STATE OF MINNESOTA
COURT OF APPEALS

Appeal No.: A23-1565

In re April Sky Weyaus, Petitioner,

State of Minnesota,

Respondent,

v.

April Sky Weyaus,

Petitioner,

Appeal No.: A23-1570

In Emilio Andres Trevino, Petitioner,

State of Minnesota,

Respondent,

v.

Emilio Andres Trevino,

Petitioner.

AMICUS BRIEF OF ACLU OF MINNESOTA IN SUPPORT OF PETITIONERS

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

The American Civil Liberties Union of Minnesota ("ACLU-MN") is a 501(c)(3) nonprofit organization. It is the Minnesota affiliate of the American Civil Liberties Union. Both are private, nonprofit, nonpartisan organizations who together have nearly two million members and supporters dedicated to the principles of liberty and equality embodied in our nation's federal and state constitutions and civil rights laws.

The ACLU-MN's organizational purpose is to protect the rights and liberties guaranteed to all Minnesotans by the United States and Minnesota Constitutions and laws. Among these rights is the right to vote. For decades, the ACLU-MN has litigated voting rights cases in Minnesota state and federal courts. That includes, from its inception, *Schroeder v. Simon,* 985 N.W.2d 529 (Minn. 2023), a case in which the ACLU-MN represented the plaintiffs challenging Minnesota's prior felony disenfranchisement law, and *Minnesota Voters Alliance et al. v. Hunt et al.,* No. 02-CV-23-3416, a case pending in Anoka County District Court in which the ACLU-MN has sought to intervene and defend the new voting restoration law against a constitutional challenge. The ACLU-MN has developed and implemented significant voter education outreach programming for newly re-enfranchised voters, which it has paused in light of the district court's ruling. Minnesota's appellate courts have regularly granted the ACLU-MN leave to participate as an *amicus* curiae.[1]

[1] No party authored this brief in whole or in part. No person other than the proposed *amicus* and its attorneys made a monetary contribution to the preparation or submission of this brief.

INTRODUCTION

Shockingly, beginning about two weeks ago, a single judge in one Minnesota county began using the machinery of the judicial process to improperly disenfranchise Minnesota voters. The judge has done so without prior notice to any litigant, to other affected officials and groups, or to the public. The court's rulings are contrary to the decision in *Schroeder v. Simon,* 985 N.W.2d 529 (Minn. 2023), and attempt to invalidate the Legislature's duly enacted statute, Minn. Stat. § 201.04 subd. 2(a), which expressly restores voting rights to those convicted of a felony "during any period when the individual is not incarcerated for the offense." Most alarmingly, the court's decisions come in the midst of an election season, rendering the voting rights of 50,000+ re-enfranchised Minnesotans uncertain, and chilling core activities of civic groups like the ACLU-MN, whose purpose is to ensure that *all* qualified Minnesotans can vote.

This Court has the power, and the duty, to put a stop to the district court's improper action, and to do it immediately. Under Minnesota Rule of Civil Appellate Procedure 120.03(a) and (b), the Court should *immediately* grant a preemptory writ of prohibition and immediately stay the lower court's orders during the pendency of this action. That would maintain the status quo during the appeal while upholding the well-established presumption that statutes are constitutional. That is the only way that the 50,000+ recently re-enfranchised Minnesotans can be sure they may safely vote in the general election less than two weeks away.

ARGUMENT

I. The District Court's Decisions Improperly Chill The ACLU-MN From Engaging In Core Civic Activities, And Render Voting Rights Of Re-Enfranchised Minnesotans Uncertain.

Above all else, the ACLU-MN needs the Court to consider the urgency of granting a preemptory writ and an immediate stay pending the ultimate resolution of this action, to prevent irreparable harm to the ACLU-MN, its clients and members, and to the 50,000+ Minnesotans whose voting rights were just restored.

Early and absentee voting in the general election is underway, and election day is less than two weeks away. The district court's orders hold that the felony re-enfranchisement statute, Minn. Stat. § 201.014 subd. 2(a) (the "Re-Enfranchisement Statute"), is unconstitutional. (*See* Add. 1-15.) Though entered only in individual cases, the orders are worded to apply to every person on felony probation or supervised release. The district court's message could not be clearer: anyone who is living in the community but still serving the probation or parole portions of felony sentences may not vote until all parole or probation is complete. The 50,000+ Minnesotans whose voting rights the Legislature restored are now put in an impossible position: if they vote on election day, they will be potentially committing a *felony*, which would subject some of them to re-incarceration, because "any individual who votes who knowingly is not eligible to vote is guilty of a felony." Minn. Stat. § 201.014 subd. 3; *see also id.* § 201.275 (requiring investigation and prosecution of such offenses if certain probable-cause standards are met).

