

STATE OF MINNESOTA
IN SUPREME COURT

FILED

January 14, 2025

**OFFICE OF
APPELLATE COURTS**

No. A25-_____

Steve Simon, Minnesota Secretary of State,

Petitioner,

v.

Lisa Demuth,

Respondent.

**PETITIONER'S MEMORANDUM
SUPPORTING WRIT QUO
WARRANTO**

Petitioner Secretary of State Steve Simon seeks a writ of quo warranto to determine if he is the presiding officer of the Minnesota House of Representatives. State law expressly designates that the Secretary holds this title until the House elects a speaker. When the Secretary called the House to order on January 14, no quorum was present, preventing the House from transacting business and electing a speaker. Yet after the Secretary adjourned the body and left the rostrum, some members purported to elect a speaker and remove the Secretary as the presiding officer. Because the House has not yet had a quorum to elect a speaker, the Court should issue a writ quo warranto declaring that the Secretary remains the presiding officer until a speaker is properly elected.¹

¹ The Secretary is aware of partisan disputes between the caucuses regarding the causes of the underlying situation. Those partisan disputes are irrelevant to the petition, which addresses only a narrow legal issue: determining whether the Secretary is the House's presiding officer.

FACTS²

The most recent legislative session began January 14, 2025. Minn. Stat. § 3.011 (2024). The beginning of a new session requires each legislative chamber to organize itself. With the House of Representatives, the Secretary of State calls the House to order and presides until a speaker is elected. *Id.* §§ 3.05, 5.05 (2024); *see also* Minn. H.J., 71st Leg., Reg. Sess. 3, 11, 15 (1979) (reflecting Secretary of State serving as presiding officer for first three days of legislative session).

When the Secretary called the House to order on January 14, only 67 members were present. The House has 134 members. Minn. Stat. § 2.021 (2024). Because the law requires the House to have 68 members to form a quorum, the Secretary adjourned the meeting

After the Secretary left, Representative Paul Anderson—acting as the oldest member present—purported to reconvene the House. Only 67 representatives remained present. He nonetheless declared a quorum. The present members then purported to elect Representative Lisa Demuth as speaker, effectively removing the Secretary as the presiding officer. The present members further purported to offer and pass various resolutions.

² The material facts in this case are undisputed. The underlying public record of events is not yet posted, but the Secretary anticipates that the House Journal for the day will soon be posted (<https://www.house.mn.gov/cc/journals/journal.htm>) and that House Public Information Services will soon post the audio and video recording of the January 14 floor session: <https://www.youtube.com/@MNHouseInfo/videos>. The events were also widely covered in the press. *See, e.g.*, Ryan Faircloth et al., *Minn. House Democrats Boycott First Day of Session, but Republicans Move Forward Anyway*, *Star. Trib.* (Jan. 14, 2025), <https://perma.cc/LS4P-7QCH>.

ARGUMENT

A writ of quo warranto addresses whether a person exercising power has authority to act. *Save Lake Calhoun*, 943 N.W.2d 171, 174 (Minn. 2020). The writ prevents someone from exercising power that the law does not confer. *State ex rel. Graham v. Klumpp*, 536 N.W.2d 613, 614 n.1 (Minn. 1995). The Court should issue a writ of quo warranto because: (1) it has original jurisdiction to address whether the legislature has organized itself consistent with the constitution; and (2) because the House lacked a quorum, House members lacked authority to remove the Secretary as the presiding officer.

I. THE COURT HAS ORIGINAL JURISDICTION TO ADDRESS THE ISSUES PRESENTED.

This Court has original jurisdiction to issue a writ of quo warranto. Minn. Const. art. VI, § 2; Minn. Stat. § 480.04 (2024). The Court will exercise this jurisdiction when exigent circumstances exist, but has directed that cases that require developing a factual record should begin in a district court. *Rice v. Connolly*, 488 N.W.2d 241, 244 (Minn. 1992); *see also Seventy-Seventh Minn. State Senate v. Carlson*, 472 N.W.2d 99, 99 (Minn. 1991) (declining jurisdiction because substantial fact dispute existed).

Historically, this Court has exercised its original jurisdiction to address both whether a legislative body has organized itself consistent with the constitution and to address whether someone is usurping power vested in another state actor. *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 778 (Minn. 1986) (addressing whether state finance commissioner usurped power granted to state treasurer); *State ex rel. Palmer v. Perpich*, 182 N.W.2d 182, 184-85 (Minn. 1971) (addressing lieutenant governor's authority in Minnesota Senate). While courts are understandably reluctant to wade into

matters involving the legislature, addressing these narrow questions does not intrude on separation of powers. *Palmer*, 182 N.W.2d at 185; *see also State ex rel. Werts v. Rogers*, 28 A.726, 730 (N.J. 1894) (deciding who was president of state senate); *In re Gunn*, 32 P. 470, 471 (Kan. 1893) (addressing attempted organization of legislative members with less than constitutionally established quorum).

