STATE OF MINNESOTA

IN COURT OF APPEALS

A23-1565

In re April Sky Weyaus,

Petitioner,

v.

State of Minnesota,

Respondent.

INTERVENOR ATTORNEY GENERAL'S MEMORANDUM SUPPORTING WRIT OF PROHIBITION

The Court should grant Petitioner April Weyaus's petition for a writ of prohibition. The district court far exceeded its authority by sua sponte disenfranchising Weyaus and addressing the constitutionality of a civil regulatory statute. The court further erred by declaring Minn. Stat. § 201.014, subd. 2a, unconstitutional. The statute, which permits those serving felony sentences in the community to vote, is a constitutional exercise of the legislature's broad discretion. The Court should vacate the district court's order declaring the law unconstitutional and prohibit the district court from issuing any similar future orders.

FACTS

Because this case addresses the district court's authority to hold that a criminal defendant cannot vote once convicted, a brief overview of Minnesota's felony disenfranchisement laws in necessary. Since statehood, the Minnesota Constitution has provided that a person convicted of a felony cannot vote "unless restored to civil rights."

Minn. Const. art. VII, § 1. From 1867 to 1963, the state had a patchwork of statutes that generally provided various discretionary procedures for restoring voting rights. *See Schroeder v. Simon*, 985 N.W.2d 529, 541-43 (Minn. 2023) (discussing prior statutes). For example, between 1907 and 1963, regaining the right to vote required people to produce witnesses and establish good character before the district court. *E.g.*, *id.* at 542-43 & n.10; Minn. Stat. § 610.45-.46 (1961). In 1963, the legislature eliminated these requirements and the discretionary aspect of restoring civil rights. The legislature automatically restored rights to everyone at the completion of a felony sentence. 1963 Minn. Laws ch. 753, art. I, at 1198. This remained the law until this year. 2023 Minn. Laws ch. 12, § 1.

The Minnesota Supreme Court recently upheld the constitutionality of the prior statute in *Schroeder v. Simon*, 985 N.W.2d 529. The *Schroeder* plaintiffs were on probation or supervised release and alleged that the law violated the Minnesota Constitution. *Id.* at 533, 536. In upholding the statute, the court rejected the plaintiffs' argument that the state constitution mandated restoration of rights when in the community. *Id.* at 536-45. The court further held that the restoration statute did not violate the plaintiffs' right to vote or their right to equal protection. *Id.* at 545-46, 556-57. The court held that the state constitution gives the legislature "broad, general discretion to choose a mechanism for restoring the entitlement and permission to vote to persons convicted of a felony." *Id.* at 556. In responding to concerns that racial disparities in the criminal justice system were compounded by the prior restoration statute, the court again noted that the legislature retained the power to respond to those concerns. *Id.* at 557.

Legislative Change to Restoration Law

A few weeks after the *Schroeder* decision, the legislature changed the law. 2023 Minn. Laws ch. 12, § 1. Effective June 1, 2023, and codified as Minn. Stat. § 201.014, subd. 2a, Minnesotans who are serving felony convictions in the community have the right to vote. *Id.*; *id.* ch. 62, art. IV, §§ 10, 92 (setting effective date). In allowing people on probation, supervised release, and parole to vote, Minnesota joined twenty-four other states and the District of Columbia, which all have similar laws or less restrictive laws. Nat'l Conf. of State Legislatures, *Felon Voting Rights* (Apr. 6, 2023), https://www.ncsl.org/elections-and-campaigns/felon-voting-rights.

Elections have already been held under the new law and others are underway. A primary election was held August 8, and early voting for the November 7 election began on September 22. *Elections Calendar*, Minn. Sec'y of State, https://www.sos.state.mn.us/election-administration-campaigns/elections-calendar/ (last visited Oct. 19, 2023).

