

STATE OF MINNESOTA
IN SUPREME COURT
A25-_____

FILED

January 30, 2025

**OFFICE OF
APPELLATE COURTS**

Lisa Demuth and Harry Niska,
Petitioners,

vs.

**PETITION FOR WRIT
OF QUO WARRANTO**

Minnesota Secretary of State Steve
Simon, *Respondent.*

Minnesota’s House of Representatives has lacked a quorum for this entire legislative Term, and this problem appears set to continue indefinitely. In this situation, our Constitution contemplates exactly what should happen. Article IV, Section 13 provides that “[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.” Thus, the plain text of our Constitution authorizes those House Members who show up for work at the Capitol to bring motions, and to hold votes, on adjournment and on compelling the attendance of absent members.

Respondent Simon, however, is purporting to unilaterally convene and adjourn the House of Representatives on his own authority, without recognizing motions or allowing votes of any kind—not on adjournment, not on compulsion, not on anything else. Elected Members of the House are repeatedly trying to bring such motions—but Simon is simply ignoring all of them and unilaterally announcing that the House is adjourned. The effect of these

actions is obvious: Simon is extending our constitutional crisis by ensuring that there is no way for House Members to exercise their constitutional authority to compel the attendance of absent legislators.

Simon, an executive branch official, utterly lacks legal authority to take over the Minnesota House of Representatives in this way. Although Minnesota statutes allow him to preside over the House until its Members choose its leadership, Simon has no power to unilaterally adjourn the body while refusing to entertain motions or to recognize properly elected and seated Members. These powers are beyond the normal authority even of a legislative presiding officer elected in the ordinary course. Such powers are *certainly* beyond the authority of an executive-branch official who is not a member of the House, who not a single Member of the House has voted into leadership, and who Article III of the Constitution expressly prohibits from exercising any legislative power. Indeed, if Minnesota statutes did purport to give the Secretary of State this power over the Legislature, they would egregiously violate the separation of powers mandated by Article III.

In short, the Constitution provides one tool for resolving our current legislative crisis: the attending Members can compel the absent ones to show up. But Simon has seized unilateral control of the House in order to prevent the exercise of that power. This Court must put a stop to that grave constitutional violation so that the situation can move toward a resolution.

JURISDICTION

1. The Court has original jurisdiction to issue a writ of quo warranto. Minn. Stat. § 480.04 (2024). “Quo warranto is an available remedy to challenge

official action not authorized by law.” *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 174 (Minn. 2020). It is the proper remedy either when a pretender usurps an office that does not belong to him, or when an official “exceed[s] the statutory authority of the office, usurping the power held by others.” *Id.* at 175. The Court has exercised this jurisdiction to address whether public officials comply with the Minnesota Constitution when presiding over a legislative body. *Simon v. Demuth*, No. A25-0066 (Minn. Jan. 24, 2025) (consolidated with No. A25-0068) (order); *State ex rel. Palmer v. Perpich*, 182 N.W.2d 182 (Minn. 1971).

PARTIES

2. Petitioner Lisa Demuth is a duly elected and seated Member of the House of Representatives. She is House Republican Caucus’s chosen leader and its choice for Speaker.

3. Petitioner Harry Niska is a duly elected and seated Member of the House of Representatives. He is the House Republican Caucus’s chosen Majority Leader.

4. Respondent Steve Simon is the Minnesota Secretary of State.

FACTS

5. In each odd-numbered year, the Minnesota legislature meets at noon on the first Tuesday after the second Monday in January. Minn. Stat. §§ 3.011, 3.05 (2024). In 2025, this date fell on January 14.

6. When the House first meets, the Secretary of State calls the House of Representatives to order. *Id.* § 5.05. He presides until the House elects a speaker. *Id.* §§ 3.05, 5.05.

7. The House must have a quorum to transact business. Minn. Const. art. IV, § 13. Once a quorum is present, the House must elect a speaker, among other officers. Minn. Stat. § 3.06, subd. 1 (2024).

