

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<p>Minnesota Voters Alliance; Mary Amlaw; Ken Wendling; Tim Kirk,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Keith Ellison, in his official capacity as At- torney General; Brad Johnson, in his offi- cial capacity as Anoka County Attorney,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: right;">Court File No. 23-CV-2774-NEB-TNL</p> <p style="text-align: center;">AMENDED VERIFIED COMPLAINT</p> <p style="text-align: center;">DECLARATORY AND INJUNCTIVE RELIEF SOUGHT</p>
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INTRODUCTION

1. “Felons still serving their sentences do not have a right to vote in Minnesota” is a statement based on a good-faith interpretation of the Minnesota Constitution, Article VII, section 1, supported by a plain reading of that section of the Minnesota Constitution and by the Minnesota Supreme Court’s decision in *Schroeder v. Simon*, 985 N.W.2d 529 (Minn. 2023).

2. In fact, in *Schroeder v. Simon*, the Minnesota Supreme Court expressly stated:

[T]he very fact that probation and conditional release did not exist in 1858 means that release from incarceration was the completion of a sentence. Accordingly, . . . one way to interpret the framers’ understanding of the phrase “unless restored to civil rights” is that restoration occurs upon completion of the sentence.

Id. at 544.

3. The Plaintiffs here, Minnesota Voters Alliance, Mary Amlaw, Ken Wendling, and Tim Kirk, agree with this statement by the Minnesota Supreme Court, and thus believe

that, under current law, those convicted of felonies must complete their sentences before they can register to vote and vote, consistent with the Minnesota Constitution. They have even brought a lawsuit in Minnesota state court arguing as much. *See Minnesota Voters All. v. Hunt*, Minn. Dist. Ct. No. 02-CV-23-3416 (“State Court Lawsuit”).

4. More specifically, the State Court Lawsuit argues that Article VII, section 1 of the Minnesota Constitution requires a Governor’s pardon, full service of a felony sentence with concomitant discharge, or full restoration of “civil rights” by legislative act, before those convicted of felonies can, consistent with the Constitution, register to vote and vote. The State Court Lawsuit arose because the Minnesota Legislature passed Laws of Minnesota 2023, chapters 12 and 62, which purport to legislatively restore the singular right to vote to some Minnesotans who are still serving their felony sentences, and thus have not had their “civil rights” restored.

5. Plaintiffs intend to continue to speak—both through their First Amendment right to petition the courts with their state-court lawsuit, and also in the public square—as to their view of the Minnesota Constitution: felons who have not served their full sentences, or otherwise had their sentences discharged, cannot legally vote. This is because, in Plaintiffs’ minds, while the Minnesota Legislature passed Laws of Minnesota 2023, chapter 12 and 62, purporting to restore the right to vote to those convicted of felonies who are no longer in prison but still under sentence, that law conflicts with the Constitution, and, as every American who has taken high-school civics knows, a constitution is supreme law and preempts legislative acts contrary to it.

6. However, a new Minnesota law, Laws of Minnesota 2023, chapter 34, article 2,

section 2, effective June 15, 2023, to be codified at Minnesota Statutes, section 211B.075 (the “Speech Code”), threatens anyone who utters such a phrase, or other like phrases, with criminal and civil penalties.

7. Under the Speech Code, no one can knowingly make a “materially false” statement “within 60 days of an election” with the “inten[t] to impede or prevent another person from exercising the right to vote.” Laws of Minnesota 2023, ch. 34, art. 2, § 2, subd. 2.

8. These forbidden phrases include, but are not limited to, “information regarding the time, place, or manner of holding an election; [and] the qualifications for or restrictions on voter eligibility at an election.”

9. In addition, the Speech Code forbids anyone from “directly or indirectly us[ing] or threaten[ing] . . . damage, harm, or loss . . . against . . . any person with the intent to compel that person to register or abstain from registering to vote, vote, or abstain from voting, or vote for or against a candidate or ballot question.” Laws of Minnesota 2023, ch. 34, art. 2, § 2, subd. 1(a)(1).

10. That subdivision also contains an intent element, which only requires that, “in a civil action brought to prevent and restrain violations of this subdivision or to require the payment of civil penalties, the plaintiff must demonstrate that the action or attempted action would cause a reasonable person to feel intimidated. The plaintiff does not need to show that the defendant intended to cause the victim to feel intimidated.” *Id.* subd. 1(b).

11. Further, the Speech Code states that “[n]o person may intentionally hinder, interfere with, or prevent another person from voting, registering to vote, or aiding another person in casting a ballot or registering to vote.” *Id.* subd. 3.

12. To make matters worse, not only is the Speech Code enforceable by the Attorney General and County Attorney—elected political officials—but it is also enforceable by “any person injured,” allegedly, by such speech. Those potential plaintiffs in such a lawsuit—who could be any Minnesotan claiming supposed “injury” from speech—are entitled, if they prevail, to recover damages, costs of investigation, and attorney fees.

13. Thus, as of June 15, 2023, saying “felons still serving their sentences do not have a right to vote in Minnesota” could subject a speaker, like Plaintiffs here, to a gross-misdemeanor criminal charge and potentially thousands of dollars in civil penalties under the Speech Code. In addition, accused persons will be forced to “lawyer up” and pay a defense attorney thousands of dollars just to defend their speech.

14. This is the law’s express purpose and effect, as described by its authors and supporters to members of the media:

Rep. Emma Greenman, DFL-Minneapolis, a national voting rights attorney and chief author of the election bill [that contains to-be-codified section 211B.075], said the provision is designed to protect voters from intimidation, harassment or anything that would hinder them from voting.

....