The Court should exercise its original jurisdiction in this case. As in *Mattson* and *Palmer*, the issues require immediate resolution and do not require the Court to interfere with the legislative branch. Nor does the case require developing a factual record; the material facts are undisputed. The case presents only narrow questions of law, requiring the Court to interpret the constitution and related state statutes to determine whether the Secretary remains the presiding officer of the House.

II. BECAUSE THE HOUSE LACKED A QUORUM ON JANUARY 14, THE SECRETARY REMAINS THE HOUSE'S PRESIDING OFFICER.

This case presents only questions of law, requiring the Court to interpret the Minnesota Constitution and state statutes. *Schroeder v. Simon*, 985 N.W.2d 529, 536 (Minn. 2023). The Court applies the same interpretative principles to both. *Id.* The plain language of a provision controls when it is clear and unambiguous. *Snell v. Walz*, 6 N.W.3d 458, 467 (Minn. 2024). If the language is ambiguous, then the Court may consider other interpretative tools. *Id.*

Applying these principles, the Court should grant the writ. The constitution requires that the House have 68 members to transact business, and state law dictates that the Secretary remain the House's presiding officer until it elects a speaker. Because the House

has not yet had a quorum, the Secretary remains the House’s presiding officer and Representative Demuth does not currently have authority to serve as speaker.³

A. The House Lacked a Quorum When Some Members Purported to Elect a Speaker.

Without a quorum, a legislative body can only meet and adjourn. *Palmer*, 182 N.W.2d at 183. Central to this dispute therefore is whether the House had a quorum on January 14 when Representative Anderson purported to preside, oversee the election of a speaker, and remove the Secretary as the House’s presiding officer. Because the Minnesota Constitution establishes a quorum as 68 members, no quorum existed when only 67 members were present.

In establishing the legislative branch, the state constitution left the legislature to decide how many members would be in each house, but provided that “[a] majority of each house constitutes a quorum to transact business.” Minn. Const. art. IV, §§ 2, 13; *see also* Minn. Stat. § 2.021 (establishing that House has 134 members). The Court must thus interpret “majority of each house.” The plain language, other parts of the constitution, and other persuasive sources all reflect that the phrase means the entity as a whole (i.e., 134 members). Properly construed, a quorum requires 68 members.

³ The Secretary recognizes that, with a quorum present, the House could elect Representative Demuth as speaker. This petition is limited to the circumstances in which she currently purports to be the House’s presiding officer. Also not before the Court is how many votes are necessary to take certain actions once the House has a quorum.

1. The constitution establishes a quorum as 68 members.

Interpreting the constitution begins with the plain text. *Schroeder*, 985 N.W.2d at 536. Article 4, section 13 of the Minnesota Constitution states: “A majority of each house constitutes a quorum to transact business. . . .” No appellate court in Minnesota has had occasion to interpret the word “quorum” or “majority of each house” in the constitution.

By saying the required majority is “of each house,” the plain text of the state constitution makes clear that it signifies all potential members of the house. That is true for at least three reasons. First, the word “house” signifies the full institution. Section 13 does not refer to members or officers—individuals who can be present, disqualified, or indisposed for any reason—but to the legislative body itself. And the constitution further provides that “[t]he number of members who compose the senate and house of representatives shall be prescribed by law.” Minn. Const., art. IV, § 2. Current law prescribes that the House of Representatives is composed of 134 members. Minn. Stat. § 2.021. Those two provisions combine to make clear that a majority is 68 members.

Second, when used similarly in other parts of the state constitution, the word “house” refers to the full constitutional body, which necessarily encompasses all potential members. *See State v. Beganovic*, 991 N.W.2d 638, 645 (Minn. 2023) (recognizing that when two provisions were enacted at the same time, they can both be considered in determining the plain meaning). For example, section four provides: “The governor shall call elections to fill vacancies in either house of the legislature.” Minn. Const., art. IV, § 4. Likewise, section twelve notes: “Neither house during a session of the legislature shall adjourn for more than three days,” except in limited circumstances. *Id.* § 12. And section

fifteen provides: “Both houses shall keep journals of their proceedings.” *Id.* § 15. None of these uses of the term “house” make sense if conceived of as only part of the full legislative body.

Third, this Court has interpreted other provisions of the constitution that require a certain proportion of the “house” to include all potential seats in the body. For example, the Minnesota Constitution permits the legislature to override a Governor’s veto only if approved by two-thirds of each “house.” *See id.* § 23. This provision requires a two-thirds vote of the total membership of each house. *See State ex rel. Eastland v. Gould*, 17 N.W. 276, 277 (Minn. 1883) (explaining that a constitutional provision requiring the “legislature” to provide a “two-thirds vote” meant such a vote from “all of the members thereof” and not the “vote of two-thirds of the members present.”). Article IV, section 19 also requires “two-thirds of the house” to waive the requirement that bills be reported on three different days. This Court has held that this language requires approval from “two-thirds of the whole membership of the house.” *State v. Wagner*, 153 N.W. 749, 750 (Minn. 1915). The descriptions from this Court—“all of the members thereof” and “whole membership”—use broad and complete language that cannot be construed to exclude temporary vacancies.

