STATE OF MINNESOTA
IN SUPREME COURT
A25-0066
A25-0068

Steve Simon, Minnesota Secretary of State,

Petitioner,

vs.

Lisa Demuth,

Respondent (A25-0066).

Melissa Hortman, et al.,

Petitioners,

vs.

Lisa Demuth, Harry Niska, Paul Anderson,

Respondents (A25-0068).

PETITIONER SIMON'S REPLY MEMORANDUM SUPPORTING WRIT QUO WARRANTO

INTRODUCTION

The legal issue presented in this petition is narrow and directed at interpreting the state constitution: whether vacancies in the House's membership reduce the majority needed to conduct business. Although no Minnesota court has had occasion to consider this question, the constitution's plain text and the legislature's norms show the answer must be "no." In addition, every state high court that has considered the precise question has answered it in the negative. Respondents' efforts to defeat jurisdiction by mis-stating the legal issue and arguing about the constitutionality of longstanding state statutes are inappropriate and unavailing.

ARGUMENT

I. THE LEGAL ISSUE PRESENTED IS NARROW AND APOLITICAL.

The central legal issue presented in the consolidated petitions is: whether vacancies reduce the “majority of each house” required to conduct business in article 4, section 13, of the Minnesota Constitution. Respondents concede this. Respts’ Br. 23. Nevertheless, in an apparent effort to manufacture a “political question” and induce concerns about judicial intrusion into legislative functions, Respondents repeatedly characterize the legal issue in this case in different terms. *E.g.*, *id.* at 1 (“Petitioners want this Court to strengthen their political maneuvers . . . this attempt at a hostile takeover of the House”), 7 (“Petitioners want this Court to choose the Speaker of the House of Representatives”).

This case is not about political ramifications. Rather, it is about an important constitutional issue that the Court must decide to ensure that legislative actions are valid. The Court’s decision will bind all people, regardless of political affiliation, both now and in the future. Respondents cannot invoke politics to prevent this Court from carrying out its constitutional duty to interpret the constitution. Finally, while the Court has not yet issued its full opinion, its recent order in *Minnesota Voters Alliance v. Walz* suggests that the Court may have largely decided some of the underlying issues affecting the current petitions.

A. Interpreting the Constitution Does Not Present a Political Question.

Respondents argue that this case presents a nonjusticiable political question. *Id.* at 7-12. It does not. The Court must decide only the narrow legal question identified above. Answering this question does not intrude on the legislative branch’s authority. The

legislative branch has broad discretion to act within its constitutional authority. But the question before the Court goes to the heart of whether the constitution vested the House members present on January 14 with any authority to conduct business. Left unanswered, a small minority of legislators could disregard the constitution's quorum safeguard and purport to act for the entire body.

1. The political question doctrine is narrow and does not prevent the Court from ensuring that the legislature acts constitutionally.

Whether a question is justiciable is a question of law. *Cruz-Guzman v. State*, 916 N.W.2d 1, 7 (Minn. 2018). Our government has three distinct branches: legislative, executive, and judicial. Minn. Const. art. III, § 1. While the branches cannot intrude on the authority vested in other branches, the judiciary has authority to adjudicate claims and to say what the law is. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803); *Cruz-Guzman*, 916 N.W.2d 1, 9-10 (Minn. 2018). The Court's role is to interpret the constitution, "however disagreeable or difficult" the question before it is. *Rhodes v. Walsh*, 57 N.W. 212, 213 (Minn. 1893).

The political-question doctrine is narrow. Separation-of-powers principles do not give any branch of government carte blanche to preclude judicial review of legal issues. *Rippe v. Becker*, 57 N.W. 331, 336 (Minn. 1894). The constitution constrains the legislature. *Id.*; *Bd. of Supervisors of Ramsey Cnty. v. Heenan*, 2 Minn. 330, 332 (1858) (characterizing constitution as "system of limitations and restrictions" on legislature). The Court has authority to interpret the constitution and determine whether the legislature complied with it. *Cruz-Guzman*, 916 N.W.2d at 9-10. When the legislative branch violates

the constitution, the judicial branch must declare so. *Rippe*, 57 N.W. at 336; *see also Snell v. Walz*, 6 N.W.3d 458, 469 (Minn. 2024) (emphasizing that, because "it is a *constitution* we are expounding," Court will not be inflexible when distinguishing between branches (quotation omitted)).

