STATE OF MINNESOTA
IN SUPREME COURT
No. A25-0157

Lisa Demuth and Harry Niska,

Petitioners,

vs.

Minnesota Secretary of State
Steve Simon,

Respondent.

REPLY MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF QUO WARRANTO

INTRODUCTION

Petitioner Simon, a member of the executive branch, claims that he has right to unilaterally shut down the Minnesota House of Representatives—and that if he does, House members have recourse. He is badly wrong. Legislators who have been completely foreclosed from all participation in the body to which they were elected plainly have standing to challenge the denial. This Court has long since determined that the presiding officer's authority at the opening of a legislative session is justiciable. And Simon's contention that he has sole and exclusive power in the House until it is "organized" is contrary to the plain text of the Minnesota Constitution.

BACKGROUND

There is no dispute as to the basic facts. Simon has taken the position that, until the House is "organized," no duly-elected and -seated Member has the right to take any action whatsoever in the proceedings of the House. According to Simon, Members may not make any motions—even to adjourn—and may not be recognized by the presider for any purpose. (*See* Simon Br. at 5 ("[H]e would not have entertained any motions because the House lacked a quorum.")

Thus, Simon's attempt to raise factual disputes regarding whether and which motions were properly filed before him (Br. at 3) is completely immaterial. Simon agrees that he is preventing any and all Members of the House from taking any action in the House's meetings.

It is inaccurate, however, for Simon to portray the non-quorum Minnesota House of Representatives as an "unorganized" nonentity that has no practical ability to do anything. (Br. 3.) In fact, the House is in session, its members presented their election certificates, an oath of office was administered, journal entries are being made at each meeting of the House, and House members are being paid.

Finally, the usurpation of power is ongoing in this case. Filed with this reply memorandum is a supplemental declaration of Representative Niska. This declaration demonstrates that, since the Petition was filed, Simon has

continued to undertake the actions that the Petition complains of—and just moments before this filing, again failed to recognize Rep. Niska when he "verbally requested recognition to make my motion." Supp. Niska Aff. ¶ 13 (for video of the incident, see https://x.com/mnhrcwarroom/status/1886895006897545725?s=42).

ARGUMENT

I. The Petition Is Justiciable.

Remarkably, Simon claims that his action—the unilateral action of an executive-branch official—to shut down of the House of Representatives cannot be reviewed by anyone, including this Court. He contends, first, that no one has standing to sue; and, second, that it is a mere "parliamentary action" (of the House) that the Court cannot ever review.

As explained below, each of these arguments is legally wrong. But beyond that, these arguments are extraordinarily problematic in light of the separation of powers. Minn. Const. art. III, § 1. If Simon's justiciability arguments were correct, then the Secretary of State—an Executive Branch Officer—could prevent the operation of the half of the Legislature simply by refusing to allow the House to meet (and, presumably, any Lieutenant Governor could do the same in the Senate). Whenever Simon or his successors disliked an incoming legislative majority, they could simply declare the legislature immediately adjourned and refuse to allow it to take any action—

and, he says, no one would have any recourse to correct this. According to Simon, under these circumstances no one would have standing to sue, and the Court could not review this purported "parliamentary ruling." This cannot be right.

A. Reps. Demuth and Niska Have Standing to Seek *Quo Warranto.*

Simon's standing argument is mistaken because it misconstrues Minnesota law and mischaracterizes Simon's usurpation of the House's authority. He asserts that individual legislators, like Petitioners, lack standing to sue for "a diminution of legislative power" or "institutional injury" to the House. Simon apparently believes that since the House lacks a quorum that could authorize suit against him—and since he is completely preventing it from operating—no one can ask the courts to determine whether his actions are lawful. This argument is too clever by half.

First, Simon's position is foreclosed by this Court's decision in *State ex rel. Palmer v. Perpich*, 182 N.W.2d 182 (Minn. 1971). There, individual Senators asked this Court to decide whether "[t]he lieutenant governor ha[s] any vote in case of a tie among members of the senate." *Id.* at 151. As here, that issue could have been cast as an "institutional injury" and "not a personal or particularized harm to" any individual senator. (Simon Br. at 8.)