District Court Order

After the law became effective in June, Weyaus pleaded guilty to fifth-degree possession of a controlled substance, a felony offense. The district court stayed a nineteen-month prison sentence and imposed five years' probation. (Index #40.) Without any party raising the issue, without receiving any briefing, and without providing any other type of notice, the court also issued a supplemental order that held Weyaus could not vote while on probation. (Addendum 1-15.) The court acknowledged that the new state law grants voting rights to those who are serving felony-level sentences in the community. (*Id*. at 7.)

But the court declared that the statute is unconstitutional. (*Id.* at 8-12.) The court additionally threatened that Weyaus would be committing a new crime by even registering to vote. (*Id.* at 1.) The court used a form order that it had prepared, writing in Weyaus's name and other case information by hand. (*Id.* at 1.) The court has been using the form order in other cases. *E.g.*, *State v. Stewart*, No. 48-CR-22-861 (Oct. 18, 2023 order, Index #59); *State v. Trevino*, No. 48-CR-21-1450 (Oct. 12, 2023 order, Index # 68).

When voting rights are restored in the district court's view is unclear. At one point, the court stated rights would be restored through a pardon, completion of probation, or by a court order. (Addendum 14.) But other parts of the order suggest that the court deems a conviction to result in indefinite and potentially recurring disenfranchisement, stating that the court would "independently evaluate the voting capacity of each felon at the time of their discharge from probation, and on subsequent occasions as needed or requested." (*Id.* at 13.)

ARGUMENT

A writ of prohibition is appropriate when a district court exercises judicial or quasi-judicial power, exceeds its authority, and either causes an injury for which there is no speedy or adequate remedy or otherwise abuses its discretion to such a degree that a writ is appropriate. *In re B.H.*, 946 N.W.2d 860, 866 (Minn. 2020); *Hancock-Nelson Mercantile Co. v. Weisman*, 340 N.W.2d 866, 868, 870 (Minn. Ct. App. 1983); *see also Wasmund v. Nunamaker*, 151 N.W.2d 577, 583 (Minn. 1967) (granting writ when district court abused its discretion by denying discovery-related motion). Writs serve as a check on the improper exercise of judicial power and are warranted to prevent a district court from violating

separation-of-powers principles. *See State v. Hart*, 723 N.W.2d 254, 261 & n.13 (Minn. 2006) (discussing the use of writ of mandamus to avoid separation of powers problems). A writ is also appropriate to settle a rule that will affect all litigants. *Wasmund*, 151 N.W.2d at 579.

Here, the district court indisputably exercised judicial power by disenfranchising Weyaus. The remaining elements also support a writ of prohibition. The district court exceeded its authority by addressing an issue outside of its sentencing authority, injecting an issue that was not raised by the parties, and by ruling on the constitutionality of a civil regulatory statute without the proper parties there to defend it. Further, the court was wrong on the merits. As reflected by the plain language of the Minnesota Constitution and the Minnesota Supreme Court's decision in *Schroeder*, the state constitution gives the legislature discretion to restore voting rights before completion of sentence. The legislature lawfully exercised that discretion in enacting Minn. Stat. § 201.014, subd. 2a.[1] Absent a writ from this Court, Weyaus lacks an adequate remedy, particularly considering the district court's suggestion that it views restoration of rights as discretionary.

The district court's use of a judge-created form order that it has also issued in other cases reflects that, unless this Court intervenes, the district court will continue to overstep its authority and arbitrarily disenfranchise otherwise eligible voters. The Court's

[1] *Schroeder* focused on section 609.165. Sections 201.014 and 609.165 were related in that section 201.014 reflected a general statement of voter-eligibility requirements and section 609.165 focused specifically on when rights were restored. *Schroeder*, 985 N.W.2d 535 n.4. The 2023 legislative changes shifted the express voter-restoration provision to section 201.014.

intervention is particularly important when the district court is doing this in the midst of an election season. A writ will therefore not only resolve the issue for Weyaus, but it will also further settle the issue for all criminal defendants in the state, and particularly those in the Seventh Judicial District.

