

STATE OF MINNESOTA

IN SUPREME COURT

In re Proposed Recall Petition
to Request the Recall of Timothy James Walz,
Governor of the State of Minnesota.

BRIEF IN SUPPORT OF DISMISSING THE PROPOSED PETITION

Self-represented Petitioner

Doug Kern
11039 Greenwood Street
Brainerd, MN 56401

Interested Observers

Steve Simon
Minnesota Secretary of State
Minnesota State Office Bldg., #180
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

David Maeda
Office of the Minnesota Secretary of State
60 Empire Drive
St. Paul, MN 55103

Counsel For Governor Tim Walz

KEITH ELLISON
Attorney General
State of Minnesota

LIZ KRAMER (#0325089)
Solicitor General

JANINE KIMBLE (#0392032)
Assistant Attorney General

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2131
(651) 757-1010 (Voice)
(651) 282-5832 (Fax)
liz.kramer@ag.state.mn.us

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTRODUCTION.....	1
FACTUAL BACKGROUND	2
STANDARD OF REVIEW.....	4
ARGUMENT.....	5
I. THE PETITION FAILS TO ALLEGE THAT THE GOVERNOR “INTENTIONALLY” ACTED UNLAWFULLY.....	7
II. THE PETITION DOES NOT ALLEGE “UNLAWFUL” OR “WRONGFUL” CONDUCT.....	7
III. THE PETITION DOES NOT ALLEGE FACTS SUFFICIENT TO SHOW THE GOVERNOR ACTED “SUBSTANTIALLY OUTSIDE THE SCOPE OF [HIS] AUTHORITY.”.....	12
IV. THE PETITION DOES NOT ALLEGE SPECIFIC FACTS TO ESTABLISH THAT THE GOVERNOR’S CONDUCT “SUBSTANTIALLY INFRINGES ON THE RIGHTS OF ANY PERSON OR ENTITY.”.....	13
CONCLUSION	14

TABLE OF AUTHORITIES

	Page
FEDERAL CASES	
<i>Advanced Auto Transp., Inc. v. Pawlenty</i> 2010 WL 2265159 (D. Minn. June 2, 2010)	8
<i>Dobbs v. Jackson Women's Health Org.</i> 142 S. Ct. 2228 (2022)	10
<i>PPH Corp. v. Consumer Fin. Prot. Bureau</i> 881 F.3d 75 (D.C. Cir. 2018).....	6
<i>Seila L. LLC. v. Consumer Fin. Prot. Bureau</i> 140 S. Ct. 2183 (2020)	6
STATE CASES	
<i>Chandler v. Otto</i> 693 P.2d 71 (Wash. 1984).....	8
<i>Doe v. Gomez</i> 542 N.W.2d 17 (Minn. 1995)	Passim
<i>In re Kiffmeyer</i> 673 N.W.2d 827 (Minn. 2004)	7, 13
<i>In re Murphy</i> No. A03-0594 (Minn. filed June 5, 2003).....	7
<i>In re Radinovich</i> No. A13-0829 (Minn. Filed May 20, 2013).....	6, 11
<i>In re Telford</i> 206 P.3d 1248 (Wash. 2009)	8
<i>In re Ventura</i> 600 N.W.2d 714 (Minn. 1999)	Passim
<i>In re Walz (“Walz I”)</i> No. A20-0748 (Minn. filed June 15, 2020).....	4, 5, 8
<i>In re Walz (“Walz II”)</i> No. A20-0984 (Minn. filed August 13, 2020).....	9, 11

<i>In re Walz (“Walz III”)</i>	
No. A20-1231 (Minn. filed October 12, 2020)	10
<i>In the Matter of J.M.M.</i>	
937 N.W.2d 743 (Minn. 2020)	10
<i>Jackson v. Mortg. Elec. Registration Sys., Inc.</i>	
770 N.W.2d 487 (Minn. 2009)	12
<i>Jacobsen v. Nagel</i>	
255 Minn. 300, 96 N.W.2d 569 (Minn. 1959)	6, 11
<i>Kennedy v. Carlson</i>	
544 N.W.2d 1 (Minn. 1996)	11
<i>State ex rel. Foster v. Naftalin</i>	
246 Minn. 181, 74 N.W.2d 249 (1956)	3

