STATE OF MINNESOTA
IN SUPREME COURT
No. A25-0068

Melissa Hortman, Jamie Long, Athena Hollins,

Petitioners,

v.

Lisa Demuth, Harry Niska, Paul Anderson,

Respondents.

REPLY MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF QUO WARRANTO

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I. THIS COURT CAN AND MUST RESOLVE THIS CONSTITUTIONAL DISPUTE.

The Court's authority to decide this case is well settled. Although Respondents dismiss *State ex rel. Palmer v. Perpich*, the Court's opinion in that case addressed the very issue at hand here—this Court's authority to determine "whether [an] organization of a branch of the legislature has been made in violation of the constitution." 182 N.W.2d 182, 184-85 (Minn. 1971) (quoting 81 C.J.S. § 30). The Court concluded that, "no matter how much [it] would desire to avoid it," it had the power to determine whether the lieutenant governor had authority to cast the deciding vote regarding the organization of the Senate and, because he had no such authority, that the purported selection of the secretary of the Senate was invalid. *Id.*

The circumstances of this case are remarkably similar. Petitioners ask the Court to resolve a single question—did a quorum, as defined in Article IV, Section 13 of the Minnesota Constitution, exist in the House of Representatives on January 14, 2025? If it did not, all actions purportedly taken on January 14 and thereafter must be held invalid.

Contrary to Respondents' assertions, this case is not about the propriety of the Republican's purposed choice of a Speaker or a mere matter of "parliamentary procedure" that may be set or changed by rule or custom. Rather, this case addresses compliance with the constitutionally mandated prerequisite for conducting legislative business. Moreover, resolution of this dispute will not open the door to this Court's involvement in the minutiae of the legislative process as Respondents assert. This case is limited to the narrow,

threshold issue of whether the legislature had the constitutional authority to transact any business when it met on January 14, 2025. Once the Court determines whether the required number for a quorum is fixed at 68, or can vary based on circumstances, it can safely be presumed that the Court will not be called upon repeatedly to help count members.

The issue raised by the Petition is not materially different from the question of whether a bill has been lawfully enacted, an issue which this Court has addressed on numerous occasions. *See Knapp v. O'Brien*, 179 N.W.2d 88, 95 (Minn. 1970) (holding that bill passed on day prescribed for adjournment was unconstitutional under Article V, § 22); *Bd. of Sup'rs of Ramsey Cnty v. Heenan*, 2 Minn. 330, 334 (1858) ("If an act fails to receive the requisite number of affirmative votes . . . it is as fatally defective as if it had failed to receive the sanction of the executive."). Nor is it materially different than this Court determining how many votes it takes to override a veto. *See State ex rel. Eastland v. Gould*, 17 N.W. 276 (Minn. 1883). This is a straightforward matter of constitutional interpretation, and it is the province and duty of the Court to address and answer these questions of law.[1] *See Heenan*, 2 Minn. at 332 ("[The Constitution] commands the performance of no act by

[1] Respondents' citation to *Ninetieth Minnesota State Senate v. Dayton*, 903 N.W.2d 609 (Minn. 2017), is unpersuasive. In that case, the Court was able to avoid answering a political question regarding whether the Governor's veto improperly denied funding to the legislature for political reasons, because the Court found that the legislature had sufficient funding in its reserves to continue operating regardless of the veto. *Id.* at 624-25. The Court specifically said that the decision "should not be read to foreclose the possibility of a judicial remedy in a different situation." *Id.* at 625. In the present case, there is no alternative solution; the Court must determine what constitutes a quorum. The Court does not have to resolve the remaining political disputes between the Petitioners and Respondents (which will remain regardless of how this case is resolved), but only needs to interpret Article IV, Section 13 of the Minnesota Constitution, which is within its province and authority to do.

the legislature, but declares that if they do act, that action shall be in a certain manner, and within prescribed boundaries.").

II. PETITIONERS HAVE STANDING.

In arguing that Petitioners lack standing, Respondents present a simplistic and inaccurate characterization of Petitioners' allegations. Petitioners' claim is not merely that they have been deprived of the opportunity to represent the interests of their constituents. Rather, Petitioners assert that Respondents' unlawful actions have prejudiced their ability to advance legislation by calling into question the legitimacy of *every action* taken by the House following the unsanctioned and unlawful declaration of a quorum, including but not limited to the purported election of a Speaker.

