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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

CASE TYPE: Other Civil

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, Jennifer Schroeder, an individual; and Elizer Eugene Darris, an individual, [Proposed]Intervenor-Respondents.	Court File No. 02-CV-23-3416 **PETITIONERS' REPLY MEMORANDUM OF LAW IN SUPPORT OF GRANTING THE WRIT OF QUO WARRANTO**

The State Respondents and Proposed Intervenors[1] don't just seek to oppose the Petitioners here; rather, they seek to foreclose the availability of the writ of quo warranto. They come up with a whole new theory of collateral estoppel where seeking intervention for a totally different purpose in another case basically tosses a litigant out of court forever. They ignore that the Minnesota Constitution is the supreme law in this state and claim that because Respondents are acting in accordance with the unconstitutional Felon Voting Law, Petitioners lack standing to assert the writ. They have no good

[1] If the Court denies the motion to intervene, the Court need not consider arguments made by Proposed Intervenors, who are not even *amici curiae*, and Petitioners would object to their consideration.

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response for the fact that there are clear legislative appropriations for the implementation of the unconstitutional Felon Voting Law. They also largely ignore the surviving aspects of the court of appeals' decision in *Save Lake Calhoun*, which established that an association simply trying to keep a Minneapolis lake's name from changing had taxpayer standing. The individual Petitioners and Minnesota Voters Alliance have standing to seek the writ of quo warranto. It exists precisely for cases like this one.

Respondents and Proposed Intervenors' merits arguments fare no better. The Minnesota Supreme Court recognized that for much of our state's history, Article VII, Section 1 was understood to mean that "restoration [of voting rights] occurs upon completion of the sentence," as the right to vote is just one right "include[ed]" in the plural phrase, "civil rights." *Schroeder v. Simon*, 985 N.W.2d 529, 544 (Minn. 2023) (*Schroeder II*). Thus, the Legislature can't restore the singular right to vote without restoring the multiple civil rights lost by a felon upon conviction. That the Felon Voting Law makes it impossible for *any* right to be "*restored*"—given back—for those serving suspended sentences further shows that Respondents and Proposed Intervenors are deleting constitutional text. The Felon Voting Law, and all actions taken under it, violate the Constitution. The Court should issue the writ.

ARGUMENT

I. Petitioners have taxpayer standing.

Petitioners addressed their standing in this case in their opening memorandum and in their combined opposition to Respondents and Intervenors' motions. *See* Pet'rs' Mem. in Opp. 3–15; Pet'rs' Opening Mem. 15–17. Petitioners refer the Court to those arguments, which effectively refute the opposing parties, and provide brief additional response here.

A. Collateral estoppel is not applicable to this case.

Collateral estoppel only applies when "the issue is identical to one in a prior adjudication." *Husten v. Schnell*, 969 N.W.2d 851, 859 (Minn. Ct. App. 2021). As previously explained, the issue of taxpayer standing to restrain implementation of an unconstitutional new law is quite different than an

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intervenor's interest in defending the constitutionality of a former law. *See* Pet'rs' Mem. in Opp., at 6–8. Indeed, an interest justifying intervention is "not synonymous" with taxpayer standing. *Schroeder v. Simon*, 950 N.W.2d 70, 78 (Minn. Ct. App. 2020) (*Schroeder I*). And in another recent case, "[t]he parties presented no legal authority indicating that standing to commence an action equates" to an interest justifying intervention. *Doe v. State*, No. A20-0273, 2020 Minn. App. Unpub. LEXIS 809, at *7 n.6 (Oct. 12, 2020). The parties here have not found such authority.

In the only other Minnesota case analyzing a motion for judgment related to collateral estoppel which Petitioners could find, the court of appeals also noted that, even where there is identity of the issues in play (not the case here), it would still "work an injustice" to hold that "one taxpayer's unsuccessful attempt to intervene should bar all taxpayers from raising future challenges." *Voyageurs Retreat Cmty. Ass'n v. City of Biwabik*, No. A22-0074, 2022 Minn. App. Unpub. LEXIS 656, at *13 (Sep. 19, 2022). Such would be the case here as well, were the Court to apply collateral estoppel.

