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

Steve Simon, Minnesota
Secretary of State, *Petitioner*,

vs.

Lisa Demuth, *Respondent*.

Melissa Hortman, *et al.*, *Petitioners*,

vs.

Lisa Demuth, Harry Niska,
and Paul Anderson, *Respondents*.

RESPONSE TO PETITIONS

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INTRODUCTION

Political advantages frequently change, sometimes in unpredictable ways. The constitutional principles that organize Minnesota's government should not. Petitioners want this Court to strengthen their political maneuvers over the internal organization of the House of Representatives—and they want the Court to do so by overturning more than a century of settled Minnesota law. The Court should decline.

Our state Constitution's first words about organizing the government mandate the separation of powers:

> The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

Minn. Const. Art. III. These petitions present a separation-of-powers nightmare. They demand that the presiding officer of Minnesota's House of Representatives be chosen by the courts. And they demand that the courts install an executive branch official as presider, overturning the House's own election. This attempt at a hostile takeover of the House must be rejected for a cascade of reasons.

First, the petitions are not justiciable because the Constitution requires that the House of Representatives' presiding officers be chosen, and its internal affairs be organized, by the House and not by the courts. Petitioners' contrary theory would turn this Court into the permanent referee of the Legislature's internal affairs, and thereby do incalculable damage to our State's democracy.

Second, Petitioners lack standing. The legislator Petitioners' alleged "harm" is a reduction in negotiating leverage to achieve choice legislative posts. That

cannot support standing. And the Secretary of State's assertion of an enforceable "right" to preside over the House is in blatant violation of Article III's separation-of-powers mandate. Minnesota's ceremonial provisions for opening the House's sessions cannot be interpreted in that unconstitutional way.

Third, it would be wholly inappropriate to exercise extraordinary-writ jurisdiction to "correct" a situation resulting from Petitioners' own wrongdoing. The alleged lack of quorum arises ***entirely*** because the legislator Petitioners are failing in their duty to appear for the legislative session—and because the Secretary, by a plainly unconstitutional assertion of unilateral control of the House, is seeking to block the constitutional ability of those Members who showed up for work to compel the attendance of others. They cannot be heard to demand extraordinary-writ relief from this Court in response to their own misconduct.

Fourth and finally, Petitioners' merits theory is not just wrong, it seeks to radically reverse settled Minnesota legal principles. More than a century of this Court's decisions recognize that the Constitution sometimes refers to a majority of *legislative seats* (both filled and vacated) and sometimes refers to a majority of *existing legislators* (without counting vacancies). The Quorum Clause's reference to "a majority of each house" plainly falls into the latter category. The Framers of our Constitution expressly discussed this, and many other jurisdictions including the U.S. House of Representatives follow a similar rule. But in pursuit of a fleeting political advantage, Petitioners demand that the Court completely reverse these settled definitions. That is not worthy of the Court's serious consideration.

In short, Minnesota's courts are not a tool to be wielded for partisan advantage. The Petitions should be rejected.

STATEMENT OF THE CASE

Respondents agree that the material facts appear to be undisputed—but the Petitions' statement of them is markedly incomplete. We offer a full account here.

A. Petitioners Purposely Created The Conditions They Complain Of.

Elections for the Minnesota legislature were held in November 2024. As prescribed by Minnesota law, the time for the newly-elected Legislature to convene and begin its session was noon on January 14, 2025. *See* Minn. Stat. § 3.011. As that date approached, it became clear that the new Minnesota House of Representatives would include 67 Republican Members, 66 DFL Members, and one vacant seat pending a future special election. *See Minn. Voters All. v. Walz*, No. A25-17 (Minn. Jan. 17, 2025).

The result was what has been described as "a bitter partisan power dispute."[1] In short, DFL Members-elect of the House predicted that a member of their party likely would win the future special election and fill the vacant seat, eventually leading to a tied chamber—and based on that prediction, they demanded significant and unusual limits on the authority of the incoming Republican majority and leadership.[2] When those negotiations broke down, the 66 DFL Members-elect decided to boycott the opening of the legislative session, with the announced

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[1] C . Cummings, WCCO News, *House Democrats take oath of office in secret 2 days before legislative session starts, sparking outrage* (Jan. 13, 2025), https://www.cbsnews.com/minnesota/news/minnesota-house-democrats-secret-oath-of-office/.

[2] C. Cummings, WCCO News, *Minnesota House Democrats boycott first day of session amid better power dispute as GOP moves forward without them* (Jan. 15, 2025), https://www.msn.com/en-us/politics/government/minnesota-house-democrats-are-no-shows-amid-legislative-session-s-bitter-beginning/ar-BB1rrlVQ?ocid=BingNewsSerp.

purpose of attempting to deprive the House of a quorum.[3] Three of the four Petitioners here (Hortman, Long, and Hollins) are DFL Members of the House who participated, and are continuing to participate, in this boycott. It is extremely likely that Petitioner Hortman, as the leader of the DFL caucus, is playing a central role in organizing and maintaining the boycott.

In the midst of this, the Secretary of State—Petitioner Steve Simon—announced that he was taking the DFL caucus's side regarding their attempted quorum-denial maneuver. Although Article III of the Constitution prescribes strict separation of powers "except in the instances expressly provided in this constitution," the Secretary of State has long been invited by statute to ceremonially preside over the opening of the House's sessions. Minn Stat. §§ 3.05, 5.05. On January 10 and January 13, 2025, Secretary Simon published letters to the incoming House leadership, asserting that these statutes gave him the unreviewable power to determine whether a quorum of House membership would be present at the opening session, and adopting the position that 68 Members were required for a quorum.[4]

Without explanation, Secretary Simon further asserted that his power over the House was exempt from normal procedural and constitutional rules. Under normal legislative procedure, a "question of no quorum is decided by the presiding officer as any other point of order and is subject to appeal [to the whole body] in the same manner." *Mason's Manual of Legislative Procedure*, § 504 para. 5 (2020).

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[3] *Id.*

[4] 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.

Moreover, if a quorum is absent, Article IV, § 13 of the Constitution expressly empowers "a smaller number" of Members of the House to take two kinds of action: "adjourn from day to day and compel the attendance of absent members in the manner and under the penalties it may provide." That too is in accordance with ordinary rules of parliamentary procedure. *Mason's Legislative Manual* § 210 (2020) ("Where a roll call shows there is not a quorum present, it does not automatically adjourn the body; the body possesses the power to issue a call of the house or to entertain the motion to adjourn."). Secretary Simon, however, has claimed the authority to override these rules. His January 13 letter asserted that his ruling regarding a quorum would be absolute and unappealable.[5] It further stated "that absent a quorum, all the members present can do is adjourn," and made no allowance for motions or votes to compel attendance by absent members.[6]

B. Petitioner Simon Purports To Seize Control Of The Minnesota House.

The House convened at noon on January 14 in the House chamber of the Capitol building. There is no dispute that an actual meeting of the Minnesota House of Representatives occurred at this time and place. The Secretary first called the House to order and appointed a clerk pro tem, an opening prayer was offered, and the Members-elect who were present recited the Pledge of Allegiance. *See* Journal of the Minnesota House of Representatives, Ninety-Fourth Session (Jan. 14, 2025), at 6 https://www.house.mn.gov/cco/journals/2025-26/j0114001.htm. The Clerk called the roll and the certificates of election for 133 Members-elect were presented. *Id.* Chief Judge Frisch of the Court of Appeals then administered the

[5] Ltr. at 2-3, https://www.sos.state.mn.us/media/6348/january-13-2025-letter-to-representative-demuth-and-representative-niska.pdf.