Petitioners and all Minnesotans need to know whether the House has been and is lawfully convened, and only a decision of this Court can provide the answer. As the leaders of the DFL party in the House and duly elected members of the legislature, the Petitioners have a personal interest in ensuring that the actions taken by this legislative body are lawful and valid.

III. PETITIONERS HAVE NOT ENGAGED IN ANY MISCONDUCT.

This Court can answer the legal question of what constitutes a quorum under Article IV, Section 13 of the Minnesota Constitution without accepting Respondents' invitation to assign blame for the manner in which the question came before it. The bottom line is this—rather than seek guidance from the Court regarding the proper application of the quorum requirement, Respondents unlawfully declared they had a quorum on January 14, 2025, in order to seize control of the House of Representatives by purporting to elect the Speaker

and establish committee organization.[2] Respondents were well aware that the Secretary of State intended to adjourn the session if only 67 members were present; he explained this fact in correspondence dated January 10 and 13.[3] Nevertheless, Respondents charged ahead with their effort to take control of the House with their apparent, and likely temporary, advantage.

In all events, the actions that led to January 14, 2025, were in the nature of well-trod parliamentary maneuverings that do not amount to legal misconduct.[4] Ultimately, the question of whether the current body purporting to act as the House of Representatives is acting without legal authority is a question that impacts not just Petitioners, but the entire state of Minnesota, and is one that should be resolved by this Court.

IV. THE HOUSE DID NOT HAVE A QUORUM ON JANUARY 14.

A. A Quorum Requires a Majority of the Entire Body of the House.

Constitutional interpretation begins with an examination of the plain language of the provision at issue. *Schroeder v. Simon*, 985 N.W.2d 529, 536 (Minn. 2023). The plain

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[2] Respondents make a critical factual misstatement in their brief on page 6 when they assert that Secretary of State Steve Simon "left" the House Chamber on January 14, 2025. Although the Secretary left the rostrum, he did not leave the Chamber. This distinction is important, because under Minn. Stat. § 3.05, only in the *absence* of the Speaker can the "oldest member present" act in the officer's place. Because the Secretary never left, Respondent Anderson never had authority to act in his place.

[3] Letter from Steve Simon to Reps. Demuth and Hortman (Jan. 10, 2025), https://www.sos.state.mn.us/media/6347/january-10-2025-letter-to-representatives-demuth-and-hortman.pdf; Letter from Steve Simon to Reps. Demuth and Niska (Jan. 13, 2025), https://www.sos.state.mn.us/media/6348/january-13-2025-letter-to-representative-demuth-and-representative-niska.pdf.

[4] Denying a quorum to prevent legislative action is by no means uncommon. *See* Peverill Squire, Quorum Exploitation in the American Legislative Experience, Studies in American Political Development (Oct. 2013).

language controls when it is clear and unambiguous. *Snell v. Walz*, 6 N.W.3d 458, 467 (Minn. 2024). Only if the language is ambiguous, does the Court consider other interpretative tools. *Id.*

Article IV, Section 13 of the Minnesota Constitution provides that "[a] majority of each house constitutes a quorum to transact business." Respondents and amici each graft additional language on to the constitutional text and assert that a quorum consists of "a majority ***of the current members*** of each house." *See* Respondents' Br. at 23-24 (emphasis added); Amicus Br. at 4-5. But Article IV, Section 13 does not refer to a majority ***of the members*** or ***current members*** of each house; it simply refers to "a majority of each house." Accordingly, determining whether a quorum exists requires further review of the constitutional text to understand what is meant by "a majority of each house."

Article IV, Section 2 provides that "[t]he number of members who compose the senate and house of representatives shall be prescribed by law." Accordingly, "a majority of each house," in the plain and clear constitutional sense, means a majority of the number of members prescribed by law; nothing more and nothing less. By statute, "the house of representatives is composed of 134 members." Minn. Stat. § 2.021. This means that a quorum of the Minnesota house of representatives is a majority of 134 members. The language is clear and unambiguous and compels a single, inescapable conclusion: a quorum of the Minnesota house of representatives is 68 members which is "a majority of [that] house" as defined in the Minnesota Constitution.