B. The 2015 *Minnesota Voters Alliance* case and *Save Lake Calhoun* amply demonstrate Petitioners' standing here.

Simply put, taxpayers have standing to bring quo-warranto actions seeking to restrain the "unlawful disbursement of public moneys . . . [or] illegal action on the part of public officials." *Minn. Voters All. v. State*, No. A14-1585, 2015 Minn. App. Unpub. LEXIS 495, at *6 (Minn. App. May 26, 2015) (quoting *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn 1977)). That is why the *MVA* court of appeals found standing to challenge the use of "taxpayer funds . . . to create, maintain, and operate [an] online-voter-registration system" that the Secretary of State "went beyond his power to create." *Id.* at *6–7. The same is true here: Petitioners allege that Respondents' actions implementing the Felon Voting Law go "beyond [their] power" under the Constitution. *See* Pet'rs' Opening Mem. 15–17. *MVA* is persuasive, and the *MVA* court relied exclusively on *binding* precedent. 2015 Minn. App. Unpub. LEXIS 495, at *6 (quoting *McKee*, 261 N.W.2d at 571).

The court of appeals again recognized that taxpayer standing allows taxpayers "to restrain illegal

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action on the part of public officials" in 2019. *Save Lake Calhoun v. Strommen*, 928 N.W.2d 377, 384 (Minn. App. 2019), *aff'd in part and rev'd in part*, 943 N.W.2d (Minn. 2020) (quoting *McKee*, 261 N.W.2d at 571). There, the petitioner was an association merely arguing that the Commissioner of the DNR did not have authority to rename Lake Calhoun under Minnesota law. The "allegations of financial resources being expended related to the DNR's exercise of authority to promote the same change" combined with the assertion that the "DNR acted illegally" were enough for standing. *Id.*[2]

Save Lake Calhoun also addresses Proposed Intervenors' argument that MVA lacks organizational standing. There, the only petitioner was "an association of residents in Minneapolis, Hennepin County, Minnesota," *Save Lake Calhoun*, 928 N.W.2d at 381 n.3, and the court did not second guess that it had organizational standing.

C. Petitioners have clearly alleged expenditures which they seek to restrain.

State Respondents' argument that the disbursements in this case—"one allocating $14,000 to generally implement the provisions of the act restoring voting rights and one allocating $200,000 to develop an educational campaign regarding that restoration"—"are not being used to re-franchise anyone" is incoherent. State Resp'ts' Opp. Writ Mem. 6 (citing Pet'rs' Opening Mem. 5 (citing 2023 Minn. Laws ch. 12, § 8; id. ch. 62, art. 1, § 6)). State Respondents argue that "the legislature appropriated [the funds] for the separate and subsequent purposes of *implementing* the statute and *educating* the populace about it." *Id.* at 8 (emphasis original). This attempted distinction is nonsensical: the implementation of the Acts is not a "separate and subsequent" purpose from the Acts but a necessary consequence of

[2] To be sure, the court of appeals' standing analysis was an alternative holding because the DNR failed to preserve the issue. *See id.* at 383–84. But alternative holdings are still binding and not mere *dicta*. *See State ex rel. Foster v. Naftalin*, 246 Minn. 181, 208 (1956) ("Where, however, two or more issues are before the court and are argued by counsel, and the court places its decision on both even though a decision on one issue might have been sufficient to dispose of the case, the decision is equally binding as to both issues."). And although the Minnesota Supreme Court reversed the court of appeals on whether the DNR's actions were lawful, it did not disturb the lower court's holding on standing. *See Save Lake Calhoun*, 943 N.W.2d at 181 (affirming in part and reversing in part).

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the Felon Voting Law. *Id.* at 8–9. Indeed, State Respondents say it best: "the legislature expressly authorized expenditures to implement the statute in question." *Id.* at 8. Respondents' use of funds to implement the Felon Voting Law furthers actions that are unlawful because the Minnesota Constitution prohibits the restoration of the right to vote to convicted felons absent the restoration of their lost civil rights. *See* Pet'rs' Opening Mem. 4–6, 15; Petition ¶¶ 22, 34–38, 41.

