No. A21-0626

State of Minnesota
In Supreme Court

Drake Snell, et. al.,

Appellants,

vs.

Tim Walz, Governor of Minnesota,
In his official capacity, et al.,

Respondents.

BRIEF OF AMICUS CURIAE MINNESOTA PUBLIC HEALTH ASSOCIATION

UPPER MIDWEST LAW CENTER

Douglas P. Seaton (#0127759)
James V. F. Dickey (#0393613)

8421 Wayzata Boulevard, Suite 300
Golden Valley, MN 55426

Attorneys for Appellants

FREDRIKSON & BYRON, P.A.

Devin T. Driscoll (#0399948)
Mary Heath (#0399260)
Sarah Theisen (#0402844)

60 South Sixth Street, Suite 1500
Minneapolis, MN 55402-4400

Attorneys for Amicus Curiae Minnesota Public Health Association

KEITH ELLISON
Attorney General
State of Minnesota

Liz C. Kramer (#0325089)
Solicitor General

Alec Sloan (#0399410)
Assistant Attorney General

445 Minnesota Street, Suite 1400
Saint Paul, MN 55101-2131

Attorneys for Respondents

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INTRODUCTION AND INTERESTS OF AMICUS CURIAE

Established in 1907, the Minnesota Public Health Association (the "MPHA") is a not-for-profit, membership-supported organization dedicated to creating a healthier Minnesota through effective public-health practice and engaged citizens.[1] MPHA is a critical voice for public health in Minnesota and provides a place for public-health workers from multiple disciplines and communities to unite in support of MPHA's mission to protect and improve the health of all who call Minnesota home. Throughout its long history, MPHA has been involved in advocacy and education related to a number of significant public-health issues, including reducing tobacco and substance use, ensuring water quality, improving nutrition and encouraging increased physical activity, and promoting vaccination to prevent disease.

Consistent with its mission to protect and improve the public health, MPHA now submits this amicus curiae brief in support of Respondents. It joins Respondents in asking the Court to affirm the Minnesota Court of Appeals' unanimous decision holding that the Minnesota Emergency Management Act ("MEMA"), Minn. Stat. §§ 12.01-.61, authorizes the Governor to declare a peacetime emergency based on a public-health emergency such as the COVID-19 pandemic.[2]

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

[2] *See Snell v. Walz*, 993 N.W.2d 669, 678 (Minn. App. 2023) (following *Hanson v. State*, No. A22-0884, 2023 WL 1943169 (Minn. App. Feb. 13, 2023)).

Pandemics represent a significant threat to the health and welfare of all Minnesotans. Pandemics will inevitably be a part of Minnesota's future. Appellants nevertheless ask this Court to remove from the Governor's crisis-response toolbox the ability to declare a peacetime emergency under MEMA based on a public-health crisis. Appellants contend that the State's ability to respond to such crises is limited to the Minnesota Department of Health's authority under Minnesota Statutes Chapter 144 to isolate or quarantine sick individuals on a case-by-case basis. The limited procedures provided in Chapter 144, however, are entirely unsuited for addressing a fast-spreading, novel, pandemic-level disease threat like COVID-19.

ARGUMENT

I. The Minnesota Emergency Management Act's "all hazards" approach to emergency management must include the ability to manage infectious-disease-related emergencies that are inevitable in the modern world.

As the Court of Appeals and all parties have recognized, the Legislature in 2005 removed the phrase "public health emergency" from the list of events that constitute a "peacetime emergency." It did not remove that phrase to limit the Governor's ability to manage public-health emergencies—to the contrary, the amendment was intended to ensure the Governor's ability to manage *all* types of emergencies, including any emergency involving a public-health component. *See* Laws of Minnesota, 2005, chapter 150; *see also* Resp'ts' Br. at 6-7; Apps.' Br. at 25; Apps.' Add. at 8. The statute was revised to "better protect public health and safety in *any* type of emergency and reflect an *all-hazard* approach to planning and response." Minn. H., Floor Debate, 84th Minn. Leg., Reg. Sess., at 35:00-35:25; 36:11-36:25 (statement of Rep. Powell) (May 13, 2005), available at

https://www.house.mn.gov/hjvid/84/1508 (emphasis added). The all-hazard approach recognizes "that many kinds of emergencies have public health components in common" and provides a "coordinated systemic approach to meeting the needs of people." *Id.* The current version of MEMA is intended to "allow[] the governor and emergency managers to address emergencies of all types with the same broad ray of authority." *Id.*

