Filed in Second Judicial District Court
6/22/2017 3:05 PM
Ramsey County, MN

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Case Type: Civil

Association for Government Accountability,

Petitioner,

vs.

Court File No. 62-CV-17-3396
Judge John H. Guthmann

AFFIDAVIT OF JACOB CAMPION

Myron Frans in his Official Capacity as Commissioner of Management and Budget as an agency of the Executive Branch of the State of Minnesota; Minnesota House of Representatives Budget and Accounting Office, and Minnesota Senate Fiscal Services Department.

Respondents.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

JACOB CAMPION, being first duly sworn on oath, deposes and states as follows:

1. I am an Assistant Attorney General for the State of Minnesota, and I represent Respondent Myron Frans, Commissioner of Minnesota Management and Budget, in the above-entitled case.

2. Attached as Exhibit 1 is a true and correct copy of *St. Paul Police Fed'n v. City of St. Paul*, No. A05-2186, 2006 WL 2348481 (Minn. App. Aug. 15, 2006).

3. Attached as Exhibit 2 is a true and correct copy of *Ctr. for Biological Diversity v. Minn. Dep't of Nat. Res.*, No. A12-1680, 2013 WL 2301951 (Minn. App. May 28, 2013).

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4. Attached as Exhibit 3 is a true and correct copy of *Minn. Voters All. v. State*, No. 62-CV-13-7718, 2014 WL 2134372 (Minn. Dist. Ct. Apr. 28, 2014).

FURTHER YOUR AFFIANT SAITH NOT.

JACOB CAMPION

Subscribed and Sworn to before me
this 22nd day of June, 2017

NOTARY PUBLIC

PAMELA JEAN HEWITT
NOTARY PUBLIC
MINNESOTA
My Commission Expires Jan. 31, 2022

2006 WL 2348481
Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

ST. PAUL POLICE FEDERATION, Appellant,
v.
CITY OF ST. PAUL, Minnesota, et al., Respondents.

No. A05-2186.
|
Aug. 15, 2006.
|
Review Denied Oct. 17, 2006.

Synopsis

Background: Police union sued city seeking declaration that the use of qualifications-rating process to evaluate applicants for a fire dispatcher position in the emergency communications center violated civil service rules and city charter, and seeking to enjoin use of the process in filling the position. Union moved for temporary injunction. The District Court, Ramsey County, denied the motion and dismissed the complaint for lack of standing. Union appealed.

Holding: The Court of Appeals, Peterson, J., held that union lacked associational standing to challenge use of qualifications-rating process.

Affirmed.

West Headnotes (1)

[1] Associations
Actions by or Against Associations

Police union failed to show that it had associational standing to challenge city's use of qualifications-rating process in filling fire dispatcher position, given that none of its members had suffered actual or threatened injury as no promotions to fill the position had yet been made using the challenged process.

Cases that cite this headnote

Ramsey County District Court, File No. C1-05-8336.

Attorneys and Law Firms

Christopher K. Wachtler, Collins, Buckley, Sauntry & Haugh, P.L.L .P., St. Paul, MN, for appellant.

John J. Choi, St. Paul City Attorney, Gail L. Langfield, Assistant City Attorney, St. Paul, MN, for respondents.

Considered and decided by HALBROOKS, Presiding Judge; PETERSON, Judge; and MINGE, Judge.

UNPUBLISHED OPINION

PETERSON, Judge.

*1 In this appeal from an order denying a motion for a temporary injunction and dismissing the complaint for lack of standing, appellant argues that the district court abused its discretion in denying a temporary injunction and erred in determining that appellant does not have standing to seek injunctive relief. We affirm.

FACTS

Respondent City of St. Paul posted a job announcement for a Fire Dispatcher I in the city's Emergency Communications Center. The position is a promotional position, which means that it requires experience in the Emergency Communications Center. The process to be used to evaluate the applicants for the position includes a "qualifications rating" questionnaire that is completed by each applicant. Twelve members of appellant St. Paul Police Federation participated in the qualifications-rating process for the Fire Dispatcher I position.

The federation brought an action against the city seeking (1) a declaration that using the qualifications-rating process for the Fire Dispatcher I position violates civil-service rules and the St. Paul City Charter because it does

not provide an objective method for scoring applicants; and (2) an injunction against using the qualifications-rating process to make any promotions. The federation moved for a temporary injunction, and the city agreed to delay any scoring of the pending examination until the district court could hear and determine the motion. The district court denied the federation's motion and dismissed its complaint for lack of standing. This appeal follows.

DECISION

The federation argues that the district court erred in concluding that the federation does not have standing to bring its action. "The reviewing court considers de novo the question of standing, as an aspect of justiciability." *Edina Cmty. Lutheran Church v. State,* 673 N.W.2d 517, 521 (Minn.App.2004). "Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court." *State by Humphrey v. Philip Morris Inc.,* 551 N.W.2d 490, 493 (Minn.1996) (citing *Sierra Club v. Morton,* 405 U.S. 727, 731-32, 92 S.Ct. 1361, 1364-65, 31 L.Ed.2d 636 (1972)).

"A party has standing if (1) the legislature has conferred standing by statute, or (2) a party has suffered 'injury-in-fact.' " *Alliance for Metro. Stability v. Metro. Council,* 671 N.W.2d 905, 913 (Minn.App.2003). The federation does not claim that the legislature has conferred standing by statute. To satisfy the "injury-in-fact" requirement, the federation must demonstrate that it has "suffered actual, concrete injuries caused by the challenged conduct." *Id.* (footnote omitted). The challenged conduct is the city's use of the qualifications-rating process to evaluate the applicants for the Fire Dispatcher I position. The Minnesota Supreme Court has adopted the principle "of 'associational standing,' which recognizes that an organization may sue to redress injuries to itself or injuries to its members." *Philip Morris,* 551 N.W.2d at 497-98. To establish associational standing, the federation must demonstrate that the qualifications-rating process has caused actual, concrete injury to the federation or its members.

***2** The federation argues that it has standing because if the qualifications-rating process is used to make promotions, its members will suffer adverse employment consequences. But the federation's argument is based on injury that someone will suffer if the qualifications-rating process is implemented and promotions are made; it is not based on an injury that any identified member will suffer. Because no promotion has been made, no identified federation member has been injured by the qualifications-rating process.

Citing *Warth v. Seldin,* 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975), the federation argues that it has associational standing as a representative of its members, even in the absence of injury to itself. In *Warth,* the Supreme Court articulated the concept of associational standing and stated:

> The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit.... [S]o long as the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to proper resolution of the cause, the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction.

Id. at 511, 95 S.Ct. at 2211-12 (citation omitted).

As the Minnesota Supreme Court has recognized, *Warth* relaxes requirements for associational standing when equitable relief is sought. *Philip Morris,* 551 N.W.2d at 498. The federation is seeking equitable relief. But even under the relaxed requirements in *Warth,* an association "can have standing as the representative of its members only if it has alleged facts sufficient to make out a case or controversy had the members themselves brought suit." *Warth,* at 516, 95 S.Ct. at 2214. Because no promotion has been made using the challenged qualifications-rating process, the federation has not identified a member who is suffering immediate or threatened injury and, consequently, has not alleged facts sufficient to make out a case or controversy had its members brought suit.

The district court did not err in concluding that the federation does not have standing to sue and dismissing the federation's suit. Because the district court did not err

in dismissing the suit, it is not necessary for us to address whether the district court erred in denying an injunction.

Affirmed.