[6] *Id.* at 2.

oath of office, the newly sworn Members took their seats, and the roll was again called. *Id.*

Secretary Simon then stated that no quorum was present, ignoring Rep. Niska's motion to appeal that ruling.[7] Immediately thereafter—without any motion or call for a vote—the Secretary unilaterally stated that "the House of Representatives is adjourned" without announcing a date for re-convening, struck the gavel, and left the rostrum.[8]

67 Members of the House remained in the chamber. The Secretary having left, Minn. Stat. § 3.05 provided that "the oldest member present" should preside until a Speaker was chosen, and the House voted that Rep. Paul Anderson assume the chair, which he did. *See* Journal of the Minnesota House of Representatives, Ninety-Fourth Session (Jan. 14, 2025), https://www.house.mn.gov/cco/journals/2025-26/j0114001.htm. The House then voted that the purported adjournment was out of order and that a new quorum roll-call be taken. *Id.* The chair ruled that a quorum was present, and no appeal was taken from that ruling. *Id.* The chair accepted nominations for Speaker, and the House elected Rep. Demuth. *Id.* After conducting various other business, the House then voted, on motion, to adjourn until noon the next day, January 15. *Id.*

Since that time, the House has continued to meet and do business regularly in its chamber in the Capitol. It has notified Governor Walz that the House is duly organized and ready to begin the 94th Legislative Session, the daily House Journal

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[7] Minnesota House of Representatives Public Information Services, *Opening Day of the Ninety-fourth Session of the Minnesota Legislature 1/14/25*, at 25:40 *et seq.*, https://www.youtube.com/watch?v=TQJNGyUjEyg.

[8] *Id.* at 25:50 *et seq.*

has been maintained, and bills have been introduced. *See generally* Journal of the House 2025-2026, https://www.house.mn.gov/cco/journals/journl.htm. At all these meetings (except for a *pro forma* session on Martin Luther King, Jr. Day), the House has maintained a quorum of 67 Members, occasionally pausing to bring additional Members to the floor when that number was lacking. *See* Journal of the Minnesota House of Representatives, Ninety-Fourth Session, at 29(Jan.16, 2025), https://www.house.mn.gov/cco/journals/2025-26/J011625CAL.htm. The House has not sought to vote on or pass any final bills, nor has it scheduled any such votes. Neither the legislator Petitioners nor any other member of the DFL caucus has appeared for any of these sessions.

ARGUMENT

I. Disputes About The Legislature's Internal Organization Are For The Legislature, Not The Courts.

The petitions should be denied, at the outset, because they ask the Court to decide non-justiciable questions about the internal organization of the Legislature. Petitioners want this Court to choose the Speaker of the House of Representatives by reviewing whether the House properly determined it had a quorum. But it is central to our democratic order that the Constitution entrusts those determinations exclusively to the people's representatives in the House, not to the courts.

A. Petitioners Challenge Only the House's Internal Organization.

As noted, our Constitution's Article III provides for the separation of the legislative, executive, and judicial powers, and prescribes that "[n]o person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others." As this Court has

explained, "[t]he three distinct departments thus created are of equal dignity, and, within their respective spheres of action, equally independent." *State v. Dist. Ct. in and for Ramsey Cnty.*, 194 N.W. 630, 632 (Minn. 1923). This is no small matter. "The division of powers is the fundamental principle upon which American constitutional government is based, and the success of our form of government depends, in large measure, upon the respect paid to that principle by each of the three divisions in its relations with the others." *Smith v. Holm*, 19 N.W.2d 914, 915 (Minn. 1945).

This separation of powers, of course, protects *each* of the judicial and legislative branches from the other's intrusion on its internal affairs. For instance, when the Legislature recently tried to instruct the courts by statute to open their Minnesota Government Access records system to all attorneys, this Court directed that the matter was within judicial, not legislative, competence. *Order re Minn. Stat. 484.94 (2023) and the Rules of Public Access to Records of the Minnesota Judicial Branch*, No. ADM10-8050 (Minn. June 28, 2023). Similarly, this Court holds that "the Legislature's ability to discipline judges is limited to the impeachment process." *E.g., State v. Irby*, 848 N.W.2d 515, 521 (Minn. 2014). And more broadly, separation-of-powers principles surely limit legislative interference with the judiciary's internal organization. For instance, if the Legislature disagreed with this Court about the constitutionality of the Court's appointment of a referee in a case before it, and enacted a statute purporting to remove the referee, we have no doubt that the Court would find serious separation-of-powers problems.

By the same token, it is long settled Minnesota law that "[t]he judicial branch may not, therefore, directly or indirectly interfere with th[e] legislative power in

any other way than by passing upon the constitutionality … of [the] laws." *Holm*, 19 N.W.2d at 916. In other words, "[t]he courts have no judicial control over … matters which the people have by the Constitution delegated to the Legislature," *In re McConaughy*, 119 N.W. 408, 415 (Minn. 1909), and must be "wary of unnecessary judicial interference in the political process." *Ninetieth Minnesota State Senate v. Dayton*, 903 N.W.2d 609, 625 (Minn. 2017).

These principles apply equally to this case. Petitioners do not challenge the validity of any statute—nor could they, since the House has not voted on the passage of any bills this Session, and certainly has not seen any such bills approved by the Senate or signed by the Governor. So, while this Court has long held that it has a certain authority to review whether a statute was enacted according to constitutional procedures, *see In re Public Hearing on Vacancies in Judicial Positions in Fifth Judicial Dist.*, 375 N.W.2d 463, 469 (Minn. 1985) (citing *Bull v. King*, 286 N.W. 311, 312 (Minn. 1939), that authority is not at issue here in any way.

Quite the contrary, Petitioners here complain only of the Legislature's internal decisions about how to organize itself. They ask the Court to review whether the House has properly chosen its Speaker, or was properly in session to take other internal actions. But the Constitution is unequivocal that "[e]ach house shall elect its presiding officer," as well as "determine the rules of its proceedings" and "sit upon its own adjournment." Art. IV §§ 7, 15. The Constitution makes no provision for review or second-guessing of any of these determinations by anyone other than the House itself.

B. The Petitions are Unprecedented and Unwise.

"[T]his case" therefore presents a request for an exercise of judicial power "unprecedented in the history of Minnesota." *Ninetieth Minnesota State Senate*, 903 N.W.2d at 623–24. Never, to our knowledge, has this Court held improper a legislative house's act of internal organization, let alone held a legislative house's leadership choice improper. To be sure, the Court can protect the legislature from *executive* encroachment, such as by holding that the lieutenant governor cannot disqualify Senators-elect or vote in the Senate. *See State ex rel. Palmer v. Perpich*, 182 N.W.2d 182, 184-86 (Minn. 1971).[9] But the Court has never attempted to review the propriety of a purely internal organizational decision of the legislature, such as its members' choice of a Speaker. Indeed, we are aware of no case in United States history in which a court removed a legislative body's officer as improperly chosen.[10]

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[9] No doubt the same principle would work in reverse, if, for instance, the Speaker of the House purported to veto a bill or to issue orders to administrative agencies.

