FILED
February 3, 2025
OFFICE OF APPELLATE COURTS

**STATE OF MINNESOTA**
**IN SUPREME COURT**
**No. A25-0157**

Lisa Demuth, et al.,

Petitioners,

v.

Minnesota Secretary of State Steve Simon,

Respondents.

***AMICUS CURIAE* BRIEF OF MELISSA HORTMAN, JAMIE LONG, AND ATHENA HOLLINS**

## INTRODUCTION

Petitioners Lisa Demuth and Harry Niska ask this court to serve as the referee in a dispute with the interim presiding officer of the Minnesota House of Representatives regarding matters of parliamentary procedure. This is precisely the type of dispute into which the Court has steadfastly refused to insert itself out of concern for the separation of powers. The Court should be especially wary of entertaining this petition because—far from ending the present political impasse in the Minnesota House—it will more deeply entangle this Court in the ongoing dispute between the caucuses.

## ARGUMENT

Minnesota Statutes, Section 5.05 provides that "[t]he secretary of state shall attend at the beginning of each legislative session, to call the members of the house of representatives to order and to preside until a speaker is elected." Because the Minnesota House of Representatives has not elected a Speaker for the current legislative session, Secretary of State Steve Simon continues to preside over the House. Each time the

House has convened, Secretary Simon, recognizing his narrowly prescribed duties as the interim presiding officer, has ordered a roll call and, upon finding that a quorum was not present, ordered the House to adjourn. Petitioners allege that Secretary Simon's actions exceed his authority. Specifically, Petitioners allege that Secretary Simon may not adjourn the house unilaterally and must allow consideration of motions which seek to withhold compensation from representatives who do not attend the legislative session.

Addressing the merits of the Petition will require the Court to insert itself into a dispute regarding the parliamentary procedures and rules of the Minnesota House of Representatives and will invite additional litigation regarding the scope of a non-quorum's authority to compel the attendance of other members. The Court should decline Petitioners' invitation to entangle itself in the ongoing political dispute within the legislative branch.

## I. The Petition Raises Significant Separation of Power Concerns.

Two weeks ago, Petitioners urged this Court not to address the question of whether the definition of a quorum pursuant to Article IV, Section 13 of the Minnesota Constitution accounts for vacant seats asserting, that it was a question relating exclusively to the internal organization of the House. *Hortman et al. v. Demuth et al.*, File No. A25-0068, Resp. Br. at 7-9 (Minn. Jan. 21, 2025). Petitioners pointed to this Court's precedents stating that "[t]he judicial branch may not … directly or indirectly interfere with th[e] legislative power in any other way than by passing upon the constitutionality … of [the] laws" and must be "wary of unnecessary judicial interference

in the political process." *Id*. (citing *Smith v. Holm*, 19 N.W.2d 914, 916 (Minn. 1945); *Ninetieth Minnesota State Senate v. Dayton*, 903 N.W2d 609, 625 (Minn. 2017)).

The Court rejected this argument and held that the question of what constitutes a quorum under Article IV, Section 13 is a justiciable question of law. *Hortman et al.*, File No. A25-0068, Order at *2 (Minn. Jan. 24, 2025). Like the earlier case of *Palmer v. Perpich*, 182 N.W.2d 182 (Minn. 1971), the litigation regarding the existence of a quorum presented a narrow question of law—constitutional and statutory interpretation—regarding whether the legislature had the authority to act. That question fit squarely within the Court's purview and authority to decide.

The present case, on the other hand, addresses *how* the legislative authority is exercised. Reaching the merits of the Petition would require the Court to delve into the minutiae of parliamentary procedure and rules, not based on binding authority, but on custom, practice, procedure, treatises and other secondary sources. These are the very types of issues the Court has refused to address, and this case presents no reason to depart from that practice.

## II. A Non-quorum of the Minnesota House Cannot Take Action to Compel Attendance before the House has Organized.

Petitioners point to several provisions of Mason's Legislative Manual in support of their argument that Secretary Simon must allow their motions to be heard. Pet. Br. at 2-3 (citing Mason's §§ 190, 192, 193, 208, 210, and 578). These provisions relate to a call of the house, motions to adjourn, and the duties of the presiding officer, all of which arise after the House has organized for the session. Other, more directly applicable provisions

of Mason's make clear that the power to compel attendance of absent members does not arise until after the House is duly organized.

For example, Section 42, titled "Indispensable Requirements for Making Valid Decisions" provides that "[t]he legislative body must have organized, acquiring the power and authority to make decisions." Accordingly, any valid actions on behalf of the House—whether by a quorum to transact business or by a smaller number to compel attendance—may be taken only after the House has organized. This principle is reflected in Minnesota statutes addressing the process of organizing the legislature. On the first day of the session, the Secretary of State calls the House to order and appoints a clerk *pro tem*. Minn. Stat. § 3.05. The Secretary then determines whether a quorum is present and, if so, presides over the election of the House officers. Minn. Stat. § 3.06. Without a quorum, the House cannot organize, no business may be conducted, and the Secretary must adjourn the House.

This limitation on the House's pre-organization authority is consistent with the guidance in Mason's Section 191, titled "Right of Less Than a Quorum to Compel Attendance" which provides:

> Until a house of a state legislature is organized, it has no authority, unless granted by the constitution, to compel the attendance of absent members. * * * After organization, a quorum has the unquestionable right to compel the attendance of other members, and less than a quorum is usually given the right by constitutional provisions ….