All Citations

Not Reported in N.W.2d, 2006 WL 2348481

Footnotes

1 The federation appealed from the order denying the motion for temporary injunction and dismissing the action. After the appeal was taken, judgment dismissing the action was entered. The city argues that the proper appeal was from the judgment. But the supreme court has held that when an action is dismissed for lack of jurisdiction, the order of dismissal is appealable. *City of Shorewood v. Metro. Waste Control Comm'n,* 533 N.W.2d 402, 404 (Minn.1995); *Bulau v. Bulau,* 208 Minn. 529, 530-31, 294 N.W. 845, 847 (1940).

2013 WL 2301951
Only the Westlaw citation is currently available.

Court of Appeals of Minnesota.

CENTER FOR BIOLOGICAL DIVERSITY, Howling for Wolves, Petitioners,

v.

MINNESOTA DEPARTMENT OF NATURAL RESOURCES, et al., Respondents.

No. A12–1680.

|

May 28, 2013.

Minnesota Department of Natural Resources.

Attorneys and Law Firms

Collette L. Adkins Giese, Center for Biological Diversity, Circle Pines, MN, for petitioners.

Lori Swanson, Attorney General, David P. Iverson, Nathan J. Hartshorn, Assistant Attorneys General, St. Paul, MN, for respondents.

Ryan Burt, Halleland Habicht PA, Minneapolis, MN; and Anna M. Seidman (pro hac vice), Safari Club International, Washington, D.C., for amicus curiae Safari Club International.

Considered and decided by ROSS, Presiding Judge; BJORKMAN, Judge; and KIRK, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge.

***1** Petitioners seek a declaratory judgment invalidating the expedited emergency rules enacted by respondent Minnesota Department of Natural Resources (DNR) for the 2012 13 wolf-hunting and -trapping seasons. Petitioners argue that the DNR adopted the rules in violation of statutory rulemaking procedures. Because petitioners lack standing to challenge the rules, we dismiss the petition.

FACTS

Effective January 27, 2012, the United States Fish and Wildlife Service removed Minnesota's wolves from the federal threatened and endangered species list, thereby removing them from the protection of the Endangered Species Act of 1973(ESA), 16 U.S.C. §§ 1531 44 (2006). Revising the Listing of the Gray Wolf (Canis lupus) in the Western Great Lakes, 76 Fed.Reg. 81,666, 81,666 (Dec. 28, 2011). The delisting left management of the Minnesota wolf population to the state.

In anticipation of this change, the legislature eliminated a preexisting requirement that there be no open season for taking wolves until five years after delisting. 2011 Minn. Laws 1st Spec. Sess. ch. 2, art. 5, § 51, at 804. The legislature provided instead that "[t]here shall be no open season for wolves until after the wolf is delisted under the [ESA]. After that time, [the DNR] may prescribe open seasons and restrictions for taking wolves but must provide opportunity for public comment." Minn.Stat. § 97B.645, subd. 9 (2012). After wolves were delisted, the legislature enacted Minn.Stat. § 97B.647 (2012), which governs the taking of wolves. 2012 Minn. Laws ch. 277, art. 1, § 65, at 1158. This legislation establishes that "[t]he open season to take wolves with firearms begins each year on the same day as the opening of the firearms deer hunting season." Minn.Stat. § 97B.647, subd. 2. The legislature further provided that the DNR commissioner "may by rule prescribe the open seasons for wolves according to this subdivision." *Id.*

Following the enactment of section 97B.647, the DNR began an expedited emergency rulemaking process to establish rules for the 2012 13 wolf-hunting and -trapping seasons. On May 21, 2012, the DNR issued a press release declaring that there would be a wolf-hunting and -trapping season in the coming fall and winter and that the DNR was "seeking public comment on details of the proposed season." The DNR explained that it would "only take comments through an online survey through June 20."

On August 20, the DNR published the 2012 13 rules for wolf hunting and trapping (the wolf rules), providing that up to 400 wolves could be taken during open hunting and trapping seasons between November 3, 2012, and January

31, 2013. 37 Minn. Reg. 279, 279 82 (Aug. 20, 2012). The DNR also published a notice stating that it adopted the wolf rules through the expedited emergency rulemaking process because "quota numbers, bag limits and season structure are developed on an annual basis so that the harvest and populations can be managed sustainably." *Id.* at 279.

***2** Petitioners Center for Biological Diversity and Howling for Wolves commenced this declaratory-judgment action on September 19, 2012. Petitioners simultaneously filed a motion for a preliminary injunction, which this court denied based on petitioners' failure "to identify any claimed irreparable harm attributable to the DNR rules." The supreme court denied petitioners' request for further review or an emergency injunction. We subsequently granted Safari Club International (Safari) leave to participate in this action as amicus curiae.

DECISION

This court has jurisdiction to determine the validity of an administrative agency's rule in a pre-enforcement declaratory-judgment action. Minn.Stat. § 14.44 (2012); *Rocco Altobelli, Inc. v. State, Dep't of Commerce,* 524 N.W.2d 30, 34 (Minn.App.1994). If we conclude the challenged rule violates constitutional provisions, exceeds the agency's statutory authority, or was adopted in violation of statutory rulemaking procedures, we will declare the rule invalid. Minn.Stat. § 14.45 (2012).

Petitioners argue that the DNR violated statutory rulemaking procedures by adopting the wolf rules under expedited emergency rulemaking procedures, which do not require a notice-and-comment period. *See* Minn.Stat. § 84.027, subd. 13(b) (2012). Petitioners contend that the DNR should have followed the emergency rulemaking procedures of Minn.Stat. §§ 97A.0451 .0459 (2012), which require notice of the proposed rules and a 25 day public-comment period, because no "conditions exist that do not allow" compliance with those requirements. *See id.*, subd. 13(a)(1), (b) (2012).

We turn first to the threshold issue of standing.[2] This is because jurisdiction is essential to a court even hearing a matter. *See* Minn. R. Civ. P. 12.08(c) (requiring dismissal if court lacks jurisdiction). And standing is essential to a court's exercise of jurisdiction. *Enright v. Lehmann,* 735 N.W.2d 326, 329 (Minn.2007); *see also Rocco Altobelli,* 524 N.W.2d at 34 (stating that this court must determine standing under Minn.Stat. § 14.44 before considering the validity of a challenged rule).

A petitioner has standing to challenge an administrative rule under Minn.Stat. § 14.44 only "when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner." Minn.Stat. § 14.44; *Coal. of Greater Minn. Cities v. Minn. Pollution Control Agency,* 765 N.W.2d 159, 163 (Minn.App.2009), *review denied* (Minn. Aug. 11, 2009). A petitioner must have a "direct interest" in the validity of the challenged rule that is "different in character from the interest of the citizenry in general." *Rocco Altobelli,* 524 N.W.2d at 34 (quotation omitted). But an organization whose members claim such an interest "may sue to redress injuries ... to its members." *See State by Humphrey v. Philip Morris Inc.,* 551 N.W .2d 490, 497 98 (Minn.1996).

***3** Petitioners first contend that they have standing because the DNR's use of the expedited emergency rulemaking process interfered with their members' ability to submit meaningful comments about the proposed rules. We disagree. While this court may invalidate a rule adopted in violation of statutory rulemaking procedures, Minn.Stat. § 14.45, standing focuses on the effect of the rule, not alleged flaws in the rulemaking process. Only one whose rights are impaired by a challenged rule has standing to ask this court to invalidate it. Minn.Stat. § 14.44.