8. On January 14, 2025, Respondent Simon called the House to order. A roll call was taken by the clerk pro tem. The roll call by the clerk signified that 67 persons with election certificates on file were present (specifically, the 67 members who constitute the Republican caucus), 66 such persons were not present, and that one seat was vacant.

9. After the initial roll call was completed, Simon called for the oath of office to be administered to the members elect. All 67 members present took their oath of office as required by the Constitution.

10. Simon then ordered the clerk pro tem to take the “roll to determine a quorum.” An electronic roll was taken. Simon ordered the roll be closed and stated: “There being 67 members present, there is no quorum as required by the Constitution of the State of Minnesota, the House may not conduct any further business, and the House of Representatives is adjourned.”

11. While Simon was making those statements, Petitioner Niska moved to appeal Simon’s quorum ruling. Simon refused to hear the motion from Niska. Indeed, he refused to hear any motion at all, and purported to adjourn the House without a motion or a vote to do so. Simon then left the presiding officer’s rostrum.

12. The 67 Members present then attempted to elect leadership, adopt rules, and transact legislative business, believing that they constituted a quorum.

13. Simon asked this Court to decide the issue, and on Friday, January 24, the Court ruled that 68 Members are required for a quorum. *Simon*, No. A25-0066 (Minn. Jan. 24, 2025) (order).

14. This Court's ruling meant that the House has not yet validly chosen a speaker. Thus, on Monday, January 27, 2025, Simon again called the House to order.¹

15. Before Simon convened the session on January 27, he informed Reps. Demuth and Niska that he would not allow any motions. (Niska Decl. ¶¶8-9.)

16. After Simon convened the January 27 session, the clerk pro tem took the roll call. All 67 members of the Republican Caucus were again present, and the 66 remaining legislators again were not present. There remained one vacancy.

17. The custom of the House is for members to present written motions at the front desk. Following that procedure, on January 27, Rep. Niska presented at the front desk a motion to compel the attendance of absent members, pursuant to Article IV, Section 13 of the Minnesota Constitution. (Niska Decl. Ex. A.)

18. Simon did not recognize or allow House Members to take any action on Niska's properly filed written motion.

19. After the roll was called at the January 27 meeting of the House, Rep. Niska rose, seeking recognition to make a motion to compel absent members, as authorized by Article VI, Section 13.

¹ <https://www.house.mn.gov/hjvid/94/898835>

20. Simon refused to recognize the motion to compel attendance as filed and refused to recognize Rep. Niska on the floor. (Niska Decl. ¶¶12-13.)

21. Simon announced that the House was adjourned, without any motion or vote on adjournment or on any other subject. Simon unilaterally announced a date and time that the House would re-convene. (Niska Decl. ¶13.)

22. On January 28 the same pattern of usurpation by Simon occurred. Simon convened the meeting, initiated a roll call, closed a roll call, stated there was no quorum, refused to recognize the written motion to compel attendance presented at the front desk, refused to recognize Rep. Niska when he rose to make a motion, and unilaterally adjourned, announcing a date and time that the House would reconvene. (Niska Decl. ¶¶14-17.)

23. On January 29, Simon's usurpation continued in the same way. Simon convened the meeting, initiated a roll call, closed the roll call, stated there was no quorum, refused to recognize a written motion to compel attendance (which had been modified from the motion presented the prior two days) presented at the front desk, refused to recognize Rep. Niska when he rose to make a motion, and unilaterally adjourned, announcing a date and time that the House would reconvene. (Niska Decl. ¶¶18-21 & Ex. B.)

24. There is no end in sight to Simon's usurpation of authority. Without intervention from this Court, Minnesota's legislators will be left with no ability to bring any motion—or even to speak and be recognized—in the very House to which the people elected them. And this will continue indefinitely.