Nonetheless, the Court in *Palmer* did not question the senators' standing.[1] To the contrary, the Court found its intervention to be necessary when an Executive Branch officer is allegedly "attempting to usurp [the legislature's] power not granted to him," and that a *quo warranto* proceeding is "[c]learly" appropriate in such circumstances. *Palmer*, 182 N.W.2d at 184.

Equally here, Demuth and Niska have standing to contend that Simon lacks authority to unilaterally adjourn the House.

Second, even if Simon were correct that Petitioners must "claim … personal or concrete harm" to themselves as individual legislators (Br. at 6), they have done so. Petitioners do not generically allege that Simon has prevented the House from acting. Rather, Petitioners contend—and indeed Simon admits—that he is preventing ***the individual Petitioners*** from taking any action whatsoever in the legislature to which the people of Minnesota elected them. This again parallels *Palmer*, where an individual Senator presented the question "whether the lieutenant governor has power to refuse to accept [the petitioner's] certificate of election or to permit him to vote in the

[1] The Court of Appeals' decision in *Rukavina v. Pawlenty* is not remotely to the contrary. *Rukavina* held that legislators who voted for a statute do not, simply by virtue of their vote, have standing to challenge the executive's alleged improper implementation of the statute. 684 N.W.2d 525, 532 (Minn. Ct. App. 2004). Nothing of the sort is at issue here.

organization of the senate," subject to an appeal to the full Senate. *Id*. at 185. The *Palmer* Court readily decided that question.

As in *Palmer*, Simon, an executive branch officer is exceeding the authority granted to him, usurping legislative authority, and preventing Demuth and Niska from taking actions they and other legislators are clearly and exclusively entitled to take.

B. Simon's Other Justiciability Arguments Likewise Fail.

Similarly, Simon's attempt to cast this as a nonjusticiable "dispute[] over parliamentary procedure in the state house" (Br. at 10) falls flat. That is a bit rich coming from Simon, who just a few days ago persuaded this Court to review a determination made in the House chamber that a quorum of Members was present. This Petition is justiciable for exactly the same reason that Simon's was: the Petition asks the Court to apply and enforce the express requirements of the Constitution. Moreover, like Senator Palmer's before it, the Petition here seeks redress for Simon's effort to prevent House members from exercising their constitutional prerogatives.

Simon relies (Br. at 10) on cases stating that the courts do not review legislative rules, and on a section of a parliamentary manual stating that courts do not "interfere in the internal affairs of a legislative body conducted in accordance with constitutional mandates." But the Petition ***is*** asking the Court to determine compliance with constitutional mandates. As the

Constitution's Article IV, Section 13 authorizes "[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." And, of course, its Article III forbids Simon from "exercis[ing] any of the powers properly belonging to" the House. The Constitution expressly gives the power of adjournment and the power to compel absent members ***to the attending legislators***, not to the Secretary. And Petitioners claim that the Constitution does the same for the power to compel attendance.

Thus, the Petition squarely presents the question whether the Secretary has usurped authority that the Constitution expressly bestows elsewhere. Simon obviously disagrees with that on the merits—but this case is not remotely a mere internal legislative question that is outside judicial purview.

II. The Constitution Expressly Empowers A Minority of The House To Adjourn Or Compel Attendance Of Absent Members.

To repeat, this Petition is about the powers that, in the absence of a quorum, the Constitution's Article IV, Section 13 expressly grants to the attending minority of legislators:

> 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.

Because the Constitution entrusts these powers to the attending legislators—and emphatically *not* to the Secretary of State or any executive branch official—Simon's unilateral adjournments of the House are blatantly unconstitutional usurpations of authority.

A. Adjournment is Plainly in the Power of Attending Legislators, not the Secretary.

When there is no quorum in the House, at the barest minimum, Article IV, Section 13 allows the attending members to decide how long to remain in session, whether and when to adjourn, and how long the adjournment should be and when and where the House will re-convene. Indeed, this Court has expressly recognized that "[i]n the absence of … a quorum," the attending minority of legislators still can "meet and adjourn." *Palmer*, 182 N.W. at 183. Nothing in the Constitution says—or even hints—that the power of adjournment is instead vested in the Secretary of State.