Factors in assessing whether a question is a political question include whether the court is presented with a yes-or-no question and whether the judiciary must devise particular policies to remedy a violation. *Cruz-Guzman*, 916 N.W.2d at 10. Applying these principles, the Court has reviewed a wide range of legislative action for compliance with the constitution. Particularly relevant here, the Court has previously reviewed whether the Minnesota Senate was organized in compliance with the Minnesota Constitution. *State ex rel. Palmer v. Perpich*, 182 N.W.2d 182, 184-85 (Minn. 1971). It has also reviewed whether the legislature complied with the constitution's Education Clause and whether a ballot question accurately described a proposed constitutional amendment. *Cruz-Guzman*, 916 N.W.2d at 9 (Education Clause); *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 643-44 (Minn. 2012) (ballot question). And it has reviewed whether the constitution precluded serving a legislator with a civil summons during a legislative session. *Rhodes*, 57 N.W at 212-13.

2. The petitions present a justiciable yes-or-no question outside legislative discretion.

Against this backdrop, this case does not present a political question for several key reasons. First, the constitution did not leave to the legislature to decide what constitutes a quorum. While expressly leaving other matters to legislative discretion, the constitution

prescribed a quorum as "a majority of each house." *Compare* Minn. Const. art. IV, § 13 (prescribing quorum) *with id.* § 2 (directing that size of house and senate "shall be prescribed by law"). Second, determining the case presents only a narrow yes-or-no question: whether vacancies reduce the "majority" needed to conduct business. Third, resolving the question does not require the Court to delve into any policy matters vested with the legislative branch. Holding that no quorum existed would essentially only re-set matters to the status quo that existed when the Secretary adjourned the January 14 meeting. He would remain presiding officer until a quorum is present and the House elects a speaker.

Accepting Respondents' position that the Court cannot interpret the constitution would have grave consequences. Without a check on the constitutional requirement for a quorum, any number of legislators could convene and declare a quorum. This would thwart the clear constitutional intent that a majority of the House be present to transact business on behalf of the body as a whole. Similarly, Respondents' suggestion that the Court would open the door to judicial review of parliamentary minutiae is unfounded. Respts' Br. 7-9, 11-12. The Court must address only a narrow legal question about the meaning of the constitution.

B. The Secretary's Position Is Consistent with Legislative Practice.

Further decreasing any concerns about judicial usurpation of legislative authority is the consistency of the Secretary's position with legislative tradition. Counsel can find no occasion that quorum was found at the beginning of a legislative session with 67 or fewer members (out of 134). The House's own rules point to Mason's Legislative Manual as governing in cases where there is a gap in the rules. Minn. House of Rep., 93d Leg.,

Permanent Rules of the Minnesota House 2023-24 5.04 ("'Mason's Manual of Legislative Procedure' governs the House in all applicable cases if it is not inconsistent with these Rules, the Joint Rules of the Senate and House of Representatives, or established custom and usage."), https://perma.cc/P8GQ-YQVX.[1] For example, the 1978 general election resulted in a tie between Democrats and Republicans, with one representative-elect subject to an election contest. In recounting the various party negotiations at the time, then-Representative Rod Searle (who went on to become Speaker of the House) noted the understanding that the quorum requirement was 68. Rod Searle, *Minnesota Standoff: The Politics of Deadlock* 70 (1990).

C. Courts Around the Country Are Willing to Resolve Similar Disputes.

Though no Minnesota court has faced the precise question presented in this petition, courts around the country have, and have found the matter justiciable. *E.g.*, *United States v. Ballin*, 144 U.S. 1, 6 (1892) (determining quorum question); *Buenaventura Esteves Lopez v. Cristino Bernazard*, 10 P.R. Offic. Trans 755, 758-59 (P.R. 1981); *Luse v. Wray*, 254 N.W.2d 324, 328 (Iowa 1977) ("We thus hold that Iowa courts have power to adjudicate substantial claims of deprivation of federal or Iowa constitutional rights by the houses of the Iowa General Assembly in the exercise of the houses' election contest powers…."); s*ee also* cases cited in Part II, *supra*.