Now that the state is restoring voting rights for over 50,000 people on parole or probation, Greenman anticipates disinformation that might say, ‘**You’re a felon and you can’t vote.**’

Deena Winter, *Election bill would make it illegal to knowingly spread false information that impedes voting*, Minnesota Reformer, Mar. 7, 2023, available at <https://minnesotareformer.com/2023/03/07/election-bill-would-make-it-illegal-to-knowingly-spread-false-election-info-that-impedes-voting/> (last accessed Aug. 21, 2023) (emphasis added). A true and correct copy of this article is attached as **Exhibit 1**.

15. Further, after Plaintiffs filed a lawsuit seeking to stop the ongoing violation of the Minnesota Constitution occasioned by chapters 12 and 62 of the 2023 session laws (the “Felon Voting Law”), the author of the Felon Voting Law, Representative Cedric Frazier, stated this:

“This is nothing more than an attempt to suppress the vote of certain members in our communities across the state. By bringing this lawsuit, MVA is seeking to create confusion and fear among our neighbors who have recently had their voting rights restored. It is not lost on me that the previous voter disenfranchisement law had a disproportionate impact on communities of color, particularly African Americans.

Rep. Cedric Frazier statement on Restore the Vote Lawsuit, Minn. House of Representatives, June 29, 2023, available at <https://house.mn.gov/members/profile/news/15548/37364> (last accessed Aug. 21, 2023). A true and correct copy of this statement is attached as **Exhibit 2**.

16. Representative Frazier’s statement is either false or misinformed, but the message is clear: those who take the Plaintiffs’ positions on this important political issue are considered, by those who wrote and voted for Minnesota’s new law, to be intentionally causing “confusion and fear.”

17. Rep. Greenman, the chief author of the Speech Code, likewise claimed to know Plaintiffs’ subjective mind-state behind their State Court Lawsuit and falsely pronounced, without any evidence, as follows, as reported this June:

Rep. Emma Greenman, DFL-Minneapolis, is a national voting rights attorney and said she is not surprised to see the Minnesota Voters Alliance and the Upper Midwest Law center bring another lawsuit “in pursuit of their goal of rolling back the freedom to vote.”

“While I’m confident the right to vote for Minnesotans on probation and

parole will survive this meritless challenge, this is a shameful attempt to use the legal system to sow doubt and confuse voters in order to suppress the vote,” she said.

Deena Winter, *Conservative law firm challenges new law restoring voting rights to felons*, Minnesota Reformer, June 29, 2023, available at <https://minnesotareformer.com/briefs/conservative-law-firm-challenges-new-law-restoring-voting-rights-to-felons/> (last visited Oct. 9, 2023). **Exhibit 3.**

18. Thus, while Plaintiffs have a good-faith belief—and intend to keep saying—that felons still serving their sentences do not have a right to vote in Minnesota because the Minnesota Constitution preempts the Felon Voting Law, they reasonably fear prosecution for doing so, and fear “retaliation” from those convicted of felonies still serving their sentences bringing lawsuits against them for their speech.

19. Their fears are quite real. In this action, prior to this Amended Complaint, Defendant Johnson actually filed a counterclaim against the Plaintiffs seeking a restraining order against their speech, plus civil penalties and attorney fees and costs of investigation. Defendant Johnson did so despite stating in pleadings in the State Court Lawsuit indicating that he takes no position on the constitutionality of the Felon Voting Law. **Exhibit 4.** That means an innocent misunderstanding of Plaintiffs’ speech, a misreading of the allegations of Plaintiffs’ complaint, or the failure to fully investigate the allegations in Plaintiff’s complaint empowered a county attorney to file an action that puts Plaintiffs in financial peril. The prior counterclaim demonstrates the clear peril posed by the Speech Code: any member of the public can file an action and threaten financial consequences simply because an individual spoke about elections.

20. Even if such a pleading were frivolous and a violation of Fed. R. Civ. P. 11, the threat of its filing and the act of its filing is enough to cause emotional and mental distress and lead someone to think twice about speaking their good-faith beliefs about hot-button political issues related to voter eligibility. And given what Minnesota’s lawmakers have openly said, and given the text of the Speech Code, any person of ordinary firmness would think twice before speaking on this issue. The Speech Code chills Plaintiffs’ speech by giving them reasonable cause to fear prosecution based on their intended course of action. The prior counterclaim shows just how reasonable that fear is.

21. The proper remedy for speech that one finds distasteful is not State punishment; it is “counterspeech”—calling out false statements and making the case as to why they are false. Both the First Amendment to the United States Constitution and Article I, Section 3 of the Minnesota Constitution protect Plaintiffs’ right to interpret and explain their views of the Minnesota Constitution and who may vote in Minnesota elections.

22. Plaintiffs therefore ask the Court to declare Laws of Minnesota 2023, chapter 34, article 2, section 2, subdivisions 1, 2, 3, 4, and 5 (soon-to-be Minnesota Statutes section 211B.075, subds. 1, 2, 3, 4, and 5), unconstitutional, facially and as-applied, and to enjoin the Defendants from enforcing those provisions.

PARTIES

23. Petitioner Minnesota Voters Alliance (“MVA”) is a nonpartisan organization which advocates for election integrity and provides research and voter education to Minnesotans. MVA regularly engages in speech on matters of public concern, especially concerning eligibility for voting and proper election procedures. MVA has repeatedly argued, in the

public square, that felons still serving their sentences are not eligible to vote under the Minnesota Constitution, and the Felon Voting Law passed to the contrary is preempted by Article VII, section 1 of the Minnesota Constitution. In fact, MVA Executive Director Andrew Cilek has published numerous op-eds in Minnesota newspapers making that statement. MVA, by itself and through its executive director, intends to continue saying that felons who have not completed their sentences cannot lawfully vote under MVA's good-faith interpretation of the Minnesota Constitution. MVA has also filed a lawsuit in Minnesota state court to formally challenge the ongoing violation of state law caused by the new Felon Voting Law. MVA also often educates people about its views on voter eligibility and election integrity.