This broad, all-hazard approach under MEMA must include the ability to manage infectious-disease emergencies. Minnesotans will undoubtedly be facing pandemic emergencies in the future. They need a government that is empowered to handle those threats efficiently and effectively—as the Legislature intended when it amended MEMA.

A. Future pandemics are inevitable.

Pandemics will be among the greatest and most significant hazards to Minnesotans' health and welfare in the twenty-first century. Emerging infectious diseases have increased around the world with troubling frequency. *See* Peter Daszak et al., *Infectious Disease Threats: A Rebound to Resilience*, 40 Health Affairs 204 (2021), https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.01544. Within the past fifty years alone, the United States has suffered a series of significant epidemics, including: recurring outbreaks caused by influenza and Ebola viruses; the discovery of Chikungunya and Zika infections in Florida; and the rapid spread of novel pathogens responsible for severe acute respiratory syndrome coronavirus (SARS) and coronavirus disease 2019 (COVID-19). *Id.* at 204. While infectious disease has always presented a challenge to public health and social order, modern trends of globalization, climate change, and technological development have ensured that pandemics will increase in both frequency and severity in

the coming years. *See* Peter Daszak et al., *Intergovernmental Workshop on Biodiversity and Pandemics: Workshop Report* 2–6 (2020), https://www.ipbes.net/pandemics.

The defining trends and conditions of the modern life have resulted in, and will continue to result in, increased spread and severity of infectious disease. Deforestation, habitat destruction, and population increase with resulting human migration into previously uninhabited areas have significantly increased contact between humans and animals—and therefore significantly raised the likelihood that animal diseases will be transmitted to humans. *See* Caroline Chen et al., *On the Edge*, ProPublica (Feb. 27, 2023, 5:00 AM), https://www.propublica.org/article/pandemic-spillover-outbreak-guinea-forest-clearing (describing connection between emerging infectious disease and habitat destruction); Silviu O. Petrovan et al., *Post COVID-19: a Solution Scan of Options for Preventing Future Zoonotic Epidemics,* 96 Biological Revs. 2694, 2697 (2021), https://doi.org/10.1111/brv.12774 (stating that the rate of zoonotic pathogen emergence is increasing globally along with increasing human population density).

Globalization and urbanization have further raised the likelihood of pandemic-level disease outbreak by vastly increasing the potential for the speedy and extensive spread of pathogens between humans. *See* Carl-Johan Neiderud, *How urbanization affects the epidemiology of emerging infectious diseases*, 5 Infection Ecology & Epidemiology 1, 2 (2015), https://doi.org/10.3402/iee.v5.27060 ("The rise of the new modern cities also creates potential risks and challenges in the aspect of emerging infectious diseases. . . . The density of inhabitants and the close contact between people in urban areas are potential hot spots for rapid spread of merging infectious disease[.]"). Increased access to and use of air

transportation has revolutionized travel and led to unprecedented human mobility—with an accompanying revolution in the frequency and spread of infectious disease. *See* Aidan Findlater & Isaac I. Bogoch, *Human Mobility and the Global Spread of Infectious Diseases: A Focus on Air Travel*, 34 Trends Parasitol 772 (2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7106444.

Climate change is expected to exacerbate these pandemic-producing trends. Rising temperatures and extreme weather events accelerate human migration and thereby increase the likelihood of epidemics or pandemics, and evidence also confirms that temperature changes and extreme weather events expand the habitat of disease-carrying animals, allow disease-carrying pests to thrive, and push people and infected animals into close contact. *See* Claire Klobucista & Lindsay Maizland, *Perilous Pathogens: How Climate Change is Increasing the Threat of Diseases*, Council on Foreign Relations (Nov. 4, 2022, 4:12 PM), https://www.cfr.org/article/perilous-pathogens-how-climate-change-increasing-threat-diseases.

