STATE OF MINNESOTA
IN SUPREME COURT
A25-0157

FILED
February 3, 2025
OFFICE OF
APPELLATE COURTS

Lisa Demuth, Harry Niska,

Petitioners,

vs.

Minnesota Secretary of State Steve Simon,

Respondent.

**RESPONDENT SIMON'S MEMORANDUM OPPOSING WRIT OF QUO WARRANTO**

Samuel W. Diehl (#388371)
Nicholas J. Nelson (#391984)
Ryan D. Wilson (#400797)
CROSSCASTLE, PLLC
14525 Highway 7, Suite 345
Minnetonka, MN 55345
(612) 429-8100
sam.diehl@crosscastle.com
nicholas.nelson@crosscastle.com
ryan.wilson@crosscastle.com

ATTORNEYS FOR PETITIONERS

KEITH ELLISON
Attorney General
State of Minnesota

LIZ KRAMER (#0325089)
Solicitor General
PETER J. FARRELL (#0393071)
Deputy Solicitor General
ANGELA BEHRENS (#0351076)
Assistant Attorney General
MADELEINE DEMEULES (#0402648)
Assistant Attorney General

445 Minnesota Street, Suite 600
St. Paul, MN 55101-2128
(651) 757-1010 (Voice)
liz.kramer@ag.state.mn.us
peter.farrell@ag.state.mn.us
angela.behrens@ag.state.mn.us
madeleine.demeules@ag.state.mn.us

ATTORNEYS FOR RESPONDENT SIMON

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## INTRODUCTION

Having failed to reach agreement with their colleagues to bring all members to the Capitol, Representatives Lisa Demuth and Harry Niska seek a writ of quo warranto against Minnesota Secretary of State Steve Simon, asking this Court to force him to accept their motions. Their petition fails. Fundamentally, it fails because the petition is filed by two legislators who lack standing, yet ask the Court to referee parliamentary procedure. And to the extent that this Court is willing to overlook those jurisdictional obstacles, the petitioners are wrong on the merits. There is no authority to support the position that Minnesota's Constitution allows members to compel the attendance of absent members before the House is even organized.

## BACKGROUND

Each session, the House must become organized. The Minnesota Constitution leaves it to the Legislature to pass laws prescribing how to elect a presiding officer and other officials, and in doing so organize itself. Minn. Const. art. IV, § 15. For more than 160 years, the Minnesota House of Representatives has required the Secretary of State to serve as the presiding officer at the beginning of each legislative session. *See, e.g.*, Minn. Stat. § 5.05 (2024); Minn. Stat. ch. 3, § 7 (1863). After legislators present certificates and are sworn, the secretary must "preside until a speaker is elected." Minn. Stat. § 5.05. But that cannot happen until "a quorum is present." *Id.* § 3.06. Similarly, no sergeant-at-arms, chief clerk, or chaplain can be chosen until a quorum is present. *Id.*

When Secretary Simon called the House to order on January 14, 2025, only 67 members were present. Minn. H.J., 94th Leg., Reg. Sess. 6 (2025). Because the House

lacked a quorum, Secretary Simon adjourned the meeting. *Id*. After he adjourned, however, the 67 members present disregarded the adjournment and purported to elect a speaker and other officers. Bethke Decl. Ex. 2. Because the 67 members then began to act as a duly organized House, Secretary Simon petitioned this Court for clarity as to whether he remained the presiding officer. This Court confirmed that the constitution requires 68 members for a quorum. *Simon v. Demuth*, No. A24-0066, 2025 WL 300399, at *1 (Minn. Jan. 24, 2025).

Secretary Simon's understanding has been that, without a quorum or a duly organized House, members of the House may only meet and adjourn and that the presiding officer cannot take motions. Bethke Decl. ¶ 9; Erickson Decl. ¶ 9, Ex. 4 at 4, 10-11.[1] Following the Court's order clarifying the quorum requirement, Secretary Simon met with Representatives Demuth and Niska, plus nonpartisan House staff. Bethke Decl. ¶¶ 4-5. Nonpartisan staff confirmed their view that the lack of a duly organized House precluded motions. *Id.* ¶ 5. Nor could the present members compel the attendance of others because the House had no rules for compelling attendance or imposing penalties against absent members. *Id.*; *see also* Minn. House of Rep., 93d Leg., *Permanent Rules of the Minnesota House 2023-24*, https://perma.cc/P8GQ-YQVX.