Most recently, in *Texas v. Garland*, 719 F. Supp. 3d 521, 575 (N.D. Tex. 2024), the federal court held that a challenge to the existence of a quorum did not present a political

[1] The House Rules do not point to outdated versions of the manual. *But see* Amici Br. 18-20.

question. In that case, Texas claimed that the U.S. House lacked a quorum when passing a law because the House allowed proxy voting to obtain the quorum. Like the respondents here, the defendant argued the issue was a nonjusticiable political question that would otherwise invite "a deluge of future quorum litigation." *Id.* at 574; Respts' Br. 12. The court rejected the concerns as overstated, particularly when federal courts had not entertained a quorum dispute in 130 years. *Garland*, 719 F. Supp. 3d at 574.

D. *Minnesota Voters Alliance v. Walz* May Have Partially Mooted the Petitions.

Although the political question doctrine is not a basis to deny jurisdiction, Petitioner acknowledges that a mootness issue has developed. Since this case started, the Court issued a decision that may affect the underlying legal issues, *Minnesota Voters Alliance v. Walz*, No. A25-0017 (Minn. Jan. 17, 2025) (order). That case involved the timing of a writ for a special election relative to an anticipated vacancy for District 40B. *Id.* at 2. After a district court issued an adverse advisory recommendation in an election contest, the representative-elect notified the Governor that he would not take his seat. *Id.*; *see also* Minn. Stat. § 209.10, subds. 4-5 (2024) (requiring legislative process and providing that any court decision in legislative contest is advisory); *id.* § 209.07, subd. 1 (2024) (exempting state legislative races from courts' authority to invalidate or revoke election certificates in election contests). Based on the anticipated future vacancy, the Governor issued the writ in late December. *Minnesota Voters Alliance*, Order at 2.

During roll call on the opening day of session a few weeks later, and before the House could organize, the clerk pro tem announced that the District 40B seat was "vacant." Minn. House Rep., *Opening Day of the Ninety-fourth Session of the Minnesota Legislature*

at 15:35-40 (Jan. 14. 2025), https://www.house.mn.gov/hjvid/94/898735. Based on information from the Chief Clerk, the Secretary announced that only 133 certificates of election were filed with the clerk's office. The Secretary delivered 134 certificates of election to the Chief Clerk's office. Erickson Decl. ¶¶ 6-7, Exs. 1-2; *see also* Minn. Stat. § 204C.40, subd. 1 (2024) (directing Secretary to deliver election certificates to Chief Clerk, who then gives copies to representative-elects). Because the district court did not (and lacked authority to) revoke any election certificate, the Secretary understands that the clerk's office did not file the District 40B certificate of election because it was assumed the seat was vacant. *Id.* ¶¶ 11-14. It is also the Secretary's understanding that this is why the District 40B seat was announced as vacant during roll call. *Id.*

In reviewing the writ for the District 40B special election, however, the Court recently held that the writ was premature and that the timing in Minn. Stat. § 204D.19, subd. 4, controls. *Minnesota Voters Alliance*, Order at 3. That statute provides that, after a "successful election contest" the Governor may issue a writ 22 days after the first day of the legislative session, unless the House passes a resolution reflecting that it will not review the court's contest decision. Minn. Stat. § 204D.19, subd. 4. If the latter occurs, then the Governor has 5 days to issue the writ. *Id.*

The Court did not decide which timeline in section 204D.19 applies, stating only that "specific dates for the writ's issuance depend[] on any actions by the House." *Minnesota Voters Alliance*, Order at 3. Recognizing that the quorum-related petitions were separately before the Court, the Court declined to address the validity of a contest-related

resolution that members of the House purported to pass on January 14. *Id.* at 3-4 &n.1; Minn. H.J., 94th Leg., Reg. Sess. 8.