Finally, although human technological development and innovation have resulted in nearly miraculous treatments for infectious disease, they have also contributed to the likelihood of a future pandemic. Development of—and increased affordability and prevalence of—antiviral and antibiotic agents have led to the emergence of new, antiviral- and antibiotic-resistant strains of pathogens. *See* Anthony Fauci, *Infectious Diseases: Considerations for the 21st Century*, 32 Clinical Infectious Diseases 675 (2001), https://academic.oup.com/cid/article/32/5/675/357623 (explaining that the threat posed by the continual evolution of infectious diseases and the development of antiviral resistant and

antimicrobial resistant pathogens). The increasing number of laboratories around the world in which dangerous pathogens are collected, studied, and experimented on has also increased the likelihood that a contagious pathogen will be accidentally released. *See American Pandemic Preparedness: Transforming Our Capabilities*, The White House (Sept. 2, 2021), https://www.whitehouse.gov/wp-content/uploads/2021/09/American-Pandemic-Preparedness-Transforming-Our-Capabilities-Final-For-Web.pdf.

Experts agree that, in light of these conditions, pandemics will be an inevitable part of our future. *See id.* at 7 ("There will be an increasing frequency of natural—and possibly human-made—biological threats in the years ahead."); *see also* Michael Penn, *Statistics Say Large Pandemics Are More Likely Than We Thought*, Duke Global Health Institute (Aug. 23, 2021), https://globalhealth.duke.edu/news/statistics-say-large-pandemics-are-more-likely-we-thought; Eleni Smitham & Amanda Glassman, *The Next Pandemic Could Come Soon and Be Deadlier*, Ctr. for Glob. Dev. (Aug. 25, 2021), https://www.cgdev.org/blog/the-next-pandemic-could-come-soon-and-be-deadlier (describing results of a study indicating that there is a 47%-57% chance of another global pandemic as deadly as COVID-19 in the next 25 years).

B. MEMA's all-hazards approach must include authority to manage pandemics.

It is clear that Minnesota, the United States, and the world will be facing pandemics similar to (or potentially even more severe than) COVID-19 in the future. Whether we can manage those inevitable future pandemics without significant fatalities, debilitating long-term health effects, or economic disruption depends on the ability of the State to swiftly

address the health emergency, including by implementing statewide measures that slow the spread of infection. Other states addressing these issues have almost unanimously recognized need for this type of authority. *See e.g.*, *Desrosiers v. Governor*, 158 N.E.3d 827, 838–39 (Mass. 2020) (finding that Massachusetts Civil Defense Act demonstrated "a legislative intent not to limit the Governor's ability to manage a public health crisis like the COVID-19 pandemic, but to empower him to do so" and noting that "[t]he distinguishing characteristic of the COVID-19 pandemic is that it has created a situation that cannot be addressed solely at the local level"); *Friends of Danny DeVito v. Wolf*, 227 A.3d 872, 889 (Pa. 2020) (concluding that the COVID-19 pandemic triggered the governor's authority under the state's emergency code); *Beshear v. Acree*, 615 S.W.3d 780, 830 (Ky. 2020) (holding that governor's emergency orders "were, and continue to be, necessary to slow the spread of COVID-19 . . . [t]his type of highly contagious etiological hazard is precisely the type of emergency that requires a statewide response").

The Court should confirm that a pandemic is precisely the type of hazard for which MEMA authorizes the Governor to declare a peacetime emergency. To hold otherwise would hobble the State's ability to effectively respond to the inevitable pandemic-related crises that the state will undoubtedly face in the coming years, in direct contravention of the Legislature's intent when it amended MEMA and adopted an all-hazards approach to emergency management.

II. The individualized isolation and quarantine provisions of Chapter 144 are unsuited for effective pandemic management.