In contrast, in other sections, the drafters of our constitution referred to a portion of the house as a portion of the legislators—the real people who may be present, absent, disqualified, or indisposed for any number of reasons. For example, section 22 states: “No law shall be passed unless voted for by a *majority of all the members elected* to each house of the legislature.” Similarly, article 8, section 1 states: “The house of representatives has

the sole power of impeachment through a concurrence of a majority of *all its members*.” And Article 9 provides: “A majority of the members elected to each house of the legislature may propose amendments to this constitution.” Regardless of what those other sections mean, the drafters of the constitution chose different language when determining how the house could function. A “majority of [the] house” must be present, and that cannot simply be a majority of available or present members, because then the drafters would have used other language. The house means the whole body. *See State ex rel. Eastland v. Gould*, 17 N.W. 276, 278, 31 Minn. 189, 192 (Minn. 1883) (reasoning that a “majority vote” in the constitution means “a majority of all the members thereof”).

Other persuasive sources support interpreting the phrase “majority of each house” as 68 seats (when the House is defined as 134 seats). Mason’s Legislative Manual identifies the quorum as a majority of the assembly’s potential seats. *Mason’s Legislative Manual*, § 501 (recognizing that “the number of which such assembly may consist and not the number of which it does in fact exist, at the time in question, is the number of the assembly, and the number necessary to constitute a quorum is to be reckoned accordingly”).

The common understanding of the institution has been that it takes 68 to make a quorum. For example, the House’s own non-partisan staff published an explanation of its law-making powers and processes, which notes that two-thirds of the house means two-thirds of the total membership (or at least 90 votes of the 134). *Making Laws: Review by the Governor*, available at https://www.house.mn.gov/hrd/pubs/ML5_GovReview.pdf (Sept. 2023). Plus, in recounting a prior dispute among political parties, a former speaker of the Minnesota house similarly mentioned that 68 members were required for a quorum.

ROD SEARLE, MINNESOTA STANDOFF: THE POLITICS OF DEADLOCK 70 (1990).

In short, the plain language of the Minnesota Constitution requires that 68 members of the House be present to conduct business. Language from this Court’s previous opinions and from our state’s history confirm that understanding.

2. The House lacked a quorum on January 14.

Only 67 members were present in the House on January 14. Because the constitution requires 68, the House lacked a quorum.⁴

B. Without a Properly Elected Speaker, the Secretary Remains the House’s Presiding Officer.

The House must have a quorum to transact business. Minn. Const. art. IV, § 3. This includes electing a speaker. Minn. Stat. § 3.06, subd. 1 (2024). Without a quorum, the present members may only meet and adjourn. *Palmer*, 182 N.W.2d at 183. Members of a legislative body cannot usurp the power given to the House as a body to elect a speaker. *Id.* at 186 (holding that officer could not control organization of legislative body by arbitrarily ignoring constitution and statutes); *see also Gunn*, 32 P. at 475-76, 484 (holding that, without quorum, members claiming to act as House did not validly elect speaker and observing that allowing less than quorum to act would make it “impossible to organize or conduct a free legislative government according to constitutional or orderly methods”).

⁴ In determining whether the legislature complied with the constitution, the Court follows the “journal rule” and looks to the record in the appropriate legislative journal. *State ex rel. Foster v. Naftalin*, 74 N.W.2d 249, 187 (Minn. 1956). The Court may therefore rely on the reflection of 67 members in the House Journal once it is published.

Because the House lacked a quorum on January 14, any action taken was invalid and the House has not properly elected a speaker of the house. Without a speaker, the plain language of section 5.05 establishes that the Secretary remains the presiding officer: At the beginning of a legislative session, “[t]he secretary of state shall . . . preside until a speaker is elected.” The Secretary has had this authority for more than 160 years. *E.g.*, Minn. Stat. ch. 3, § 7 (1863). Although the law permits the oldest present member of the House to preside in the Secretary’s absence, the Secretary was physically present and the House was adjourned when he purported to preside. Minn. Stat. § 3.05 (2024); *see also id.* § 3.055, subd. 1 (2024) (providing that House meetings must be noticed and open to public). Section 3.05 does not give the oldest member present authority to usurp the Secretary’s authority and independently convene the House at will. And regardless, no quorum existed. The House cannot elect a speaker without quorum. Because the House has not yet had a quorum that would enable it to elect a speaker, the Secretary remains the House’s presiding officer.

CONCLUSION

The Court should issue a petition for a writ quo warranto. The Minnesota Constitution requires 68 members as a quorum to transact business. Because the members of the House lacked this constitutionally required quorum on January 14, Representative Demuth has not properly been elected speaker and the House cannot transact business. Until a quorum is present and a speaker is properly elected, the Secretary remains the House’s presiding officer and his role may not be usurped.

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