Petitioners next argue that they have standing because the rules themselves threaten their members' aesthetic interests in wolves "because they open hunting and trapping seasons and cause wolf deaths that otherwise would be unlawful." We are not persuaded. We recognize that the desire to use or observe an animal species for aesthetic purposes is "a cognizable interest for purpose of standing." *See Lujan v. Defenders of Wildlife,* 504 U.S. 555, 562 63, 112 S.Ct. 2130, 2137 (1992). But petitioners must allege that the wolf rules cause actual or imminent impairment of that interest. As this court recognized in denying injunctive relief, it was the legislature that established an open season on wolves, not the DNR. By statute, the open season "to take wolves with firearms begins each year on the same day as the opening of

the firearms deer hunting season." Minn.Stat. § 97B.647, subd. 2. The DNR is authorized to promulgate rules for wolf hunting and trapping but does not have discretion to forego an open season on wolves.[3] *See id.* Accordingly, we consider whether petitioners allege impairment of their members' aesthetic interest in wolves or any other harm attributable to the rules that regulate the wolf-hunting season.

In support of their challenge to the wolf rules, petitioners submitted declarations from eight of their members who live in, have traveled to, or have specific plans to travel to the areas of Minnesota where wild wolves live. All eight declarations state absolute opposition to hunting wolves. They express concern that wolves they have seen or heard will be killed and assert that wolf hunting and trapping will reduce the number of wolves in Minnesota. But the declarations do not identify how the wolf rules themselves impair the members' interests in wolves by effectuating and regulating the open wolf season that the legislature mandated.

In this respect, petitioners' challenge is similar to that in *Rocco Altobelli.* The hair-salon petitioners in that case challenged a rule regulating independent contractors who lease chairs in beauty salons. *Rocco Altobelli,* 524 N.W.2d at 32 33. The petitioners claimed that the rule injured petitioners and other salons that do not lease chairs to independent contractors by affording a tax benefit to salons that do. *Id.* at 34. We concluded that the challenged rule did not harm the petitioners but merely conformed to the statute that exempts independent contractors from paying into the workers' compensation fund, which was the real target of the petitioners' complaint. *Id.* at 34 35. Because the petitioners in that case identified no harm uniquely attributable to the challenged rule, they lacked standing. *See id* . Likewise, petitioners here challenge rules that effectuate and regulate a statutory mandate without identifying any harm uniquely attributable to the challenged rules.

***4** Alternatively, petitioners claim that they qualify for taxpayer standing. A taxpayer without personal or direct injury may have standing, "but only to maintain an action that restrains the 'unlawful disbursements of public money ... [or] illegal action on the part of public officials.' " *Olson v. State,* 742 N.W.2d 681, 684 (Minn.App.2007) (alteration in original) (quoting *McKee v.. Likins,* 261 N.W.2d 566, 571 (Minn.1977)). Petitioners assert that this is a proper taxpayer claim because they seek to restrain illegal action on the part of public officials. We are not persuaded.

Taxpayer standing requires an allegation of harm to the petitioners *as taxpayers.* Petitioners must identify an unlawful "expenditure made as a result of the challenged [rules]." *See id.* at 685 (holding that challenge to tax exemption could not be pursued on solely taxpayer basis because it did not involve expenditure). Mere disagreement with a policy decision is insufficient to confer standing. *See Rukavina v. Pawlenty,* 684 N.W.2d 525, 531 (Minn.App.2004), *review denied* (Minn. Oct. 19, 2004).

Petitioners allege that the wolf rules involve the expenditure of tax money, pointing to the printing of the wolf-regulation booklet and establishment of the electronic-licensing system. But the DNR routinely permits electronic licensing and annually publishes booklets to educate the public about hunting regulations, and petitioners do not contend that these expenditures would have been avoided had the DNR promulgated different rules or used a different rulemaking process. Because the expenditures associated with the wolf rules do not increase the "overall tax burden," they are not expenditures for the purpose of establishing taxpayer standing. *See Olson,* 742 N.W.2d at 685. Rather, it is apparent that petitioners' disagreement is with the legislature's policy decision to permit wolf hunting. Such a disagreement does not present a controversy for judicial review of the rules that effectuate that legislative decision.

In sum, petitioners do not assert that the wolf rules cause unique harm to their aesthetic interest in wolves or the unlawful use of public funds. Petitioners therefore lack standing to challenge the wolf rules in this court.

Petition dismissed.

All Citations

Not Reported in N.W.2d, 2013 WL 2301951

Footnotes

1 For all hunting and fishing statutes, "taking" includes shooting, killing, and trapping wild animals, or attempting to do so. Minn.Stat. § 97A.015, subd. 47 (2012).

2 Only Safari directly challenges petitioners' standing. While appellate courts generally will not consider arguments raised by an amicus that are not raised by the litigants themselves, this rule does not preclude consideration of an issue, such as standing, that a court can raise sua sponte. *See League of Women Voters v. Ritchie*, 819 N.W.2d 636, 645 n. 7 (Minn.2012) (addressing standing challenge raised only by amicus).

3 At oral argument, the DNR asserted that it generally has discretion to forego open hunting seasons if it has concerns about population sustainability. But the DNR agreed that such a circumstance was not presented here and that the legislature essentially mandated an open season by passing section 97B.647.

2014 WL 2134372 (Minn.Dist.Ct.) (Trial Order)
District Court of Minnesota.
Second Judicial District
Ramsey County

MINNESOTA VOTERS ALLIANCE, Minnesota Majority, Minnesota House of Representative Steve Drazkowski, Minnesota House of Representative Ernie Leidiger, Minnesota House of Representative Mary Franson, and House of Representative Jim Newberger, Petitioners,

v.

STATE of Minnesota, and Secretary of State Mark Ritchie, in his official capacity, or his successor, Respondents.

No. 62-CV-13-7718.
April 28, 2014.

West Headnotes (1)

[1] **Election Law** 🡐 Absentee registration

The Minnesota Secretary of State lacked statutory authority to create and operate an on-line voter registration tool that permitted prospective voters to deliver their voter registration applications electronically; the legislature did not expressly authorize the creation of an online voter registration tool, and the Uniform Electronic Transaction Act (UETA) did not mandate the use of electronic records. Minn. Const. art. 7, § 1; Minn. Stat. Ann. §§ 201.018(2), 201.061, 201.071, 325L.05(a).

Cases that cite this headnote

Order Granting Petition for and Issuing a writ of Quo Warranto

John H. Guthmann, Judge.

***1** The above-entitled matter came before the Honorable John H. Guthmann, Judge of District Court, on December 13, 2013, at the Ramsey County Courthouse, St. Paul, Minnesota. At issue was a Petition for the Issuance of a Writ of Quo Warranto against respondents. Erick G. Kaardal, Esq., appeared on behalf of petitioners. Kristyn Anderson, Esq., Alethea M. Huyser, Esq., and Nathan J. Hartshorn, Esq., appeared on behalf of Respondents. Emma G. Greenman, Esq., appeared on behalf of amici American Civil Liberties Union of Minnesota. The record closed on January 29, 2014 per the court's January 23, 2014 Order. Based upon all of the files, records, submissions and arguments of counsel herein, the Court issues the following:

CONCLUSIONS OF LAW AND ORDER

1. The American Civil Liberties Union of Minnesota's motion for leave to participate in these proceedings as an amicus curiae is **GRANTED**.

2. By stipulation of the parties, Respondent State of Minnesota is dismissed with prejudice.

3. Petitioners have taxpayer standing to seek Quo Warranto relief.

4. The Petition for issuance of a Writ of Quo Warranto is **GRANTED**.

5. There being no fact issues, the court concludes as a matter of law that the Minnesota Secretary of State lacks statutory authority to create and operate an on-line voter registration tool permitting prospective voters to deliver their voter registration applications electronically. No later than midnight on April 29, 2014, Secretary of State Ritchie shall shut down the Secretary of State's on-line voter registration tool. Any online voter registration request received after midnight on April 29, 2014 shall be void.

