

STATE OF MINNESOTA

IN COURT OF APPEALS

A23-1570

In re Emilio Andres Trevino,

Petitioner,

v.

State of Minnesota,

Respondent.

NOTICE OF INTERVENTION

Trial Court Case Number:
48-CR-21-1450

Pursuant to Minnesota Rule of Civil Appellate Procedure 144, Minnesota Attorney General Keith Ellison files this notice of intervention to address the district court's authority to disenfranchise criminal defendants and to defend the constitutionality of section 201.014, subd. 2a, of the Minnesota Statutes.

PROCEDURAL HISTORY

Petitioner Emilio Trevino petitioned for a writ of prohibition on October 19, 2023. After sentencing Trevino to probation for a felony offense, the Mille Lacs County District Court, the Honorable Matthew M. Quinn, declared that Trevino cannot vote while on probation. (Index # 67-68.) State law expressly provides that a person serving a felony sentence on probation is restored to civil rights and may vote when not incarcerated for the offense. Minn. Stat. § 201.014, subd. 2a (Supp. 2023). The district court sua sponte declared the statute unconstitutional. Neither party raised the issue nor provided notice of

a challenge to the Attorney General. Nor did the district court give the parties notice or an opportunity to brief the matter.

Trevino now seeks a writ of prohibition, challenging the district court's authority to declare that he cannot vote and to hold that statute giving him the right to vote, if he is otherwise eligible, is unconstitutional. Trevino provided notice of his writ to the Attorney General's Office on October 19. Minn. R. Civ. App. P. 144.

The Attorney General's Office has a strong interest in defending the implementation and constitutionality of the section 201.014. As counsel for the Secretary of State, the office is currently defending the constitutionality of the statute in civil litigation. *Minn. Voters Alliance v. Hunt*, Anoka Cnty. No. 02-cv-23-3416. Further, the district court relied heavily on its interpretation of the Minnesota Supreme Court's decision in *Schroeder v. Simon*, 985 N.W.2d 529 (Minn. 2023). In *Schroeder*, the Attorney General's Office also appeared as counsel for the Secretary and defended the prior version of the re-enfranchisement statute. The Attorney General therefore has a strong interest in this case. And because this issue was not briefed or raised by either party before the district court, the briefing will also be helpful to the Court.

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The Attorney General has the right to intervene in this matter. The Attorney General is a constitutional officer, Minn. Const. art. V, § 1, and the chief law officer of the State. *Slezak v. Ousdigian*, 110 N.W.2d 1, 5 (Minn. 1961), *overruled on other grounds by Christensen v. Minneapolis Mun. Emps. Ret. Bd.*, 331 N.W.2d 740 (Minn. 1983). The

Attorney General has broad statutory and common law authority to appear in court proceedings that will affect the interests of the State and the public.

For example, the Attorney General is authorized by statute to “appear for the state in all causes in the supreme and federal courts wherein the state is directly interested; also in all civil cases of like nature in all other courts of the state whenever, in the attorney general’s opinion, the interests of the state require it.” Minn. Stat. § 8.01 (2022). He may also “institute, conduct, and maintain all such actions and proceedings” that he deems necessary to enforce the state’s laws, to preserve order, and to protect public rights. *Slezak*, 110 N.W.2d at 5.

The Attorney General’s discretion is plenary and “beyond the control of any other officer or department of the state.” *State ex rel. Peterson v. City of Fraser*, 254 N.W. 776, 778-79 (1934). Indeed, “courts will not control the discretionary power of the attorney general in conducting litigation for the state.” *Slezak*, 110 N.W.2d at 5. In recognition of the Attorney General’s role and extensive powers, the Court’s rules require litigants to promptly notify the Attorney General of any constitutional challenge to a legislative act. Minn. R. Civ. App. P. 144. The rules recognize the inherent interest of the Attorney General in defending the constitutionality of state statutes and affords the right to intervene in appeals where such issues are raised. *See Elwell v. Hennepin Cnty.*, 221 N.W.2d 538, 544 (Minn. 1974). The Attorney General’s interest is so strong that appellate courts will ordinarily refuse to consider constitutional questions if a party fails to give the required notice. *Id.*

This case raises an important challenge to the district court's authority to strip a criminal defendant of a right to vote that a statute expressly provides. This notice is being filed on the same day the Attorney General received notice of Trevino's writ. The Attorney General's intervention is timely and will not delay the Court's consideration of this case.¹ The Attorney General is most closely aligned with the petitioner's position and he is filing his memorandum supporting the writ at the same time as this notice.

Dated: October 19, 2023

KEITH ELLISON
Attorney General
State of Minnesota

s/Angela Behrens

ANGELA BEHRENS
Atty Reg. No. 0351076
Assistant Attorney General

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1204 (Voice)
angela.behrens@ag.state.mn.us

ATTORNEYS FOR INTERVENOR
ATTORNEY GENERAL

#5617214-v1

¹ Rule 144 has no deadline for intervention, but the Attorney General notes that he is filing his notice within the 60-day window that is provided in the analogous federal rule, Fed. R. Civ. P. 5.1(c), and within the 14-day window for requesting leave to file an amicus brief, Minn. R. Civ. App. P. 129.01(b). If for any reason the court finds intervention inappropriate, the Attorney General alternately moves for leave to participate as an amicus.