediately tempered by the prospect of re-enfranchisement. The Constitution, in other words, declines to write off criminal offenders as a permanent class of political outcasts. Instead, Article VII, Section 1, recognizes the authority of the people, through their elected representatives, to bring offenders back into the civic fold. And it does so by way of an open-ended phrase—"restored to civil rights"—that places no textual constraints on when and how lawmakers can effectuate that restoration. As written, Article VII, Section 1, leaves the state's self-governing people free to make those choices.

Resisting this straightforward application of text and precedent, Appellants insist that Article VII, Section 1, impliedly cabins the Legislature's re-enfranchisement authority. On their telling, the only way for the Legislature to restore the voting rights of individuals with felony convictions is to restore *every* right that those individuals lost by virtue of their convictions or, at a minimum, multiple rights other than the right to vote itself. But this cramped construction needlessly imposes barriers to political inclusion that flout the

[4] Other provisions of Article VII delineate additional safeguards against electoral exclusion, including that Minnesotans do not lose their residence, and thus their voting eligibility, solely by virtue of temporary absences from the state, their status as "a student in any institution of learning," or even "while confined in any public prison." *Id*. § 2; *see also id*. § 4 (providing that "no person shall be arrested by virtue of any civil process" on election day).

Constitution's overarching democratic commitments. If the right to vote is indeed "preservative of other civil and political rights," *Hanlon*, 142 N.W.2d at 746, then surely Minnesotans, acting through their elected lawmakers, should have leeway to prioritize restoring that right to their fellow citizens over restoring other, less fundamental rights that might have been lost following a felony conviction. Once re-enfranchised, those individuals then become able "to register the full weight of [their] judgment as a citizen," including on policy questions concerning the downstream consequences of felony convictions. *State ex rel. S. St. Paul*, 61 N.W.2d at 741. The right to vote, moreover, automatically carries with it a host of other rights under Minnesota law, including rights to hold public office, to sign recall petitions, and to sign home rule charter amendment petitions. *See* Minn. Const. art. VII, § 6; art. VIII, § 6; art. XII, § 5. Thus, even if the Appellants were correct that Article VII, Section 1, requires the restoration of multiple rights, Minnesota Statute § 201.014, subdivision 2a, does just that.

III. THE CHALLENGED RE-ENFRANCHISEMENT STATUTE IS CONSISTENT WITH HOW SIMILARLY SITUATED STATES HANDLE FELON RE-ENFRANCHISEMENT.

Upholding this re-enfranchisement law would accord with the practice and precedent of every other state with constitutional language similar to Minnesota's. *Cf. Kahn v. Griffin,* 701 N.W.2d 815, 829 (Minn. 2005) (noting the value of "relevant case law from other states that have addressed identical or substantially similar constitutional language" when addressing a state constitutional claim). Specifically, at least 11 other states have constitutional provisions that match or closely resemble Article VII, Section

1's, "unless restored to civil rights" provision.[5] In all of these states, legislatures and courts have regarded the language as giving lawmakers flexibility to decide when and how to re-enfranchise individuals with felony convictions. None of them has embraced Appellants' position that lawmakers cannot restore voting rights without first restoring all other rights. Adopting that view would make Minnesota an outlier.

Significantly, every state with constitutional language resembling Minnesota's has enacted statutes specifically addressing the restoration of *voting* rights, rather than treating the restoration as something that must follow from an all-or-nothing restoration of "civil rights." Several of these states—namely, Nevada, North Dakota, and Washington—have laws that closely parallel Minnesota's, in that they automatically restore a felony offender's voting rights upon release from incarceration, even though the individual may still be under some form of formal supervision, such as probation or parole, and still face other rights restrictions.[6] Several other states have chosen to restore the right to vote after all portions

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[5] *See* Alaska Const. art. V, § 2 ("unless his civil rights have been restored"); Ariz. Const. art. VII, § 2 ("unless restored to civil rights"); Kan. Const. art. V, § 2 ("unless pardoned or restored to his civil rights"); Ky. Const. § 145 ("persons hereby excluded may be restored to their civil rights by executive pardon"); N.D. Const. art. II, § 2 ("until his or her civil rights are restored"); Neb. Const. art. VI, § 2 ("unless restored to civil rights"); Nev. Const. art. II, § 1 ("unless restored to civil rights"); Va. Const. art. II, § 1 ("unless his civil rights have been restored by the Governor or other appropriate authority"); Wash. Const. art. VI, § 3 ("unless restored to their civil rights"); Wis. Const. art. III, § 2 ("unless restored to civil rights"); Wyo. Const. art. VI, § 6 ("unless restored to civil rights"). The Florida Constitution similarly refers to the "restoration of civil rights," but, unlike the Minnesota Constitution, that provision affirmatively requires the restoration of voting rights once all terms of a felony sentence has been completed. Fla. Const. art. VI, § 4.