Because the Court issued an order with an opinion to follow, the parties lack the benefit of the Court's reasoning. *Minnesota Voters Alliance*, Order 5, ¶ 5. But the Court's decision appears to affect whether a vacancy legally existed when the Secretary called the House session to order on January 14. By concluding that section 204D.19 governs the timing of the writ, the premise appears to be that the representative-elect could not have surrendered his seat before the legislative session and that his election certificate remained valid until the House acted. *See* Minn. Stat. § 209.07, subd. 1 (recognizing that court cannot invalidate election certificate for state legislative office); *Scheibel v. Pavlak*, 282 N.W.2d 843, 850 (Minn. 1979) (explaining that district court's findings and conclusions in election contest do not bind legislative body); *Palmer*, 182 N.W.2d at 186 (recognizing that senate would decide election contest involving senator-elect); Op. Minn. Att'y Gen., 280E, Dec. 31, 1970 (explaining that senator-elect with election certificate could be sworn in and vote on all matters unrelated to election contest, including organizational decisions).

In short, the Court appears to have decided that no vacancy existed when the legislative session began on January 14. If that was the Court's determination, these petitions may be moot. With 134 members, a quorum indisputably requires 68 members.

With only 67 members present, the present members lacked a quorum to elect a speaker or transact any other business.[2]

II. A CONSTITUTIONAL QUORUM MUST BE OF ALL AVAILABLE SEATS.

A. Petitioners' Plain Language Reading Is Confirmed by Every High Court to Consider the Same Text.

Respondents do not dispute that this Court interprets the state constitution by starting with a plain reading of the text. Yet Respondents offer no analysis of the plain text. Respts' Br. 22-37.

As the Secretary established in his opening brief, the constitution's text provides all the definition needed to interpret section 13. That section requires "a majority of each house" and section 2 provides, "The number of members who compose the senate and house of representatives shall be prescribed by law." As prescribed by current law, the House is composed of 134 members. Minn. Stat. § 2.021 (2024). Therefore, a majority of 134 members is required to do business in the House.[3]

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[2] Amici suggest a vacancy existed based on the district court's order in the District 40B election contest, which found the representative-elect ineligible and purported to enjoin him from taking an oath. (*E.g.*, Amici Br. 3.) Respondents did not make this argument. Courts generally will not consider issues raised only by an amicus curiae. *In re Northmet Project Permit to Mine Appl.*, 959 N.W.2d 731, 755 (Minn. 2021). And in any event, as evidenced by the authorities cited above, only the House may make the final determination of eligibility, the district court had no authority to revoke a certificate of election, and the pendency of an election contest does not preclude a representative from being seated until the legislative body resolves the contest.

[3] While the amici curiae offer some textual analysis, they pull individual words from at least six sections of article 4, mixing minimum qualifications for legislators with quorum requirements for doing business. Amicus Br. 3-5.

The only state high courts that appear to have considered the meaning of the same constitutional language—a majority of each house—concur. For example, in 1868—near the time Minnesota's constitution was drafted— the Florida Supreme Court concluded that for quorum purposes, "a majority of the house" means a majority of all potential members. *In re Exec. Commc'n of the 9th of Nov., 1868*, 12 Fla. 653 (Fla. 1868). It reasoned "[t]he meaning of the word "house" . . . does not depend on such 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.

In that same period, and interpreting the same constitutional language, the Kansas high court agreed:

> The constitution of our state ordains that a majority of each house shall constitute a quorum. The house of representatives consists of 125 members; 63 is a majority and a quorum. When a majority or quorum are present, the house can do business; not otherwise. A quorum possesses all the powers of the whole body, a majority of which quorum must, of course, govern. If less than 63 members are present in the house, there is no quorum.

In re Gunn, 32 P. 470, 476 (Kan. 1893).

Finally, in the twentieth century, the Delaware Supreme Court interpreted the same language in its constitution. *Opinion of the Justices*, 251 A.2d 827 (Del. 1969). It too concluded that vacancies could not reduce the number of members required for quorum. *Id.* at 827 ("a majority of each House shall constitute a quorum" is the same as "a majority of all the members elected to each House," and both mean that a quorum is a majority of the members prescribed by law "irrespective of . . . vacancies".)