This interpretation is consistent with the Florida Supreme Court's interpretation, more than 150 years ago, of *identical* language in the Florida constitution, which, at the

time, provided that "a majority of each House shall constitute a quorum to do business . . . . " *Opinion of Justices*, 12 Fla. 653, 673-74 (1868) (quoting Fla. Const. art. IV, § 8 (1868)). The Florida Court held that "[t]he meaning of the word 'House' . . . does not depend on . . . contingencies. It has a fixed meaning under all circumstances, which is, the entire number of which it *may be composed*, and a constitutional quorum must be a majority of that number." *Id.* at 673; *see also Opinion of the Justices*, 251 A.2d 827, 827 (Del. 1969) (holding that the phrases "a majority of each House" and "a majority of all the members elected to each House" both mean "a majority of the number of members of that House prescribed by law, irrespective of whether or not one or more vacancies have occurred by reason of death, resignation or otherwise."); *Lymer v. Kumalae*, 29 Haw. 392, 412 (1926) (similar).[5]

The same result is compelled here. Minnesota law sets the membership of the House at a fixed number—134—and this is the number against which a quorum must be measured. This interpretation is not only loyal to the plain language of the Minnesota Constitution, it ensures that *at least a majority of all Minnesotans* are represented in the legislature before it takes any official action.

[5] The most updated version of *Mason's Legislative Manual* also confirms that the *majority* of legislative bodies follow the rule established in the Minnesota Constitution that "the number of which such assembly *may* consist and not the number of which it does in fact consist, at the time in question, is the number of the assembly, and the number necessary to constitute a quorum is to be reckoned accordingly." *Mason's Legislative Manual* § 501 (2020).

B. *Peterson* does not compel a different result.

Respondents do not apply the plain language of the Minnesota Constitution and instead rely on a flawed application of this Court's decision in *State ex rel. Peterson v. Hoppe*, 260 N.W. 215 (Minn. 1935), to assert that this Court should conclude that the number of House members required for a quorum may vary based on vacancies which may occur from time to time. But *Peterson* involved the interpretation of different text to resolve a different issue about a different government body. It is neither dispositive nor particularly instructive here.

Peterson involved a petition for a writ of quo warranto challenging the Minneapolis City Council's appointment of an alderman to fill a vacancy that had decreased the seated membership on the Council from 26 to 25. *Id*. at 216-17. The relevant charter provision required an "affirmative vote of a majority of all members of the City Council" to fill the vacancy. *Id*. During a meeting at which all 25 remaining aldermen were present, 13 voted in favor of the respondent. The Court upheld the appointment, relying extensively on case law that distinguished between the phrase "a majority of all members"—which referred only to currently seated members—and "a majority of all members elected"—which referred to the total number of a fully constituted body, including vacant seats. *See id*. at 217-19. Respondents argue that, under *Peterson*, the distinction between these terms is dispositive because the phrase "[a] majority of each house," as used in Article IV, Section 13, is equivalent to "a majority of the members of each house."

First, as should be obvious, "each house" and "the members of each house" are different phrases and should be given different meanings. As the Court recognized in

Peterson, words like "board" or "house" are regularly used to refer not only to the members of the body, but also to the "abstract" "legislative creation" or "corporate entity." 260 N.W. at 219 (quoting *Bd. of Comm'rs v. Town of Salem v. Wachovia Loan & Tr. Co.*, 55 S.E. 442, 443-44 (N.C. 1906)). The Constitution's framers clearly knew how to refer to the individual members of the legislature when they intended to do so, repeatedly using the terms "members" and "members elected" throughout Article IV. In context, Section 13 is best understood to use the term "house" in the abstract sense. *See Torgelson v. Real Property Known as 17138 880th Ave.*, 749 N.W.2d 24, 27 (Minn. 2008) ("[I]t is presumed that if the Constitution's authors used two different words, they intended two different meanings."). As defined in Article IV, Section 2, the House does not simply consist of "members," but rather of a "number of members" that is "prescribed by law." Read alongside this provision, the most natural interpretation of Section 13 is that it refers not to a majority of each house's current "members" but rather to a majority of the "number of members" that is "prescribed by law."