[10] We know of two other cases in which state supreme courts were presented with disputes over legislative leadership—and both courts expressed serious separation-of-powers concerns. In *Malone v. Meekins*, the former speaker of the Alaska House of Representatives went to court claiming that his "removal and replacement" by the House "was illegal and unconstitutional." 650 P.2d 351, 353 (Alaska 1982). The court rejected that claim, in significant part because "overseeing the officer selection process of a legislative body would be … inconsistent with the respect owed the legislature by the judiciary." *Id.* at 357. And in 1891, the governor of Colorado sought an advisory opinion from his state supreme court about which of two rival speakers of the house had the better claim. The court expressed concern that this "anomalous and peculiar" request seemed to be "inconsistent with the prevalent American system of separating the governmental powers into distinct departments," but felt "constrained by the imperative command of the constitution [about advisory opinions] to give our opinion." *In re Speakership of the House of Representatives*, 25 P. 707, 708 (Colo. 1891).

Petitioners certainly cite no such precedent. The best they can do is to invoke two 19th-century cases where the courts were asked to ***identify*** which rival group was the legitimate state senate or house—not to review the lawful house's leadership choices or internal organization. *See Werts v. Rogers*, 28 A. 726, 757 (N.J. 1894); *In re Gunn*, 32 P. 470, 480 (Kan. 1893). These courts recognized that they had jurisdiction to ***identify*** the legitimate legislature, since every court must know "whose enactments it will recognize as laws of binding force when brought judicially before it." *Gunn*, 32 P. at 478 (cleaned up). But they did not purport to decide "whether this senatorial body had been organized in the accustomed mode." *Werts* 28 A. at 758.

This case is nothing like those ones. Here, no one disputes that the group of Representatives convened by Petitioner Simon at noon on January 14 in the Capitol was the genuine, legitimate Minnesota House of Representatives. There is no rival group claiming to act as the House—and if there were, such claim would be obviously spurious. Petitioners contend only that, because the legitimate House held a legitimate meeting at which it allegedly lacked a quorum, its internal organizational choices at that meeting are procedurally defective. That is precisely the type of internal legislative decision that separation-of-powers principles place squarely outside the courts' jurisdiction.

Finally, there plainly are sound practical reasons why the separation of powers precludes the courts from interfering with legislative self-organization. Allowing review here would invite endless litigation over legislative minutiae, turning this Court into the arbiter of parliamentary procedure. If these Petitions were justiciable, then every leadership election ever held in the House or Senate

could be "appealed" to the courts by alleging that the choice was unlawful in some way or another. The same likely would be true of every committee assignment or other allocation of any legislative position.

Even worse would be the Court's exercising jurisdiction to review the Legislature's quorum determinations. The Constitution requires a quorum for almost every kind of business a legislative house can transact. Art IV, § 13. So, if the courts could review the existence of a quorum, almost every detail of daily legislative business would become "appealable" when a member alleged a lack of quorum, or a failure to properly apply parliamentary rules on subjects like the germaneness of amendments.

Even if it is likely that the courts would reject the great majority of these petitions, the separation-of-powers harm would still be irrevocable. Internal legislative negotiations would take place in the permanent shadow of judicial supervision. The judiciary could be forced to consider reviewing legislative decisions in emergency proceedings, like these ones, as often as dissatisfied legislators wanted to ask for it. Legislative deliberations could frequently by halted or crippled pending requests for judicial review. And in the public eye, the judiciary would become the permanent supervisor of legislative choices, and no such choice could be regarded as final until the courts had signed off.

This Court has previously exercised "judicial restraint" and declined to referee "political disputes between our co-equal branches of government," because the parties "have both an obligation and an opportunity to resolve [such] disputes between themselves." *Ninetieth Minnesota State Senate*, 903 N.W. at 612. If anything, those considerations apply even more strongly to a political dispute that, like this

one, is mostly taking place *within* a single co-equal branch of government. The parties to this dispute, and Minnesota's voters, have all the tools they need to resolve it themselves. Judicial interference is unnecessary and unwarranted.

II. Petitioners Lack Standing.

Even assuming that the courts could ever have jurisdiction to review the Legislature's internal organization, such jurisdiction is absent here because Petitioners lack standing to pursue their claims.

For this Court "[t]o exercise [its] judicial power" in *quo warranto* proceedings, as in most others, it "must have jurisdiction," and "[a]n essential element of jurisdiction is standing." *Minnesota Voters All. v. Hunt*, 10 N.W.3d 163, 167 (Minn. 2024) (cleaned up).[11] Standing generally requires "some injury in fact" to the plaintiff, meaning "a concrete and particularized invasion of a legally protected interest." *Id.* (cleaned up). "Moreover, the injury must be fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision." *Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 663 (Minn. 2014).

Here, none of the Petitioners can make this showing.

A. The Legislator Petitioners Cannot Show Traceability or Redressability.

The legislator Petitioners claim they have been denied certain legislative posts—but this "harm" was not caused by Speaker Demuth's election; it was

[11] Both this Court and the Court of Appeals have taken considerable pains to apply standing and related concepts to *quo warranto* proceedings. *E.g., Snell v. Walz*, 985 N.W.2d 277, 291 (Minn. 2023) (adopting voluntary-cessation exception to mootness in *quo warranto* case); *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 322 (Minn. Ct. App. 2007) (applying to *quo warranto* petition the "threshold principle" that "judicial action is sustainable only when the controversy presents an injury that a court can redress").

caused by Petitioners' (and their fellow DFL caucus members') own refusal to attend the legislative session and seek or vote for the positions they wished. Moreover, Petitioners' demand that the Court remove Speaker Demuth would not redress it.

Petitioners Hortman and Long allege that they hoped to be co-speaker or a co-committee chair. (Legislators' Ptn. ¶¶ 16, 19.) Petitioner Hollins claims that she "can" lose her anticipated committee assignments. (*Id.* ¶ 20.) These allegations of harm suffer from obvious and insurmountable defects of traceability and redressability.

First, there is no sense in which these alleged harms were caused by, or are traceable to, the House's choice of Speaker Demuth. The legislator Petitioners have not received the posts they desired for the simple and direct reason that they and their caucus have not attended the House sessions. Even if the 67 attending House Members had not elected Speaker Demuth (or anyone), that would not have resulted in any legislative posts for Petitioners—because they and their caucus simply were not there and did not vote.

Second, and even more obviously, there is very little chance that the relief Petitioners request from this Court would result in redress of their claimed injuries. Petitioners demand that the Court remove Speaker Demuth and shut down the House of Representatives until at least one more Member shows up. (Simon Ptn. p.3; Hortman Ptn. p.13.) But even if the Court could enter such an order, it is extremely unlikely that it would somehow result in the Republican caucus abandoning its majority position and agreeing to vote Petitioners into their desired co-leadership posts. Instead, by far the more likely outcome would be that the 67

Members currently attending House sessions would try other ways to get at least one currently boycotting Member to attend—for instance, by criticizing the boycotters' absenteeism to the electorate, or by using their constitutional authority to "compel the attendance of absent members" regardless of whether there is a quorum. *See* Art. IV, § 13.