In the week since this Court resolved the quorum question, Secretary Simon has been attempting to carry out his duties under Minnesota law. He resumed presiding over the House on January 27. From January 27 to January 30, Secretary Simon convened the

[1] The Declaration of Justin Erickson, submitted in *Simon v. Demuth*, is attached as Exhibit 1 to Lauren Bethke's declaration.

House each day. Minn. H.J., 94th Leg., Reg. Sess. 7, 9, 11, 13. Each time, the House lacked a quorum, and Secretary Simon adjourned the meeting. *Id.* The House therefore has not yet elected a speaker, a sergeant-at-arms, or any other officers. Minn. Stat. § 3.06, subd. 1.

The House cannot adjourn for more than three days during a legislative session. Minn. Const. art. IV, § 12. When not adjourning to a day and time certain, the customary practice is to meet daily at 3:30 p.m. *Permanent Rules of the Minnesota House 2023-24*, at 1.01. Ahead of the January 27 floor session and again later in the week, Secretary Simon proactively scheduled a meeting to consult with Representatives Demuth and Niska regarding their preferred adjournment schedule. Bethke Decl. ¶¶ 8, 11, 13, Exs. 3-4. They asked that he reconvene each day, Monday through Thursday, and then adjourn to the following Monday. *Id.* Secretary Simon deferred to their preferred schedule. *Id.*

When Secretary Simon presided on January 27 through January 30, he was not presented with any motions. Simon Decl. ¶ 3; Bethke Decl. ¶¶ 10, 12, 14. In any event, he would not have entertained any motions because the House lacked a quorum. Representative Niska's declaration attaches two motions that he alleges he "presented at the front desk." Niska Decl. ¶¶ 15, 19, Exs. A-B. The motions seek three actions: compelling absent members' attendance; docking their salaries or fining them; and refusing their per diem for the entire two-year session. *Id.*

## ARGUMENT

The Court should deny the petition. As individual legislators, neither petitioner has standing to pursue their claims of institutional injury. Nor does either cite a cognizable or

justiciable injury, instead asking the Court to adjudicate parliamentary procedure. And even if the petitioners raised a proper claim, the petition should begin in the district court rather than with this Court.

Finally, even if the Court determines that the petition presents a viable constitutional question over which it should exercise original jurisdiction, the Court should still deny the petition. While the Minnesota Constitution includes a provision about compelling the return of absent members, it presumes a duly organized House and procedures to implement any directive to compel members. Because the Minnesota House of Representatives has not yet organized and otherwise has no procedures for compelling members, the petitioners have no basis for invoking the constitutional provision.

## I. PETITIONERS LACK STANDING.

### A. Petitioners Do Not Meet the Test for Legislator Standing.

When individual legislators bring suit, they must show that they seek to address a personal injury, as opposed to an institutional injury. Minnesota courts have adopted federal precedent on this issue, requiring legislators to establish an injury that is "personal, particularized, concrete, and otherwise judicially cognizable" to show standing. *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 149-50 (Minn. Ct. App. 1999) (citing *Raines v. Byrd*, 521 U.S. 811, 820 (1997)). If the essence of the claim is the "diminution of legislative power," it will not suffice. *Id.* Here, Representatives Demuth and Niska claim a diminution of legislative power, not any personal or concrete harm that can establish standing.

In *Rukavina v. Pawlenty*, 684 N.W.2d 525, 532 (Minn. Ct. App. 2004), for example, two legislators sued the governor for transferring money from a mineral fund to the general fund, alleging it was a "usurpation of [their] power" or "vote nullification." The court affirmed the dismissal of their claims and held that they lacked standing, concluding that they described only an institutional injury of the type that does not support individual legislator standing. *Id.* (relying on *Conant* and *Raines*).