Second, *Peterson* does not create the sort of broadly applicable and formulaic rule Respondents advocate, but instead interprets the text of a specific charter provision in a specific context. As Respondents acknowledge, this Court has elsewhere recognized that by requiring a vote of "two-thirds of that house" to override a veto, Minn. Const. art. IV, § 23, the Constitution requires a supermajority of the total number of seats in the relevant house. *See Eastland*, 17 N.W. at 277; *see also Mo. Pac. Ry. Co. v. Kansas*, 248 U.S. 276, 285 (1919) (discussing *Eastland* and concluding that "the decision in that case was that . . . the two-thirds vote necessary to override a veto was a two-thirds vote of the same body");

Respondents' Br. at 34-35. Given the similarity between Section 23's use of "that house" and Section 13's use of "each house," there is no justification for reaching a different result here. In their attempt to dismiss *Eastland* as a one-time departure from the rule embodied in *Peterson*, Respondents largely ignore the relevant text of the Minnesota Constitution.

Third, the Court in *Peterson* made clear that its decision was driven by the purpose for which the charter provision was enacted: to allow the City Council to fill a vacancy promptly when there was no dispute that a quorum was present. *See Peterson*, 260 N.W. at 220. That policy justification—which presumes the existence of a properly constituted legislative body—does not apply here, where it is disputed whether the House may act at all. Far more salient in this case is the interest in ensuring that, in Minnesota's representative democracy, a majority of the state's legislative districts are represented in the chamber whenever the House conducts business.

C. Respondents' Other Authorities Are Non-Binding and Unpersuasive.

Respondents' remaining authorities are unpersuasive, and in any event, non-binding. With respect to the cases cited on pages 26 and 27 of Respondents' brief, they are inapplicable for the same reason as *Peterson*: they address language that is not used in Minnesota's constitutional quorum provision. Specifically, they involve a quorum or voting requirement that refers to a proportion of the "members" or "members elected" of a body, rather than the body itself. *See* Respondents' Br. at 26-27.

In *Croaff v. Evans*, in addition to addressing dissimilar language ("all *members*"), the Court also addressed an issue of whether a recusal should reduce the total membership for purposes of calculating a voting proportion. 636 P.2d 131, 136 (Ariz. Ct. App. 1981).

In holding that it should, the court relied on the public policy concern that a contrary decision could make public officials hesitant to fulfill their obligation to recuse under appropriate circumstances; an issue the Court obviously need not grapple with in this case. *Id.* at 138.

The North Carolina case of *Board of Commissioners of Town of Salem v. Wachovia Loan & Trust Co.*, involved a question of whether a town board of commissioners had acted with the requisite three-fourths majority. 55 S.E. 442, 443-44 (N.C. 1906). In interpreting the language "majority of the entire board," the court discussed the two potential meanings of the term "board" noted above—one being the "corporate entity, which is continuous," and "the other referring to its members, the individuals composing the board." *Id.* The Court in that case found that, as used in the specific charter provision at issue, the phrase "entire board" had the latter meaning—and thus could account for vacancies. *Id.* at 444. In this case, the use of "a majority of each house" in Article IV, Section 13 of the Minnesota Constitution, better aligns with the first meaning the North Carolina court described—the abstract, continuous entity, which has a fixed number of members, a majority of which must be present in order for there to be a quorum.

With respect to the Respondents' comparisons to the United States Constitution, the Florida Supreme Court's *Opinion of Justices*, referenced above, contains a helpful discussion distinguishing the United States Constitution and how the U.S. House and Senate have determined the meaning of a quorum. 12 Fla. at 669-70. The Court observed that the U.S. House is "composed of members *chosen* every second year by the people of the several states," whereas the Florida Senate (the body at issue in the case), was set at a

specific number by law: "There shall be twenty-four Senatorial Districts." *Id.* at 669. The Court noted that the U.S. Representatives are *chosen* every two years when it explained how the House proceeded to do business during the civil war when several states did not send representatives to Washington. *Id.* at 669-70. Quite simply, because those Representatives had not been *chosen*, they did not count towards a quorum. By contrast, because the number of Florida Senators were set by law, that was the number against which a quorum needed to be measured, regardless of any vacancies or other contingencies. *Id.* at 672. Similarly, because the number of representatives for the Minnesota House is set by law, the number required for a quorum cannot vary depending on how many members are currently elected, seated, or "chosen."