I. THE COURT EXCEEDED ITS AUTHORITY BY SUA SPONTE HOLDING A STATUTE UNCONSTITUTIONAL AND DISENFRANCHISING WEYAUS.

District courts may act only within the scope of their authority. Even if a court has subject matter jurisdiction over a case, it "must still use a proper *procedure* to decide any issue raised during a case." *In re Leslie*, 889 N.W.2d 13, 15 (Minn. 2017). The district court exceeded its authority in two key ways. First, it went beyond its role to oversee Weyaus's conviction and sentence to independently assess a collateral consequence of her conviction. Second, it unilaterally inserted and resolved the constitutionality of a civil statute in a criminal case. By doing so, the court created harm for which no other adequate remedy exists and so abused its discretion that the Court should issue a writ of prohibition.

A. A Sentencing Court Has No Authority Over Voting Rights as a Collateral Consequence of a Conviction.

In a criminal case, a district court has no inherent sentencing authority; its power is limited to that given by the legislature. *State v. Osterloh*, 275 N.W.2d 578, 580 (Minn. 1978). A court's sentencing function is solely to sentence. Minn. Stat. § 609.095 (2022). While collateral consequences may follow a conviction or sentence, the legislature has not left those matters to a sentencing court's discretion. Rather, they are civil and regulatory in nature. *State v. Crump*, 826 N.W.2d 838, 842 (Minn. Ct. App. 2013). In other words, whether a particular collateral consequence attaches as a matter of law is not assessed on a

case-by-case basis by the sentencing court.[2] This is particularly true in the context of voting rights. The state constitution provides that a person convicted of a felony cannot vote "unless restored to civil rights." Minn. Const. art. VII, § 1. State law establishes when a person is restored to voting rights and does not leave anything to the district court's discretion:

> An individual who is ineligible to vote because of a conviction has the civil right to vote restored during any period when the individual is not incarcerated for the offense. If the individual is later incarcerated for the offense, the individual's civil right to vote is lost only during that period of incarceration.

Minn. Stat. § 201.014, subd. 2a (Supp. 2023). The law is clear: a person who has been convicted of a felony has the right to vote when serving the sentence in the community on probation, supervised release, or parole. By holding otherwise, the district court exceeded its authority and acted in contravention of the statute's plain language.

B. The District Court Exceeded Its Authority by Independently Raising and Resolving a Constitutional Issue.

The district court further exceeded its authority by unilaterally raising and resolving a constitutional challenge to Minn. Stat. § 201.014, subd. 2a. In general, courts should only address issues that a party raised. Courts rely on parties to frame issues for decision and the court's role is that of a neutral arbiter on the matters that the parties present. *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020). This is commonly known as the

[2] In some limited circumstances not present here, a court may later play a role in assessing the continuing application of a collateral consequence. For example, a person must petition a court to regain the right to possess firearms and ammunition. Minn. Stat. § 609.165, subd.1d (2022).

"party-presentation principle." *Id.* Courts should initiate matters only in rare circumstances, such as when necessary to protect a party's rights. *Id.* (holding that no extraordinary circumstances warranted court's "takeover" of case when it injected new issues into case). Even if a court gives parties an opportunity to brief an issue that it independently raises, a court acts "beyond the pale" when it interjects itself to reshape a case beyond a fair resemblance to the case the parties presented. *Id.* at 1581-82. Minnesota courts follow the party-presentation principle. *Leuthard v. Indep. Sch. Dist. 912*, 958 N.W.2d 640, 650 (Minn. 2021) (holding that workers' compensation court of appeals committed legal error by addressing issues party had not properly raised or briefed to compensation judge).

Judicial restraint is particularly important in the context of assessing the constitutionality of a statute. *See State v. Morse*, 878 N.W.2d 499, 501-02 (Minn. 2016) (holding that court of appeals erred by independently raising and deciding statute's constitutionality). Because statutes are presumed constitutional, courts must exercise "extreme caution" in exercising their power to declare a statute unconstitutional and do so "only when absolutely necessary." *Fletcher Props., Inc. v. City of Minneapolis*, 947 N.W.2d 1, 9 (Minn. 2020). The party challenging a statute bears the burden of proof. *Sheridan v. Comm'r of Revenue*, 963 N.W.2d 712, 716 (Minn. 2021).