[6] Nev. Rev. Stat. § 213.157(1)(a) (providing that a person convicted of a felony is "immediately restored to the right to vote" when they are placed on probation, granted parole, or granted a pardon); N.D. Cent. Code §§ 12.1-33-01(1)(a), 12.1-33-03 (removing the rights to vote and hold public office from a person convicted of a felony only "during

of a sentence are served, including probation or parole, but their statutory provisions still refer to voting specifically, rather than restoring "civil rights" generally.[7] The remaining states with constitutional language resembling Article VII, Section 1, of the Minnesota Constitution require individuals to apply to have their right to vote restored after serving all portions of their sentence, but these provisions again address voting rights specifically, rather than "civil rights" generally.[8]

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the term of actual incarceration" under a sentence of imprisonment); Wash. Rev. Code § 29A.08.520(1) ("For a felony conviction in a Washington state court, the right to vote is automatically restored as long as the person is not serving a sentence of total confinement under the jurisdiction of the department of corrections."); *cf.* Wash. Rev. Code § 9.94A.637(1) (providing that other rights, including the right to possess firearms, are restored only by the sentencing court's issuance of a certificate of discharge, which cannot occur until the offender has completed "all requirements of the sentence, including any and all legal financial obligations").

[7] Alaska Stat. §§ 33.30.241, 12.55.185(18) (restoring the right to "vot[e] in a state or municipal election" upon a person's "unconditional discharge" from their felony sentence); Ariz. Rev. Stat. §§ 13-905, 13-907 (providing for automatic restoration of a first-time felon's rights to vote, hold public office, and serve as a juror but not the right to possess a firearm upon completion of sentence); Kan. Stat. § 21-6613 (disqualifying a felony offender from voting, holding public office, and jury service "until such person has completed the terms of the authorized sentence"); Neb. Rev. Stat. § 32-313(1) (providing that a person convicted of a felony is not "qualified to vote or to register to vote until two years after the sentence is completed, including any parole term"); Wis. Stat. § 304.078(3) (providing that a person convicted of a felony shall have "his or her right to vote … restored when he or she completes the term of imprisonment or probation for the crime that led to the disqualification").

[8] Ky. Rev. Stat. § 196.045 (establishing a process for felony offenders to apply for a gubernatorial pardon to restore their rights to vote, serve on a jury, obtain a professional license, and hold elective office but not the "right to bear arms"); Va. Code § 53.1-231.2 (establishing a process for felony offenders to apply to the state's courts "for restoration of his civil right to be eligible to register to vote"); Wyo. Stat. § 7-13-105 (specifying process for a person who has completed a felony sentence, including probation or parole, to apply to the state department of corrections for a certificate of restoration of voting rights).

Tellingly, most of these statutes have been on the books for decades, and their constitutionality has commonly been accepted without challenge. To the extent state courts have had occasion to consider the issue, they have uniformly concluded that lawmakers have the authority to determine when and how to restore the right to vote to individuals with felony convictions. Take the Washington Supreme Court. Rejecting a challenge to a prior version of that state's re-enfranchisement law, the Court declared: "It is the province of the legislature to determine the best policy approach for re-enfranchising Washington's felons." *Madison v. Washington*, 163 P.3d 757, 773 (Wash. 2007). The Nebraska Supreme Court likewise accepted the state legislature's constitutional authority to provide by law for a re-enfranchisement system of its choosing. *Ways v. Shively*, 646 N.W.2d 621, 626 (Neb. 2002). Contrary to the notion that lawmakers must issue a blanket restoration of *all* civil rights before a person can regain the right to vote, the court explained that "the restoration referred to" in the state constitution's felon re-enfranchisement provision "is the restoration of the right to vote." *Id*. Along similar lines, the Wisconsin Court of Appeals has construed the phrase "unless restored to civil rights" to refer to a restoration of the right to vote in particular, as opposed to the restoration of some broader set of rights. *See State, Law Enf't Standards Bd. v. Vill. of Lyndon Station*, 295 N.W.2d 818, 826-27 (Wis. Ct. App. 1980).[9]

[9] *See also Anderson v. Kentucky*, 107 S.W.3d 193, 195 (Ky. 2003) (holding that, in exercising his power to restore the "civil rights" of convicted felons by pardon, the Governor could constitutionally choose to restore an individual's right to vote and to hold office while declining to restore other rights); *City of Mandan v. Baer*, 578 N.W.2d 559, 563 (N.D. 1998) (approvingly discussing the system enacted by the state legislature for

The bottom line is that no legislature or court in a state with constitutional language mirroring or closely resembling Article VII, Section 1, of the Minnesota Constitution appears to have embraced the Appellants' restrictive interpretation of "unless restored to civil rights." Instead, the legislatures in these states have all enacted tailored approaches to voting rights restoration, and the state courts to have addressed the issue have accepted those exercises of legislative authority, consistent with the democratic commitments discussed in Part II. This Court should likewise recognize the Legislature's constitutional authority to bring individuals with felony convictions back into the fold as citizens by restoring their right to vote.

CONCLUSION

For the foregoing reasons, *Amici* respectfully urge the Court to affirm the District Court's ruling and to hold, if it reaches the merits, that Article VII, Section 1, of the Minnesota Constitution authorized the Legislature to enact the challenged re-enfranchisement statute.

Dated: March 1, 2024

Respectfully submitted,

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restoring the right to vote along with "many," but "[n]ot all," other civil rights lost due to a felony conviction).

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01 for a brief produced in a proportional font. By automatic word count, the length of this brief is 4,058 words. This brief was prepared using Microsoft Word Version 2401.

Dated: March 1, 2024

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