Even when interpreting other language, states have concluded that vacancies cannot reduce the required quorum. *See*, *e.g.*, *Snider v. Rinehart*, 31 P. 716, 719 (Colo. 1892) (concluding that vacancy on three-member state supreme court did not reduce quorum to fewer than two judges); Okla. Op. Att'y Gen. Nos.82-165, 82-165A, 1982 WL 184257 (June 9, 1982) (opining that Oklahoma constitutional requirement for two-thirds of "all members elected" to each house could not be reduced for vacancies or absences). In other contexts, state courts have recognized that the common law did not allow excluding vacant members. *See State ex rel. Bell v. Cnty. Court of Clay Cnty.*, 92 S.E.2d 449, 451 (W.Va. 1956) (counting vacancies toward denominator when determining majority needed for quorum in political party business); *Seiler v. O'Maley*, 227 S.W. 141, 142 (Ky. Ct. App. 1921) ("The common-law rule as to what constitutes a quorum of a representative body consisting of a definite number of members is that a majority of the authorized membership shall constitute a quorum for the purpose of transacting business.")

In addition, both the Minnesota Legislature and this Court look to *Mason's Legislative Manual* as a persuasive treatise on issues of legislative power. *See Blanch v. Suburban Hennepin Reg'l Park Dist.*, 449 N.W.2d 150, 157 n.1 (Minn. 1989) (Popovich, C.J., concurring) (citing *Mason's* favorably); *State ex rel. Todd v. Essling*, 128 N.W.2d 307, 314 (Minn. 1964) (same, in multiple footnotes). This 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 cases that Respondents cite are inapposite. *E.g.*, Respts' Br. 26-27. Only one interpreted language of a state constitution, but the text differs from that in section 13. *Marionneaux v Hines*, 902 So.2d 373, 378 (La. 2005). The others generally interpret different language in state statutes about how cities or local political bodies can transact business.

To be clear, the Secretary is not taking the position that phrases in the Minnesota Constitution that refer to "majority of all members" or "members elected" necessarily mean a smaller number than all available seats in the House. While the Court does not need to decide the meaning of those phrases in the context of these petitions, and likely should not given the abbreviated briefing and argument schedule, the Secretary's point is only that "the house" must mean at least the same number, if not a greater number, than those phrases, and include any vacant seats.

B. Federal Practice Differs Because the U.S. Constitution Has No Analog to Our Section 22.

Both Respondents and Amici point this Court to evidence that the U.S. House interprets the language in the U.S. Constitution ("a majority of each shall constitute a quorum") as lowering the quorum when vacancies exist. Respts' Br. 28-29; Amicus Br. 14-17. But they ignore the constitutional basis for that difference.

In particular, the U.S. Constitution has no analog to Minnesota's requirement that "No law shall be passed unless voted for by a majority of all the members elected to each

house of the legislature."[4] *Compare* Minn. Const. art. IV, § 22 *with* U.S. Const. art. 1. The Minnesota drafters' emphasis on having a full majority approve every law provides evidence of their intent to insist on majority rule and affects how our Court has interpreted other sections of the constitution. The U.S. Supreme Court recognized that this difference between the U.S. and Minnesota constitutions explains why the federal courts interpret the two-thirds requirement as two-thirds of a quorum, while Minnesota courts interpret it as two-thirds of all members. *Mo. Pac. Ry. Co. v. Kansas*, 248 U.S. 276, 285 (1919).

Just as the Minnesota Constitution's insistence that a majority of all members elected pass a law has influenced how this Court interprets the same constitution's two-thirds requirement, it should influence how this Court interprets the quorum requirement. To honor the clear intent to require true majority rule in Minnesota, the quorum must not fluctuate with vacancies. Otherwise, tens of thousands of Minnesotans will lack representation when the legislature conducts its important work. In addition, there may be an incentive to slow-walk special elections or other methods of filling vacancies, to maintain the lower number for the quorum. That incentive runs afoul of the intent behind the Minnesota Constitution to offer proportional representation to all citizens, and then to ensure that their representatives had to govern by majority.

[4] Legislative leaders have treated 68 as the number required to pass legislation. *See, e.g.*, Minn. H.J., 82d Leg., Reg. Sess. 1773 (Apr. 5, 2001) (noting that bill did not pass because it failed to receive "the constitutionally required 68 votes").

C. Stray Comments from Constitutional Convention Delegates Are Not Persuasive.

Respondents point to the comments of three attendees at the Republican Constitutional Convention to persuade this Court of the intent of over 100 delegates at two competing conventions. Respts' Br. 30-31. But, the comments of the delegate offering the amendment (Rep. Stannard) make clear he was concerned about absences, not vacancies.[5] Even if that were not true, the quotes from these few delegates are unpersuasive for two primary reasons.