Further, even if a party raises an issue, a criminal court should not address issues that are more properly suited for resolution in civil litigation with proper parties. *Leslie*, 889 N.W.2d at 16-17. A court overseeing a criminal proceeding should not decide the merits of issues or statutes vested under the authority of other state officials. *Id.* at 15-16.

For example, in *Leslie*, the supreme court issued a writ of prohibition when a district court concluded that a statute was unconstitutional and prohibited a county sheriff from collecting a defendant's DNA sample. *Id.* at 14, 16-17. The court noted that the district court essentially ordered relief more appropriate for a civil case than a criminal one. *Id.* at 16. By ruling on the statute in a criminal case, the district court also deprived the Attorney General and the sheriff of a full and fair opportunity to defend the challenged statute's constitutionality. *Id.* Similarly, in *Schnagl*, the court held that a criminal sentencing court improperly ruled on a challenge to the administration of a person's sentence because the Department of Corrections was not a party to the case. *State Schnagl*, 859 N.W.2d 297, 298, 303 (Minn. 2015).

Here, the district court exceeded its authority by addressing the constitutionality of section 201.014, subd. 2a. It unilaterally issued a form order and, without notice and in contradiction to duly enacted law, stripped Weyaus of a right to vote that the statute had preserved. And it did so in a criminal case without the proper state officials as parties. The legislature vested the Secretary of State and the Department of Corrections with various duties to implement Minn. Stat. § 201.014, subd. 2a. *E.g.*, 2023 Minn. Laws ch. 12, §§ 3, 6, ch. 62, art. 1, § 6.[3] It did not leave any determinations to the sentencing court. *Id.* By unilaterally raising and deciding the constitutionality of a civil statute, the district court

[3] Civil litigation against the Secretary and a Department official to challenge the constitutionality of Minn. Stat. § 201.014, subd. 2a, is pending. *Minn. Voters Alliance v. Hunt*, Anoka Cnty. No. 02-cv-23-3416 (filed June 29, 2023).

exceeded its authority. Moreover, as addressed in more detail in section II below, the court's resolution of the issue it injected into the case was erroneous as a matter of law.

Equally alarming is the district court's suggestion that it plans to subject defendants in Mille Lacs County to an unknown discretionary restoration process in which the presiding judge assesses a person's "voting capacity," and that this review will be ongoing "as requested" (by who is unknown) and "as needed." (Addendum 13.) This process has no basis in law and is fraught with the potential for bias. The court also inaccurately stated prior law by suggesting that it restored rights only "where appropriate." (*Id.*) The predecessor statute automatically restored rights upon completion of sentence. Minn. Stat. § 609.165, subds. 1, 2 (2022). If a person was discharged from probation, he or she regained the right to vote; a court was not to independently evaluate whether restoring the right to vote was "appropriate." *Id.*

C. A Writ is Warranted Because No Adequate Remedy Exists and the District Court Abused Its Discretion.

In exceeding its authority, the district court created a harm for which there is no adequate remedy. The district court is singling out probationers in Mille Lacs County and withholding rights that the law otherwise provides. And the court is also effectively stripping probationers of other rights tied to the right to vote. *E.g.*, Minn. Stat. § 204B.06, subd. 1 (2022) (making voting eligibility condition of being candidate for office).

The court's ambiguous statements about when it believes voting rights can or should be restored further reflects that Weyaus's continuing right to vote is in jeopardy without this Court's intervention. Alternatively, even if the Court concludes that another remedy is

available, the Court should find that this is one of the rare cases where the district court abused its discretion to such a degree that the writ is appropriate.

II. THE LEGISLATURE CONSTITUTIONALLY RESTORED VOTING RIGHTS TO PEOPLE SERVING FELONY SENTENCES IN THEIR COMMUNITIES.

In addition to the district court exceeding its authority by opining on a legal issue that was not before it, the court incorrectly resolved the issue that it added to the case. Put simply, if she meets other eligibility criteria, Weyaus has the right to vote while on probation. As reflected by the plain language of the constitution, its history, and the supreme court's interpretation of it, the legislature had authority to restore voting rights before completion of sentence. The legislature constitutionally exercised this authority when it enacted section 201.014, subd. 2a.