6. Counsel for Respondent shall file a notice that this Order was complied with no later than April 30, 2014 at 4:30 p.m.

7. This Order does not invalidate any on-line voter registration accepted prior to midnight on April 29, 2014.

8. The following Memorandum is made part of this Order.

Dated: April 28, 2014

BY THE COURT:

<<signature>>

John H. Guthmann

Judge of District Court

MEMORANDUM

I. STATEMENT OF FACTS

***2** Petitioners are the Minnesota Voters Alliance, Minnesota Majority, and Minnesota House of Representative members Steve Drazkowski, Ernie Leidiger, Mary Franson, and Jim Newberger. (Petition for Writ of Quo Warranto, Introduction.) The Minnesota Voters Alliance is an organization with an objective of promoting the integrity of Minnesota's elections and election system. (*Id.* ¶ 2.) Its members include individual taxpayers. (*Id.*) Minnesota Majority, through its members, seeks to ensure "state and local governmental integrity, election and election system integrity, and that public officials act in accordance with the law in exercising their obligations to the people of the State of Minnesota." (*Id.* ¶ 3.) As with Minnesota Voters Alliance, its membership includes individual taxpayers. (*Id.*) The individual legislator petitioners are taxpayers and members of the House of Representatives who expect to run for re-election during the next election cycle. (*Id.* ¶¶ 4-7.)

Petitioners seek issuance of a Writ of Quo Warranto to Minnesota Secretary of State Mark Ritchie ("Respondent"). Respondent is a constitutional officer under the Minnesota Constitution, art. 5, § 4, and is a member of the executive branch of state government. (*Id.* ¶ 8.) He is Minnesota's chief elections officer. (Ritchie Aff. ¶ 1.) Respondent manages the Secretary of State's agency office. (*See id.* ¶ 3.)

On September 26, 2013, the Respondent's office debuted an online voter registration tool on the office's website. (Poser Aff. ¶ 19; *see* Ritchie Aff. ¶ 3.) The internet tool provides an alternative means by which eligible Minnesota voters

may register to vote. Before September 26, 2013, Minnesota voters could register to vote in multiple ways but, with some exceptions, each way required the physical completion and delivery of a paper form. Each registration method is expressly authorized by statute.

Under the new online voter registration tool created by Respondent, an applicant may now register electronically. To do so, the prospective voter must input both a valid email address and a Minnesota-issued driver's license, a Minnesota-issued identification card number, or the last four digits of their social security number. (Poser Aff. Ex. B (online registration application).) Applicants must then check an on-screen box verifying the accuracy of the information they submit under penalty of law and "sign" the application by typing their name into the signature field on the application, which indicates that the typed name is the voter's legally binding signature. (*Id.*)

If an online applicant fails to provide any of the required information, the web site is programed to reject the application and notify the applicant that all required information must be provided before the application can be accepted. (*Id.* ¶ 16(a)-(b).) Once the application has been completed, the software immediately encrypts and saves the applicant's data. (*Id.* at ¶ 16(c).) Thereafter, through a firewall-protected system built at the direction of the Minnesota Secretary of State's office, various security measures are employed to ensure that the information is accurate. (*Id.*) The process includes automated cross-checks through the State Voter Registration System ("SVRS") database, the databases maintained by the Driver and Vehicle Services ("DVS") division of the Minnesota Department of Public Safety, and the database maintained by the federal Social Security Administration. (*Id.* Aff. ¶ 18.) Any application that fails to find a match in the driver's license, state identification card, and Social Security processes detailed above is automatically rejected. (*Id.* ¶ 18(d).) In the event a registration is rejected, the applicant is advised in an e-mail message that the application cannot be processed and that it may be resubmitted either online or on paper. (*Id.*) If accepted, the applicant's data is treated like any other voter registration data. (*Id.* at ¶ 18(a)-(c).)

***3** Respondent oversaw the development and implementation of the online registration tool through his staff, consisting of state employees paid by state funds. (Ritchie Aff. ¶ 3.) Moreover, at the motion hearing, Respondent conceded Petitioners' allegation that the continuing maintenance and operation of the online registration tool utilizes taxpayer funds.[2] (*See* Pet. For Writ of Quo Warranto ¶¶ 11, 46.)

Petitioners ask the court to conclude that Respondent's creation of an online voter registration system was unauthorized by law and, as a result, misused state funds that were derived from tax revenues. (*Id.* ¶ 12.) To the extent the court concludes that Respondent misappropriated state tax revenues, Petitioners ask for issuance of a writ: enjoining Respondent from engaging in or allowing for online voter registration unless and until the Minnesota legislature enacts a law that permits online voter registration; requiring Respondent to contact all persons who previously registered to vote using online registration, have those persons re-register to vote, and deliver the new applications per current law;[3] and, awarding Petitioners statutorily-allowed attorneys' fees and costs. Respondent asks that the Petition be denied.

Amici American Civil Liberties Union of Minnesota takes no position on the validity of the online voter registration system.[4] However, if the system is legally unauthorized, it argues that no already-completed online registration may be invalidated.

II. NATURE OF THE QUO WARRANTO PROCEEDING

The petition for a writ of quo warranto has both common law and statutory underpinnings. *Rice v. Connolly*, 488 N.W.2d 241, 243 (Minn. 1992); Minn. Stat. §§ 556.01-.13 (2012). Although Minnesota district courts have original jurisdiction and the discretion to issue a writ of quo warranto as " 'necessary to the execution of the laws and the furtherance of justice" ', the discretion is "exercised ... infrequently and with considerable caution." *Id.* at 244 (quoting Minn. Stat. § 480.04 (1990)).

"The writ of quo warranto is a special proceeding designed to correct the unauthorized assumption or exercise of power by a public official or corporate officer." *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 318 (Minn. Ct. App. 2007) (citing *State ex rel. Danielson v. Village of Mound*, 234 Minn. 531, 542, 48 N.W.2d 855, 863 (1951) ("quo warranto ... [is] a proceeding to correct the usurpation, misuser, or nonuser of a public office or corporate franchise" [5]). "The writ requires an official to show before a court of competent jurisdiction by what authority the official exercised the challenged right or privilege of office." *Id.* (citing *State ex rel. Burnquist v. Village of North Pole*, 213 Minn. 297, 303, 6 N.W.2d 458, 461 (1942)).

***4** The quo warranto remedy is not available to challenge government conduct that is pending or has been completed. *See, e.g., Danielson*, 234 Minn. at 544, 48 N.W.2d at 864; *State ex rel. Lommen v. Gravlin*, 209 Minn. 136, 137, 295 N.W. 654, 655 (1941). There must be an ongoing unauthorized exercise of power. *State ex rel. Sviggum*, 732 N.W.2d at 319 (citations omitted). [6]

Here, in response to the Petition for Issuance of a Writ of Quo Warranto, the court issued an Order to Show Cause directing Respondents to demonstrate why a Writ of Quo Warranto should not issue. Respondents were ordered to establish, among other things, the basis upon which the Minnesota Secretary of State has authority to create an online voter registration system. In the proceeding that followed, Respondents argued that Petitioners have no standing and that statutory authority indeed exists to support creation of the disputed online voter registration system. Accordingly, Respondents (now a single Respondent) asked that no Writ of Quo Warranto be issued.