First, the Court has cautioned against relying on the convention debates in assessing the drafters' intent. *See State v. Lessley*, 779 N.W.2d 825, 840 (Minn. 2010) (explaining that the debates "are of limited value"). When the delegates met for Minnesota's first (and only) constitutional convention, they split into Republican and Democratic factions, each of which produced their own document. *See id.* at 838.[6] While the Republican faction addressed the distinction between the language in sections 13 and 22 of article IV, the Democratic delegation did not. Ultimately, the two delegations met in a conference

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[5] The issue of absences was also highlighted by this Court as animating some language of the constitution. *Heenan*, 2 Minn. at 333–34 (connecting current section 22 to the problem that "Previous to the constitution, a majority of either house of the legislature was a quorum to transact business; and laws could be passed by a single member voting in the affirmative").

[6] Respondents take umbrage with the Secretary previously noting the quorum discussion was part of the Republican debates. Respts' Br. 31 n. 21. They read too much into the reference. The contentious history surrounding Minnesota's constitutional convention is well known, as is the separate publications of the parties' debates. The Secretary's reference was merely to where the debate occurred, not a commentary on the people having it.

committee that produced a joint constitution. *See id*. at 840 (explaining that the "final constitution resulted from the secret, undocumented compromise committee"). The limited references to these provisions in the constitutional debates do little to establish the intent of the drafters.

Second, this specific exchange shows the dangers of taking the debates out of context. Representative Stannard's proposed quorum amendment arose after a debate, earlier the same day, in which the Republicans struck proposed section 22 from the draft Republican constitution. That section would have required "[a] majority of all members elected to each House . . . to pass every bill or joint resolution." *Debates and Proceedings of the Constitutional Convention for the Territory of Minnesota* 201-02 (St. Paul, G.W. Moore 1858), https://perma.cc/G322-TSXD. Representative Secombe moved to strike that language; he thought it was unusual to require all members elected to pass a bill. *Id.* Representative Stannard pushed back, explaining that the language simply required "a clear working majority of all the members elected to be present." *Id.* The section was ultimately stricken, however, after a confusing discussion in which at least one member seemed to believe that this requirement was unnecessary because the constitution already required a quorum was necessary to conduct business. *Id.* at 202 (Rep. Cleghorn, directing Rep. Stannard to the quorum language). It was only after this section was stricken that Stannard proposed the quorum amendment. *Id.* at 208-09. To be sure, that amendment was voted down. But the language from section 22 that prompted Representative Stannard's amendment ended up in the final constitution. *See* Minn. Const. art. IV, § 13 (1857). In

light of that development, it is difficult to discern what, if any, value to assign to the isolated exchange from a few members of the Republican debates.[7]

D. *State ex rel. Peterson v Hoppe* Is Inapposite.

Respondents place undue emphasis on a 1935 case from this Court interpreting different language from a different governing document with different drafting intent. Respts' Br. 23-37.

In *State ex rel. Peterson v Hoppe*, 260 N.W. 215 (Minn. 1935), the Court addressed involved the number of votes necessary to appoint a successor after one of a city's 26 aldermen resigned. The issue was whether 13 votes of the remaining 25 constituted a "majority of all members" as required by the Minneapolis City Charter. The Court surveyed case law interpreting similar requirements in mostly the municipal and corporate context, before concluding "the better rule is that which permits the governing body to function by a majority of those constituting that body as and when the legislation or other

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[7] Interestingly, the predecessor to the Secretary of State (the Secretary of the Territory) served as temporary chair to organize the constitutional convention, and *both* sides assumed that they needed a quorum of 55 authorized delegates to conduct business. The best evidence for this is from the Democratic debates. After the sides split, the Democrats still (even under their own math) "only had fifty-four members," and thus "needed somehow to recruit one member before they could claim to have a majority of the convention." William Anderson & Albert J. Lobb, *A History of the Constitution of Minnesota* 90 (1921). The Democrats thus didn't even start debate until the ninth day of the convention, which was when its committee on credentials reported that 54 of its members had appropriate credentials, and it had received "unofficial evidence" that a fifty-fifth member had won the popular vote. *Id.*

act takes place." *Id.* at 220.[8] The conclusion was driven in part by the Court's understanding of the voters' intent behind the majority rule, as well as the practical need to ensure the city could continue doing business. *Id.* ("The broad power granted by the amendment adopted in 1932 was intended to expedite the business of electing a successor. Public policy demands that a majority of those remaining should have power to act.")