D. The Record of the Debates at the Constitutional Convention is Vague, At Best.

Respondents' reliance upon a brief debate from the Constitutional Convention sheds little light on the issue. This Court has cautioned against relying on the Constitutional Convention to interpret the language in the Constitution, describing it as "somewhat of a mess." *State v. Lessley*, 779 N.W.2d 825, 838-40 (Minn. 2010) (citation omitted). This is particularly relevant here because the language of the Constitution is clear and unambiguous. *See Kahn v. Griffin*, 701 N.W.2d 815, 825 (Minn. 2005) (the court will look "to the history and circumstances" at the time of framing and ratification only if the language is subject to more than one reasonable interpretation). In any event, the discussion did not touch on the issue of how a quorum would be determined in the face of a vacancy, and the reference to members "sworn in" simply cannot be dispositive of this

issue, when the record reflects no discussion regarding how to handle such contingencies. Given the Court's previous cautions regarding the usefulness of the Convention documents, and the lack of discussion regarding the issue at the heart of this case, the Convention debates should not be relied upon to interpret the language at issue.

E. Public Policy Supports Petitioners' Interpretation.

Respondents assert that there is no sound public policy basis for Petitioners' interpretation of Section 13. Respondents' Br. at 36-37. They are wrong, and the Court need look no further than the circumstances that have brought the parties to the Court to understand the public policy basis for fixing the constitutional quorum requirement at 68 members. Under Article IV, Section 6, the House has the power to judge the election returns and eligibility of its own members, a process to which the courts may only act in an advisory capacity. *See Schiebel v. Pavlak*, 282 N.W.2d 843, 848 (Minn. 1979). One can imagine an abuse of that power whereby one party finds that enough members of the other party are not qualified to hold the office of representative at the start of a legislative session to claim a majority to which it was not elected, and begins governing under a quorum of less than 68 due to the number of vacancies that it willfully created. This is not so different from what is occurring this session, where a trial court issued its advisory opinion concluding that one DFL member was not eligible to hold the office, and the Respondents are threatening to refuse to acknowledge the election of a second member of the DFL party despite a trial court order finding that he won the election.[6]

[6] *See Wikstrom v. Johnson*, Ramsey County Dist. Ct., No. 62-CV-24-7378, Order (Dec. 20, 2024); *Paul v. Tabke*, Scott County Dist. Ct., No. 70-CV-24-17210, Order (Jan. 14, 2025).

The fundamental policy reason establishing the quorum requirement of at least 68 members is that by law, Minnesotans are entitled to be represented by 134 members in the House of Representatives. It should not be the case that a vacancy due to death, disqualification, resignation or any other reason, would allow the House to conduct business on behalf of the entire state with fewer than half of the total members authorized by law to represent all Minnesotans. In light of the legislature's unfettered authority to judge the eligibility of its own members, there must be some limiting mechanism to rein in any tendencies toward undemocratic abuses of power. *See Clark v. North Bay Village*, 54 So.2d 240, 242 (Fla. 1951) ("A temporary hiatus is preferable to creating a condition whereby two of the remaining councilmen, upon their caprice, whim or fancy, can govern the City until there may be another city election . . . .") (citing *Opinion of Justices*, 12 Fla. 653 (1868)). The requirement of a quorum consisting of a majority of all potential representatives serves that purpose.

CONCLUSION

For the reasons stated herein and in the Petition, this Court should grant the Petition for Writ of Quo Warranto, and issue an Order granting the relief requested therein.

Dated: January 22, 2025

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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 **3,859** words. This brief was prepared using Microsoft Word 365.

s/David J. Zoll
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