More recently, the U.S. Supreme Court applied the same concepts in explaining why the Arizona State Legislature had standing to sue the state's redistricting commission for usurping legislative authority. *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 801-04 (2015). It contrasted the standing of Arizona's full legislature with the lack of standing by six individual members of Congress in the Court's earlier *Raines* decision:

> In *Raines*, this Court held that six *individual Members* of Congress lacked standing to challenge the Line Item Veto Act. The Act, which gave the President authority to cancel certain spending and tax benefit measures after signing them into law, allegedly diluted the efficacy of the Congressmembers' votes. The "institutional injury" at issue, we reasoned, scarcely zeroed in on any individual Member. "[W]idely dispersed," the alleged injury "necessarily [impacted] all Members of Congress and both Houses . . . equally." None of the plaintiffs, therefore, could tenably claim a "personal stake" in the suit.
>
> In concluding that the individual Members lacked standing, the Court "attach[ed] some importance to the fact that [the *Raines* plaintiffs had] not been authorized to represent their respective Houses of Congress." "[I]ndeed," the Court observed, "both houses actively oppose[d] their suit." Having failed to prevail in their own Houses, the suitors could not repair to the Judiciary to complain. The Arizona Legislature, in contrast, is an institutional plaintiff asserting an institutional injury, and it commenced this action after authorizing votes in both of its chambers.

*Id.* at 801–02 (citations omitted); *see also* Michael B. Miller, *The Justiciability of Legislative Rules and the 'Political' Political Question Doctrine*, 78 Cal. L. Rev. 1341, 1366 (1990) (noting that "[v]irtually all congressional standing cases are founded upon [the] fundamental principle [that] . . . the congressional plaintiff must have suffered an injury that cannot be redressed by his fellow legislators").

Representatives Demuth and Niska, like the individual legislators in *Conant*, *Rukavina*, and *Raines*, lack standing because they are two members of a 134-member body, attempting to allege an institutional injury. The injury they allege—Secretary Simon's "usurpation" of legislative authority (Pet. ¶ 32)—impacts all members equally. It is not a personal or particularized harm to the petitioners.[2] And it is one that the full House has power to ameliorate.

### B. Representative Niska's Assertion that Secretary Simon "Refuse[d] to Recognize" His Motions Does Not Confer Standing.

The closest that petitioners come to asserting a personal or particularized harm is Representative Niska's allegation that on three consecutive days last week he wanted to make a motion, but Secretary Simon "refused to recognize [him] or acknowledge the motion." Niska Decl. ¶¶ 7-21. Even accepting Representative Niska's allegations as true, those facts do not establish standing, because Minnesota law obliged Secretary Simon to reject all motions, and the issue is not justiciable.

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[2] In fact, the petition contains no allegations that Secretary Simon has taken any action that is unique to Representative Demuth. The sole references to Representative Demuth allege that she is the "Republican Caucus's chosen leader and its choice for Speaker," and that she was informed that Secretary Simon would not entertain motions. Pet. ¶¶ 2, 15.

### 1. Secretary Simon was following Minnesota law.

Secretary Simon has been transparent about his two reasons for not entertaining motions. First, this Court has prohibited any motions when a quorum is not present. "In the absence of a majority of the members of the senate necessary to constitute a quorum, all they can do is to meet and adjourn." *State ex rel. Palmer v. Perpich*, 182 N.W.2d 182, 183 (Minn. 1971). Second, the parliamentary rules adopted by the House, and cited favorably by this Court, confirm that motions are disallowed in the absence of a quorum, other than to adjourn. *Mason's Legislative Manual* § 191 ("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."); *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.").[3] The duties of a presiding officer include "enforc[ing] all laws and regulations applicable to the body." *Id.* § 575 (1)(*l*). As such, Secretary Simon was following the law, and his actions could not injure Representative Niska. The petition cites no authority to the contrary.

### 2. Appeals of parliamentary procedure are not justiciable.

Putting aside the merits of the motion issue, in addition to being personal, legislators must assert an injury that is "otherwise judicially cognizable" to show standing. *Conant,*

[3] Petitioners cite six sections of *Mason's* (Mem. 2 n.2), but not section 191 which directly addresses the situation the parties are in.