III. PETITIONERS HAVE TAXPAYER STANDING TO COMMENCE THE INSTANT QUO WARRANTO PROCEEDING

A. *Absent Standing the Court is Without Jurisdiction.*

An action must be dismissed if the court lacks subject matter jurisdiction. Minn. R. Civ. P. 12.08(c). The court has no jurisdiction over an action that is not justiciable. *State ex rel. Sviggum*, 732 N.W.2d at 321. Standing is essential to the existence of a justiciable controversy and, therefore, a court's exercise of subject matter jurisdiction. *Annandale Advocate v. City of Annandale*, 435 N.W.2d 24, 27 (Minn. 1989 (citing *Izaak Walton League of America Endowment, Inc. v. State Department of Natural Resources*, 312 Minn. 587, 589, 252 N.W.2d 852, 854 (1977)) *reh'g denied* (Mar. 31, 1989).

B. *Standing Generally Requires Injury-In-Fact.*

Respondent argues that Petitioners lack standing to seek quo warranto relief. Standing is generally "acquired in two ways: either the plaintiff has suffered some 'injury-in-fact' or the plaintiff is the beneficiary of some legislative enactment granting standing." [7] *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (citation omitted). In the case of citizen actions brought in the public interest, injury in fact requires "damage or injury to the individual bringing the action which is special or peculiar and different from damage or injury sustained by the general public." *Channel 10, Inc. v. Independent School District No. 709*, 298 Minn. 306, 312, 215 N.W.2d 814, 820 (1974) (citations omitted). The peculiar injury requirement "precludes citizens from bringing lawsuits against governmental agencies based only on their disagreement with policy or the exercise of discretion by those responsible for executing the law." *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 146 (Minn. Ct. App. 1999) (citing *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977)), *rev. denied* (Minn. Mar. 14, 2000). Instead, to avoid a flood of litigation, public rights are generally enforced by public authority rather than by individuals. *Channel 10, Inc.*, 298 Minn. at 312, 215 N.W.2d at 820 (citation omitted).

C. *The Taxpayer Standing Exception.*

*5 An exception to the general rule traces its origin to 1888. "[I]t generally has been recognized that a state or local taxpayer has sufficient interest to challenge illegal expenditures." *McKee*, 261 N.W.2d at 570-71 (citing *State v. Weld*, 39 Minn. 426, 428, 40 N.W. 561, 562 (1888) (Mitchell, J.) and *Oehler v. City of St. Paul*, 174 Minn. 410, 417-418, 219 N.W. 760, 763 (1928) ("it is well settled that a taxpayer may, when the situation warrants, maintain an action to restrain unlawful disbursements of public moneys")). Thus, "the right of a taxpayer to maintain an action in the courts to restrain the unlawful use of public funds cannot be denied. Taxpayers are legitimately concerned with the performance by public officers of their public duties." *Id.* at 571.

The taxpayer standing exception, which was reaffirmed in *McKee*, has been "limited ... closely to its facts." *Citizens for Rule of Law v. Senate Committee on Rules & Administration*, 770 N.W.2d 169, 175 (Minn. Ct. App. 2009) (citations omitted). In other words, the challenged conduct must actually involve an alleged unlawful use of public funds. Thus, in *Conant*, there was no taxpayer standing because "the challenged moneys [fees paid to attorneys hired by the state to prosecute the tobacco litigation] are not state funds and ... the law does not require an appropriation for payment of attorney fees for special counsel." *Conant*, 603 N.W.2d at 149. Similarly a return of money from a special mineral fund to the general fund cannot confer taxpayer standing because an unlawful disbursement of funds was not alleged. *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. Ct. App.), *rev. denied* (Minn. Oct. 19, 2004). [8]

D. *The Taxpayer Standing Exception Applies to Petitioners.*

Respondent argues that Petitioners seek an overbroad application of the taxpayer standing exception. According to respondents, if petitioners are accorded taxpayer standing, there would be no functional limitation on the scope of standing because every official state action involving the expenditure of public funds could be challenged. (Resp.'s Memo. Opp. Quo Warranto, at 10 n.4.) Respondent's concern is unfounded and inconsistent with taxpayer standing jurisprudence. For example, in *Citizens for Rule of Law*, the Minnesota Court of Appeals held that a taxpayer had standing to raise a constitutional challenge to the actions taken by committees in both houses of the Minnesota Legislature to raise the per diem allowance for legislators' living expenses. *Citizens for Rule of Law*, 770 N.W.2d at 169. An association of taxpayers challenged the raise on grounds that it violated Article IV, Section 9 of the Minnesota Constitution, which provides that "[n]o increase of compensation shall take effect during the period for which the members of the existing house of representatives may have been elected." *Id.* at 171. The court held that although "Minnesota courts have limited *McKee* closely to its facts ... this action falls within the narrow confines of taxpayer standing. As in *McKee*, appellants challenge a specific disbursement of money, alleging that it was wrongful." *Id.* at 175. In *Channel 10, Inc. v. Independent School District No. 709*, 298 Minn. 306, 313, 215 N.W.2d 814, 821 (1974), the Minnesota Supreme Court stated that the "Minnesota Open Meeting Law was obviously designed to assure the public's right to be informed," and that even though no member of the public would have an injury unique or different from one another, "a right to attend open public meetings having been given to the general public ... they should have standing to enforce that right." *Id.*

*6 After analyzing the taxpayer standing cases, the court concludes that Petitioners have standing based upon their status as taxpayers. Respondent concedes that taxpayer funds were used to create the on-line voter registration system and that taxpayer funds are used to maintain and operate the system. Respondent further concedes that he could not create an on-line voter registration system without express consent from the legislature. Thus, the taxpayer standing exception is uniquely suited to permit a challenge to an unauthorized use of public funds by the Minnesota Secretary of State. Consistent with the legal foundation for the taxpayer standing exception, Petitioners allege that the taxpayer funds Respondent admits were and are being spent were and are being spent unlawfully. [9] Petitioners have taxpayer standing to challenge the legality of Respondent's operation of an on-line voter registration system with taxpayer funds. [0]

IV. RESOLUTION OF THE PETITION INVOLVES AN ISSUE OF STATUTORY INTERPRETATION

Turning to the merits of the Petition, it is important to note what is not at issue. The case does not involve the merits of on-line registration systems generally or the procedures and safeguards put in place by the Secretary of State. In fact, the parties seem to agree that there is merit to such a system. The sole question presented herein is whether Respondent had the legal authority to do what he did. As such, there are no constitutional issues at stake. Respondent agrees that he has no constitutional or other inherent authority to create an on-line voter registration tool. Similarly, there is no separation of powers issue involved in the case. Respondent concedes that express statutory authority must exist to empower his creation of an on-line voter registration tool. Based upon his interpretation of several statutes, Respondent argues that he was given authority to create the subject on-line tool. Accordingly, resolution of the case involves a question of statutory interpretation.

When interpreting a statute, the court's objective "is to give effect to the legislature's intent as expressed in the language of the statute." *Goodyear Tire & Rubber Co. v. Dynamic Air, Inc.*, 702 N.W.2d 237, 242 (Minn. 2005) (quoting *Pususta v. State Farm Insurance Companies*, 632 N.W.2d 549, 552 (Minn. 2001)); Minn. Stat. § 645.16 (2012) ("The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature."). The text of an unambiguous statute must be interpreted "according to its plain language." *Brua v. Minnesota Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) (citing *Molloy v. Meier*, 679 N.W.2d 711, 723 (Minn. 2004)). "[T]he court is prohibited from adding words to a statute and cannot supply what the legislature either purposely omitted or inadvertently overlooked." *Tracy State Bank v. Tracy-Garvin Coop.*, 573 N.W.2d 393, 395 (Minn. Ct. App. 1998) (citation omitted); *see* Minn. Stat. 645.16 (2012) ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.").