24. With some trepidation, MVA intends to continue speaking as it has in support of its position on felon eligibility for voting in Minnesota under the Minnesota Constitution, among many other issues which could relate to eligibility for voting (such as related to voting under guardianship), within the State of Minnesota and within Anoka County. Plaintiff MVA fears that it will be prosecuted by the Defendants or sued by third parties who disagree with its political speech because they claim that MVA is in violation of the Speech Code.

25. In addition, the individual Plaintiffs described below are each long-time supporters and volunteers with MVA. MVA has associational standing to bring this lawsuit on behalf of those for whom it advocates, including the individual Plaintiffs. This raises additional concerns for MVA: because it is a voter and election-integrity education organization, MVA fears that the "vicarious liability" and "conspiracy" provisions of the Speech Code,

subdivision 4, will lead to Defendants, or third-parties which oppose MVA's speech on matters of public concern, pursuing vicarious liability against MVA through a lawsuit based on another person or entity's speech.

26. Plaintiff Mary Amlaw is an individual resident of Anoka County, Minnesota. Plaintiff Amlaw is active in state and local politics as a long-time Republican activist. Plaintiff Amlaw regularly engages in speech on matters of public concern, including concerning eligibility for voting and proper election procedures. Plaintiff Amlaw believes, says, and will continue to believe and say, within the State of Minnesota and within Anoka County, that felons still serving their sentences are not eligible to register to vote or vote under the Minnesota Constitution because the Felon Voting Law is unconstitutional.

27. With some trepidation, Plaintiff Amlaw intends to continue speaking as she has in support of her position on felon eligibility for voting in Minnesota, among many other issues which could relate to eligibility for voting (such as related to voting under guardianship). Plaintiff Amlaw fears that she will be prosecuted by the Defendants or sued by third parties who disagree with her political speech because they claim that she is in violation of the Speech Code.

28. Petitioner Ken Wendling is an individual resident of Anoka County, Minnesota. Plaintiff Wendling is active in state and local politics. He is currently a Council Member of the City of Spring Lake Park, Minnesota and has served as Acting Mayor of Spring Lake Park when called upon to do so. He also ran for the Minnesota House of Representatives, District 37A, in 2020, as the candidate for the Republican Party. Mr. Wendling is also a long-time election judge. Plaintiff Wendling regularly engages in speech on matters of

public concern, including concerning eligibility for voting and proper election procedures. Plaintiff Wendling believes, says, and will continue to believe and say, within the State of Minnesota and within Anoka County, that felons still serving their sentences are not eligible to register to vote or vote under the Minnesota Constitution because the Felon Voting Law is unconstitutional.

29. With some trepidation, Plaintiff Wendling intends to continue speaking as he has in support of his position on felon eligibility for voting in Minnesota, among many other issues which could relate to eligibility for voting (such as related to voting under guardianship). Plaintiff Wendling fears that he will be prosecuted by the Defendants or sued by third parties who disagree with his political speech because they claim that he is in violation of the Speech Code.

30. Petitioner Tim Kirk is an individual resident of Anoka County, Minnesota. Plaintiff Kirk regularly engages in speech on matters of public concern, including concerning eligibility for voting and proper election procedures. Plaintiff Kirk believes, says, and will continue to believe and say, within the State of Minnesota and within Anoka County, that felons still serving their sentences are not eligible to register to vote or vote under the Minnesota Constitution because the Felon Voting Law is unconstitutional.

31. With some trepidation, Plaintiff Kirk intends to continue speaking as he has in support of his position on felon eligibility for voting in Minnesota, among many other issues which could relate to eligibility for voting (such as related to voting under guardianship). Plaintiff Kirk fears that he will be prosecuted by the Defendants or sued by third parties

who disagree with his political speech because they claim that he is in violation of the Speech Code.

32. Defendant Keith Ellison, in his official capacity, is the attorney general of the State of Minnesota. His office address is 445 Minnesota Street, Saint Paul, Minnesota 55101. Upon information and belief, he resides in the District of Minnesota.

33. Defendant Ellison is expressly charged with the enforcement of Laws of Minnesota 2023, chapter 34, article 2, section 2, subdivisions 1, 2, 3, 4, and 5 (soon-to-be Minnesota Statutes section 211B.075, subds. 1, 2, 3, 4, and 5).

34. Defendant Brad Johnson, in his official capacity, is the county attorney for Anoka County, Minnesota. His office address is 2100 3rd Avenue, Anoka, Minnesota 55303. Upon information and belief, he resides in the District of Minnesota.

35. Defendant Johnson is expressly charged with the enforcement of Laws of Minnesota 2023, chapter 34, article 2, section 2, subdivisions 1, 2, 3, 4, and 5 (soon-to-be Minnesota Statutes section 211B.075, subds. 1, 2, 3, 4, and 5).

JURISDICTION AND VENUE

36. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this claim arises under a federal statute, 42 U.S.C. § 1983, and the First Amendment to the U.S. Constitution.

37. The Court has personal jurisdiction over Defendants because, on information and belief, they reside in the State of Minnesota, within the District of Minnesota.

38. The Court has supplemental jurisdiction over Plaintiffs' state-law claims under the Minnesota Constitution and declaratory judgment act because they arise from the same common nucleus of operative facts as Plaintiffs' federal claims. 28 U.S.C. § 1367.

39. Venue is proper because a substantial part of the events giving rise to the claims occurred in the District of Minnesota. *See* 28 U.S.C. § 1391(b)(2).