Peterson is inapposite because it construed language not present in section 13, and it construed a city charter instead of a constitution, with knowledge of voters' intent behind the provision. It is also not persuasive because this Court has not afforded *Peterson* significant precedential weight. Forty years later, this Court reached the opposite result in another municipal fight. *Ram Dev. Co. v. Shaw*, 244 N.W.2d 110 (Minn. 1976). It held that abstentions should not reduce the required two-thirds vote of the full council, and suggested that "the special problems of vacancy" had not been resolved. *Id.* at 147.

III. THE SECRETARY HAS STANDING AND NO EQUITABLE DEFENSES BAR CONSIDERATION OF THE WRIT.

Respondents make much of the fact that the Secretary is not a member of the legislature, to bolster their separation-of-powers theme and suggest that the Secretary overstepped his authority. *E.g.*, Respts' Br. 5-6, 16-18. Respondents further claim that he lacks standing. *Id.* at 16-18. These arguments have no merit. The Secretary seeks only to

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[8] The Court's syllabus is either incorrect, or suggests that the majority changed its decision after drafting the syllabus. The syllabus point states "Where a charter or statute provides that the vote of a majority of the members elected to the council shall be necessary to pass a measure the fact that there are vacancies in office due to death, resignation, or other cause, does not diminish the number of votes necessary to pass such measure." *Id.* at 186.

comply with the law, he has standing to do so, and he has “clean hands” to the extent the issue is relevant.

A. The Secretary’s Role as Presiding Officer Does Not Encroach on the Legislative Branch.

The Secretary does not exercise or claim the power of a legislator. He seeks only to comply with the state constitution and state law in fulfilling the role that the *legislature* has statutorily assigned to him and his predecessors for more than 160 years. *See Snell*, 6 N.W.3d at 470-71 (recognizing that legislative branch may delegate certain powers); Minn. Stat. ch. 3, § 7 (1863). Consistent with state law, his role is limited to convening the House to start the session, appointing a clerk pro tem, determining whether a quorum is present, and presiding until a speaker is elected. Minn. Stat. §§ 3.05, 3.06, subd. 1, 5.05 (2024). Without a quorum, the House cannot elect a speaker and must adjourn. *Palmer*, 182 N.W.2d at 151; *see also* Minn. Stat. § 3.06, subd. 1 (requiring quorum to elect speaker); *Heenan*, 2 Minn. at 333 (recognizing that legislative action taken without constitutional authority is void). The Secretary stayed within his limited authority on January 14. He called the House to order, appointed a clerk pro tem, and, because no quorum was present, adjourned the meeting. *Cf. Palmer*, 182 N.W.2d at 184-86 (addressing lieutenant governor who purported to refuse certificate of election and vote on senate’s organizational decisions).

Respondents cite the House’s authority to determine its own rules and elect a presiding officer. Minn. Const. art. IV, §§ 7, 15. That authority is not at issue here. Once constitutionally organized, the House may of course adopt rules. As to the presiding

officer, the constitution directs that the House "elect its presiding officer and other officers as may be provided by law." *Id.* § 15. The legislature used its constitutional authority to pick a temporary presiding officer: The Secretary. With a quorum, the House could undertake the process of changing the law to appoint a new presiding officer. But, until it does, the Secretary is the presiding officer until the House elects a speaker.

B. The Secretary Has Standing.

For the same reasons, the Secretary has standing. State law expressly provides that a quorum is needed to elect a speaker and that he is presiding officer until the House elects a speaker. Minn. Stat. §§ 3.05-.06, 5.05. Representative Demuth is holding herself out as speaker, and her caucus has prevented the Secretary from carrying out his statutory duties. Erickson Decl. ¶15. The Secretary has standing to ask the Court to determine whether he still holds the role that the law confers.