D. The Minnesota Supreme Court has repeatedly issued the writ of quo warranto to enjoin unconstitutional actions.

Respondents and Proposed Intervenors argue that the writ of quo warranto only exists to rein in government action in excess of *statutory* authority, but is powerless to stop actions in excess of *constitutional* authority. There is no such distinction in Minnesota law, which Petitioners have already detailed. *See* Pet'rs' Mem. in Opp. 13. In fact, the Minnesota Supreme Court has stated the opposite: the writ exists "to rein in government officials who exceed their constitutional or statutory authority." *Save Lake Calhoun*, 943 N.W.2d at 176; *see also* Pet'rs' Mem. in Opp. 4–5, 13 (discussing *Palmer v. Perpich*, 182 N.W.2d 182, 184 (Minn. 1971) (concluding that the court had "the power to determine whether a constitutional officer is attempting to usurp power which is not granted to him by the Constitution or by the laws of this state") and *Rice v. Connolly*, 488 N.W.2d 241 (Minn. 1992).

II. The Felon Voting Law violates the Minnesota Constitution's plain language and defies more than a century of historical understanding of the meaning of "restored to civil rights."

Schroeder II only addressed "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." *Schroeder II*, 985 N.W.2d at 533. The Court said no. *Id.* Rather, the Court held that a felon's voting rights are not restored unless "the person's right to vote is restored in accordance with an affirmative act or mechanism of the government restoring the person's right to vote, such as an absolute pardon or a legislative act that generally restores the right to vote *upon the occurrence of certain events*." *Id.* at 533–34 (emphasis added). Respondents and Proposed Intervenors' interpretation of *Schroeder II*—that the

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legislature can ignore the constitutional text and do whatever it "deems appropriate"—is an absurd expansion of legislative authority. Ingram Aff., Ex. 1, at 8.

Respondents' position entirely ignores the meaning of the word "restore" itself, because it allows convicted felons to *never lose* the right to vote. But the word "restore" cannot mean "never lose": it means to "give back" or "return." *Restore*, Merriam-Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/restore. One cannot be restored to that which was never lost. And the Minnesota Constitution expressly removes the right to vote for felons absent the eventual "restoration" of their "civil rights." Yet those serving felony sentences who are never imprisoned are allowed to vote under the Felon Voting Law. Respondents' position thus renders multiple words in Article VII, section 1 superfluous. *Contra Shefa v. Ellison*, 968 N.W.2d 818, 825 (Minn. 2022) (avoiding interpretation that would "render a word of phrase superfluous" (quoting *State v. Thompson*, 950 N.W.2d 65, 69 (Minn. 2020))). In part for this reason, one Minnesota judge has already determined that the Felon Voting Law violates Article VII, Section 1. *See* Order Holding Minn. Stat. § 201.014, subd. 2(a) (2023) Unconstitutional, at 11, *Minnesota v. Trevino*, No. 48-CR-21-1450 (Minn. Dist. Ct. Oct. 12, 2023), petition for writ of prohibition filed Oct. 19, 2023. As the *Trevino* court stated:

> The court finds that "during any period when the individual is not incarcerated for the offense" is not an event. Rather it is an amorphous state of being. Consider a defendant convicted of Burglary in the First Degree of an occupied dwelling, a felony . . . . With no criminal history, that defendant would receive a stayed sentence of 21 months . . . . Accordingly, . . . "any period when the individual is not incarcerated for the offense" is every period—the defendant received a stayed sentence. No "event," nor any "affirmative act" of the government contemplated by the *Schroeder* decision has occurred. If anything, "any period when the individual is not incarcerated" is, in fact, the *absence of an event*.

Id. at 8-9.

Furthermore, under Proposed Intervenors' reading of *Schroeder II*, there would be nothing to stop the legislature from "restoring" the right to vote even when convicted felons are serving life sentences for murder and still in prison. And indeed, the portion of the Felon Voting Law which purports to

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restore voting rights to those on "work release" does exactly that—work release is, for all other purposes, part of the term of imprisonment for felons. *See* Minn. Stat. § 241.26 ("Release under this subdivision is an extension of the limits of confinement . . . ."). To argue that these individuals have been "restored to civil rights" while still in prison is obviously inconsistent with the text of Article VII, Section. At bottom, the *Schroeder II* Court *did not* hold—and could not have held—that *any* act "that the legislature deems appropriate" would suffice to restore voting rights. Ingram Aff. Ex. 1, at 8. To do so would authorize the Legislature to amend the Constitution without the people's say.