603 N.W.2d at 150. But to the extent that Representative Niska has focused his writ on the propriety of Secretary Simon's parliamentary actions, those actions cannot be appealed to this Court.[4]

The relief sought in the writ is a declaration regarding Secretary Simon's authority to: adjourn without a motion and vote; and to refuse motions. Pet. ¶¶ 33-34. Even when a legislative body is duly organized, the method of appealing a presiding officer's ruling is by appeal to the entire body. *Mason's* §§ 240-45. The House's most recent rules have no contradictory procedures. *Permanent Rules of the Minnesota House 2023-24*. Courts have consistently refused to consider similar questions, finding them non-justiciable political questions. *See, e.g.*, *Common Cause v. Biden*, 909 F. Supp. 2d 9, 27-30 (D.D.C. 2012) (finding a challenge to two Senate rules presented a nonjusticiable political question); *Pirtle v. Legis. Council Comm. of N.M. Legislature*, 492 P.3d 586, 596 (N.M. 2021) ("Courts have shown a marked reluctance to interfere with a legislative body's application or interpretation of its own procedural rules, generally declining to review such determinations as involving questions beyond the judiciary's reach."); *see also generally Mason's* § 73 ("The judiciary will decline to interfere in the internal affairs of a legislative body conducted in accordance with constitutional mandates.") This Court should similarly refuse the invitation to review disputes over parliamentary procedure in the state house. *See, e.g.*, *Democratic-Farmer-Labor State Cent. Comm. v. Holm*, 33 N.W.2d 831, 833

[4] Furthermore, relief is unnecessary, because the parties are capable of resolving through internal discussions certain parliamentary matters. For example, Secretary Simon has consistently deferred to the petitioners' preferred dates and times for adjournment.

(Minn. 1948) (holding that court lacks jurisdiction over matters that involve no controlling statute or clear legal right); *see also Ninetieth Minn. State Senate v. Dayton*, 903 N.W.2d 609, 623-24 (Minn. 2017) (declining to review political dispute between governor and legislature); *In re Improvement of Lake of the Isles Park*, 188 N.W. 59, 60 (Minn. 1922) (holding that assessing amount of power vested in board and council was political question).

## II. EVEN IF EITHER PETITIONER HAS STANDING, THE COURT SHOULD DENY THE PETITION.

Even if Representative Demuth or Niska has standing, the Court should deny the petition. The petition does not raise the type of exigent circumstance in which this Court will exercise its original jurisdiction. And to the extent that it raises fact-based issues about who has what authority in the legislative body, the petition should start in the district court. But even if the Court considers the merits, it should deny the petition. Only a duly organized House, or at least one with an established process, can compel absent members to attend.

### A. The Court Should Not Exercise Jurisdiction Over the Petition.

Although this Court can exercise original jurisdiction over writs, it has cautioned that it will do so sparingly and only in "the most exigent of circumstances." *Rice v. Connolly*, 488 N.W.2d 241, 244 (Minn. 1992). Petitions should typically begin in a district court, which is better equipped to develop a record. *Id.* Even when a petition presents a significant substantive issue, resolving it by traditional means before a district court is the appropriate course of action. *Seventy-Seventh Minn. State Senate v. Carlson*,

472 N.W.2d 99, 99-100 (Minn. 1991). For example, when the state legislature petitioned the Court to address whether gubernatorial vetoes were effective, the Court dismissed the petition and directed the legislature to file in district court. *Id.* The Court similarly dismissed a petition challenging a district court's authorization of expenditures during a government shutdown because it did not involve exigent circumstances. *Limmer v. Swanson*, No. A11-1107, 2011 WL 2473302, at *1 (Minn. June 22, 2011).

The current petition rests primarily on fact-based claims regarding legislative procedure, making detailed claims about parliamentary procedure and the various powers of the presiding officer. *E.g.*, Pet. ¶¶ 16-23. Fact disputes also exist about whether a motion was even presented. Simon Decl. ¶ 3. And, as discussed below, there are fact disputes as to how the petitioners' proposed remedies would be enforced, which could affect whether the relief they seek is lawful. The case is therefore better suited to being in district court.

Although the Court recently exercised original jurisdiction in *Simon v. Demuth*, exigent circumstances were present. In that case, a minority of representatives were purporting to act as an organized body by electing officers, passing resolutions, introducing bills, and holding committee hearings. *See, e.g.*, Bethke Decl. Ex. 2; Minn. House Rep., *Session Daily*, *Week in Review Jan. 20-24* (Jan. 24, 2025) (reflecting bills and committee meetings), https://perma.cc/TU3V-SBPU. The legitimacy of a legislative body and its ongoing activities were at stake, and their actions could not be reversed without a court order. Here, by contrast, while the petition may present important issues, exigent circumstances do not exist. Negotiations between the two caucuses are ongoing and

intervening events could resolve this dispute without court intervention. The Court should therefore decline to exercise original jurisdiction and dismiss the petition.