A. The Minnesota Constitution Gives the Legislature Discretion to Restore Voting Rights at Any Point in Time.

In addressing eligibility to vote, the Minnesota Constitution provides that: "The following persons shall not be entitled or permitted to vote at any election in this state: . . . a person who has been convicted of treason or felony, unless restored to civil rights." Minn. Const. art. VII, § 1. The Minnesota Supreme Court interpreted this provision in *Schroeder* and its decision binds this Court and state district courts. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018). The constitutional clause "unless restored to civil rights" merely refers to an "affirmative act of, or mechanism established by, the government." *Schroeder*, 985 N.W.2d at 538, 545, 556.

While the constitution does not mandate restoration of voting rights at a particular time, it left that power to the legislature. *Id.* at 544. The *Schroeder* court further recognized

that the statute before it was the type of "mechanism" contemplated by the constitution. *Id.* at 546, 556 (repeatedly referring to prior statute as mechanism for restoring rights). And the court repeatedly emphasized the legislature's broad discretion to decide when to restore rights:

- "Different rights may be restored at different times (and may be limited in different ways at different times)." *Id.* at 544.

- "For instance, that affirmative act could be . . . a legislative act that generally restores the right to vote upon the occurrence of certain events." *Id.* at 545.

- Recognizing that prior statute reflected legislature "exercising its constitutional prerogative to restore the civil rights of persons convicted of a felony." *Id.* at 548.

- Explaining that "[t]he basic rule under the constitution is that a person convicted of a felony cannot vote in Minnesota unless the person's right to vote is restored by some affirmative act of the government restoring the person's right to vote." *Id.* at 556.

- Stating that the legislature could "generally restore the right to vote upon the occurrence of certain events." *Id.* at 556.

- Recognizing that those convicted of a felony could regain the right to vote "by a different process approved by the Legislature." *Id.*

- Stating that "[t]he Legislature retains the power to respond to [the] consequences" of the prior law. *Id.* at 557.

Because the legislature constitutionally exercised this authority in amending section 201.014, the Court should grant the writ and prohibit the district court from disenfranchising Weyaus or any other criminal defendants.[4]

[4] It is also worth noting that the new version of § 201.014 essentially produces the outcome that the *Schroeder* plaintiffs sought: voting rights when in the community. If that outcome had been a constitutional impossibility for the legislature, there would have been no need

Even if the Court concludes that *Schroeder* did not resolve the issue, the history of the constitutional provision and legislative action since statehood underscore that the framers intentionally left to the legislature decisions on whether and when to restore voting rights after a felony conviction. Courts give great consideration to a "practical construction of the constitution, which has been adopted and followed in good faith by the legislature and people for many years." *Clark v. Pawlenty*, 755 N.W.2d 293, 306 (Minn. 2008); *see also Eldred v. Ashcroft*, 537 U.S. 186, 213 (2003) (noting that "a contemporaneous legislative exposition of the Constitution when the founders of our Government and framers of our Constitution were actively participating in public affairs, acquiesced in for a long term of years, fixes the construction to be given [to constitutional] provisions").

Debates from the 1857 constitutional convention reflect the framers' recognition that civil rights could be restored in two ways: by an individual pardon or by legislative action. Delegates briefly debated whether disenfranchisement should be permanent. *Debates and Proceedings of the Constitutional Convention for the Territory of Minnesota* 540-41 (St. Paul, G.W. Moore 1858), https://perma.cc/G322-TSXD.[5] They reviewed

for the *Schroeder* court to analyze whether the prior statute was constitutional for not restoring rights to those living in the community.