Appellants attempt to mask the devastating public-health consequences of their position that MEMA cannot be invoked in response to a pandemic by arguing that the Minnesota Department of Health can address such crises through its Chapter 144 emergency health powers—namely, the individualized isolation and quarantine provisions described in Minn. Stat. §§ 144.419 and 144.4195. (Apps.' Br. at 51-52.) Appellants suggest that the procedures authorized in these provisions would have been adequate to slow the spread of COVID-19 and will be adequate in the face of any future public-health emergencies.

Appellants' argument is unpersuasive. The emergency measures provided under Minn. Stat. §§ 144.419 and 144.4195 are clearly designed to address cases involving specific, individualized exposure to a contagion that has not yet reached pandemic-level spread; they are insufficient and inappropriate in the face of a novel, widespread, and extremely contagious pandemic disease.

A. The emergency measures described in Minn. Stat. §§ 144.419 and 144.4195 are complex, fact-specific, and clearly intended to address individual or small-scale exposure to a contagion.

Minn. Stat. §§ 144.419 and 144.4195 provide a procedure by which "individuals" or "groups of individuals" may be isolated or quarantined. The procedure is complex, time-consuming, resource-intensive, and heavily dependent on the facts of a particular exposure or infection. Before the Department of Health may isolate or quarantine a person or "group of persons" under Minn. Stat. § 144.419, the Commissioner of Health must obtain "a written, ex parte order authorizing the isolation or quarantine from the District Court of

Ramsey County, the county where the person or group of persons is located, or a county adjoining the county where the person or group of persons is located." Minn. Stat. § 144.4195, subd. 1(a). "The court shall grant the order" only "upon a finding that probable cause exists to believe isolation or quarantine is warranted to protect the public health." *Id.* The order itself "must state the specific facts justifying isolation or quarantine, must state that the person being isolated or quarantined has a right to a court hearing under [section 144.4195] and a right to be represented by counsel during any proceeding under [section 144.4195], and must be provided immediately to each person isolated or quarantined." *Id.*, subd. 1(b). A quarantine or isolation order issued under section 144.4195 is also strictly limited to a short period of time: "[n]o person may be isolated or quarantined pursuant to an order issued under [section 144.4195] for longer than 21 days without a court hearing . . . to determine whether isolation or quarantine should continue." *Id.*, subd. 1(e).

A person subject to an isolation or quarantine order has a right at any time to "petition the court to contest the court order." *Id.*, subd. 3(a). "If a petition is filed, the court must hold a hearing within 72 hours from the date of the filing" at which "the commissioner of health must show by clear and convincing evidence that the isolation or quarantine is warranted to protect the public health." *Id.* A person subject to an isolation or quarantine order also has a right to request a hearing regarding the "treatment during and the terms and conditions" of isolation or quarantine. Minn. Stat. § 144.4195, subd. 4. "Upon receiving a request for a hearing," the court must "fix a date for a hearing that is within seven days of the receipt of the request." *Id.* Any person subject to an isolation or quarantine order under section 144.4195 "has the right to be represented by counsel" and

"may request the court to appoint counsel at the expense of the Department of Health." *Id.*, subd. 5.

In addition to requiring these extensive procedures, the isolation or quarantine of a person or "group of individuals" under section 144.419 must conform to a lengthy list of requirements. The isolation or quarantine "must be by the least restrictive means necessary to prevent the spread of a communicable or potentially communicable disease to others." Minn. Stat. § 144.419, subd. 2(b). "Isolated individuals must be confined separately from quarantined individuals." *Id.*, subd. 2(c). "The health status of isolated and quarantined individuals must be monitored regularly to determine if they require continued isolation or quarantine," and such individuals "shall be given a reliable means to communicate 24 hours a day with health officials and to summon emergency health services." *Id.*, subd. 2(d). And isolated and quarantined individuals "must be immediately released when they pose no known risk of transmitting a communicable or potentially communicable disease to others." *Id.*, subd. 2(f).