The Minnesota Constitution does not authorize the House to compel the attendance of absent members and, as a result, the House may not take such action prior to organization.

Similarly, the limited grant of authority for a smaller number to "adjourn from day-to-day and compel the attendance of absent members" does not authorize less than a quorum to compel the attendance of absent members prior to organization. Article IV, Section 13 provides two limited exceptions to the requirement that a quorum must be present to transact business on behalf of the House: a less-than-quorum can adjourn from day to day and can take action to compel the attendance of absent members. While this language authorizes the House to *create* procedures, in certain circumstances, as discussed below, to compel the attendance of members, it does not itself authorize the House to compel members to appear. Nothing in Article IV, Section 13 suggests that these limited exceptions are intended to grant a minority of members the authority to transact business which the whole body itself does not enjoy prior to organization.

## III. The Authority of a Non-quorum Minority of the House to Compel the Attendance of Other Members is Limited to the Manner and Penalties Previously Adopted by the House.

Article IV, Section 13 states: "A majority of each house constitutes a quorum to transact business, but a smaller number may adjourn from day to day and compel the attendance of absent members in the manner and under the penalties ***it*** may provide." (emphasis added). If Rep. Niska's motion is heard and passed by less than a quorum of the House, this Court will inevitably be called upon to determine what "it" refers to in Article IV, Section 13. The plain language and sound public policy compel the

conclusion that when a non-quorum of members acts to compel the attendance of absent members, they may only do so "in the manner and under the penalties" that *the House* already provided. In other words, "it" refers to "each house" and not to the "smaller number of members."

This reading finds support in the language of other provisions of Article IV where "it" is used to refer back to the "the House" or "each House" as an entity. For example, Section 14 states: "Each house shall be open to the public … except in cases which in *its* opinion require secrecy." By comparison, when a group of one or more members is referenced, the Constitution uses "they." *See, e.g.*, Art. IV, § 11. In Section 13, had the framers wished to give that smaller number of members the authority to establish the manner and penalties pursuant to which absent members could be compelled, "they" would have been the more logical choice of pronoun, consistent with other provisions in Article IV. Instead, the framers used "it" to refer to the House as an entity, indicating that the process for compelling attendance and the relevant penalties must be established in statute or rule by the whole House, in the ordinary course of business.

The public policy supporting this interpretation is clear. If a small group of members constituting less than a quorum has the power to compel absent members to appear and establish the penalties for failing to do so, the barest minority of the members could meet and impose severe and draconian penalties upon their colleagues which would never be agreed to by a majority of all members through rule or statute. Sound public policy requires that the methods for compelling attendance and the penalties for failing to appear must be established by the whole before they are implemented and not on an *ad*

*hoc* basis when it is clear that unduly harsh penalties will inure to a particular group of legislators.

## IV. The Minnesota House has not Adopted Procedures or Penalties for a Non-quorum to Compel the Attendance of Other Members.

Petitioners will undoubtedly argue that this interpretation hamstrings their ability to compel a quorum to appear. But this is nothing more than the consequence of the choice made by the House of Representatives. Unlike other states, the House has never passed a statute or implemented a rule imposing penalties upon members for failing to appear. *Compare e.g.*, *In re Abbott*, 628 S.W.3d 288 (Tex. 2021) (discussing the long-standing House rule permitting absent House members to be arrested in order to secure their attendance). The only rule the House has adopted with regard to convening a quorum is found in Article II of the 2023-2024 Rules, which permits a "Call of the House." Rule 2.02 provides that when a call is demanded "the doors of the chamber must be closed, the roll called, and absent members sent for; and no member is allowed to leave the chamber until the roll call is suspended or completed. During the roll call, no motion is in order except a motion pertaining to matters incidental to the call." The rule does not provide any procedure for compelling attendance nor does it impose a penalty for failing to attend. This is the fullest extent to which the House has ever attempted to codify the last phrase of Article IV, Section 13, and further demonstrates that a minority faction of the House cannot act alone to pass or implement new penalties for members who have not appeared.

Rule 2.02 also underscores why the House must be organized in order for it to act to compel members to appear. The Rule describes how the Sergeant at Arms must not permit members to leave unless the member is excused by the Speaker. These procedures assume that a Speaker and a Sergeant at Arms have been elected, and thus that the House is organized. Any new measures or penalties that the non-quorum of members attempt to pass now are, as a purely practical matter, invalid and unenforceable because there are no mechanisms in place for implementing them prior to organization—there is no Sergeant, no clerk, and no comptroller. The House has no power of the purse until it is validly organized. Accordingly, under the plain language of the Constitution, new procedures and penalties can only be created and implemented in the normal course of business once a quorum of the House convenes.

## CONCLUSION

For these reasons, Amici respectfully request the Court reject the Petition, on the grounds that it presents a non-justiciable political question, and because Petitioner's motions cannot proceed prior to the House being duly organized. The Petition should also be rejected because it unnecessarily invites the Court deeper into the dispute between the House caucuses. The proper place for a resolution to occur now is at the negotiating table, not in the courts.

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## CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds.1 and 3, for a brief produced with a proportional 13-point font. The length of this brief is **2,070** words. This brief was prepared using Microsoft Word 365.

s/David J. Zoll
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