That is fatal to a finding of redressability. Standing ordinarily is lacking when, as here, redress for the asserted injury would depend on "guesswork as to how independent decisionmakers will exercise their judgment," or "speculation about the decisions of independent actors" in response to the court's order. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 413-14 (2013). Here, Petitioners have exactly that problem. Because they cannot "show that the third-party [actors] will likely react in predictable ways" to redress their injury if they win in court, *see Murthy v. Missouri*, 603 U.S. 43, 57–58 (2024) (cleaned up), they cannot possibly establish standing.

Perhaps realizing this, the legislator Petitioners fall back on a generic claim that "Respondents have deprived Petitioner Hortman and the other leaders of the DFL the opportunity to represent the interests of their constituents in the Minnesota House of Representatives." (Ptn. ¶ 18.) But the public record shows that nothing could be further from the truth. All Members of the House—including Rep. Hortman—are most welcome to attend the Session and represent the interests of their constituents through full participation. Respondents have created no barriers to that whatsoever. The sole reason that Rep. Hortman's constituents are not being represented is her own refusal to do show up for work. She and her co-petitioners therefore lack standing.

B. Petitioner Simon's Asserted "Interest" is Plainly Unconstitutional.

Petitioner Simon, an executive branch official, asserts the right to preside over Minnesota's House of Representatives. This asserted "right" is not a "legally protected interest," for purposes of standing, because it is specifically prohibited by the state Constitution.

As noted, Article III creates the three branches of our state government, and prescribes that no one in "one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution." And of course, "[t]he legislature consists of the senate and house of representatives," Art. IV, § 1, while "[t]he executive department consists of a governor, lieutenant governor, secretary of state, auditor, and attorney general." Art. V, § 1.

Nowhere does the Constitution authorize the Secretary of State to exercise any power over or in the House of Representatives. Historically, the Secretary has attended the opening of each House session, and ceremonially presided over the Members' swearing-in and election of a Speaker. *See* Minn. Stat. §§ 3.05, 5.05. The origins of this tradition are difficult to discern; it has existed in statute since at least 1905. *See* Minn. Rev. L. of 1905, Ch. 3 § 1, Ch. 4 § 32 (requiring Secretary of State to prepare "the legislative chambers and committee rooms" and then preside over opening of session). A clue may be found in the fact that § 3.05 also directs the Lieutenant Governor to preside over the Senate—and until 1972, the Constitution did expressly make the lieutenant governor the "ex-officio President of the

Senate."[12] After a constitutional amendment eliminated this role (*see* Minn. L. 1971 at p.2034, Ch. 958 § 6), the statutes remained substantively unchanged, both as to the Lieutenant Governor and as to the Secretary of State.

The result is that, although the Secretary and Lieutenant Governor are invited by statute to preside over the openings of the House and Senate, in doing so they may not "exercise any of the powers properly belonging to" the legislative branch without violating Article II of the Constitution. Moreover, the Constitution specifies that every substantive action in the House that a presiding officer might oversee properly belongs to the Legislature: the House and it alone judges its election returns and member eligibility, determines its rules of proceeding and sits on adjournments, punishes or expels its members for misconduct, elects its officers, and keeps its journal. (Art. IV, §§ 6-7, 15.)

In that light, there is a serious question whether these portions of §§ 3.05 and 5.05 can constitutionally be applied at all. But the Court can leave that question for another day. At the very least, it is clear that Article III requires that the Secretary's role at the House's opening must be purely ceremonial, and involve no exercise of any kind of power.

Such an ephemeral "right" to preside cannot qualify as a "legally protected interest," and the loss of it cannot be a "concrete harm," for purposes of establishing standing. "[A] bare procedural violation, divorced from any concrete harm," cannot "satisfy the injury-in-fact requirement." *Spokeo, Inc. v. Robins,* 578 U.S. 330, 341 (2016). And a hortatory statement in a statute cannot ground standing where

[12] Minn. Const. of 1857, Art. 5, Sec. 6, https://mnhs.gitlab.io/archive/constitution/www.mnhs.org/library/constitution/transcriptpages/dt.html.

it "has no means of enforcement." *California v. Texas*, 593 U.S. 659, 669 (2021). So here. At most, the Secretary's role in the House is a matter of legislative grace that can be revoked any time by the House; and even if it is not revoked, he is constitutionally barred from taking any substantive action. A purely ceremonial, non-substantive "right to preside" cannot amount to an enforceable legal interest for purposes of standing.[13]

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It would be unavailing for Petitioners to contend that *someone* must always have standing to allege that a Speaker of the House was unlawfully elected. That is mistaken as a matter of law. "The assumption that if these plaintiffs lack standing to sue, no one would have standing, is not a reason to find standing. Rather, some issues may be left to the political and democratic processes." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 396 (2024) (cleaned up). So here. If standing rules mean that judicial removal of the Speaker and shutdown of the House of Representatives are never (or almost never) available remedies, that is no surprise—indeed it is wholly appropriate in our constitutional order.

III. Petitioners Cannot Seek Extraordinary-Writ Relief To "Correct" The Results Of Their Own Misconduct.

Even if the Court *could* exercise extraordinary-writ jurisdiction here, it should decline to do so. That is because Petitioners' own misconduct is the direct cause of the supposed "harm" they are suing about—and Petitioners themselves

[13] If the Court were to disagree—and to conclude that §§ 3.05 or 5.05 purport to create a right in the Secretary that is substantial enough to ground standing—then Respondents believe that *would* violate Article III of the Constitution, and the statutes would be unenforceable for that reason. Either way, Petitioner Simon lacks standing.

can instantly remedy that harm simply by complying with their constitutional duties. Seeking extraordinary-writ relief in these circumstances is highly inappropriate and should not be countenanced by the courts.

A. This Court has Considerable Discretion in *Quo Warranto* Proceedings.

Quo warranto is one of the "extraordinary writs," along with mandamus, certiorari, and the like. *Page v. Carlson*, 488 N.W.2d 274, 278 (Minn. 1992); 5A Minnesota Practice, *Methods of Practice* § 1.52 (4th ed.). By statute, this Court issues such extraordinary writs only when "necessary to the execution of the laws and the furtherance of justice." Minn. Stat. § 480.04. The Court "exercise[s] that discretion" regarding extraordinary writs, including *quo warranto*, only "infrequently and with considerable caution." *Rice v. Connolly*, 488 N.W.2d 241, 244 (Minn. 1992). And that discretion is at least guided, if not limited, by equitable doctrines restricting the availability of relief. *See State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 317 (Minn. Ct. App. 2007) (subjecting *quo warranto* petition to laches analysis).[14]

[14] There is no question that "equitable defenses are available" to a mandamus petition, *Alevizos v. Metro. Airports Comm'n,* 216 N.W.2d 651, 665–66 (Minn. 1974), but this Court has never expressly addressed the question with respect to *quo warranto*. The history of *quo warranto* proceedings is very long and complex, both in England, *see generally State ex rel. Danielson v. Village of Mound*, 48 N.W.2d 855 (Minn. 1951), and in other American jurisdictions, *see* 74 C.J.S. *Quo Warranto* § 4 (different courts may treat *quo warranto* as equitable, legal, or some combination of both), and in Minnesota itself. *See Rice v. Connolly*, 488 N.W. 2d 241 (Minn. 1992). What is clear is that (1) this Court exercises "discretion" to grant *quo warranto* "with considerable caution," *id.* at 244, and (2) the lower courts subject *quo warranto* petitions to equitable defenses. *Sviggum*, 732 N.W.2d at 317. For purposes of these Petitions, therefore, it does not matter whether equitable principles are strict limitations on *quo warranto* relief, or merely useful guides for this Court's exercise of its discretion. Either way, *quo warranto* relief is manifestly inappropriate.