CLAIMS

25. At the time and place appointed by law for the convening of the House of Representatives, 67 Members convened and were lawfully sworn in and seated.

26. Because these 67 Members constituted less than a quorum, Article IV, Section 13 of the Minnesota Constitution authorizes them, when meeting in a session of the House, to adjourn from day to day and to compel the attendance of absent members.

27. Simon has denied and is denying them the power to bring or vote on these motions, the power to bring or vote on any motion at all, and even the power to speak and be recognized in the legislative body to which the people of Minnesota elected them.

28. Simon lacks even colorable legal authority to unilaterally adjourn the House of Representatives, without motion or vote on adjournment or any other topic. Nothing in the Constitution says or suggests that the Secretary of State may override attending Legislators' authority to adjourn or to compel attendance of others.

29. Nor does any statute purport to grant the Secretary of State this authority. Minn. Stat. §§ 3.05 and 5.05 authorize the Secretary to "preside" over the House "until a speaker is elected." But *no* presiding officer, let alone a temporarily presiding executive official not chosen by the body, has authority to unilaterally adjourn the assembly without motion or vote.

30. That remains true even when the presiding officer rules that there is a lack of a quorum. *See Mason's Legislative Manual* § 192 ("When a quorum is not present, a call of the house takes precedence over all other motions.");

§ 193 (“When a quorum is not present, a call is, in effect, demanded. Any member may raise the question of no quorum, and if a quorum is not present, the house must either order a call or adjourn.”); § 190 (“The purpose of a call of the house is to compel the attendance of absent members.”); § 210 (“Where a roll call shows there is not a quorum present, it does not automatically adjourn the body; the body possesses the power to issue a call of the house or to entertain the motion to adjourn.”), § 208 (“It is a rule of parliamentary procedure applicable to all legislative bodies that less than a quorum have the power to adjourn. It is in this respect the motion to adjourn differs from all other motions. It is, of course, necessary that a body that finds itself without a quorum have a means of terminating its daily sessions.”); § 578 (“The presiding officer may not refuse to put any motion that is in order.”).

31. If any Minnesota statute *did* purport to grant the Secretary of State the power to unilaterally adjourn the House of Representatives, without motion by and over the objections of the duly elected and seated Members of the House, that would blatantly violate the command of Article III of the Constitution that “[n]o person or persons belonging to [the executive] department[] shall exercise any of the powers properly belonging to the” legislative department.

32. Thus, by adjourning the House without the assent of the body and without permitting motions or votes, Simon is usurping power that he plainly does not have, and that belongs instead to the attending Members of the House. *Perpich*, 182 N.W.2d at 186 (“But in like measure, neither does the lieutenant governor have power to usurp the power of the senate in deciding this issue.

To permit him to do so would enable the lieutenant governor to control the organization of the senate by arbitrarily refusing to follow the Constitution and statutes of this state. We do not think he has such power.”).

RELIEF

The Court should issue a writ of *quo warranto* declaring:

33. That Simon has no authority to adjourn the House without a motion and vote of a majority of the Members present, regardless of whether those Members constitute a quorum;

34. That Simon, when presiding over the House, has no authority to ignore or refuse to recognize properly raised motions by duly elected and seated House Members, including motions to compel the attendance of absent members, regardless of whether the Members in attendance constitute a quorum;

35. That Simon’s purported adjournment of the House exceeded his authority and that the House will henceforth remain in session unless and until a majority of Members present vote to adjourn.

Dated: January 30, 2025

s/Samuel W. Diehl
Samuel W. Diehl (#388371)
Nicholas J. Nelson (#391984)
Ryan D. Wilson (#400797)
CROSSCASTLE, PLLC
14525 Highway 7, Suite 345
Minnetonka, MN 55345
(612) 429-8100
sam.diehl@crosscastle.com
nicholas.nelson@crosscastle.com
ryan.wilson@crosscastle.com

Attorneys for Petitioners