Indeed, Simon's own argument in response to this Petition is that "motions are disallowed in the absence of a quorum, ***other than to adjourn.***" (Br. at 9 (emphasis added).) But Simon has arrogated the power of adjournment to himself. 67 Members of the House have repeatedly met in the Capitol at the time and place designated for the legislature to meet. These Members have the express constitutional right to remain in session for a particular convening as long as they see fit, to move to adjourn and vote on

that motion as they deem best, and to specify by motion and vote the time for their re-convening. Simon has indisputably usurped that authority.[2] Authorities from across the nation and across American history confirm: a presiding officer has no power to unilaterally adjourn the body, without a motion or vote by the members.[3]

This is no triviality. Beyond the inherent importance of a legislative body's ability to adjourn and re-convene itself, there are various other actions

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[2] Simon correctly cites to *Mason's Legislative Manual* as persuasive on the role of a presiding officer, Br. at 9, yet nearly every cite supports Petitioner's claims that the body, not Simon, has the right to adjourn. Mason's § 204 ("Legislative bodies have the right to adjourn whenever they determine to do so . . . . The presiding officer cannot arbitrarily adjourn a meeting."); *id.* § 208 ("It is a rule of parliamentary procedure applicable to all legislative bodies that less than a quorum have the power to adjourn. 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 session. The constitutions of forty-three states authorize the houses of the state legislatures to adjourn from day to day in the absence of a quorum."); *id.* § 191 ("Until a house of a state legislature is organized, . . . it can adjourn from day to day until a quorum can be secured."). This parliamentary law, which defines the bounds of Simon's power "to preside," accords with the Constitution and this Court's holding in *Palmer*—it is the body that determines adjournment, not the presiding officer.

[3] *Roti v. Washington,* 450 N.E.2d 465, 471 (Ill. App. 1983) ("[T]he Council members, not the Mayor, have the authority in the first instance to decide who won a disputed vote on a motion to adjourn")*; Kaeble v. Mayor of Chicopee*, 41 N.E. 49, 51 (Mass. 1942); *Att'y Gen. v. Remick*, 73 N.H. 25 (1904); ("If [the body] has not enacted a code of rules, [the presider] is still bound by the legally expressed will of the assembly"); *see also To Certain Members of the House of Representatives,* 191 A. 269, 272 (R.I. 1937) (presiding officer could not foreclose body from seeking an advisory opinion from the court).

that legislators may wish to take, even in the absence of a quorum, instead of adjourning. The Constitution does require a quorum "to transact business," which is why this Court said in *Palmer* that "all" the body "can do is to meet and adjourn." 182 N.W.2d at 183. But there certainly are some things that do not qualify as "transact[ing] business," and that therefore can be done in the House even without a quorum. For starters, if there is a question about whether the presiding officer has counted the number of attending Members correctly, a no-quorum ruling surely can be appealed to the body and voted on by the Members present. Moreover, setting aside the question whether the attending Members can *compel* the absent ones, they certainly can send letters and make entries in the house's journal *requesting* the attendance of absent members. Indeed, when the very first United States Senate found itself without a quorum at the beginning of its very first session, it nevertheless began keeping an official journal that included just such exhortations that absent members appear.[4]

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[4] The Senate journal recorded that members of the Senate that were present had "[a]greed, that the following circular letter should be written to eight of the absent members, urging their immediate attendance." The letter stated:

> Sir : We addressed a letter to you the 11th instant, since which no Senator has arrived. The House of Representatives will probably be formed in two or three days. Your presence is indispensably necessary. We therefore again earnestly request your immediate attendance, and are confident you will not suffer our, and the public anxious expectations to be disappointed.

There likely are other non-"business" actions that could be taken even without a quorum. For instance, legislators may be able to raise "points of privilege" to ensure "freedom from disturbance," to address "[d]isorderly conduct" in the chamber, to ensure the "[a]ccuracy of the journal," or to make floor remarks that "relate to [the speakers] as members of the body or relate to charges against their character." *Mason's* §§ 221-222. Certainly at least some of these housekeeping-type procedures do not qualify as "business" and therefore can be performed without a quorum. This is not the occasion for the Court to decide on precisely which: emergency *quo warranto* litigation is the wrong vehicle for compiling a comprehensive manual of what individual legislators may do on the House floor in the absence of a quorum. What is unquestionably true is that there are ***some*** such things that legislators may do—and that, under our Constitution, moving to adjourn and voting on adjournment is one of them. The Secretary having plainly usurped that power, and making no arguments to the contrary, *quo warranto* should issue.