Under those principles, one who seeks relief "should come into court with a clear record," and a petitioner with unclean hands will be denied relief "however meritorious the application may be on other grounds." *Dale v. Johnson*, 173 N.W. 417, 418 (Minn. 1919). Under this principle, when a "petitioner did not come into court with clean hands and … [is] unwilling to do equity although abundantly able to do so, it [i]s error to grant him any relief." *Santee v. Travelers Ins. Co.*, 275 N.W. 366, 368 (Minn. 1937); *see Pomeroy v. Kelton*, 62 A. 56, 57 (Vt. 1905) (denying *quo warranto* relief to a "relator who stands as a wrongdoer in respect to the very thing in issue").

These Petitions present just about the strongest case of unclean hands imaginable: Petitioners are suing about a situation that they directly created by their own continuing misconduct.

B. The Legislator Petitioners do not Need an Extraordinary Writ Where They Can Fix the Alleged "Problem" Simply by Doing Their Jobs.

That is clearest as to the legislator Petitioners, who have deliberately and improperly created the alleged lack of quorum they are suing about. It is undisputed that these Petitioners are duly-elected Members of the Minnesota House of Representatives. The Constitution requires that "[t]he legislature shall meet at the seat of government in regular session in each biennium at the times prescribed by law." Art. IV, § 12. That time was a week ago, *see* Minn. Stat. § 3.011—but none of the legislator Petitioners have appeared for the House's scheduled sessions at the Capitol. Indeed, they are organizing their whole caucus *not* to appear. And the whole purpose of this counter-constitutional conduct by Defendants is to try to ***create*** the alleged lack of quorum that they are now complaining about.

As a result, Petitioners' alleged "problem" does not remotely require an extraordinary writ; indeed it would be trivially easy for them to fix the "problem" themselves. 67 Members of the House are regularly and publicly meeting in the Capitol. If ***any one*** of the legislator Petitioners simply shows up to such a meeting as called for by the Constitution and takes up the legislative duties she was elected to, the alleged quorum defect will disappear—and so will the grounds for these Petitions. If ever there were a case where the Court should exercise its discretion to decline *quo warranto* relief as inequitable, it surely is this one.

C. Petitioner Simon Likewise Cannot Sue About a Situation He is Purposely and Illegally Causing.

Petitioner Simon's misconduct is, if anything, even more troubling. That is so in two ways.

First, Simon's insistence that he can make an unappealable lack-of-quorum ruling is a blatant abuse of power. Under ordinary rules of proceeding, no presiding officer of a legislature can simply dictate rulings—instead the chair's rulings are subject to appeal to the body. That includes a ruling of "no quorum," which is "subject to appeal in the same manner" as any other point of order. *Mason's Legislative Manual* § 504 para. 5 (2020). Here, Secretary Simon was fully aware that his no-quorum ruling depended on a hotly debated question of law. Moreover, he was—or at least should have been—fully aware that there were strong legal arguments for the presence of a quorum. *See infra* Pt.IV. His minimum responsibility, therefore, was to entertain an appeal of his ruling and allow the body to make a determination on the issue if it wished. His refusal to do so was a highly improper attempt to seize control of the House, committed without any authority or legal justification.

Second, if Petitioner Simon's no-quorum ruling had been correct, the Constitution specifies exactly what should have happened next: even when a house of the Legislative allegedly lacks a quorum, "a smaller number [of members] may adjourn from day to day and compel the attendance of absent members in the manner and under the penalties it may provide." Art. IV, § 13. Moreover, the House may not constitutionally adjourn "for more than three days ... without the consent of the [Senate]." *Id.* § 12. Therefore, if Secretary Simon believed that the House lacked a quorum at the opening of its session and that he was the lawful presiding officer, he would also have had a clear constitutional duty to entertain motions and votes on compelling the attendance of absent members—or, alternatively, on adjournment for no more than three days. He utterly failed to do this as well. Instead he ignored appeals and motions from duly elected and sworn House members, and purported to unilaterally adjourn the House without a motion or vote.

In the face of this egregious executive overreach, Petitioner Simon's invocation of an extraordinary writ meant to *end* usurpation of authority is gravely inappropriate. The Constitution prescribes quite specific remedies for the alleged lack of quorum at issue. Petitioner Simon cannot invoke this Court's extraordinary-writ jurisdiction to address it while he is actively and illegally obstructing those constitutional paths.

IV. The House Has A Quorum Under Long-Settled Minnesota Law.

Finally, to any extent that the Court has and exercises jurisdiction, the Petitions should be denied because they are meritless. Settled Minnesota law agrees with the longstanding practice of the U.S. House of Representatives: a legislative

quorum is a majority of the body's current members. That requirement undisputedly has been satisfied here.

Article IV, § 13 of the Minnesota Constitution provides that "[a] majority of each house constitutes a quorum to transact business." The merits question in this case is what constitutes a "majority" of the House, for these purposes. Petitioners contend that it is a majority of *seats* in the House, including vacant ones. Respondents contend that it is a majority of current *members* of the House, without counting vacant seats. There is no dispute about how the numbers work out under each standard. If a quorum were a majority of *seats* (including vacant ones), it would require 68 Members, and no quorum would have been present since the current House session began. If a quorum is a majority of *current members* (excluding vacant seats), then it currently requires 67 Members, and a quorum has been present at each meeting of the House during this Session (other than the *pro forma* meeting on Martin Luther King Day). The sole debate is about what qualifies as a "majority of [the] house."

But this Court has long since settled that debate—in Respondents' favor here. Petitioners give no reason whatsoever to overturn that settled law.

A. A "Majority of [the] House" Means A Majority of Current Members, not Total Seats.

The question of how a multi-member body may take official action is not at all a new one. It has been faced by every such body that has ever existed, from the U.S. Congress to state and local governments to corporate boards to civic clubs. For Minnesota in particular, this Court has addressed this issue several times. And it has made perfectly clear that, under Minnesota law, a requirement that a body act with "a majority" refers to majority of "all members currently sitting"—***not*** a

majority of "all possible members, including the vacancy." *Ram Dev. Co. v. Shaw*, 244 N.W.2d 110, 113 (Minn. 1976) (cleaned up). That is the same rule followed by the U.S. House of Representatives. It is confirmed by the specific discussion of the Quorum Clause at Minnesota's Constitutional Convention. And it is followed by many other States as well.

1. This Court's decisions.

For multimember bodies at every level of Minnesota government, this Court has made the rules clear: such bodies normally act through a majority of their current membership, except when specific legal language requires votes equaling a majority of all seats (including vacant ones).