### B. Only a Duly Organized House or a House with an Established Process Can Compel Members.

As noted above, the writ seeks a declaration from this Court regarding purely procedural matters, not the meaning of the state constitution. Yet, the memorandum supporting the writ makes clear that the real dispute is (again) over article 4, section 13 of Minnesota's Constitution. Mem. 2. This Court's scheduling order similarly anticipates that the merits will focus on that constitutional text. Order 1, *Demuth v. Minn. Sec'y of State*, No. A25-0157 (Minn. Jan. 31, 2025). If the Court chooses to engage on the meaning of that section, it will conclude that members of the House can only compel the attendance of absent members after the House is duly organized, which has not yet happened this session.

#### 1. The plain text establishes the compel clause is not available now.

Any analysis begins with the plain text of the provision. The relevant clause states:

> 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.

Minn. Const. art 4, §. 13. The plain language applies to all meetings of each house throughout each session, not just the initial organization of each house at the beginning of a session. Nothing about the language indicates a concern about the opening day, or start of the legislative session, or organization of the house in particular. It provides general rules for the legislative session. And the reference to providing the manner of compelling

or otherwise imposing penalties is rooted in the institution—"it"—not the smaller number of members seeking to invoke these procedures or penalties.

Logic dictates that the "compel clause" cannot apply until the house is organized and "it" provides penalties or another process. For example, the House rules indicate that the sergeant-at-arms would be the person to carry out any directive to round up members. *Permanent Rules of the Minnesota House 2023*-24, at 2.02, 7.20 (providing that sergeant-at-arms carries out orders of House and speaker).[5] But no sergeant-at-arms is elected until there is a quorum and officers are chosen. Minn. Stat. § 3.06. Further, until the House is organized, it has no rules that it could enforce (regarding attendance) and no basis to assess penalties. *See Mason's* § 14 ("Rules of procedure adopted by one legislature or statutory provisions governing the legislative process are not binding on a subsequent legislature.").[6] These clear implications of the text may be why this Court noted in *Palmer*, a case about the initial organization of the Senate that session, that "[i]n the absence of a majority of the members of the senate necessary to constitute a quorum, all they can do is to meet and adjourn." 182 N.W.2d at 183.

These limits are present for good reasons. The relief that the petitioners seek goes far beyond just "compelling members," and would "usurp" significantly more authority. If

[5] Separation-of-powers considerations prevent the House from being able to direct State Patrol or other law enforcement to compel attendance.

[6] In the most recent set of rules adopted by the House, there were no rules that authorized compelling the attendance of members who were outside the vicinity of the Capitol. Similarly, there were no rules that authorized penalizing members of the House who failed to attend proceedings. *Permanent Rules of the Minnesota House 2023-24*.

Secretary Simon entertained Representative Niska's motion, that would require Secretary Simon to oversee substantive debate on that motion, including ruling on amendments and points of order, and making other decisions inherent in overseeing a motion. And it would allow a small number of legislators to pass substantive rules that infringe on the constitutional duties of other entities, such as the Legislative Salary Council, which has the authority to regulate salaries. Minn. Const. art. IV, § 9. It could also allow those members to expend funds to hire the individuals (such as a sergeant-at-arms) necessary to compel the attendance of members. *See id.* art. XI, § 1 (prohibiting money from being paid out unless appropriated by law; Minn. Stat. § 3.06 (permitting the house to appoint certain staff, such as a sergeant-at-arms).[7] It could ultimately allow a small number of legislators to authorize the arrest of their absent colleagues.

In short, the relief that the petitioners seek would allow a small number of legislators to act without limit to take extraordinary measures to compel the attendance of absent house members. Such measures should only be permitted when authorized by previously enacted law or legislative rules passed by a duly organized house, rather than through an ad hoc motion process of a small number of legislators.

Moreover, established legislative authority provides that the compel clause is not effective in a situation like Minnesota's. The authority relied upon by the House itself on procedure provides: "Until a house of a state legislature is organized, it has no authority,

[7] At a minimum, the questions surrounding the process by which the petitioners might enforce these remedies further underscore why this Court should not entertain jurisdiction over the matter without a more developed factual record.