In addition, "[e]very law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.16 (2012); *see, e.g., American Family Insurance Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). "[N]o word, phrase, or sentence [of a statute] should be deemed superfluous, void, or insignificant." *Christianson v. Henke*, 831 N.W.2d 532, 538 (Minn. 2013) (citing *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999)). Accordingly, "[p]rovisos shall be construed to limit rather than to extend the operation of the clauses to which they refer. Exceptions expressed in a law shall be construed to exclude all others." Minn. Stat. § 645.19 (2012).

V. THE LEGISLATURE DID NOT EXPRESSLY AUTHORIZE THE CREATION OF AN ON-LINE VOTER REGISTRATION TOOL

*7 In arguing that he had express legislative authority to establish the on-line voter registration tool, Respondent relies primarily upon the Uniform Electronic Transaction Act ("UETA"). Secondarily, Respondent points to existing laws authorizing the electric delivery of scanned paper voter registration forms.

Respondent relies upon UETA because Minnesota's election statutes do not grant express authority to the Respondent, or anyone else, to create an on-line voter registration tool. Only in limited circumstances expressly stated in law may Respondent accept electronically transmitted voter registration applications. By statute, citizens "must register in a manner specified by section 201.054, in order to vote in any primary, special primary, general, school district, or special election held in the county." Minn. Stat. § 201.018, subd. 2 (2012). According to section 201.054, prospective voters may choose one of three ways of registering to vote: "before the 20th day preceding any election" as provided in section 201.061, subd. 1; on the day of an election per section 201.061, subd. 3; or, by submitting an absentee ballot pursuant to section 203B.04, subd. 4. *Id.* § 201.054, subd. 1.

Section 201.071 prescribes the configuration and contents of a voter registration application. The application must be on a form specified by statute and approved for use by the Secretary of State. *Id.* § 201.071, subd. 1. The form "must be

of suitable size and weight for mailing", contain space for the mandated information, and contain space for the "voter's signature." *Id.*

A prospective voter employing the first method registers by completing an approved form "and submitting it in person or by mail to the county auditor of [their county of residence] or to the Secretary of State's Office." *Id.* For purposes of section 201.061, "mail registration is defined as a voter registration application delivered to the secretary of state, county auditor, or municipal clerk by the United States Postal Service or a commercial carrier." *Id.*

The second method of voter registration requires the voter to appear in person on election day, complete the voter registration form, and make an oath. *Id.* § 201.054, subd. 3. The form is then forwarded to the county auditor. *Id.*, § 201.071, subd. 4.

Finally, voting by absentee ballot requires the voter to include a completed voter registration form with their application for an absentee ballot. *Id.* § 203B.04, subd. 4. The application must be "deposited in the mail or returned in person." *Id.* § 203B.04, subd. 1. However, certain persons in the military service of the United States may submit their signed registration form "by electronic facsimile device, or by electronic mail upon determination by the secretary of state that security concerns have been adequately addressed." *Id.* § 203B.17, subd. 1; *see id.* § 203B.04, subd. 4.

A voter registration application is deficient if it does not contain the applicant's signature. *Id.* § 201.071, subd. 3. In addition, "[a]n individual who is unable to write the individual's name shall be required to sign a registration application in the manner provided by section 645.44, subdivision 14." *Id.* § 201.056. [2] The referenced statute states:

***8** "Written" and "in writing" may include any mode of representing words and letters. The signature of a person, when required by law, (1) must be in the handwriting of the person, or (2) if the person is unable to write (i) the person's mark or name written by another at the request and in the presence of the person or (ii) by a rubber stamp facsimile of the person's actual signature, mark, or a signature of the person's name or a mark made by another and adopted for all purposes of signature by the person with a motor disability and affixed in the person's presence.

Id. § 645.44, subd. 14.

The statutory scheme reviewed above demonstrates that a legally valid voter registration involves three key components. Registration must take place on a proper form, the form must be signed, and the form must be delivered in the right way. Respondent argues that UETA changed the aforementioned system and authorized him to accept electronically delivered applications through an on-line voter registration tool.

VI. UETA, WHILE BROAD, CONTAINS SPECIFIC LIMITATIONS

UETA, a product of the Uniform Law Commission, was enacted in 2000. Act of April 13, 2000, ch. 371, 2000 Minn. Laws 443-452 (codified as Minn. Stat. §§ 325L.01-.19). The express purpose of the statute is to "facilitate and promote commerce and governmental transactions by validating and authorizing the use of electronic records and electronic signatures." Minn. Stat. § 325L.06 (2012). The statute "applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after August 1, 2000. *Id.* § 325L.04.

The legislature's intent to enact a broad and all-encompassing statute is revealed by the expansive definitions contained therein. The term "[e]lectronic record" is defined to mean "a record created, generated, sent, communicated, received, or stored by electronic means." *Id.* § 325L.02(g). An " 'ADe]lectronic signature' means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." *Id.* § 325L.02(g). The definitions also appear to cover any form of public or private person or entity. A "person"

"means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity." *Id.* § 325L.02(l). A "governmental agency" means "an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state." *Id.* § 325L.02(i).

UETA precludes denying a record, signature, or contract legal effect or enforceability simply because it is in an electronic form. *Id.* § 325L.02(a)-(b). If a law requires a record to be in writing or contain a signature, an electronic record or signature satisfies the law. *Id.* § 325L.07(c)-(d). Each governmental agency is authorized to "determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records." *Id.* § 325L.17.

Despite its sweeping language, UETA does not mandate the use of electronic records. *Id.* § 325L.05(a). The parties to a transaction must agree to conduct their business electronically. *Id.* § 325L.05(b). Whether there was an agreement is determined from the parties' conduct, the surrounding circumstances, and the context of the transaction. *Id.* In addition, UETA contains a number of exceptions inapplicable to this case. *Id.* § 325L.03(b), (e). Finally, UETA yields to other laws in specified situations:

***9** (b) If a law other than this chapter requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated, or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) the record must be posted or displayed in the manner specified in the other law;

(2) except as otherwise provided in paragraph (d), clause (2), the record must be sent, communicated, or transmitted by the method specified in the other laws;

(3) the record must contain the information formatted in the manner specified in the other law.

Id. § 325L.08(b). The requirements of section 325L.08 "may not be varied by agreement" but a requirement in another law that a record be sent, communicated, or transmitted by first-class mail, postage prepaid or regular United States mail may be varied by agreement "to the extent permitted by the other law." *Id.* § 325L.08(d)(2).

VII. UETA DOES NOT AUTHORIZE THE CREATION OF AN ON-LINE VOTER REGISTRATION TOOL

As already discussed, three components must be present for a voter registration application to satisfy Minnesota election statutes: an application containing the specified information; a signature; and, delivery to the right place in the prescribed manner. UETA applies to all government agencies, including the Minnesota Secretary of State's office. Nothing in the statute prohibits the electronic collection of properly completed and signed voter registration forms if the applicant does what the statute requires. Therefore, absent a provision preventing extension of UETA to Minnesota election laws, the court must find that UETA authorizes Respondent's on-line voter registration tool.