STATEMENT OF THE CLAIM

40. The Minnesota Legislature passed, and on May 5, 2023, the Governor signed, House File 3, Laws of Minnesota 2023 chapter 34, effective June 15, 2023. The Speech Code amended Minnesota Statutes 2022 and will be codified at section 211B.075.

41. The Speech Code states:

[211B.075] INTIMIDATION AND INTERFERENCE WITH THE VOTING PROCESS; PENALTIES.

Subdivision 1.

Intimidation.

(a) A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, or loss, including loss of employment or economic reprisal against:

(1) any person with the intent to compel that person to register or abstain from registering to vote, vote or abstain from voting, or vote for or against a candidate or ballot question; or

(2) any person with the intent to impede that person's efforts to encourage another to cast a ballot or assist another in registering to vote, traveling to a polling place, casting a ballot, or participating in any other aspect of the election process.

(b) Notwithstanding paragraph (a), in a civil action brought to prevent and restrain violations of this subdivision or to require the payment of civil penalties, the plaintiff must demonstrate that the action or attempted action would cause a reasonable person to feel intimidated. The plaintiff does not need to show that the defendant intended to cause the victim to feel intimidated.

Subd. 2.

Deceptive practices.

(a) No person may, within 60 days of an election, cause information to be transmitted by any means that the person:

(1) intends to impede or prevent another person from exercising the right to vote; and

(2) knows to be materially false.

(b) The prohibition in this subdivision includes but is not limited to information regarding the time, place, or manner of holding an election; the qualifications for or restrictions on voter eligibility at an election; and threats to physical safety associated with casting a ballot.

Subd. 3.

Interference with registration or voting.

No person may intentionally hinder, interfere with, or prevent another person from voting, registering to vote, or aiding another person in casting a ballot or registering to vote.

Subd. 4.

Vicarious liability; conspiracy.

A person may be held vicariously liable for any damages resulting from the violation of this section and may be identified in an order restraining violations of this section if that person:

(1) intentionally aids, advises, hires, counsels, abets, incites, compels, or coerces a person to violate any provision of this section or attempts to aid, advise, hire, counsel, abet, incite, compel, or coerce a person to violate any provision of this section; or

(2) conspires, combines, agrees, or arranges with another to either commit a violation of this section or aid, advise, hire, counsel, abet, incite, compel, or coerce a third person to violate any provision of this section.

Subd. 5.

Criminal penalties; civil remedies.

(a) A person who violates this section is guilty of a gross misdemeanor.

(b) The attorney general, a county attorney, or any person injured by an act prohibited by this section may bring a civil action to prevent or

restrain a violation of this section if there is a reasonable basis to believe that an individual or entity is committing or intends to commit a prohibited act.

(c) The attorney general, a county attorney, or any person injured by an act prohibited by this section, may bring a civil action pursuant to section 8.31 to recover damages, together with costs of investigation and reasonable attorney fees, and receive other equitable relief as determined by the court. An action brought by any person under section 8.31, subdivision 3a, is in the public interest. In addition to all other damages, the court may impose a civil penalty of up to \$1,000 for each violation.

(d) Civil remedies allowable under this section are cumulative and do not restrict any other right or remedy otherwise available. An action for a penalty or remedy under this section must be brought within two years of the date the violation is alleged to have occurred. The complaint process provided in sections 211B.31 to 211B.36 does not apply to violations of this section.

EFFECTIVE DATE.

This section is effective June 15, 2023, and applies to violations occurring on or after that date.

42. Neither Chapter 211B nor the Speech Code defines “impede,” explains what rises to the level of constituting an impediment to exercising the right to vote, or articulates what constitutes a “threat” to a person’s “physical safety,” whether such a “threat[] to physical safety” is consistent with the definition of a “true threat” under First Amendment jurisprudence. *See* Speech Code, subd. 2.

43. Neither Chapter 211B nor the Speech Code defines what “damage, harm, or loss” is, explains how an intent to “compel” a person to abstain from registering to vote or voting can be shown, or how “the intent to impede that person’s efforts to encourage another to cast a ballot or assist another in registering to vote, traveling to a polling place, casting a ballot, or participating in any other aspect of the election process” can be shown. *See* Speech Code, subd. 1(a).

44. Moreover, there is no indication in the Speech Code as to how subdivision 1(b) can coexist with subdivision 1(a)'s intent requirement, or how an ordinary, reasonable person could predict what might make another person "feel intimidated" by political speech that does not threaten anything whatsoever. *See* Speech Code, subd. 1.

45. Further, the Speech Code does not define or explain what it means for a person to "intentionally hinder, interfere with, or prevent another person from voting, registering to vote, or aiding another person in casting a ballot or registering to vote."

46. The Speech Code, subdivision 5, makes the violation of subdivision 2 a "gross misdemeanor" subject to "a civil penalty of up to \$1,000 for each violation." Moreover, "[t]he attorney general, a county attorney, [(the Defendants here)] or any person injured by an act prohibited by this section, may bring a civil action to prevent or restrain a violation of this section," subd. 5(b), and "to recover damages, together with costs of investigation and reasonable attorney fees, and receive other equitable relief as determined by the court," subd. 5(c).

47. The Speech Code even allows the Defendants here to bring a civil action to "*prevent...a violation of this section if there is a reasonable basis to believe that an individual or entity...intends to commit a prohibited act.*" In other words, one need not have even uttered the claimed false speech to be prosecuted. This creates a prior restraint on speech.

48. The Speech Code also threatens with a "vicarious liability" or "conspiracy" charge a person (which may be an organization, like MVA) who "intentionally aids, advises, hires, counsels, abets, incites, compels, or coerces a person to violate any provision of this section or attempts to aid, advise, hire, counsel, abet, incite, compel, or coerce a person to violate

any provision of this section; or...conspires, combines, agrees, or arranges with another to either commit a violation of this section or aid, advise, hire, counsel, abet, incite, compel, or coerce a third person to violate any provision of this section.” Speech Code, subd. 4.