This Court's most direct and extensive statement of the rule came 90 years ago in *State ex rel. Peterson v. Hoppe*, 260 N.W. 215 (1935). That case involved a city charter providing that action could be taken by "a majority of all members of the City Council," *id.* at 217, but the Court applied its analysis to any multimember government body, including the Legislature. The *Peterson* Court noted a crucial distinction "between the phrase 'all members' (or phrases of a similar import) and … the phrase 'all the members elected'." *Id.* at 218. Citing extensive authority from other jurisdictions, the Court explained that when the law requires a certain proportion "of the members *elected*," this means that "vacancies in office … do[] not diminish the number of votes necessary" to carry an action. *Id.* (emphasis in original). By contrast, when the law allows for action by "a certain proportion of the 'entire council,'" that refers to a proportion of "all the members of the board in existence at the time …, and ***not*** all of those originally elected." *Id.* (emphasis added). Thus, the *Peterson* Court explained, the phrase "'a majority of the

members' … mean[s] … a majority of those constituting the actual membership of the body at the time, so that, if the full membership is 16 but at a given time has been in fact reduced by the resignation of one, there are but 15 members" for purposes of calculating this majority. *Id.* at 192.

Lest there be any doubt that these principles apply to the state Legislature as well, the *Peterson* Court added that other "Minnesota cases" dealing with the Legislature were "of similar nature and import" to its holding. *Id.* Those cases are *State ex rel. Eastland v. Gould*, 17 N.W. 276 (Minn. 1883) and *Board of Supervisors of Ramsey County v. Heenan*, 2 Minn. 330 (1858). Of these, *Eastland* is most on point here. In *Eastland* this Court considered "[w]hat is a two-thirds vote" of the legislature, for overriding vetoes and other purposes. 17 N.W. at 190. In answering this question, the *Eastland* Court started by noting exactly the same linguistic distinction that the *Peterson* Court would later emphasize, with specific reference to the Quorum Clause: while "[t]he constitution … provides that a majority of each house shall constitute a quorum for the transaction of business," by contrast, "no law shall be passed unless voted for by a majority of ***all the members elected***." *Id.* at 277 (emphasis added).[15] And from this linguistic distinction, the *Eastland* Court drew the same substantive distinction that the *Peterson* Court later elaborated on: "while a majority of the members of each house constitute a quorum, no law, however unimportant, can be passed without the votes of a majority in each branch of the legislature of ***all the members elected*** to that branch." *Id.* (emphasis added).

[15] Our modern Constitution still contains substantially the same provisions quoted by the *Eastland* Court. *See* Art. IV, §§ 13 ("A majority of each house constitutes a quorum"), 22 ("No law shall be passed unless voted for by a majority of all the members elected to each house").

The Court proceeded to construe the two-thirds vote requirement similarly. (We discuss this further below. *See infra* Pt.IV.B.2.)

This Court has never questioned the majority-of-current-members rule it adopted in *Peterson* and *Eastland*. To the contrary, when similar issues have recurred, the Court has discussed the rule extensively and with approval. *Ram Dev. Co.*, 244 N.W.2d at 113.[16]

Minnesota is far from alone in recognizing this crucial distinction. Many other jurisdictions recognize and apply it:

- There is "a distinction between 'members elected' and … the term 'membership of each house,'" under which "'members elected' means the entire membership authorized to be elected to each house."

Marionneaux v. Hines, 902 So.2d 373, 378 (La. 2005).

- "[I]f the statute requires the vote of a specified proportion of all members 'elected' … the required proportion must be determined based upon the entire authorized membership of the body, unaffected by the vacancy. On the other hand, under statutory language [referring to a] vote … 'of all members' without additional qualifying words such as 'elected,' compliance is determined based upon the then current total membership, as reduced by any vacancy which might exist."

Croaff v. Evans, 636 P.2d 131, 137 (Ariz. Ct. App. 1981).

- A legal requirement of a "majority of all" members "mean[s] a majority of the actual membership at the time in question instead of a majority of the total authorized membership."

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[16] The *Ram Development* Court held that ***abstentions*** from voting by sitting councilmembers do *not* reduce the number of votes required for official action by the council. *Id. at* 115. In that context, the Court described at length its previous holdings regarding "vacancy", *id.* at 113, and took pains to note that it was not disturbing those rulings. *Id.* at 115.

Bailey v. Greer, 468 S.W.2d 327, 336 (Tenn. Ct. App. 1971) (citations omitted).

- "[P]rovisions requiring a specified fraction of the whole body 'elected'" refer to "the total number of positions which constitutes that body" without any reduction for vacancies, while a simple reference to "all the members … means all the members *in esse* and qualified."

City of Alamo Heights v. Gerety, 264 S.W.2d 778, 779–80 (Tex. Civ. App. 1954).

- "[T]he phrase 'a majority of the members' … mean[s] … a majority of those constituting the actual membership of the body at the given time."

City of Nevada v. Slemmons, 59 N.W.2d 793, 796 (Iowa 1953).

- "[T]he fact that the word 'elected' was omitted after the word 'board' is indicative to us that the Legislature [was referring to] three-fourths of the entire membership of the board in existence," not three-fourths of the total possible membership.

Bd. of Comm'rs of Town of Salem v. Wachovia Loan & Tr. Co., 55 S.E. 442, 443 (N.C. 1906). *See also McCracken v. City of San Francisco,* 16 Cal. 591, 602 (1860) (distinguishing between requirements of action by portion of "all the members" and portion "of all the members elected.")

2. It is very clear how this law applies to the Quorum Clause.

Under this settled Minnesota law, it is very clear that the Constitution's quorum requirement refers to a majority of *current members*, not a majority of all *seats* filled or vacant.

Peterson clarifies that, when the law refers to action by a majority of "members *elected*" to a body, that means a majority of *seats* in the body (including vacant ones). This principle applies naturally to the Constitution's provisions for the Legislature, several of which specifically require a vote of a majority (or two-thirds) of "members elected." These include most of the provisions that can affect the rights of persons outside the Legislature: "No law shall be passed unless voted for by a

majority of all the members elected" (§ 22), line-item-veto overrides must be "approved by two-thirds of the members elected to each house" (§ 23), "[a] majority of the members elected to each house of the legislature may propose amendments to this constitution" (Art. IX § 1), and "[t]wo-thirds of the members elected to each house of the legislature may" set an election for a constitutional convention. (*Id.* § 2.) Pursuant to the *Peterson* rule, these actions require the vote of members equaling a majority (or two-thirds) of *all seats* in the relevant house, whether occupied or vacant.

By contrast, *Peterson* holds that when a law requires only a majority of a legislative body (or a majority of "members" in the body), this means a majority of the body's *current membership*, without counting vacancies. The Constitution's Quorum Clause plainly is that type of provision. Article IV, § 13 provides that "[a] majority of each house constitutes a quorum." It makes no mention of "members elected" to the house. Under *Peterson*, that is dispositive: requiring a majority of an "'entire council'" refers to "all the members … in existence at the time." 260 N.W. at 218. Thus, a quorum of the House consists of a majority of currently-existing members—in other words, a majority of all the non-vacant seats in the House. Here, all agree that this number is 67.