[5] Because of the contentious political climate, Democrat and Republican delegates held separate meetings during the constitutional convention and then resolved differences through a conference committee. Mary Jane Morrison, *The Minnesota State Constitution: A Reference Guide* 1 (2002). Both conventions' debates were separately published. *Id.* The discussion cited above is from the Republican convention. The Democrats' debates reflect recognition of the provision but only brief, non-substantive discussions. *See, e.g.*, *The Debates and Proceedings of the Minnesota Constitutional Convention* 422-23, 580 (St. Paul, E.S. Goodrich 1857), https://perma.cc/A6TU-KLRE. The operative phrasing reviewed by the Democrats was identical to that ultimately put in the constitution. *Id.* at 423.

language similar to that ultimately enacted: "No person shall be qualified to vote at any election who shall be convicted of treason—or any felony . . . *Provided,* That the governor or the Legislature may restore any such person to civil rights." (*Id.* at 540.) When one delegate moved to strike all language after "felony" (which would remove the restoration clause), others highlighted that doing so would "cut off the power of the Legislature to restore civil rights" and eliminate the governor's power to restore rights through a pardon. (*Id.* at 540-41.) The proposed language was not enacted. (*Id.*) The delegates therefore understood that restoration would be left to the legislature.

That the legislature could decide whether and how to restore voting rights is underscored by the more than 150 years of the legislature exercising this authority. As outlined in *Schroeder*, the legislature enacted the first restoration law in 1867, providing that those who left prison without a discipline record were automatically re-enfranchised. *Schroeder*, 985 N.W.2d at 541. Over time, the legislature created restoration processes for others leaving prison or jail, completing probation, or completing parole. *Id.* at 542-43. In 1963, it then enacted the automatic-restoration law. The change followed an advisory committee's recommendation that restoring rights would promote rehabilitation by allowing people to be "effective participating citizen[s]" in their communities. Minn. Stat. Ann. § 609.165 advisory comm. cmt.

In the 1970s, a state commission studied whether to reform the constitution, including the voting-rights provisions in Article VII. *See* 1971 Minn. Laws ch. 806, § 3, subd. 2, at 1541. While the commission heard testimony urging removal of the felony disenfranchisement provision, it ultimately left any changes to the legislature. Minn.

Const'l Study Comm'n, *Final Report and Committee Reports*, *Bill of Rights Committee Report* 5 (1973).

This history underscores the longstanding understanding of what the Minnesota Constitution permits. In 2023, the legislature carried on its tradition of acting in this area by establishing a new mechanism for when voting rights are restored. Nothing in the constitution prohibited it from restoring rights to those convicted of a felony when they are not incarcerated and serving the sentence in the community.

B. The District Court's Reasoning is Unpersuasive.

The district court's analysis is not supported by the text of the constitution or *Schroeder*. The court rested primarily on its conclusion that an insufficient "event" happened to permit restoration and that the legislature cannot "restore" voting rights because they have not been lost. (Addendum 8-9.) The court further expressed views on the legislature's authority to define terms and on the state's policy regarding disenfranchisement. (*Id.* at 9, 14.) None of these points is rooted in law.

First, the district court's analysis of "event" takes *Schroeder* out of context. The supreme court repeatedly referred to the legislature needing to affirmatively "act" or provide a "mechanism," i.e., a statute to restore rights. *Schroeder*, 985 N.W.2d at 538, 544-56, 548, 556. While the court occasionally used the word "event," the thrust of the court's decision was that legislation is a sufficient act or mechanism to restore rights. Further, even if some other type of "event" is required, the law requires one to retain or regain voting rights: placement on correctional supervision in the community for a felony conviction. This event will occur in one of four main ways: (1) a district court sentences a

person and stays execution of the sentence, placing the person on probation; (2) a person in prison hits his or her supervised-release date and begins serving the remainder of the sentence on supervised-release in the community; (3) a person whose supervised-release was revoked is rereleased back into the community on supervised release; (4) the commissioner of corrections paroles a person to continue serving the sentence in the community. *See* Minn. Stat. §§ 609.135, .14 (probation); 244.101, 244.05, subd. 1 (supervised release); 243.05 (parole); Minn. R. 2940.3800 (addressing reincarceration and release following revocation of supervised release).