On their face and as a matter of common sense, the procedures and authority provided for isolation and quarantine under Chapter 144 are clearly intended to address infectious-disease exposures with respect to particular individuals or small, clearly defined groups of people. Indeed, the Legislature added these provisions in 2002 as part of the Emergency Health Powers Act, which was enacted in response to September 11 and the anthrax outbreak that followed shortly after. *See* Minnesota Department of Health, *Minnesota Emergency Health Powers Act: Report to the Minnesota Legislature 2003* 1,1 (Feb. 14, 2003) ("The terrorist attacks of September 11 and the anthrax outbreak in the fall

of 2001 raised questions about the threat of bioterrorism and other public health emergencies in Minnesota. Because of the potentially devastating community-wide consequences of such an event, government is responsible for limiting the impact of an event. . . . [T]he Minnesota Department of Health (MDH) is charged to plan for and oversee care for injured, ill or infectious individuals affected by a terrorism event.") The Chapter 144 isolation and quarantine procedures were therefore intended to provide a mechanism by which the Department of Health could enforce a quarantine or isolation period on particular individuals or small groups of individuals identified as having been infected with or specifically exposed to a known, dangerous pathogen (such as anthrax) until the source of the infection could be discovered and any potential of further transmission eliminated.

B. Chapter 144's case-by-case approach was not designed to address, and is fundamentally unsuited to address, a pandemic like COVID-19.

While the individualized quarantine and isolation measures provided in Minn. Stat. §§ 144.419 and 144.4195 provide a sensible process for addressing the threats posed by exposure of specific, limited groups of people to a dangerous pathogen presenting a *risk* of mass infection, they are not designed to, and do not, provide a means of effectively addressing an infectious disease that is actively and rapidly spreading across wide swaths of the population through as-yet-unidentified transmission vectors—as COVID-19 was in the spring of 2020 when Governor Walz declared the peacetime emergency.

First, the only means of infectious-disease control offered under Minn. Stat. §§ 144.419 and 144.4195 is a court order imposing quarantine or isolation on specific individuals or groups of people suspected of carrying an infectious disease. In the context

of COVID-19, actually implementing these procedures would have required the Commissioner of Health to apply for ex parte isolation or quarantine orders for hundreds—and eventually, thousands—of new individuals a day, based on a particular factual showing justifying each order. *See* MPR News Staff, *Nov. 9 Update on COVID-19 in MN: 4K More Cases, 19 More Deaths*, MPRNews (Nov. 9, 2020, 5:00AM), https://www.mprnews.org /story/2020/11/09/latest-on-covid-in-mn (showing active cases per day rising from the hundreds in spring/summer of 2020 to thousands in November and December 2020). It would also have permitted every person subject to an order to receive, within three days of their request, a hearing from the court, at which each person would be entitled to representation by counsel challenging the order. The courts and the Department of Health simply do not have the resources or time to follow those procedures on the scale that would have been necessary to address a pandemic like COVID-19.

Second, even assuming that the Commissioner of Health and the courts were equipped to handle that extraordinary, unprecedented volume of cases, the isolation and quarantine orders authorized under Chapter 144 are inherently insufficient and unsuited to effectively manage a novel, widespread, extremely contagious pandemic. For example, during the first round of COVID-19 infections, due to the novel nature of the virus, the medical and public-health community did not clearly understand: how the virus spread (and therefore who could be considered to have been "exposed" to the virus); how long a COVID-19-infected person remained contagious; the length of time between exposure and infection; the extent to which an asymptomatic person could carry and/or spread the virus; or the particular risk factors for a severe COVID-19 infection. *See, e.g.*, Elizabeth Cohen,