Again, Minnesota is in very good company in holding that a quorum is a majority of current membership. The U.S. Constitution's Quorum Clause is nearly identical to Minnesota's: "a Majority of each [House] shall constitute a Quorum to do Business." (Art. I, § 5, para. 1.) And the U.S. House of Representatives applies the same current-membership quorum rule as Minnesota: a "quorum consists of a majority of those Members chosen, sworn, and living whose membership has not

been terminated by resignation or by the action of the House."[17] There are very weighty historical reasons for this: the House developed this approach during the Civil War, when a majority-of-seats quorum requirement would have allowed rebel States to cripple Congress simply by refusing to hold elections. *See* Cong. Globe, 37th Cong., 1st sess. 210 (July 19, 1861). Unsurprisingly, numerous other States follow a similar rule. *E.g., Zemprelli v. Daniels*, 436 A.2d 1165 (Pa. 1981); *People ex rel. Funk v. Wright*, 71 P. 365, 366 (Colo. 1902); *State ex rel. Atty. Gen. v. Orr*, 56 N.E. 14 (Ohio 1899); *State ex rel. Hatfield v. Farrar*, 109 S.E. 240 (W. Va. 1921).

The rule of *Peterson* also underscores the serious separation-of-powers issues posed by these petitions. The ***only*** questions raised by the current 67-66 split are whether 67 House votes suffice for acts of self-organization that the Constitution entrusts to a majority of the House such as choosing a Speaker. These internal functions are certainly important to the House—without them, the House would be hobbled in scheduling hearings, readings or votes on bills that it hopes to eventually pass, or in taking various other actions that are essential to the modern legislative process. But if the House sought to actually pass legislation (which it has not done here), an entirely different analysis would apply—that would require the

[17] H.Doc. No. 117-161, *Jefferson's Manual and Rules of the House of Representatives* at 23 (117th Cong. 2d Sess.), https://www.govinfo.gov/content/pkg/HMAN-118/pdf/HMAN-118.pdfi; *accord* Johnson et al., *House Practice* at 757 (2017), https://www.govinfo.gov/content/pkg/GPO-HPRACTICE-115/pdf/GPO-HPRACTICE-115.pdf.

vote of a majority of all "members elected," which *Peterson* makes clear would be assessed under a different standard.[18]

In sum, *Peterson*'s dichotomy between "majority-of-members" requirements and "majority-of-seats" requirements disposes of this case: under long-settled Minnesota law, the House has had a quorum since the beginning of the current session.

3. Minnesota's Constitutional Convention.

As explained, this Court's repeated decisions are in accord with the U.S. House and many other States that a legislative quorum consists of a majority of current membership. That easily settles the dispute here. But if more were needed, it is worth nothing that the Framers of our Constitution addressed this very issue when they discussed the Quorum Clause in Minnesota's original Constitutional Convention. One delegate to the Convention noted that the proposed Constitution's Quorum Clause called for "a majority of each House," and offered an amendment that "[a] majority of ***all the members elected*** shall constitute a

[18] Thus, there is no need for the Court to address questions that other jurisdictions and commentators have raised about the precise meaning of "members elected," under *Peterson* and similar principles. Some have questioned whether a vacant seat should count as a "member elected" if, for some reason, no election was held for it. Others have asked whether a vacant seat counts as a "member elected" if the election winner never became a "member" because he was ineligible, or died before her term began, or never was sworn in for whatever other reason. *Peterson* and related cases seem to suggest that "members elected" includes *all* vacancies, regardless of the reason for the vacancy. But this Court has never expressly addressed the issue, and there is no occasion for it to do so here because the House has not sought to pass any legislation.

quor[u]m in either branch of the Legislature."[19] Other Framers objected—including on the ground that a majority-of-seats quorum requirement would make it easier for "a minority" to "remain[] out of either House" in order to "compel the attendance, and constantly perhaps, of all the other members."[20] The objections won the day: the Convention rejected the "majority of members elected" amendment was rejected, and adopted the "majority of each house" quorum language that remains in our current Constitution.[21]

B. Petitioners' Contrary Arguments are Unavailing.

Although Petitioners do not acknowledge it, their positions in this case would require the Court not merely to discard, but to completely ***invert*** this established Minnesota law, and to stake out a position that (to our knowledge) has been

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[19] *Debates and Proceedings of the Constitution Convention for the Territory of Minnesota*, at 208-09 (T.F. Andrews rptr., 1858) (emphasis added), *available at* http://minnesotalegalhistoryproject.org/assets/Republican%20Debates%20%20at%20Con%20Conven%20(1857).pdf

[20] *Id.* at 209.

[21] One of Secretary Simon's letters referred to this exchange as "the debates … of the Republican delegates during the Minnesota Constitutional Convention." Letter to Reps. Demuth & Niska at 1 (Jan. 13, 2025). If that reference to party affiliation was intended as disparaging, it was improper and more than a little ironic. As is well known, at the 1857 constitutional convention, "bitterness between the two parties was so intense that Republican delegates and Democratic delegates refused to meet" with each other in person, and the two groups had to hold "separate sessions in different rooms" before reconciling a final constitutional text "through a conference committee." *See* Office of the Minnesota Secretary of State Steve Simon, *Minnesota Constitution 1858,* https://www.sos.state.mn.us/about-minnesota/minnesota-government/minnesota-constitution-1858/. Thus, almost ***all*** discussions at the Constitutional Convention were between the members of one party only. As it happened, the relevant issues appear to have been discussed only by Republicans, not by Democrats.

adopted by no other State. Petitioners offer no justification whatsoever for that radical approach.

1. The constitutional text does not suggest overturning the *Peterson* rule.

Petitioners now contend that a constitutional requirement of a "majority … 'of each house'" refers to "all potential members of the house" — that is, all House seats whether filled or vacant — while a constitutional requirement of "a *majority of all the members elected* to each house" refers to "a portion of the legislators — the real people who may be present, absent, disqualified, or indisposed." (Simon Mem. at 6-7; *accord* Hortman Ptn. ¶ 56.) That is the opposite of what this Court has long held, as we explained above: "all the members elected" means *all the seats*, filled or vacant; while a reference to the body generally (or a majority of the body) means a majority of its current membership.

Petitioners' attempted reversal of that settled definition would lead to bizarre results that cannot be correct. For instance, whenever a legislative seat is vacant, Petitioners' proposed rule apparently would mean that the number of Representatives or Senators needed to establish a quorum (which requires "[a] majority of each house") would be *greater* than the number needed to pass a statute (which requires "a majority of all the members elected"). *Compare* Art. IV, §§ 13 & 22.

And Petitioners' attempts to ground their arguments in the constitutional text are not persuasive. They first note (*see* Simon Mem. at 6) that the Constitution requires that "[t]he number of members who compose the senate and house of representatives shall be prescribed by law," Art. IV § 2, and so they contend that a "majority of [the] house" must be a majority of that prescribed number even if

some seats are vacant. The text cannot support that reading. For one thing, the phrase "members ***who*** compose the … house" naturally refers to persons, not inanimate seats. For another thing, the Constitution elsewhere uses the word "members" in a manner that cannot possibly include empty seats. For instance, the Bill of Rights' requirements that juries "have at least six members" (Art. I §§ 4, 6) surely would not be satisfied by a "jury" of four people and two empty chairs. Other provisions of the Constitution refer to "members" of the Legislature having their eligibility judged (Art. IV, § 6), being punished (*id.* § 7), belonging to political parties (§ 9), making journal entries (§ 11), and voting "viva voce" (§ 16). None of these is even capable of being applied to a vacant seat.