Instead, what the Court *did* say indicates the opposite: felons are "permanently prohibited from voting 'unless restored to civil rights,'" plural. *Schroeder II*, 985 N.W.2d at 536 (quoting Minn. Const. Art. VII, § 1). The framers of the Constitution could have used language like "restored to life in the community" or "restored upon release from prison." *Id.* at 538. Instead, the mandate in the Constitution encompasses much more: "restored to civil rights." As the *Schroeder II* Court repeatedly pointed out, that plural phrase merely "include[es] the right to vote," *Id.* at 533, 552, 557. The right to vote is one of several "civil rights" lost when a person is convicted of a felony crime.

And although the Court did not identify exactly how the legislature could restore felons to their lost civil rights, it *did* discuss past practice. These historical statutes "show[ed] a consistent understanding over time of the meaning of the felon voting limitation in Article VII, Section 1." *Id.* at 542. In every historical example cited by the *Schroeder II* Court, restoration did not occur until the individual's sentence was complete. *See id.* at 544 ("[O]ne way to interpret the framers' understanding of the phrase 'unless restored to civil rights' is that restoration occurs upon completion of the sentence."). It is nonsensical to suggest, as Proposed Intervenors do, that the Supreme Court in *Schroeder* quietly disregarded this "compelling" historical evidence of what Article VII, Section 1 requires and greatly expanded the legislature's power to restore voting rights. *Id.* at 543.

Schroeder II's historical analysis also shows that applying the plain meaning of Article VII, Section

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1 advanced by Petitioners does *not* yield absurd results. Otherwise, every Felon Voting Law before the 2023 revision would have been absurd because it required *at least* completion of the entire sentence before restoration. *See id.* at 543–44. To say that an interpretation of Article VII, Section 1 that is consistent with this historical record is absurd is, for lack of a better word, absurd.

III. Respondents' bootstrapping argument that attempting to restore the singular "civil right to vote" restores the right to hold public office fails because it rests on the same flawed interpretation of Article VII, section 1.

Despite the law's complete silence on the issue, State Respondents suddenly claim that the Felon Voting Law restores more than one civil right: "The re-enfranchisement law restores both the civil right to vote and the civil right to hold public office." State Resp'ts' Opp. Writ Mem. 14. There are two fatal flaws with this argument.

First, the acts purport to restore only the right to vote; nowhere do they reference the right to hold office. This supposed second restoration would only be incidental to the restoration of the right to vote, per State Respondents' reading of Article VII, Section 6 of the Minnesota Constitution. But that provision requires that, for a person to hold public office, that person must be, "*by the provisions of this article* . . . entitled to vote." Minn. Const. Art. VII, § 6 (emphasis added). So, in order to hold public office, a felon must regain "by the provisions of" Article VII a right to vote. *See id.* Thus, a felon still needs to be "restored to civil rights" to get the right to vote, to then hold office—if the Legislature's attempted restoration of the right to vote is ineffective, then the right to hold office is not impacted. In other words, State Respondents cannot bootstrap the failed restoration of the right to hold public office into a qualifying "civil right"—because the right to vote itself was not properly restored.

IV. There is no *Purcell* principle relevant to this case.

In Petitioners' opposition memorandum, they adequately debunked the frivolous "*Purcell* principle" argument advanced by Proposed Intervenors. *See* Pet'rs' Mem. in Opp. 29–32. Petitioners refer the Court to those arguments. Simply put, *Purcell v. Gonzalez*, 549 U.S. 1 (2006) is entirely inapplicable

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to the ***merits*** of ***any*** case on its own terms. *Id.* at 5–6.

CONCLUSION

The Minnesota Constitution sets the rules for voter eligibility. Those convicted of a felony may not vote unless "restored"—an affirmative action to give something back—to "civil rights"—a set of rights stripped from felons. Proposed Intervenors and Respondents do even attempt to reconcile the Felon Voting Law with that constitutional language. Rather, they falsely claim that the Minnesota Supreme Court greenlit *any* legislative enactment restoring the right to vote in *Schroeder II*. But *Schroeder II* says the opposite: Article VII, Section 1 is about a plurality of civil rights which the legislature has discretion to restore at different times. Under the Felon Voting Law, it has only restored one—the right to vote. And one is not enough. The Court should issue the writ of quo warranto.

Respectfully submitted,

Dated: October 23, 2023

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Dated: October 23, 2023

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