> We have honor to be, Sir, Your obedient humble servants [names of those present]."

S. Journal, 1d Cong., 1d Sess. 6 (March 18, 1789), available at https://www.congress.gov/senate-journal-page/4. Even if this is not considered to be compelling the attendance of absent members, it shows that the body could do *something* to acquire a quorum (instead of just adjourning).

B. Compelling the Attendance of Absent Members is in the Power of the Attending Minority, Including at the Beginning of a Session.

As noted, the Constitution provides that "a smaller number" than a quorum "may adjourn from day to day and compel the attendance of absent members in the manner and under the penalties it may provide." Minn. Const. art. IV, § 13. Simon does not dispute the general existence of this power. He claims, however, that there is an implicit exception to this power when a quorum is lacking at the beginning of a legislative session: according to Simon, it is not possible to compel the attendance of absent members until "after the House is duly organized, which has not yet happened this session." (Br. at 13.) Simon is thoroughly mistaken. His implicit "organization" requirement is found nowhere in the constitutional text and is badly inconsistent with Minnesota law.

1. Minnesota law requires no "organization" for the compulsion of absent members beyond the House being in session.

Remarkably, Simon relies on a concept of "organization" that appears nowhere in Minnesota's Constitution and that expressly contradicts Minnesota statutes. Nothing in the Quorum Clause says that the Legislature must be "organized" before absent members may be compelled to attend. Indeed, nowhere does the Constitution ever refer to the Legislature (or either house) being "organized." Simon wants the Court to add an implicit provision to the

Constitution—that a minority of legislators can adjourn or compel the attendance of absent members *once the House is organized*. But of course, the courts "cannot add words or meaning" to a constitutional provision. *Shefa v. Ellison*, 968 N.W.2d 818, 826 (Minn. 2022) (cleaned up); *accord United States v. Perkins*, 887 F.3d 272, 276 (6th Cir. 2018) ("[T]he replace-some-words canon of construction has never caught on in the courts."). If the Framers of the Constitution had wanted to make some powers or actions dependent on "organization," they could easily have said so. They did not.

By contrast, Minnesota Statues § 3.05 addresses the legislature and is entitled "Organization"—but it does not involve the election of leadership or a sergeant-at-arms, the adoption of rules, or any other action that Simon is invoking here. Instead, the "Organization" contemplated by § 3.05 is simply the initial assembly of the Members-elect on the first day of the session, a roll call, the presentation of certificates of election by the Members-elect, and their swearing in to office.

Petitioners agree, of course, that *this* degree of "organization" is required before a minority of legislators can compel the attendance of absent ones. Members-elect who have not been sworn or seated may not meet informally and compel others to join them. But there is no dispute that the House *has* been "organized" in this sense. At the time and place prescribed by Minnesota law, Simon himself presided over the presentation of election certificates and

the swearing-in and seating of all the Members present. Each time Simon adjourns the House, he announces the time and place for its next convening, and the House continues to meet regularly (albeit without a quorum) at those times and places. Thus, even if all of Simon's assertions about the general need for "organization" were correct, they would not help him: under Minnesota law, the House *is* organized.

Simon cites no authority to the contrary. Indeed, he quotes *People v. Parker*, 3 Neb. 409, 423 (1872) (Lake, J., concurring) for the proposition that "a legislature 'not . . . in legal session' has "no authority to compel the attendance of absent members". (Br. at 17) We agree: when the House is not in session at all, its members cannot compel the attendance of members. But here the House ***is*** in session. Under our Constitution and laws, no further "organization" is needed.

The Framing generation's own legislative actions overwhelmingly confirm that it did not understand the Constitution to contain any further implicit "organization" requirement for the compulsion of absent members. In 1858—immediately after the Constitution was adopted—the Legislature enacted a statute entitled "Proceedings to obtain a quorum." The law stated:

> That whenever **at the commencement**, or during the regular, adjourned or called session of the Legislature, upon a call of either House, it shall be found that no quorum of members is present, or if any member or members shall be found absent upon any such call, the members present shall be authorized to direct the

> Sergeant-at-Arms, or if there be no Sergeant-at-Arms of such House, then any other person duly authorized by the presiding officer of either House, to compel the attendance of any or all absentees; *Provided*, That if the House refuse to excuse such absentee, he shall not be entitled to any *per diem* during such absence.