This is no academic matter. The ACLU-MN has designed and implemented a specific campaign around the new Re-Enfranchisement legislation. The campaign seeks to contact and engage with the 50,000+ newly enfranchised Minnesotans in order to educate this marginalized and previously disenfranchised group about the change in law, how to vote, and the democratic process more generally. The campaign involves developing and activating its members, volunteers, and activists toward greater voter participation. Specific campaign actions include activities like voter registration, phone banking, door knocking, advertising on social media, developing and sending educational mailers, hosting a series of community forums, and leadership development activities, all of which are strategically designed for those who recently had their rights restored. Since learning of the district court's orders, the ACLU-MN has largely suspended this work because it cannot actively participate in placing this vulnerable population at any risk of potential criminal liability.

If that weren't bad enough, the impact of the district court's orders risks falling disproportionately on people of color. For example, in Mille Lacs County, at year-end 2021, there was an estimated 2% overall disenfranchisement rate for people on probation and parole—but the disenfranchisement rate was 5% for Black residents and 15% for American Indian residents. The Re-Enfranchisement Statute attempts to fix a system that had channeled historic, persistent racial discrimination and disparate impacts across the criminal justice system into persistent disparities in civic engagement. But the district court's orders undermine that important work.

To put it plainly: since passage of the Re-Enfranchisement Statute, many of the ACLU-MN's members and volunteers have eagerly waited to be part of the campaign to help reintroduce newly enfranchised voters to the democratic process. Many of the newly enfranchised have anxiously looked forward to joining their neighbors by voting in the upcoming election. The district court's orders chill the exercise of that core, constitutional right. Only this court, through the issuance of immediate relief, can ensure that they do so without a cloud of uncertainty swirling around them.

II. The District Court's Decisions Violate Numerous Rules And Legal Doctrines, Requiring Immediate Issuance Of A Writ Of Prohibition.

ACLU-MN supports Petitioners' request for issuance of a writ because the district court's orders violate or contravene several legal doctrines.

A. The district court's decisions violate due process and prevent interested parties like the ACLU-MN from being able to participate in court proceedings.

No one in this case—not even amicus Minnesota Voters Alliance ("MVA")—seriously contends that the district court's orders comport with due process. They don't, because the district court just began issuing them from whole cloth, without notice or an opportunity for anyone to be heard.

"The procedures afforded by the government must provide an individual with notice and an opportunity to be heard at a meaningful time in a meaningful manner." *ITW Food Equip. Group LLC v. Minn. Plumbing Board*, 933 N.W.2d 523, 532 (Minn. App. 2019) (quotation omitted). The district court afforded neither Petitioners Weyaus nor Trevino any such process. Nor did it afford notice to the Attorney

General that it was considering the "constitutionality of a federal or state statute." *Cf.* Minn. R. Civ. P. 5A. These deficiencies are problematic for the reasons Petitioners and the Attorney General explain in their briefs, but they are additionally problematic because the lack of due process to *them* prevents other interested parties, like the ACLU-MN, from learning about the case and otherwise informing the court about the longstanding fight to restore voting rights, both through the courts and the legislature—whether through witness testimony, an amicus brief, or other filings.

B. The district court's decisions violate rules against deciding the constitutionality of statutes on unargued grounds.

It is bad enough that the district court reached out to decide an issue the parties did not brief or argue. But it is even worse that the issue the district court decided *sua sponte* was the *constitutionality* of a recently-enacted state statute. Governing precedent counsels strongly against that approach.

Instead, the law going back many years—in state and federal courts alike—is that lower courts should refrain from deciding constitutional issues unless "absolutely necessary." *State v. Lee*, 976 N.W.2d 120, 125 (Minn. 2022) ("Minnesota's statues are presumed constitutional and we will strike down a statute as unconstitutional only if absolutely necessary.") (cleaned up); *Fletcher Properties, Inc. v. City of Minneapolis*, 947 N.W.2d 1, 9 (Minn. 2020) (similar).

It is particularly egregious that the district court held the Re-Enfranchisement Statute unconstitutional when *no party in any case asked for that relief*. "When the basis for declaring a statute unconstitutional is not argued by the parties in either their briefs or

at oral argument, it should be a very rare occasion where we proceed to consider the constitutionality of the statute on unargued and unarticulated grounds." *State v. Hartmann*, 700 N.W.2d 449, 459–60 (Minn. 2005) (Anderson, J., concurring); *see also Maytag Co. v. Comm'r of Taxation*, 17 N.W.2d 37, 39 (Minn. 1944). As Justice Brandeis instructed nearly a century ago, courts should not "anticipate a question of constitutional law in advance of the necessity of deciding it." *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 346–48 (1936).

The district court below abandoned all pretense of exercising judicial restraint. It is as if it intentionally ignored admonition from this Court in *State v. Chasingbear*, 2014 WL 3802616, at *3 (Minn. App. Aug. 4, 2014), which instructed district courts not to "join the contest and carr[y] the burden itself on the challenger's behalf, invalidating the statute as unconstitutional on a theory never presented or argued by either party." Here, as in *Chasingbear*, district court judges "are not parties. They have a duty to remain neutral." *Id.* at *3. By reaching far beyond the issues before it, the district court exceeded its authority.

C. The district court's decisions violate the *Purcell* principle that courts should not alter election rules in the midst of an election season.

The ACLU-MN often litigates voting-rights cases, and its experience in those cases shows another egregious violation from the district court: violation of the common-sense, "*Purcell* principle," which has long instructed that courts should not upset voting rules shortly before election day.