STATE STATUTES

Minn. Stat. § 4.034	1
Minn. Stat § 145.412	4
Minn. Stat. § 211C.01	4, 7, 12, 13
Minn. Stat. § 211C.02	4
Minn. Stat. § 211C.03	13
Minn. Stat. § 211C.05	passim
Minn. Stat. § 645.17(3)	10, 11
Minn. Stat. § 645.20	11
Minn. Stat. § 645.26	10

CONSTITUTIONAL PROVISIONS

Minn. Const. art. IV, § 23	1, 8, 12
Minn. Const. art. V, § 3	3
Minn. Const. art. VIII, § 6	4

INTRODUCTION

Petitioners improperly seek to recall the Governor for signing an act that codified Minnesota's constitutional right to abortion.

Petitioners misapprehend the role of the Governor in the passage of laws. Under Article IV, Section 23 of the Minnesota Constitution, "Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it[.]" The Governor does not write or re-write bills before he signs them. In this case, the Governor had three options: he could sign the bill into law, veto it, or do nothing, in which case the bill would have become law without his signature.¹ There is no binding precedent interpreting, must less limiting, the Governor's authority to sign bills. More to the point, there is no binding precedent that states the Governor *must* veto a bill under any circumstance. That fact alone torpedoes Petitioners' case. The Governor exercised his plenary constitutional authority to sign bills when he signed the PRO Act, and this petition must be dismissed.

The Minnesota Constitution provides only one extraordinary path for voters to express their opinions about the Governor before the end of his term—a recall election. This process may be used only to remedy "evil" or illegal conduct or repeated nonfeasance. To date, no Minnesota governor (or any other public official) has been subject to a recall election. In fact, no proposed petition for recall of any public official has ever survived the stage in which the present petition finds itself. The Chief Justice must be satisfied that the

¹ Minn. Const. art. IV § 23; Minn. Stat. § 4.034.

proposed petition “alleges specific facts that, if proven, would constitute grounds for recall.”

In this case, the proposed petition to recall the Governor wholly fails to allege specific facts to support any of the necessary elements of malfeasance. In particular, the petition fails to establish intentionality, fails to establish any unlawful act by the Governor, fails to establish that the Governor acted substantially outside the scope of his authority, and fails to establish any impermissible infringement on the constitutional rights of Minnesotans. As a result of those failures, the Chief Justice should dismiss the proposed petition.

FACTUAL BACKGROUND

On January 31, 2023, the Governor signed the Protect Reproductive Options Act (PRO Act). The entirety of the PRO Act is as follows:

Section 1. [145.409] REPRODUCTIVE HEALTH RIGHTS.

Subdivision 1. Short title. This section may be cited as the "Protect Reproductive Options Act."

Subd. 2. Definition. For purposes of this section, "reproductive health care" means health care offered, arranged, or furnished for the purpose of preventing pregnancy, terminating a pregnancy, managing pregnancy loss, or improving maternal health and birth outcomes. Reproductive health care includes, but is not limited to, contraception; sterilization; preconception care; maternity care; abortion care; family planning and fertility services; and counseling regarding reproductive health care.

Subd. 3. Reproductive freedom.

(a) Every individual has a fundamental right to make autonomous decisions about the individual's own reproductive health, including the fundamental right to use or refuse reproductive health care.

(b) Every individual who becomes pregnant has a fundamental right to continue the pregnancy and give birth, or obtain an abortion, and to make autonomous decisions about how to exercise this fundamental right.

Subd. 4. Right to reproductive freedom recognized. The Minnesota Constitution establishes the principles of individual liberty, personal privacy, and equality. Such principles ensure the fundamental right to reproductive freedom.

Subd. 5. Local unit of government limitation. A local unit of government may not regulate an individual's ability to freely exercise the fundamental rights set forth in this section in a manner that is more restrictive than that set forth in this section.