49. The Speech Code does not define what it means to “advise,” “counsel,” or “incite” another person to violate it, or whether those provisions apply to an attorney providing advice related to a lawsuit related to challenged speech, or whether they apply to a person relying on such an attorney’s advice. The Speech Code, on its face, is also not limited to out-of-court statements, so it is unclear whether Defendants or a third party could bring a claim against these Plaintiffs for merely filing a lawsuit which states their good-faith beliefs about the meaning of the Minnesota Constitution and its preemption of the Felon Voting Law.

50. According to the chief author of the Speech Code, Representative Emma Greenman, the law “is designed to protect voters from intimidation, harassment or anything that would hinder them from voting.” Exhibit 1, Winter, *supra* ¶ 9. Rep. Greenman also reportedly connected the aim of the Speech Code with recently signed legislation, Laws of Minnesota 2023, Chapters 12 and 62, which restored voting rights to certain felons: “Now that the state is restoring voting rights for over 50,000 people on parole or probation, Greenman anticipates disinformation that might say, ‘You’re a felon and you can’t vote.’” Exhibit 1, Winter, *supra* ¶9.

51. Laws of Minnesota 2023, chapters 12 and 62, amended Minnesota Statutes 2022, section 201.014, (the “Felon Voting Law”) to state:

An individual who is ineligible to vote because of a felony 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. For purposes of this subdivision only, an individual on work release under section 241.26 or 244.065 or an individual released under section 631.425 is not deemed to be incarcerated.

52. The Felon Voting Law purports to restore the right to vote to those convicted of felony crimes who have not completed their sentences and are still on supervised release, probation, or work release.

53. Plaintiffs oppose the Felon Voting Law as violating the Minnesota Constitution, Article VII, section 1, which states that those convicted of a felony crime may not vote “unless restored to civil rights.”

54. Plaintiffs oppose the Felon Voting Law as contrary to the Minnesota Supreme Court's interpretation of the Minnesota Constitution, Article VII, section 1, in *Schroeder v. Simon*, 985 N.W.2d 529, 544-45 (Minn. 2023).

55. Plaintiffs therefore oppose the Felon Voting Law as being in excess of the authority granted to the Minnesota Legislature by the Minnesota Constitution.

56. Plaintiffs filed a lawsuit in Minnesota state court to stop the ongoing excess of authority by certain state actors caused by the Felon Voting Law. *Minnesota Voters All. v. Hunt*, Minn. Dist. Ct. No. 02-CV-23-3416

57. Plaintiffs intend to speak, verbally and in writing, in opposition to the Felon Voting Law.

58. Plaintiffs intend to convey, verbally and in writing, the information that felons on supervised release, probation, or work release do not have the right to vote in Minnesota

under the Minnesota Constitution. Plaintiffs have not said, and do not intend to say, that the Felon Voting Law does not exist. Rather, Plaintiffs' political speech relates to their opinions about the interrelation of the Minnesota Constitution and the Felon Voting Law—that the former preempts the latter.

59. Plaintiffs hold their beliefs in good faith and do not intend to impede or prevent any person from lawfully exercising the right to vote.

60. Plaintiffs' beliefs described herein constitute their opinions about the political and legal issue of the interrelation of the Minnesota Constitution and the Felon Voting Law.

61. Plaintiffs have never directly or indirectly threatened damage, harm, or loss against any person for their decision to register to vote, vote, or assist another in registering or voting.

62. Plaintiffs have never intended to compel any person to register or abstain from registering to vote, vote or abstain from voting, or vote for or against a candidate or ballot question.

63. Plaintiffs have never intended to impede any person from encouraging another to cast a ballot or assist another in registering to vote, traveling to a polling place, casting a ballot, or participating in any other aspect of the election process.

64. No reasonable person could feel intimidated by Plaintiffs' political speech and opinions about the interrelationship between the Minnesota Constitution and Felon Voting Law.

65. Plaintiffs have never intended to impede or prevent another person from exercising the right to vote.

66. Plaintiffs firmly believe their opinions about the interrelationship between the Minnesota Constitution and the Felon Voting Law to be true, and they reject any characterization that they are false.

67. Plaintiffs have never intended, nor do they intend, to hinder, interfere with, or prevent another person from voting, registering to vote, or aiding another person in casting a ballot or registering to vote. They simply believe and say that those still serving felony sentences do not have the right to vote in Minnesota because the Felon Voting Law is unconstitutional, and the Constitution is supreme law in Minnesota.

68. Despite these facts about Plaintiffs' intentions, the political nature of their speech, the opinion nature of their beliefs, and their good-faith belief in the truth of their views, the Speech Code poses a threat of prosecution which chills Plaintiffs' speech because Defendants or any other person claiming to somehow be harmed by Plaintiffs' speech could still bring an action seeking a restraining order, penalties, and attorney fees and costs of investigation against Plaintiffs.

69. Defendant Johnson's prior counterclaim shows that this threat is real and not hypothetical or speculative because it has actually occurred.

70. In fact, Plaintiffs' only public statements related to the eligibility to vote of felons who have not completed their sentences identified in the original Complaint referred to the State Court Lawsuit and this lawsuit, so the Speech Code appears to target in-court statements for which there is an absolute privilege in the law. And it is also not clear whether Plaintiffs' attorneys can even speak in pleadings and in open court for purposes of the State Court Lawsuit, or whether any of the Plaintiffs can speak to the media after the October

30, 2023 hearing in the State Court Lawsuit, where the media have provided notice of their intent to be at the hearing and take video and audio recordings. **Exhibit 5.**

71. Further, because the law states that it targets messages “communicated in any way,” the law may criminalize and subject to liability statements made about lawsuit pleadings, hearings, and opinions about the law based on ongoing litigation.