The *Purcell* principle is a common-law doctrine arising from the Supreme Court's decision in *Purcell v. Gonzalez*, 549 U.S. 1 (2006), which expressed disfavor of orders altering election rules shortly before an election. Since *Purcell*, courts have often been faced with lawsuits challenging voting rules or procedures—including in the immediate period before an election. The Supreme Court has "repeatedly emphasized that lower federal courts should not ordinarily alter the election rules on the eve of an election." *Republican Nat'l Committee v. Democratic Nat'l Committee*, 140 S. Ct. 1205, 1207 (2020). Thus, even during the pandemic, when public-health crises prompted some jurisdictions to apply more flexible voting rules on short notice, the Supreme Court applied *Purcell* to prevent some jurisdictions from doing so, because of the uncertainty that would otherwise flow from upending election rules right before an election.

The district court's orders flunk the *Purcell* principle with flying colors. There is no justification for issuing its orders in the midst of an election season. The court's orders make the ability of 50,000+ Minnesotans to vote uncertain, right in the midst of an election. If they don't violate *Purcell*, it is hard to imagine what would.

D. The district court's decisions violate Article VII, Section 1 of the Minnesota Constitution, as interpreted in *Schroeder*.

Finally, if all of that weren't enough, the lower court's orders squarely violate Article VII, Section 1 of the Minnesota Constitution, as interpreted in *Schroeder*.

The ACLU-MN won't belabor the analysis, but the high-level take-away from *Schroeder* is that under Article VII, Section 1 of the Minnesota Constitution, our legislature has "broad, general discretion to choose a mechanism for restoring the

entitlement and permission to vote to persons convicted of a felony." 985 N.W.2d at 556. The Legislature can do so by any "affirmative act" that generally "restores the right to vote upon the occurrence of certain events." *Id.* at 534. And of course, the legislature did just that when it passed what is now Minn. Stat. § 201.014 Subd. 2(a) (the "Re-enfranchisement Statute"), which states that an individual who would otherwise be ineligible to vote because of a felony "has the civil right to vote restored during any period when the individual is not incarcerated for the offense."

The district court's order glibly contravenes both *Schroeder* and the Re-enfranchisement Statute. It reads *Schroeder* too narrowly by requiring some specific "event" to restore each person's right to vote, rather than a simple "mechanism" from the legislature—such as passage of a statute. It incorrectly suggests that passage of the Re-Enfranchisement Statute is merely the "*absence of an event*," rather than a mechanism restoring the right to vote. (Add.9.) And it parades a non-existent horrible by pretending that concluding that it is constitutional would take the power of judicial review and vest it in the legislature, not the courts. (*Id.*)

Very little in the district court's analysis is correct. The district court was wrong to suggest that Minnesotans with felony sentences did not "lose" their right to vote while incarcerated. The ACLU-MN's members, volunteers, supporters, and other impacted individuals who were previously incarcerated can explain otherwise: while

they were in prison, they lost the right to vote, and now that they are on probation or parole, the legislature has restored it. (*Cf.* Add.10-11.)[2]

CONCLUSION

The district court's orders are judicial activism that makes Minnesota's judicial system a cause of voter confusion, suppression, and intimidation. Without intervention from this Court, the district court will keep churning out the same order in any new sentencing, as it has done in other cases.[3] The Court should exercise its authority under Rule 120.03 and issue a preemptory writ, and also stay the lower court's orders for the duration of these proceedings. And because of the importance of the issue, the Court should certify the case directly to the Supreme Court, even before it issues a decision, as permitted under Minn. Stat. § 480A.10 Subd. 2(b). Such relief would allow the Supreme Court—the ultimate interpreter of Minnesota statutes, and the body that knows best what it meant in *Schroeder*—to promptly and conclusively stop the district court from its unlawful and injudicious behavior.

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[2] Minnesota Voters Alliance (MVA) may offer its own, distinct analysis regarding the constitutionality of the Re-Enfranchisement Statute. Because the Court generally does not strike down statutes unless a *party* to the case specifically asks it to, it really should not consider any novel arguments to strike down the Re-Enfranchisement Statute presented by MVA as amicus for the first time on appeal. MVA has a pending challenge to the statute's constitutionality. *See Minnesota Voters Alliance et al. v. Hunt et al.,* No. 02-CV-23-3416, in Anoka County District Court. MVA can and will present any distinct arguments about the statute's constitutionality in that matter.

[3] *State v. Stewart*, No. 48-CR-22-861, Index #59 (Mille Lacs Cnty. Oct. 18, 2023); *State v. Belland*, No. 48-CR-23-698, Index #29 (Mille Lacs Cnty. Oct. 18, 2023); *State v. Sablan-Alger*, No. 48-CR-22-1225, Index #21 (Mille Lacs Cnty. Oct. 19, 2023).

Respectfully submitted,

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Certification of Length

I hereby certify that this motion conforms to the requirements of this Court's October 24, 2023 order, because it is fewer than ten full pages, exclusive of caption and signature block. It was prepared using Microsoft Word 365 software.

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