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." *Mason's* § 191. Critically, Minnesota's Constitution does not grant any specific authority to compel absent members *before* the body is organized. Underscoring the point, *Mason's* begins with "ten principles that govern procedure in decision making," and the first of those is "the legislative body must have organized, acquiring the power and authority to make decisions." *Id.* at Intro. § 42.[8]

**2. Relevant federal and state authority confirm the plain text analysis.**

Federal law and that of other states further demonstrate that compelling the attendance of absent members requires an organized body and existing legislative rules. While legislatures have historically had the power to compel absent members, that power requires rules that provide a process for doing so. *See Linthicum v. Wagner*, 94 F.4th 887, 893-94 (9th Cir. 2024) (discussing historical tradition and implementation through legislative rules). For example, like the Minnesota Constitution, the U.S. Constitution permits less than a quorum to compel the attendance of absent members. U.S. Const. art. I, § 5. But the congressional bodies have rules for implementing their constitutional authority. *E.g.*, U.S. House of Representatives, 119th Cong., *Rules of the House of Representatives* Rule XX, cl. 5 (2025) (authorizing 15 members, which can include the

[8] Both the Minnesota Legislature and this Court look to *Mason's Legislative Manual* as a persuasive treatise on issues of legislative power. *See Blanch v. Suburban Hennepin Reg'l Park Dist.*, 449 N.W.2d 150, 157 n.1 (Minn. 1989) (Popovich, C.J., concurring) (citing *Mason's* favorably); *State ex rel. Todd v. Essling*, 128 N.W.2d 307, 314 (Minn. 1964) (same, in multiple footnotes).

speaker, to compel attendance of absent members by ordering sergeant-at-arms to arrest absent members), https://perma.cc//QP8M-S8UP; U.S. Senate, *Standing Rules of the Senate*, Rule VI, cl. 4 (2025) (authorizing, in absence of quorum, majority of those present to direct sergeant at arms to compel attendance), https://perma.cc/2RT9-69MG. By referring to officials who are elected only when the House is organized—the speaker and sergeant-at-arms—the rules also reflect that they apply once the House is organized.

Decisions from other states' high courts also point to the conclusion that a legislative chamber must organize itself prior to recalling absent members. Two states have addressed this issue. The most persuasive authority is from the Maine Supreme Court, which has explained that no legislative chamber "without a legal organization formed and without legal officers chosen" can compel the attendance of absent members. *Op. of Justices*, 70 Me. 570, 587 (1880). Rather, only when "formed and organized" does a chamber acquire the power to compel its members' attendance. *Id*. at 588-89. Maine's approach flows, in large part, from the practical necessities that attend the task of compelling absent members to attend. "Until a legal organization has been effected, there is no house to provide penalties for such purpose," and "no officer in either house to issue a warrant against the absent member." *Id.* Similarly, in a case about its legislature's authority outside of properly-convened sessions, the Nebraska Supreme Court listed certain tasks for which appropriate legislative organization is required and specifically mentioned compelling the return of absent members. *See People v. Parker*, 3 Neb. 409, 423 (1872) (Lake, J., concurring) (noting, in dicta, that a legislature "not . . . in legal session" has "no authority to compel the attendance of absent members").

Other state courts have not been presented directly with the same question, but their resolution of related legislative issues evinces the same basic logic—that no legislator can be compelled before the body is duly organized. For example, fact patterns in several cases about compelling legislative attendance feature legislators in positions that could have only been assigned after a chamber's initial organization, such as speaker of a house or president of a senate, or efforts undertaken pursuant to rules that could have only been passed by a duly-organized chamber. *See, e.g.*, *In re Abbott*, 628 S.W.3d 288, 290 (Tex. 2021) (analyzing manner of returning members to a house that had already promulgated rules for compelling such returns); *Massing v. State*, 14 Wis. 502, 504 (1861) (determining proper compensation for sergeant-at-arms who, following election to that role by legislative assembly, made arrests of absent legislators).