Infected people without symptoms might be driving the spread of coronavirus more than we realized, CNN (Mar. 19, 2020, 9:14 AM), https://www.cnn.com/2020/03/14/health/coronavirus-asymptomatic-spread/index.html; Nell Greenfieldboyce, *For Scientists Who Study Virus Transmission, 2020 Was a Watershed Year*, NPR (Dec. 26, 2020, 7:01 AM), https://www.npr.org/sections/health-shots/2020/12/26/946901965/for-scientists-who-study-virus-transmission-2020-was-a-watershed-year; Allison Aubrey, *How Long Does It Take to Recover from COVID-19?*, NPR (Apr. 13, 2020, 2:44 PM), https://www.npr.org/sections/health-shots/2020/04/13/833412729/how-long-does-it-take-to-recover-from-covid-19-and-how-long-are-you-infectious; Wyatt Koma et al., *How Many Adults Are at Risk of Serious Illness if Infected with Coronavirus? Updated Data*, Kaiser Family Foundation (2020), https://www.kff.org/coronavirus-covid-19/issue-brief/how-many-adults-are-at-risk-of-serious-illness-if-infected-with-coronavirus. In the early stages of the COVID-19 pandemic, Minnesota also suffered from an ongoing shortage of reliable COVID tests that could be quickly and safely administered to every person experiencing potential viral symptoms or who had been in contact with a suspected case of COVID-19. *See MDH Issues Updated Guidance on COVID-19 Testing Criteria*, Minn. Dept. of Health (Mar. 17, 2020), https://www.health.state.mn.us/news/pressrel/2020/covid031720.html (describing restricted COVID-19 testing criteria in light of national shortage of COVID-19 laboratory testing materials).

The Department of Health did not and could not have known during the crucial early stages of the COVID-19 pandemic who to quarantine or isolate, how to practically and effectively quarantine or isolate them, how long to quarantine or isolate them, or how to

confirm that a previously quarantined or isolated individual was safe to release from isolation without risk of further COVID-19 spread. And, in light of the incredibly contagious nature of COVID-19, the Department of Health could not have moved quickly enough in actually implementing the Chapter 144 quarantine and isolation measures for every infectious person to actually slow the spread of COVID-19. *See* Coronavirus Resource Center, Harvard Health Publishing, https://www.health.harvard.edu/diseases-and-conditions/coronavirus-resource-center (noting the highly contagious and quick-spreading nature of COVID-19) (last visited Jan. 5, 2024).

Instead, to effectively manage a pandemic on the scale of COVID-19, Minnesota's government required—and will require in the future—a broader authority to implement emergency measures that could effectively and efficiently slow the spread of the disease throughout the state. That broad authority has been granted to the Governor through the power to declare a peacetime emergency under MEMA. This Court should confirm that MEMA authorizes governors to declare a peacetime emergency in response to a pandemic, and that Governor Walz therefore lawfully exercised his authority when he exercised that authority in response to the COVID-19 pandemic.

CONCLUSION

The individualized quarantine and isolation procedures provided in Chapter 144 are insufficient to meaningfully address the public-health emergencies that Minnesota is unfortunately certain to face in the future. In addressing those infectious-disease threats, Minnesota's leaders must have authority to implement statewide, evidence-backed, and science-based emergency measures to control the spread of disease and protect the health,

welfare, and prosperity of all Minnesotans. MPHA therefore respectfully requests that the Court affirm the decision of the Court of Appeals and confirm that MEMA authorizes governors to declare a peacetime emergency in response to a pandemic.

Respectfully submitted January 5, 2024.

By: */s/ Devin T. Driscoll*
Devin T. Driscoll (#0399948)
Mary Heath (#0399260)
Sarah Theisen (#0402844)

FREDRIKSON & BYRON, P.A.
60 South Sixth Street, Suite 1500
Minneapolis, MN 55402-4400

P:(612) 492-7000

ddriscoll@fredlaw.com
mheath@fredlaw.com
stheisen@fredlaw.com

Attorneys for Amicus Curiae Minnesota Public Health Association

CERTIFICATE OF COMPLIANCE

This brief complies with the form requirements of Minn. R. Civ. App. P. 132.01, subd. 1. It also complies with the length limitations of Minn. R. Civ. App. P. 132.01, subd. 3(c). This brief was prepared using Microsoft Word Microsoft 365 in a 13-pt. font, which reports that the brief contains 3,639 words.

Dated January 5, 2024.

By: */s/ Devin T. Driscoll*

Devin T. Driscoll (#0399948)
Mary Heath (#0399260)
Sarah Theisen (#0402844)

FREDRIKSON & BYRON, P.A.
60 South Sixth Street, Suite 1500
Minneapolis, MN 55402-4400

P:(612) 492-7000

ddriscoll@fredlaw.com
mheath@fredlaw.com
stheisen@fredlaw.com

Attorneys for Amicus Curiae Minnesota Public Health Association