1858 Minn. L. ch. 85 § 12, *available at* https://www.revisor.mn.gov/laws/1858/0/General+Laws/Chapter/85/pdf/ (emphasis added). This law remained in effect for at least 47 years, until the general statutory revision of 1905.[5] Thus, it is beyond clear that the Framing generation understood the constitutional compulsion power to apply even when a quorum was absent "at the commencement" of a session. No "organization" was required beyond the attending legislators swearing their oaths of office and taking their seats—the statute even expressly provided for the possibility that the House had not yet elected a sergeant-at-arms.[6]

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[5] It is not clear whether the "Proceedings to obtain a quorum" statute is still effective, or whether it was repealed in the general revision. The 1905 revisor's report does not discuss this statute, and it is not included in the list of repealed statutes. *See Report of the Statute Revision Commission* 39-40 (1905), *available at* https://babel.hathitrust.org/cgi/pt?id=umn.31951d02427918h&seq=45; *see also Index to General Laws of 1905*, App. A-G, *available at* https://www.revisor.mn.gov/laws/1905/0/General+Laws/Index/0/pdf/. But this Court need not decide that issue here. Simon argues only that the House needs to have had a quorum present for "organization" before a minority can compel absent members, not that compelling absent members requires statutory authorization.

[6] It is not clear whether Simon was previously aware of this statute. In any event, it would not be plausible for him now to abandon his "organization" argument and instead argue that this statute shows that the Framing generation believed that *enabling legislation* was required before a minority of

If the Framing generation had understood that the House had to have a quorum to "organize" before it could compel the attendance of absent members, they could not possibly have enacted such a statute. But not only did they enact the statute, we are not even aware of any contemporaneous debate or objection about whether it was constitutional. This plainly shows that Simon's "organization" construct is foreign to our constitutional tradition.

Simon points to other jurisdictions or authorities that, he argues, use a more robust definition of legislative "organization" than is reflected in Minnesota law. But these do not help him. The parliamentary manual that Simon cites (Br. at 9) recognizes that a constitution *can* authorize the compulsion of absent members even before it elects officers or takes other actions. *Mason's* states: "Until a house of a state legislature is organized, it has no authority, *unless granted by the constitution*, to compel the attendance of absent members; but it can adjourn from day to day until a quorum can be secured and the body is organized." Mason's § 191 (emphasis added). And of

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legislators can compel the attendance of absent members. When the Constitution requires a power to be prescribed "by law," it clearly says so. *See* Minn. Const. art. IV § 6 ("The legislature shall prescribe *by law* the manner for taking evidence in cases of contested seats in either house.") (emphasis added); *id*. § 12 ("The legislature shall meet at the seat of government in regular session in each biennium at the times prescribed *by law*") (emphasis added); *id*. § 15 ("Each house shall elect its presiding officer and other officers as may be provided *by law*") (emphasis added). This 1858 law merely adds directory procedures to aid in the use of the Quorum Clause's compel powers.

course, Minnesota's Constitution *does* expressly authorize a minority of legislators *both* to "adjourn from day to day" *and* to "compel the attendance of absent members," without any mention of an "organization" requirement.[7]

The Florida Supreme Court opinion on which Simon relies (Br. at 19) only confirms that no "organization" is necessary before compelling the attendance of absent members. In that case, after deciding that a legislative quorum is a majority of total seats, the court clarified that a "constitutional quorum" was needed "for the purpose of general legislative business," as "*contradistinguished* from its power to punish for contempts, to examine returns, *to compel the attendance of absent members*, and *other powers necessary to its organization*." 12 Fla. 653, 663, 667 (1868). The court then repeated that, unless "the Senate … was in actual legal session, **duly organized** and competent to transact business of any kind … and a constitutional quorum be present, it could do no business as a House of the Legislature, ***except*** to adjourn ***and to compel the attendance of absent members***." *Id.* at 678 (emphasis added).

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[7] *See also* Mason's § 190 ("The right of a house of a state legislature to compel the presence of absent members is provided for by a constitutional provision in forty-three states, even to ordering the arrest of members . . . . The absence of the power of a house of a state legislature to compel the attendance of all members at all times would destroy its ability to function as a legislative body . . . . In Congress, it has been held that a call is in order under the Constitution in the absence of any rule providing for a call of the house.").