72. And because the news media republishes information obtained by speakers like Plaintiffs, it is not clear whether any republication of the statements of any person by news media would subject the news media to liability because it could constitute aiding or abetting violations of the Speech Code under its subdivision 4.

73. On the other hand, if the news media reporting statements made by Plaintiffs or other like persons are *not* subject to the Speech Code, then the Speech Code leaves its purported government interest open to harm by repeated republication.

74. There is no history of disuse of the Speech Code, nor have Defendants disclaimed their authority or intent to enforce it.

75. Even if such an action against Plaintiffs based on their speech and beliefs were entirely frivolous, Plaintiffs’ fear of prosecution is not just reasonable, it is also supported by the fact that a counterclaim was brought against Plaintiffs prior to this Amended Complaint based on Plaintiffs’ political opinions, in-court statements, and intent to state them.

76. Harm to Plaintiffs’ First Amendment rights has already occurred and continues to exist because of the Speech Code’s existence and the genuine threat of its enforcement against Plaintiffs.

77. Plaintiffs also have concerns about other citizens' eligibility to vote in elections. For example, Plaintiffs believe that those under guardianship may not vote under the Minnesota Constitution, Article VII, section 1. However, one state district court has held that this provision of the Constitution conflicts with other provisions and is therefore unconstitutional. *See In re Brian W. Erickson*, Minn. Dist. Ct. No. 27-GC-PR-09-57, Order, Oct. 4, 2012. Plaintiffs disagree with this decision and are concerned that citizens under guardianship can be and have been manipulated for their vote. Plaintiffs intend to speak against any such manipulation and abuse of vulnerable adults, which would require saying and conveying to the public that those under guardianship are not eligible to vote in Minnesota elections pursuant to the Minnesota Constitution. This information could be incorrectly interpreted by Defendants or a third party to violate the Speech Code because of the existence of a district court decision contrary to Plaintiffs' view of the Minnesota Constitution.

78. Plaintiffs' proposed speech is protected by the First Amendment. It is "quintessential political speech, which is at the heart of the protections of the First Amendment." 281 *CARE Comm. v. Arneson*, 638 F.3d 621, 635 (8th Cir. 2011) (citing *Mills v. Alabama*, 384 U.S. 214, 218 (1966)).

79. The Speech Code expressly charges Defendants with prosecuting violations.

80. Plaintiffs fear prosecution by Defendants or by a third party for engaging in this protected speech.

81. The Speech Code expressly targets political and campaign speech both based on its intended targets, discussed above, and because it prohibits speech within 60 days of an election.

82. The Speech Code is not tailored to target only readily verifiable facts, and instead sweeps in a substantial amount of political speech and opinion.

83. The Speech Code fails to advance any government interest because it directly regulates what is said or distributed during an election and is a content- and viewpoint-based restriction.

84. There is no evidence advanced in any committee hearing, or on the legislative floor, or which could be advanced, which could show that the Speech Code is actually necessary to achieve its claimed interests.

85. The Speech Code is not narrowly tailored to achieve any government interest because it sweeps too broadly, leaves significant influences bearing on claimed interests unregulated, and could be replaced by counterspeech, which is a less restrictive alternative.

86. The Speech Code fails to support any state interest because it perpetuates fraud in the form of third parties, such as political opponents or opponents of Plaintiffs' state-court lawsuit, suing Plaintiffs in order to shut down their political speech.

87. This already happened when Defendant Johnson, who represents certain Anoka County based defendants in the State Court Lawsuit, filed a counterclaim prior to this Amended Complaint.

88. The Speech Code fails to support any state interest because the legislature did not identify any empirical problem in Minnesota with deceptive speech causing eligible voters not to vote or participate in elections, or that any reasonable person would feel intimidated by deceptive speech, and on information and belief, no evidence that would justify the Speech Code exists.

89. The Speech Code sweeps in a significant amount of protected speech but fails to support a state interest because insufficient claims made under it will rarely be resolved by the time an election is complete, and it takes time and resources to fight insufficient allegations, so the false “remedy” of proving one’s innocence is thus largely meaningless.

90. The Speech Code is unconstitutional and unlawfully chills political speech because the filing of a complaint alone would damage and has damaged Plaintiffs and other like individuals, and so penalizes core political speech with a burden of proof even lower than a preponderance of the evidence.

91. The *mens rea* of the Speech Code does not adequately narrow it because it does not address Plaintiffs’ reasonable and proven concern that someone will file a complaint against them, or they might be prosecuted, based on a truthful statement someone deems false.

92. Plaintiffs’ speech already has been wrongly interpreted by Defendant Johnson, and on information and belief, Plaintiffs’ speech could be wrongly and unreasonably interpreted by a third party, to violate the Speech Code, and therefore Plaintiffs have an objectively reasonable fear that this Speech Code will sweep in their protected speech for prosecution. Plaintiffs also have a reasonable fear that they will have to hire counsel and pay to defend their speech in the event of any such prosecution or lawsuit.

93. Defendants are state actors for purposes of 42 U.S.C. § 1983.

94. Defendants are connected with the enforcement of the Speech Code because they are expressly charged with enforcement.

95. Plaintiffs' claims for a declaratory judgment and injunctive relief only seek prospective relief which addresses Defendants' ongoing violation of federal law.