The same is true for cases involving related issues such as roll call votes, which serve to account for all members of a particular legislative body, and the process of convening of a legislative body. As to roll call votes, courts have uniformly addressed this issue in the context of legislatures that have already achieved organization. *See, e.g.*, *Davis v. Burnam*, 137 S.W.3d 325, 328 (Tex. Ct. App. 2004) (call of house issued by speaker pursuant to rules that house had established); *Abood v. Gorsuch*, 703 P.2d 1158, 1159-60 (Alaska 1985) (call of house issued by already-elected president of senate); *Keefe v. Roberts*, 355 A.2d 824, 825-26 (N.J. 1976) (same, with already-elected speaker of house); *cf., e.g.*, *Werts v. Rogers*, 28 A. 726, 761 (N.J. 1894) (explaining that a chamber must organize itself before confirming its membership and, accordingly, the identities of any members who might be absent). And when addressing whether the state senate had validly

impeached the governor, the Florida Supreme Court reiterated the importance of the senate being duly organized. *See Op. of Justices*, 12 Fla. 653, 661 (1868) (Randall, C.J., concurring) (noting the validity of the senate's actions depended on more than just the presence of a quorum, as its ability to "transact business of any kind" also required the chamber to be "in actual legal session, duly organized and competent").

Across these states, the throughline that emerges is that an unorganized legislative chamber is incapable of any task other than organizing itself, including finalizing determinations of membership, selecting leadership, and identifying the rules by which it might recall absent members. The legislative chamber in question is, until organized, an inchoate entity that cannot compel the attendance of its members, any more than it could propose or pass legislation.

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In sum, an analysis of the text of section 13, along with persuasive authorities like *Mason's*, decisions from other state supreme courts, and the practices of the federal legislative branch, leads to the conclusion that, given the lack of any House rules, the "compel clause" can only be used after the House is duly organized.

### C. Minnesota Statutes, Section 5.05 is Constitutional.

Finally, as they did in the quorum dispute, the petitioners make a passing claim that Minnesota statutes section 5.05 must be unconstitutional because it grants Secretary Simon the authority he is exercising. Mem. 3. It is surprising that legislators would be so quick to suggest that a longstanding statute (passed by their own body) may be cast aside by another branch of government.

The judiciary has greater respect for our state laws. It protects them by affording them the presumption of constitutionality; the Court uses its "power to declare a statute unconstitutional with extreme caution and only when absolutely necessary." *Wendell v. Comm'r of Revenue*, 7 N.W.3d 405, 414 (Minn. 2024) (cleaned up). It also protects them by placing a "heavy burden" of proof on any party alleging the statute is unconstitutional, requiring that party prove "the legislation is unconstitutional in all applications." *Minn. Voters All. v. City of Minneapolis*, 766 N.W.2d 683, 696 (Minn. 2009). The petitioners have not met their burden to overcome the presumption of constitutionality. Even if the petitioners were making a less impactful argument, this Court would not consider it because petitioners fail to adequately present and brief the issue. *State v. Myhre*, 875 N.W.2d 799, 807 (Minn. 2016) (holding that party waived issue when mentioning issues in passing with no substantial argument or analysis).

In any case, section 5.05 is constitutional. The legislature may delegate authority as long as it does not delegate "purely legislative power." *Snell v. Walz*, 6 N.W.3d 458, 469-71 (Minn. 2024). Purely legislative power is the power to make law. *Id.* at 469. As presiding officer, Secretary Simon does not have—nor has he ever claimed to have—the power to make law. He is serving in a limited legislative capacity while the body gets organized (and therefore cannot be usurping legislative power). His service in this role has been prolonged because of a political stalemate in which he is not involved. But he is not the first Secretary of State to preside for several days. *See, e.g.*, Minn. H.J., 71st Leg., Reg. Sess. 3, 11, 15 (1979) (reflecting Secretary of State Joan Growe serving as presiding officer for first three days of legislative session).

## CONCLUSION

The Court should deny the petition for a writ quo warranto.

Dated: February 3, 2025

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

**s/Liz Kramer**
LIZ KRAMER (#0325089)
Solicitor General
PETER J. FARRELL (#0393071)
Deputy Solicitor General
ANGELA BEHRENS (#0351076)
Assistant Attorney General
MADELEINE DEMEULES (#0402648)
Assistant Attorney General

445 Minnesota Street, Suite 600
St. Paul, MN 55101-2128
(651) 757-1010 (Voice)
liz.kramer@ag.state.mn.us
peter.farrell@ag.state.mn.us
angela.behrens@ag.state.mn.us
madeleine.demeules@ag.state.mn.us

ATTORNEYS FOR RESPONDENT SIMON

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