2023 Minn. Laws, Ch. 4. The PRO Act was effective the day following enactment—or, February 1, 2023. *Id.* The PRO Act codified the fundamental right to an abortion that this Court set out in *Doe v. Gomez*, 542 N.W.2d 17 (Minn. 1995).

Under Article IV, Section 23 of the Minnesota Constitution, “Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it[.]” And the bill presented to the Governor must be the same bill that was passed by the Legislature. *State ex rel. Foster v. Naftalin*, 246 Minn. 181, 194, 74 N.W.2d 249, 258 (1956). The Governor’s oath states that he will “support the constitution of the United States and of this state and [] discharge faithfully the duties of his office to the best of his judgment and ability.” Const. art. V, § 3.

The Proposed Recall Petition (“Petition”) alleges that certain members of the public thought that the PRO Act should have included additional restrictions on abortions later in pregnancy. It further alleges the PRO Act expanded the right to an abortion beyond *Doe v. Gomez* and abridges rights under the Fourteenth Amendment of the U.S. Constitution by

not including “born-alive protections.” The Petition also states the PRO Act is inconsistent with Minn. Stat § 145.412.

STANDARD OF REVIEW

When a proposed petition for recall is referred to the Chief Justice of the Minnesota Supreme Court by the Secretary of State, the Chief Justice “must review the proposed petition to determine if it alleges specific facts that, if proven, would constitute grounds for recall.” *In re Ventura*, 600 N.W.2d 714, 715 (Minn. 1999) (citing Minn. Stat. § 211C.05, subd. 1). If the allegations are insufficient to establish the statutory grounds for recall, the proposed petition must be dismissed. Minn. Stat. § 211C.05, subd. 1.²

Recall of a sitting governor is allowed under Minnesota law in only rare circumstances for “serious malfeasance or nonfeasance during the term of office in the performance of the duties of the office or conviction during the term of office of a serious crime.” Minn. Const. art. VIII, § 6; Minn. Stat. § 211C.02; *see also In re Ventura*, 600 at 716 (only “‘serious’ malfeasance constitutes grounds for a recall petition”). This “standard is necessarily a high one.” *In re Walz* (“*Walz I*”), No. A20-0748, Order at 4 (Minn. filed June 15, 2020). Malfeasance is “the intentional commission of an unlawful or wrongful act by a state officer . . . in the performance of the officer’s duties that is substantially outside the scope of the authority of the officer and that substantially infringes on the rights of any person or entity.” Minn. Stat. § 211C.01, subd. 2.

² The ten-day timeframe in Minn. Stat. § 211C.05, subd. 1 should run from March 24, 2023, the final date for submissions to be received by the Chief Justice regarding the Petition.

Petitioners do not use the word malfeasance or nonfeasance. However, the Petition appears to allege that the Governor committed serious malfeasance by signing the PRO Act, because petitioners allege that the law “chang[es] Minnesota’s existing laws under *Doe vs Gomez*; (2) Abridges the babies privileges to life, by removing born alive protections, guaranteed under the US Constitution’s 14th Amendment for a US born Citizen in Minnesota.”

The only question for the Court then is whether, assuming the facts alleged in the Petition are true, the Governor committed serious malfeasance by signing the PRO Act. *Walz I*, 4. Only if the Chief Justice determines that the allegations are sufficient, if proven, to constitute serious malfeasance, does she appoint a special master to hold a public hearing on the factual allegations within 21 days. Minn. Stat. § 211C.05, subds. 1-2.

ARGUMENT

The first time a chief justice considered a petition to recall a Minnesota governor under the current statutory framework, she explained that the statutory definition of malfeasance could be broken into five “identifiable elements”:

1. an intentional act;
2. that is unlawful or wrongful;
3. in the performance of the officer’s duties;
4. that is substantially outside the scope of the authority of the officer;
- and
5. that substantially infringes on the rights of any person or entity.