These are all events. The district court's assertion that probation is simply an "amorphous state of being" misunderstands probation. (Addendum 9.) A person on probation has been convicted of a crime, is subject to conditions of release, and remains subject to incarceration for the duration of the probation term for violating any of those conditions. Minn. Stat. §§ 609.135, subd. 1, .14 (2022).

Second, the district court's arguments concerning the word "restore" are misplaced. The court asserted that the legislation was unconstitutional because it could not "restore" a right if it is never lost. (Addendum 10-11.) The plain text of the constitution and *Schroeder* again foreclose this conclusion. The constitution provides that a person convicted of a felony cannot vote "*unless* restored to civil rights." Minn. Const. art. VII, § 1 (emphasis added). The constitution does not mandate a loss of rights; it provides that the loss occurs *unless* some other action restores the right that was, or would be, lost. Here, the legislature acted to restore the rights that a person would otherwise lose if convicted of a felony. Further, in the context of someone who serves an executed prison sentence, or is

incarcerated on release violations and then re-released on correctional supervision, the statute will restore rights in the sense that the district court interpreted the word. And, as addressed above, *Schroeder* already interpreted "unless restored to civil rights" to give the legislature broad discretion to determine the scope of felony disenfranchisement.

Third, the district court's concern about the legislature being able to define terms is not well taken. (Addendum 9-10.) While the constitution establishes broad parameters, the legislature can define terms that the constitution did not. *E.g.*, *State v. Kelly*, 15 N.W.2d 554, 564 (Minn. 1944). For example, Minnesota appellate courts have long recognized the legislature's authority to define "felony." *Baker v. State*, 590 N.W.2d 636, 638 (Minn. 1999); *see also Osterloh*, 275 N.W.2d 578, 580 (Minn. 1978) (addressing separation of powers in criminal justice system). And, as recognized in *Schroeder*, the legislature can determine when rights are restored. The legislature acted within its authority to restore rights to people serving felony sentences in the community.

Finally, while the district court stated it was not making a policy decision, it cited an oft-quoted passage from a Second Circuit decision by Judge Friendly, in which the judge noted that many felony disenfranchisement laws stem from social-contract principles. (Addendum 12, 14.) The district court asserted that this statement from 1967 was the basis for Minnesota's constitutional provision felony-disenfranchisement position. (*Id.* at 14.) While true that the social-contract theory has been recognized as a rational basis for states' felony disenfranchisement laws, the district court erred to the extent that it implied Minnesota cannot change course on matters of policy. For example, the passage that the court cited was in the context of whether a rational basis supported a New York statute on

felony disenfranchisement. *Green v. Bd. of Elections of City of New York*, 380 F.2d 445, 448, 451 (2d Cir. 1967). It was not a statement of a permanent state policy.

As reflected by the many other states with laws that are similar to or less restrictive than Minnesota's new law, views on felony disenfranchisement have evolved nationally. In 1963, the legislature recognized that restoring voting rights at completion of sentence would further rehabilitation. Minn. Stat. Ann. § 609.165, advisory comm. cmt. Minnesota is not locked into its 1963 law. Just as the 1963 legislature and the many legislatures before it made policy choices on when and how to restore voting rights after a conviction, the 2023 legislature made a policy choice. Because the district court had no basis to hold this policy choice was unconstitutional, the court exceeded its authority.

CONCLUSION

The district court exceeded its authority and abused its discretion by disenfranchising Weyaus and independently declaring Minn. Stat. § 201.014 unconstitutional. The Court should therefore issue a writ of prohibition that vacates the district court's order declaring the law unconstitutional and prohibits the district court from issuing any similar future orders.

Dated: October 19, 2023

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

s/Angela Behrens
ANGELA BEHRENS
Assistant Attorney General (#351076)
445 Minnesota Street, Suite 1400

St. Paul, MN 55101-2131
(651) 757-1204 (Voice)
angela.behrens@ag.state.mn.us

ATTORNEYS FOR INTERVENOR
ATTORNEY GENERAL

|#5616348-v1