In short, whether or not Simon's concept of "organization" is followed in any other jurisdictions, it has never been a part of Minnesota law.

2. The Constitution expressly empowers a minority of legislators to compel attendance, and Simon's contrary argument is inconsistent with the text's plain meaning.

As noted, Article IV, section 13 of the Constitution provides that "[a] majority of each house" is a quorum, "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." This plainly allows "a smaller number" to "compel the attendance of absent members," and to provide the "manner" and "penalties" for the compulsion.

Simon, however, contends without explanation that the word "it" at the end of this Clause refers not to the nearest antecedent—the "smaller number" of legislators—but to the *furthest possible* antecedent, all the way back to the beginning of the section, 31 words earlier, to the phrase "A majority of each house."[8] Although Simon seems reluctant to state the argument explicitly, he apparently contends that this means that a minority of legislators cannot

[8] Actually, Simon seems to be arguing that "it" refers only to a part of this phrase—"*each house*"—since we do not understand him to be contending that it requires "[a] majority of each house" (or 68 votes in the House of Representatives, no matter how many Members are in attendance) to adopt rules on compelling the attendance of absent members.

compel the attendance of absent members except under "terms" or "penalties" prescribed by the full house (acting with a quorum).

This reading of the constitutional text is, to say the least, highly implausible. As noted, the nearest natural referent of the word "it" is the "smaller number" of attending legislators. Reaching back to a much-more-distant antecedent like "each house" is not a natural way of reading under any circumstances. And multiple features of Section 13 make that reading *especially* unlikely here.

First, the phrase "each house" is remote from the word "it" not just in terms of spacing on the page, but also in terms of grammatical structure. Section 13 contains two independent clauses.[9] "A majority of each house" is the noun that is the subject of the first independent clause. The "smaller number" is the noun that is the subject of the second independent clause. Since the phrase "it may provide" *also* appears in the second independent clause, it is far

[9] *See Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 236, 131 S. Ct. 1068, 1078 (2011) ("[L]inking independent ideas is the job of a coordinating junction like "and," not a subordinating junction like "even though."). "But" is a coordinating conjunction and is used here with a comma to separate two independent clauses. Bryan A. Garner, *The Elements of Legal Style* 19 (1991) ("The comma separates independent clauses joined by coordinating conjunctions: and, but, or, nor, and for."); Bryan A. Garner, *The Chicago Guide to Grammar, Usage, and Punctuation* 347 (2016) ("Use a comma when you join two independent clauses with a coordinating conjunction.").

more naturally understood as referring back to the subject of its own clause—the "smaller number"—rather than (part of) the subject of a different clause.

Second, this is confirmed by the "smaller number" clause's parallel use of the modal verb "may." The clause specifies that "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." When a clause of a sentence repeats a verb in this way, the reader naturally understands that each use of the verb relates to the same subject—here, the "smaller number" that "*may* adjourn" and "*may* provide." More generally, *all of the rest* of Section 13's second independent clause is oriented toward empowering the minority of attending legislators: they may "adjourn from day to day" and may "compel the attendance of absent members." The phrase "it may provide" therefore is most naturally understood as another grant of discretion to the minority—not as allowing or requiring "each House" to do anything.

The authorities that Simon cites only confirm this result. He points (Br. 17) to an 1880 Maine decision holding that "legal organization" and "legal officers" are required before a legislature can compel the attendance of absent members. *Op. of Justices*, 70 Me. 570, 587 (1880). But the constitutional provision at issue there ***did not include*** the "it may provide" language at issue here. Rather, the Maine Constitution expressly called for "such penalties as ***each house shall*** provide—and in contrast to Minnesota's Constitution, the

"each house" phrase also is the beginning of Maine's Quorum Clause[10]—and the court's opinion expressly relied on that specific language. 70 Me. at 589.

A number of other states, as well as the federal Constitution, specify that compulsion of absent members must be "as each House may provide." *See* U.S. Const. Art. I, § 5. But the Framers of Minnesota's Constitution chose different language that, as explained above, naturally has a different meaning. The courts should honor that choice, not negate it.