Respondents attack the Secretary's standing by suggesting that sections 3.05 and 5.05—both of which authorize the Secretary to call the House to order—violate the separation-of-powers doctrine because the constitution does not authorize the Secretary "to exercise any power over or in the House of Representatives." Respts' Br. 16. Alternatively, they claim that the constitution requires the Secretary role to be "purely ceremonial," without the "exercise of any kind of power." *Id.* at 17.

The Court should not consider Respondents never-before-raised constitutional challenge to the Secretary's authority to preside and to make the initial quorum determination. Indeed, just a few weeks ago, Respondents acceded to the Secretary's role. Respondents wrote to the Secretary the day before the legislative session started, noting "it

is proper for a presiding officer to make an initial determination of a quorum." Erickson Decl. ¶ 10, Ex. 4 at 8. Further, Respondents do not cite a single case from this Court that supports depriving the Secretary of his statutory authority to convene the House and to preside until a quorum is reached and a speaker is elected. Instead, Respondents rely on two inapposite federal cases, *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016), and *California v. Texas*, 593 U.S. 659 (2021). The former addressed whether a procedural violation of a federal consumer-protection statute was independently sufficient to confer Article III standing in federal court. The latter involved a federal statute that was no longer enforceable, so there was no injury from governmental action that could be traced to the executive branch. Neither case involved a constitutional officer's enforcement of statutory authority. And even if these cases were somehow relevant, Minnesota courts are "not bound by the standing constraints of Article III of the United States Constitution." *Growe v. Simon*, 2 N.W.3d 409, 499 n.6 (Minn. 2024).

C. No Equitable Defense Bars Consideration of the Petition.

In their final attempt to wrest this case from the Court, Respondents suggest that the Secretary has "unclean hands" that should estop the Court from reviewing his petition. Respts' Br. 3-5, 21-22. This argument has no merit. The Secretary has been transparent throughout the process, and he acted only to comply with the constitution and state law. Disagreement with his interpretation of the constitution is not grounds for invoking the unclean-hands doctrine.

The unclean-hands doctrine is rooted in equity; a court may deny relief when a party seeking relief engaged in unconscionable conduct or acted in bad faith. *Hepfl v.*

Meadowcroft, 9 N.W.3d 567, 572-73 (Minn. 2024); *Johnson v. Freberg*, 228 N.W 159, 597 (Minn. 1929). The doctrine applies only to equitable claims, however, and quo warranto is an action at law. *See Heidbreder v. Carton*, 645 N.W.2d 355, 371 (Minn. 2002) ("doctrine of 'unclean hands' bars a party who acted inequitably from obtaining equitable relief."); *Danielson v Village of Mound*, 48 N.W.2d 855, 861 (Minn. 1951) (noting a writ of quo warranto is not available if equitable relief is otherwise available).

Even if an unclean-hands defense were available here, none of the Secretary's actions come close to approaching that standard. As January 14 approached and the Secretary learned that a quorum issue may arise, he was transparent with the political caucuses' leadership. Contrary to Respondents' assertion, he did not "tak[e] the DFL caucus's side" or attempt to "seize control" of the House. Respts' Br. 4-5. The Secretary independently studied the issue, consulted with non-partisan experts, met with both sides and invited their legal authority, and shared his analysis concluding that a quorum requires 68 representatives. *E.g.*, Erickson Decl. ¶¶ 8-10, Exs. 3-5. Then, when only 67 members were present on January 14, the Secretary did what he had previewed: he found no quorum present and adjourned as required by *Palmer*, 182 N.W.2d at 186.[9] The Secretary was transparent from the outset. A legal disagreement is not evidence of unclean hands.

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[9] Respondents' incorrectly assert that the Secretary then left. Respts' Br. 6. But the Secretary was present during the actions by Rep. Paul Anderson and Rep. Demuth. *Opening Day of the Ninety-fourth Session of the Minnesota Legislature* at 25:40-27:20. There was no "absence of [the] officer" as reflected both by the Secretary having already fulfilled his duty to call the House to order under Minn. Stat. § 3.05 and by his physical presence. But the court need not resolve this factual issue to determine these petitions.

CONCLUSION

The Court should issue 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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