The parties do not dispute that an acceptable voter registration form can be placed on line and completed by a prospective voter. Such a form may be altered from the virtual to the tangible by printing. Conversely, a tangible form may be completed in ink or pencil and then scanned into an electronic format. Completion of a paper form of "suitable size and weight for mailing" that is later scanned for electronic delivery or printed in such a format for in-person or mailed delivery is perfectly compatible with the requirements of section 201.071, subdivision 1.

Next is the signature requirement. Minnesota law requires prospective voters to place their signature on the application. *Id.* § 201.071, subd. 4 (voter registration applications without a signature are deficient). Moreover, individuals who are unable to write their own name "must" sign the application "in the manner provided by section 645.44, subdivision 14." *Id.* § 201.056. The referenced statute requires a signature to be in a person's "handwriting." *Id.* § 645.44, subd. 14. The dictionary definition of "handwriting" is "writing with a pen or pencil." Oxford Dictionary of American English, http://www.oxforddictionaries.com/us/definition/american_english/handwriting.

Obviously, UETA and section 201.056 directly conflict. However, section 645.44, last substantively amended in 1973, is controlled by UETA, which states that "[i]f the law requires a signature, an electronic signature satisfies the law." *Id.* § 325L.07(d). The court's conclusion is dictated by two basic rules of statutory construction. First, the most recently passed law prevails. *Id.* § 645.26, subd. 4 ("When the provisions of two or more laws passed at different sessions of the legislature are irreconcilable, the law latest in date of final enactment shall prevail."). Second, a general statute like UETA, which broadly applies to all laws dealing with the creation, authentication, and transmission of records, controls. *Id.* § 645.39 ("When a general law purports to establish a uniform and mandatory system covering a class of subjects, such law shall be construed to repeal preexisting local or specials laws on the same class of subjects."). Section 645.39 directly addresses Petitioners' erroneous argument that statutes cannot be amended by implication. The court holds that UETA authorizes electronic signatures on voter registration applications. [3] An in-person voter registration application could even be completed at an authorized location using an UETA-compliant electronic signature.

***10** Delivery is the final voter registration condition needing review. Voter registration applications must be delivered in compliance with section 201.061. Delivery to the Secretary of State must be "in person or by mail." [4] *Id.* § 201.061, subd. 1. Non-military voter registration applications accompanying an absentee ballot request must be "deposited in the mail or returned in person." *Id.* § 203B.04, subd. 1. But, does delivery by mail include electronic delivery to the Secretary of State?

Respondent argues that under UETA, he and any prospective voter may agree to change the statutory mail delivery option to permit electronic delivery. (Resp.'s Memo. Opp. Quo Warranto, at 18.) However, Respondent neglected to address the statute's exception. Persons may agree to change a statutory delivery-by-mail directive only "to the extent permitted by the other law." *Id.* § 325L.08(d)(2). Here, Respondent cannot point to any language in Minnesota election laws permitting parties to deviate from the statutory delivery requirements by agreement or in any other way. UETA does not reach section 201.061 because no Minnesota election statute triggers the exception.

Since Minnesota permits electronic delivery of voter registration applications under some circumstances, Respondent also argues that our election statutes allow electronic delivery in all instances. Such statutes actually support the opposite conclusion. For example, the law permitting certain military personnel to register electronically would be superfluous if UETA already allowed it. Yet, section 203B.17 was enacted in 2001, after the enactment of UETA. Act of June 30, 2001, ch. 10, art. 18, § 15, 2001 Minn. Laws Ex. Sess. 2882 (codified as Minn. Stat. § 203B.17, subd. 1).

Respondent's examples include the statute permitting driver's license applicants to register to drive and to vote simultaneously. Minn. Stat. § 201.022, subd. 1(1), (4) (2012) ("the secretary of state shall maintain a statewide voter registration system" that, *inter alia*, provides "for electronic transfer of completed voter registration applications from the Department of Public Safety to the secretary of state or the county auditor"). When registering to vote through the Department of Public Safety, individuals need only check a box and provide a signature in a dedicated portion of their driver's license application. *Id.* § 201.161. The form is then electronically transferred to the Secretary of State or County Auditor. *Id.*

The statute does not assist Respondent for three reasons. First, applications signed at the Department of Public Safety are completed and presented by the applicant in person, at which time there is a delivery. Respondent's on-line system is designed to accept delivery from people who are not ever in a recipient's physical presence.

***11** Second, the legislature expressly mandated a system permitting electronic transfer of a voter registration completed at the Department of Public Safety four years after UETA's enactment. Act of May 29, 2004, ch. 293, art. 1, § 2, 2004 Minn. Laws at 1517 (codified as Minn. Stat. § 201.022, subd. 1(1), (4)). As with electronic voter registration by military personnel, the legislature had no reason to approve electronic transfer of voter registration applications collected by the Department of Public Safety if the process was already permitted by law.

Finally, the electronic transfer authorization found in section 201.161 is specific and limited. If the legislature intended to sanction electronic delivery of voter registration applications in all cases, it could have done so.

Respondent's survey of Minnesota election statutes concludes by emphasizing the frequent collection of voter registration applications by third parties such as political parties, government agencies, and private entities like the League of Women Voters. (Resp.'s Memo. Opp. Quo Warranto, at 16.) By statute, a "state or local agency or an individual that accepts completed voter registration applications from a voter must submit the completed applications to the secretary of state or the appropriate county auditor within ten days after the applications are dated by the voter." Minn. Stat. § 201.061, subd. 1 (2012). The legislature's silence regarding how third parties may "submit" voter registration applications to the Secretary of State or County Auditor actually harms Respondent's UETA argument. Unlike the provision authorizing in-person delivery of applications to third-parties, section 201.061, subdivision 1, states that voters choosing to deliver their applications directly to the Secretary of State or County Auditor do so by "submitting [the application] in person or by mail." *Id.* The UETA exception applies to an express requirement that a document be transmitted by mail. Section 201.061 contains such a mandate. The rules of statutory construction compel a conclusion that the legislature's decision to specify a means of delivery by prospective voters to the Secretary of State or County Auditor was intentional.

To sidestep a holding that election law delivery requirements may not be avoided by agreement, Respondent contends that the definition allowing "mail registration" by "a commercial carrier" encompasses companies that transmit data over the internet. *Id.* § 201.061, subd. 1. Respondent offers no support for his assertion. When interpreting a statute, words must be given their ordinary meaning. Minn. Stat. § 645.08(1) (2012). Thus, courts often turn to the dictionary definition of legislative terminology. *See, e.g., Amundson v. State*, 714 N.W.2d 715, 720 (Minn. Ct. App.), *rev. denied* (Minn. Aug. 15, 2006). According to Black's Law Dictionary, the word "carrier" means "[a]n individual or organization (such as a shipowner, a railroad, or an airline) that contracts to transport passengers or goods for a fee." BLACK'S LAW DICTIONARY 242 (9th ed. 2009). In contrast, "[a] business or other organization that offers internet access ... for a fee" is called an "internet service provider." *Id.* at 893. These definitions, combined with the reference to the U.S. Postal Service, evince a legislative intent that the term "commercial carrier" denotes an organization, like the postal service, that transports goods for a fee. The internet may facilitate or document the sale of goods but it does not actually transport goods for a fee. Applying the ordinary meaning of the language in section 201.061, voters desiring to deliver a completed voter registration form directly to the Secretary of State or County Auditor must do so in person or send a paper form by mail using the U.S. Postal Service or a similar entity performing a like service.