The general point here is that some constitutional powers simply mean what they say, and do not require additional action or authorization before they come into existence. For example, the Constitution grants this Court appellate jurisdiction in all cases; the Court does not need an enabling law or rule to have such jurisdiction. Minn. Const. art. VI, § 2. Nor does the Court need enabling laws or rules to exercise its constitutional authority to "appoint to serve at its pleasure a clerk, a reporter, a state law librarian and other necessary employees." *Id*. Similarly, the Governor has the power, even without any legislation or rule, to "require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to his duties." Minn. Const. art V § 3.

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[10] Maine Constitution of 1875, Art. IV, sec. 3, https://www.loc.gov/resource/gdcmassbookdig.constitutionofst00main/?sp=32&st=image&r=0.031,0.077,1.042,0.641,0

Likewise, the Quorum Clause means what it says—"a smaller number may . . . compel the attendance of absent members in the manner . . . it may provide." The presence of rules, a sergeant-at-arms, or other tools may be *helpful* in that task. But nothing in the Constitution suggests that they are *required* for it.

3. The Constitution's structure and public policy also foreclose Simon's countertextual argument.

Finally, because Simon's argument would give legislators free rein to deny a quorum for as long as they wish—even extending through the entire legislative session—they are inconsistent with the constitutional structure and public policy, both of which favor the presence of a functioning legislature.

The Constitution's structure and text are pro-assembly, pro-quorum, and pro-transacting-of-legislative-business. Members are immune from arrest on their way to the legislature or while on the floor. Minn. Const. art. IV, § 10. The houses must meet at a regular frequency. Minn. Const. art. IV, § 12. And of course, it is at least *often* true that absent members may be compelled to attend. Minn. Const. art. IV, § 13. Overall, then, when legislators disfavor a particular legislative action, the recourse contemplated by the Constitution is that they will vote against it. It is not that they cripple the Legislature by refusing to show up at all.

It is extraordinarily difficult to think of any reason why there should be a "beginning-of-the-session" exception to this. A quorum is as important at the beginning of a session as at any other time. Indeed, if quorum-busting were freely permitted at the beginning of a session, then legislators who refused to show up could prevent the house from *ever* meeting—no transacting any business, no passing a budget, nothing—until the entire legislative session ended. It is very hard to see why the Framers could possibly have wanted that—or why we should today.

Simon's attempt to come up with such reasons fails badly. He argues (Br. at 15) that "a small number of legislators" should not be able "to act without limit to take extraordinary measures to compel the attendance of absent house members." As a general matter, this ignores the reality that, as soon as a quorum is present, a simple majority can vote to undo or revisit any penalties or other ongoing measures that the minority created. There is no risk, therefore, that a small minority would impose unduly draconian penalties on an absent majority—the majority could simply undo them as soon as they arrived at the legislative session.

Simon does no better when he gives specific examples of things that (he claims) a minority of legislators should not be able to authorize, such as "infring[ing] on the constitutional duties of other entities," "expend[ing] funds,"

or "hir[ing]" staff to track down absent legislators. (*Id.*)[11] Whether or not the compulsion power embraces these specific methods of compulsion is simply beside the point. Petitioners are not arguing that a minority's power to compel absent members is unlimited and unconstrained by any other provision of the Constitution. But the likelihood that this power has some substantive limits does not remotely suggest that it does not exist at all, as Simon argues.

In short, our constitutional structure and public policy make clear that the "cure" Simon proposes is worse than the purported "disease" he seeks to treat. Simon professes concern that, if a majority of legislators for some reason do not show up for a session, a smaller portion of the body might adopt excessively harsh or improper methods to compel their attendance. To avoid that possibility, he proposes a rule that would allow a group of legislators to completely shut down the Legislature (and eventually the entire State government) by refusing ever to show up for the session—and that would deprive the government of any tool whatsoever to correct the situation. Neither our constitutional text nor good sense permits that result.

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[11] Minnesota's longstanding statute on compelling the attendance of absent members specifically allowed a minority to depute someone to perform this task—although it did not specify whether the minority could authorize payment for such services. *See supra* Pt. II.B.1. In any event, hiring staff would hardly be *necessary* to the exercise of the compulsion power. In other states, preexisting law enforcement officers often assist in finding absent members. *E.g., Abood v. Gorsuch,* 703 P.2d 1158, 1160 (Alaska 1985).

CONCLUSION

By unilaterally adjourning each meeting of the House, Secretary Simon usurps the power granted to the legislature and its members. This Court should issue the writ of quo warranto and restore the House to its rightful balance.

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