Petitioners attempt to make their own textual point of this kind: they contend (Simon Mem. at 6-7) that the Constitution's references to a "house" having vacancies, or adjourning, or keeping a journal, do not "make sense" if they refer to the house's current membership rather than the house as an institution. For the most part, this argument is facially wrong: it is perfectly sensible for journal-keeping and adjournment to be entrusted to a house's current membership. But more broadly, the solution to all these grammatical puzzles lies in recognizing that, in normal English, the word "house" can refer to *either* the legislative institution *or* its membership, as the context indicates. As the Supreme Court of North Carolina recognized long ago when addressing similar issues as to governing boards, "[t]he term … seems to have two meanings—one abstract, having reference to the legislative creation, the corporate entity, which is continuous, and the other referring to its members, the individuals composing the board." *Bd. of Comm'rs of Town of Salem*, 55 S.E. at 443-44. So here. The Constitutional terms "house" (and "Senate")

are best understood as sometimes referring to the institutions and sometimes referring to their membership. That is fully consistent with the interpretation this Court adopted in *Peterson*, and does not suggest overturning it.

2. Requiring two-thirds of total seats for a veto override does not suggest requiring a majority of total seats for internal organization.

Petitioners argue that, since this Court has held (or at least strongly suggested) that a veto override requires a vote of two-thirds of the total seats in each legislative house, all other actions by a house of the legislature must also be determined with reference to the total number of seats. (Simon Mem. at 7 (discussing *Eastland*, 17 N.W. at 277); Hortman Ptn. ¶54 (similar); Simon Mem. at 8 (noting publication by "the House's own non-partisan staff" that, for veto overrides "two-thirds of the house means two-thirds of the total membership").) That is mistaken.

It is true that this Court has made one exception to *Peterson's* majority-of-members/majority-of-seats dichotomy. Certain of the Constitution's supermajority requirements refer to a vote of each "house" or the "members of each house," not of members elected.[22] These were the provisions that this Court addressed in *Eastland.* The *Eastland* Court noted that passing ordinary legislation requires a majority of all members elected, and found it would be "absurd" if "a bill could be passed after a veto by a vote less than is required to pass it before a veto." 17 N.W. at 192. So it concluded that these provisions must refer to a supermajority of all

[22] *See* Art. IV § 19 ("two-thirds of the house" can dispense with timing requirements for bill reporting), § 23 ("two-thirds of the house" required for non-line-item veto overrides), § 26 ("Passage of a general banking law requires the vote of two-thirds of the members of each house"), Art. IX § 5 (issuing certain public debt requires "the vote of at least three-fifths of the members of each house").

members elected, even though they do not expressly include that language. As the U.S. Supreme Court later put it, *Eastland* concluded that since "the state Constitution required a vote of the majority of all the members elected to the house to pass a law, the two-thirds vote necessary to override a veto was a two-thirds vote of the same body." *Missouri Pac. Ry. Co. v. State of Kansas*, 248 U.S. 276, 285 (1919).

Seizing on this rule, Petitioners contend that if a constitutional reference to "the house" includes vacant seats for purposes of veto overrides, then it must also include vacant seats for quorum purposes. That is incorrect. *Eastland*'s interpretation of the supermajority provisions was plainly based on those provisions' structural relationship to the "majority of members elected" requirement for enacting ordinary legislation—not on the textual meaning of the word "house." Thus, there is no reason to apply this principle to constitutional provisions such as the Quorum Clause that do not require a supermajority vote.

3. No other considerations suggest overturning the *Peterson* rule.

Since Petitioners' attempted overthrow of *Peterson* finds no footing in the constitutional text or in this Court's decisions, it is unsurprising that they gain little traction elsewhere, either.

Petitioner Simon mischaracterizes *Mason's Legislative Manual* as "identif[ying] the quorum as a majority of the assembly's potential seats." (Mem. at 8.) In reality, Mason's states that there are two potential approaches: it describes Petitioners' preferred majority-of-seats rule as being followed by "[t]he majority of legislative bodies," and the *Peterson* majority-of-members approach as being "[t]he minority rule." *Mason's Legislative Manual* sec. 501 (2020). Even these descriptions are questionable at best, since the previous edition of *Mason's* did not even

mention what it now claims is the majority rule: as recently as 2020, *Mason's* simply stated that "when there is a vacancy … a quorum will consist of the majority of the members remaining qualified." *Mason's Manual of Legislative Procedure* at 337 (2010 ed.). Nor does the new edition of *Mason's* purport to count the jurisdictions that adhere to its supposed "majority" and "minority" approaches. But even taking this statement at face value, this Court's *Peterson* approach still enjoys strong and broad support from a number of other jurisdictions. *See supra* Pt.IV.A.1-2. The mere fact that different States take different approaches to parliamentary procedure is no reason for Minnesota to abandon its own approach.

Secretary Simon's reference to the tied House in 1979 (Mem. at 8-9) is equally misplaced, because the 1979 House had a full complement of 134 members at the relevant time. Although both parties held 67 seats in January 1979, Republicans had a temporary 67-66 majority in floor votes because one sitting DFL Member (Richard Kostohyrz) was absent due to a health emergency. *See* Rod Searle, *Minnesota Standoff: The Politics of Deadlock* 67-70 (1990). Consistent with *Peterson*, therefore, Speaker Searle needed "68 votes for a quorum to conduct House business" (*id.)* because that was a majority of the 134 sitting House *members*, not because there were 134 House *seats*.

Finally, Petitioners make no developed public-policy arguments for abandoning the *Peterson* approach, and it is hard to see how they could. This Court has explained that the majority-of-members rule "permits the governing body to function" in more circumstances, and makes it more difficult for "obstructionists" to "defeat any action" by the body. *Ram Dev. Co. v. Shaw*, 244 N.W.2d at 114. On the other hand, other courts recognize that allowing official action by too small of a

group risks allowing an unrepresentative group to act for the whole body. *See Zemprelli v. Daniels*, 496 Pa. 247, 260 (1981). But there are strong arguments that the risk of crippling the Legislature is "by far the less desirable" option. *Id.* There is not the slightest indication that the policy balancing could tip so far as to warrant abandoning longstanding rules of Minnesota law.

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We close by emphasizing the extraordinary short-sightedness of Petitioners' position. Petitioners are seeking a fleeting political advantage—they hope to deprive the opposing party of the ability to organize the House of Representatives for a few weeks. But to achieve this, they ask the Court to reverse constitutional principles that Minnesota has consistently articulated and applied since before it became a State. That is backwards. The effect of changing circumstances on the balance of political power should be determined by our constitutional structure. Petitioners' attempt to have it the other way around—to rearrange our constitutional order for their momentary advantage—is wholly inappropriate.

CONCLUSION

The petitions should be dismissed for lack of jurisdiction, or alternatively denied on the merits.

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