***12** Respondent's "commercial carrier" argument is also a victim of timing. The definition of "mail registration" was added to Minnesota election law in 2004. Act of May 29, 2004, ch. 293, art. 1, § 3, 2004 Minn. Laws 1499 (codified as Minn. Stat. § 201.061, subd. 1). If UETA already authorized the electronic delivery of voter registration applications, there was no need to do so again. Viewed in another way, if the legislature intended to amend election laws to eliminate the limitations imposed by section 325L.08, subdivision d(2), it could have expressly permitted parties to choose electronic delivery or it could have used language less oblique than "commercial carrier."

The court holds that neither UETA nor Minnesota election laws authorize the Secretary of State to accept electronically delivered applications through an on-line voter registration tool. The court's ruling is consistent with recent legislative history. On April 9, 2014, the Minnesota House of Representatives passed a bill authorizing the Secretary of State to accept on-line delivery of voter registration applications through a secure Web site. H.F. 2096, Minn. H.J., 88th Leg.,

Reg. Sess. 9748 (2014). As of date this Order was filed, identical legislation was awaiting action by the Minnesota Senate. S.F. 2288, Minn. Sen. J. 88th Leg., Reg. Sess. 8207 (2014). [5] Once again, if the legislature believed that the existing on-line voter registration tool was already legally authorized, there would be no need for new legislation. The Writ of Quo Warranto shall issue.

John H. Guthmann

Footnotes

1 The right to vote is contained in the Minnesota Constitution. Minn. Const. art. VII, § 1 (" e]very person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct). Voter registration is not constitutionally mandated. However, by statute, exercise of the franchise requires voter registration. Minn. Stat. § 201.018, subd. 2 (2012) ("An eligible voter must register in a manner specified by section 201.054, in order to vote in any primary, special primary, general, school district, or special election held in the county.).

2 Respondent asserts that the online voter registration system "reduces administrative costs of processing voter registrations for local election officials and property taxpayers. (Ritchie Aff. ¶ 7.) However, Respondent neither argued nor factually supported any claim that the online voter registration system saves state taxpayers money or offsets the added and ongoing cost to state taxpayers of operating and maintaining the online voter registration system.

3 Petitioners changed their position on the validity of already accepted registrations at the motion hearing. *See* note 6, *infra*.

4 At the motion hearing, counsel for Petitioners waived any objection to the brief submitted by the American Civil Liberties Union of Minnesota. However, they objected to any right of an amici to be heard during the hearing. The objection was overruled and the court permitted a brief oral argument.

5 The *Danielson* court defined "usurpation ... as 'unauthorized arbitrary assumption and exercise of power ; 'misuser ... as 'use unlawfully in excess of, or varying from, one's right ; and 'nonuser ... as 'failure to use or exercise any right or privilege. *State ex rel. Danielson v. Village of Mound*, 234 Minn. 531, 543, 48 N.W.2d 855, 863 (1951) (quoting Webster's New International Dictionary).

6 At the motion hearing, counsel for Petitioners conceded that only prospective relief is possible by means of a Writ of Quo Warranto. Therefore, he agreed that the court only has authority to order the online voter registration system closed and no voter's prior registration may be invalidated by this Order.

7 In the instant case, there is no claim that standing was conferred on Petitioners by statute.

8 Respondent cited *Conant* and *Rukavina* for the proposition that the exception should be strictly limited to the facts of *McKee*. However, a strict application of *McKee* is not as onerous as Respondent makes it sound. As demonstrated above, the threshold test is simply whether an alleged unlawful expenditure of taxpayer funds is truly at stake. Illustrative is a third case cited by Respondent, *Hageman v. Stanek*, A03 2045, 2004 WL 1563276 at *2 (Minn. Ct. App. July 13, 2004) *rev. denied* (Minn. Sept. 21, 2004) (unpublished). In *Hageman*, plaintiffs challenged the constitutionality of an appropriation specifically authorized by statute on equal protection grounds. *Id.* at *1. The taxpayer standing exception was inapplicable because the funds were spent as the statute authorized and there was no allegation that a public official or rule making body acted in a manner that led to an illegal expenditure. *Id.* at *2. In addition, applying the taxpayer standing exception to the legislature "would constitute an unwarranted intrusion on the authority of the legislature. *Id.* at *3. There are other examples. *See, e.g., St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585 (Minn. 1977) (no standing to challenge statutory freeway moratorium because non expenditure of funds is not a disbursement); *Olson v. State*, 742 N.W.2d 681 (Minn. Ct. App. 2007) (no standing to challenge business tax credits because tax exemption is not an expenditure).

9 While taxpayer standing does not lie when a citizen merely disagrees with government policy, Petitioner's challenge "does not address the merits of the Secretary of State's action] and constitutes no comment on the public policy underlying the on line voter registration system] itself. *Unity Church of St. Paul v. State*, 694 N.W.2d 585, 591 (Minn. Ct. App. 2005).

10 The court need not address the other forms of standing presented by Petitioners in light of the court's holding that all of the Petitioners have taxpayer standing.

11 Other forms of in person voter registration expressly authorized by statute are discussed in section VII, *infra*.

12 Respondent notes that the manner in which an application is delivered is not one of the reasons an application may be considered deficient. Minn. Stat. § 201.071, subd. 3 (2012). From this observation, it is argued that the "in person or by

mail delivery requirement in section 201.061 "is neither mandatory nor exclusive. (Resp.'s Memo. Opp. Quo Warranto, at 17.) However, section 201.071 only addresses the application form and supporting documentation. It does not deal with the delivery method or any other aspect of voter registration. Thus, Respondent's point adds nothing to the analysis.

13 Two appellate courts outside of Minnesota have considered whether UETA validates electronic signatures under state election laws. Unfortunately, both cases review the sufficiency of an electronic signature to place an initiative or a candidate on the ballot and neither addresses voter registration or a statute prescribing how signatures must be delivered. Nevertheless, the cases are instructive because both employ the same statutory interpretation approach employed herein. *Anderson v. Bell*, 234 P.3d 1147 (Utah 2010), involved a Utah statute requiring candidates who are not affiliated with a registered political party to collect the signatures of 1,000 registered voters before their name may be placed on the statewide ballot. *Id.* at 1148. Significantly, the controlling statute did not define the term "signature. *Id.* at 1150. Thus, even without UETA, the signature requirement was held to include electronic signatures and UETA was viewed as additional support for the court's conclusion. *Id.* at 1150 53. In *Ni v. Slocum*, 196 Cal. App. 4th 1636 (Cal. Ct. App. 2011), the court considered the validity of signatures submitted in support of a ballot initiative. *Id.* at 1640. The statute at issue required each signor to "personally affix his or her signature. *Id.* at 1645. The court rejected UETA as providing authority for electronic signatures because the election code stated that its language applies " n]otwithstanding any other provision of law. *Id.* at 1647. Turning to whether the legislature intended the "personally affix requirement to include electronic signatures, the court found electronic signatures "incompatible with the current statutory scheme for collecting petition signatures. *Id.* at 1653.

14 Respondent argues that delivering the application in person or by mail is permissive because the statute indicates that registration "may be submitted in that fashion. Minn. Stat. § 201.061, subd. 1 (2012); *see id.* § 645.44, subds. 15 15a (when interpreting Minnesota statutes, " ' m]ay is permissive and " ' m]ust is mandatory). The argument is based upon a misconstruction of the statute. The word "may is used because prospective voters "may register in one of three ways and they are not required by law to register twenty or more days before an election. However, for persons who choose to register twenty or more days before the election, section 201.061, subd. 1 sets forth the required forms of delivery.

15 Had the proposed legislation been enacted and signed into law prior to the court's 90 day deadline for filing this Order, the Petition might have become moot. However, agreement could not be reached when it was suggested that final submission of the case be delayed until after the legislative session.

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