96. Plaintiffs reserve the right to seek leave of the Court to further amend this Amended Complaint or pursue a counterclaim-in-reply if the Defendants or any third party retaliates against them for their speech and/or for bringing this action, including by a counterclaim. *See Harrison v. Springdale Water & Sewer Com.*, 780 F.2d 1422, 1427-28 (8th Cir. 1986).

97. Plaintiffs demand a trial by jury of any issues so triable.

CAUSES OF ACTION

Count One 42 U.S.C. §§ 1983, 1988 U.S. Const. Amend. I Minn. Const. art. I, § 3

First Amendment Freedom of Speech – Overbreadth

98. Plaintiffs incorporate the preceding paragraphs by reference.

99. The Free Speech Clause of the First Amendment to the Constitution provides, in relevant part, that “Congress shall make no law . . . abridging the freedom of speech.”

100. The Free Speech Clause applies to states and their subdivisions and municipalities through the Fourteenth Amendment to the U.S. Constitution.

101. The Free Speech Clause also prohibits speech restrictions which sweep too broadly in relation to the statute's legitimate sweep; “a statute is facially invalid if it prohibits a substantial amount of protected speech.” *United States v. Williams*, 553 U.S. 285, 292 (2008).

102. The Speech Code sweeps in a wide swath of protected speech, including true speech proposed by Plaintiffs and others who might make similar political statements in the future, because political opponents and the Defendants may subjectively (and incorrectly) determine it to be false and therefore bring a civil action against Plaintiffs and like persons.

103. The Speech Code also impermissibly prohibits “intended” speech before it is uttered, and criminalizes so-called advising, counseling, and inciting violations, without defining those terms.

104. The Speech Code’s overbreadth is thus substantial in relation to any legitimate target, if one exists.

105. Consequently, the Speech Code is unconstitutionally overbroad, and Plaintiffs ask the Court to so declare and to enjoin the law’s enforcement.

106. Plaintiffs are also entitled to their taxable costs and reasonable attorney fees, upon prevailing and upon filing of an appropriate motion for the same.

Count Two
42 U.S.C. §§ 1983, 1988
U.S. Const. Amend. I
Minn. Const. art. I, § 3

First Amendment Freedom of Speech – Content and Viewpoint Discrimination

107. Plaintiffs incorporate the preceding paragraphs by reference.

108. The Free Speech Clause prohibits speech restrictions based on content or viewpoint.

109. In other words, laws which “target speech based on its communicative content...are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015).

110. On its face, the Speech Code targets the content of speech, and expressly targets, without limitation, “information regarding the time, place, or manner of holding an election; [and] the qualifications for or restrictions on voter eligibility at an election.”

111. To determine whether a person violates the Speech Code, Defendants or any third party seeking to prosecute violations must consider the content of Plaintiffs’ speech, or any other person’s speech.

112. The Speech Code is not narrowly tailored to serve any compelling government interest. It is overbroad and not actually necessary to serve the interests it claims to support, and it perpetuates fraud itself.

113. A less restrictive alternative exists, which is as effective to combat any claimed false statements subject to the Speech Code’s enforcement: counterspeech.

114. The Speech Code imposes an objectively reasonable chill on the speech of any person desiring to engage in political expression, like Plaintiffs.

115. Consequently, the Speech Code is unconstitutional, and Plaintiffs ask the Court to so declare and to enjoin the law’s enforcement.

116. Plaintiffs are also entitled to their taxable costs and reasonable attorney fees, upon prevailing and upon filing of an appropriate motion for the same.

Count Three
42 U.S.C. §§ 1983, 1988
U.S. Const. Amend. I, XIV
Minn. Const. art. I, §§ 3, 7

First Amendment Freedom of Speech – Vagueness
Procedural Due Process – Vagueness

117. Plaintiffs incorporate the preceding paragraphs by reference.

118. The Free Speech Clause and the Due Process Clause prohibit restrictions on speech that are so vague that they fail to give precise notice of what conduct is forbidden.

119. Courts apply a heightened vagueness test to criminal penalties of protected speech. *E.g., Reproductive Health Serv. v. Webster*, 851 F.2d 1071, 1077-78 (8th Cir. 1988), *rev'd on other grounds for mootness*, 492 U.S. 490 (1989).

120. The Speech Code is vague as to (a) what it means to “impede” a person’s right to vote, (b) what rises to the level of constituting an impediment to exercising the right to vote, (c) what constitutes a “threat” to a person’s “physical safety,” (d) whether such a “threat[] to physical safety” is consistent with the definition of a “true threat” under First Amendment jurisprudence; (e) what conduct rises to the level of “intent” to violate the Speech Code, or (f) what it means to “advise,” “counsel,” or “incite” a person to violate the Speech Code.

121. Further, the Speech Code is vague because it fails to define what “damage, harm, or loss” is, explain how an intent to “compel” a person to abstain from registering to vote or voting can be shown, or how “the intent to impede that person's efforts to encourage another to cast a ballot or assist another in registering to vote, traveling to a polling place,

casting a ballot, or participating in any other aspect of the election process” can be shown. *See* Speech Code, subd. 1(a).

122. Moreover, the Speech Code is vague because there is no indication in the Speech Code as to how subdivision 1(b) can coexist with subdivision 1(a)’s intent requirement, or how an ordinary, reasonable person could predict what might make another person “feel intimidated” by political speech that does not threaten anything whatsoever. *See* Speech Code, subd. 1.

123. Further, the Speech Code is vague because it does not define or explain what it means for a person to “intentionally hinder, interfere with, or prevent another person from voting, registering to vote, or aiding another person in casting a ballot or registering to vote.”

124. These words are “fraught with ambiguity” and are thus “incapable of objective measurement.” *Baggett v. Bullitt*, 377 U.S. 360, 367 (1964).

125. These terms “abut upon sensitive areas of basic First Amendment freedoms.” *Id.* at 372.

126. These terms require a person, and even their *attorneys*, to “steer far wider of the unlawful zone....than if the boundaries of the forbidden areas were clearly marked.” *Id.*

127. As to the terms “advise,” and “counsel,” these have the effect of leading professionals who might be in a position of discussing Minnesota’s election laws and its Constitution to “avoid the risk of loss of employment, and perhaps profession, only by restricting

their conduct to that which is unquestionably safe.” *Id.* Thus, the Speech Code’s vagueness causes additional overbreadth.

128. As to the specter of “threats to physical safety” raised by the Speech Code, there is no evidence to support the existence of any “threats” in the legislative record, nor are Plaintiffs aware of any other evidence of “threats” to which this provision might be targeted, and any interest in stopping “true threats” to a person are adequately addressed by Minnesota’s criminal law related to “true threats.” *See* Minn. Stat. § 609.713; *see also State v. Mrozinski*, 971 N.W.2d 233, 239 (Minn. 2022); *see also Virginia v. Black*, 538 U.S. 343, 360 (2003). Thus, the Speech Code is not actually necessary to deter any criminal conduct without First-Amendment value.

129. As to the term “incite,” any interest in deterring such speech supposedly reached by the Speech Code is otherwise served through laws prohibiting incitement to imminent violence where the speaker intends to incite such action by third persons. *See* Minn. Stat. § 609.72, subd. 1(3); *see also State v. Hensel*, 901 N.W.2d 166, 176-77 (Minn. 2017) (interpreting section 609.72, subdivision 1(3) to apply to “fighting words,” which by their nature “incite” violence); *see also United States v. Alvarez*, 567 U.S. 709, 717 (2012) (incitement of imminent, lawless action not protected by First Amendment). Thus, the Speech Code is not actually necessary to deter any criminal conduct without First-Amendment value.

130. These terms in the Speech Code are not narrowly tailored to achieve a compelling government interest, and the Speech Code is not actually necessary to address the speculative evil it supposedly targets.

131. The Speech Code imposes an “objectively reasonable chill” on the speech of any person desiring to engage in political expression, like Plaintiffs. *281 CARE Comm. v. Arneson*, 766 F.3d 774, 781 (8th Cir. 2014).

132. Consequently, the Speech Code is unconstitutional, and Plaintiffs ask the Court to so declare and to enjoin the law’s enforcement.

133. Plaintiffs are also entitled to their taxable costs and reasonable attorney fees, upon prevailing and upon filing of an appropriate motion for the same.

Count Four
42 U.S.C. §§ 1983, 1988
U.S. Const. Amend. I
Minn. Const. art. I, § 3

First Amendment Freedom of Speech – Prior Restraint

134. Plaintiffs incorporate the preceding paragraphs by reference.

135. Prior restraints on speech “are the most serious and least tolerable infringement on First Amendment rights.” *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). “In the first place, the main purpose of [the First Amendment] is ‘to prevent all such *previous restraints* upon publications as had been practiced by other governments....’” *Near v. Minnesota*, 283 U.S. 697, 714 (1931) (emphasis in original).

136. The Speech Code allows the Defendants to bring a civil action to “*prevent...a violation of this section if there is a reasonable basis to believe that an individual or entity...intends to commit a prohibited act.*” (emphasis added). In other words, one need not have even uttered the claimed false speech to be prosecuted. This allows the prosecution

of speech before it is even uttered—what amounts to an Orwellian regulation of “thought-crime.”

137. While some categories of speech are unprotected, such as fighting words or true threats, there is virtually no justification under the First Amendment for a law which stops speech from being uttered in the first place.

138. The Speech Code creates a prior restraint on speech in the provision that authorizes prosecution to “prevent” speech from being uttered if the State decides that a person, like Plaintiffs, merely “intends” to violate the Speech Code.

139. There is no justification for this prior restraint on speech.

140. Thus, the Speech Code is not narrowly tailored to achieve a compelling government interest, and the Speech Code is not actually necessary to address the speculative evil it supposedly targets.

141. The Speech Code imposes an “objectively reasonable chill” on the speech of any person desiring to engage in political expression, like Plaintiffs. *281 CARE Comm. v. Arneson*, 766 F.3d 774, 781 (8th Cir. 2014).

142. Consequently, the Speech Code is unconstitutional, and Plaintiffs ask the Court to so declare and to enjoin the law’s enforcement.

143. Plaintiffs are also entitled to their taxable costs and reasonable attorney fees, upon prevailing and upon filing of an appropriate motion for the same.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court grant them relief as follows:

A. A declaration that the Speech Code violates 42 U.S.C. § 1983 and Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 7 of the Minnesota Constitution.

B. A preliminary and permanent injunction prohibiting Defendants from enforcing the Speech Code.

C. Plaintiffs' taxable costs and disbursements as allowed by law and after proper application for the same;

D. An award of attorney fees in favor of Plaintiffs and against Defendants upon Plaintiffs prevailing in this litigation and upon post-judgment application for the same, pursuant to 42 U.S.C. § 1988; and

E. An award of all other relief that the Court may deem just, proper, or equitable.

UPPER MIDWEST LAW CENTER

Dated: October 17, 2023

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** Pro hac vice admission to be sought*

Attorneys for Plaintiffs

VERIFICATION

I, Tim Kirk, declare as follows:

1. I am Tim Kirk, a Plaintiff in this case, and I make this declaration on personal knowledge.
2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Complaint, and if called upon to testify I would competently testify as to those matters.
3. I verify under penalty of perjury that the factual statements in this Complaint concerning myself, my activities, and my intentions are true and correct.

**Executed in Anoka County, Minnesota
On October 9, 2023**

/s/ Tim Kirk
Tim Kirk