In re Ventura, 600 N.W.2d at 716; *see also Walz I*, at 4 (citing *Ventura* factors). The conduct alleged in the petition must satisfy all five elements of malfeasance, in addition to being “serious.” *In re Ventura*, 600 N.W.2d at 716. The word “serious” is not a

throwaway. It carries with it a reminder that for the act to rise to the level of malfeasance it must be “evil conduct or an illegal deed, the doing of that which one ought not to do, the performance of an act by an officer in his official capacity that is wholly illegal *and* wrongful.” *Id.* at 718; *see also PPH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75, 131 n.11 (D.C. Cir. 2018) (Griffith, J., concurring) (“Courts have likewise interpreted malfeasance to mean corrupt conduct that is wholly wrongful, if not positively unlawful.”), *abrogated on other grounds by Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183 (2020). Mere political criticisms do not amount to malfeasance. *Jacobsen v. Nagel*, 96 N.W.2d 569, 573 (Minn. 1959).

Section 211C.05 makes clear that the Chief Justice must evaluate only the contents of the proposed petition in considering dismissal. *See* Minn. Stat. § 211C.05, subd. 1 (providing the Chief Justice shall review “the proposed petition” to determine “whether *it* alleges specific facts that, if proven, would constitute grounds for recall” (emphasis added)). Supplemental materials submitted by petitioners to the Chief Justice are only for purposes of “supporting the petition,” Minn. Stat. § 211C.05, subd. 1.

On its face, the Petition fails to allege any facts that, if proven, would satisfy the five-part test from *In re Ventura* necessary to establish serious malfeasance. The Governor signed into law legislation that was duly passed by the legislature. It is immaterial that certain constituents preferred different legislation. *See In re Radinovich*, No. A13-0829, Order at 3 (Minn. filed May 20, 2013) (an elected official’s support or sponsorship of

legislation that is opposed by some of his constituents is not unlawful or wrongful); *see also In re Murphy*, No. A03-0594, Order at 4 (Minn. filed June 5, 2003) (same).

I. THE PETITION FAILS TO ALLEGE THAT THE GOVERNOR “INTENTIONALLY” ACTED UNLAWFULLY.

Because the allegations in the Petition must satisfy all five elements of the definition of malfeasance, if the Petition fails to allege any element, it must be dismissed. Minn. Stat. § 211C.05. Here, the Petition makes no allegation to satisfy the first element: an intentional act of malfeasance. It never uses the word “intentional” or otherwise suggests that the Governor knowingly exceeded his authority or otherwise acted wrongfully when he signed the PRO Act. This failure is fatal to the Petition. *See In re Kiffmeyer*, 673 N.W.2d 827, 829 (Minn. 2004) (dismissing recall petition, in part because “the petition fails to state specific facts which, if proven, would establish that the failure to act was intentional”); *see also* Minn. Stat. § 211C.01, subd. 2; Minn. Stat. § 211C.05, subd. 1.³

II. THE PETITION DOES NOT ALLEGE “UNLAWFUL” OR “WRONGFUL” CONDUCT.

Petitioners allege that the Governor acted “unlawfully” by signing the Act, which they claim is inconsistent with Section 145.412, is broader than *Doe v. Gomez*, and violates the right to life. The recall statute clearly contemplates that “unlawful” conduct must be objectively illegal as set forth by existing rules or case law. Differing interpretations of a statute—the most that Petitioners offer in support of their unlawfulness theory—cannot

³ In her Orders of June 15, August 13, and October 12 dismissing three 2020 recall petitions, the Chief Justice disagreed with the Governor’s analysis of the “intentional” element. The Governor repeats an abbreviated version of the argument here in order not to waive it.

suffice. And Petitioners are simply wrong that the Governor signing the PRO Act was unlawful.

“Unlawful or wrongful” within the recall statute means “conduct that is contrary to a legal standard established by law, rule or case law.” *In re Ventura*, 600 N.W.2d at 719; *Walz I*, Order at 5. The purpose of this standard is to ensure that the Chief Justice’s review of a proposed petition turns on a “substantive legal standard” rather than a “subjective judgment about whether certain conduct is right or wrong.” *Id.*; *see also In re Telford*, 206 P.3d 1248, 1253 (Wash. 2009) (finding no malfeasance under similar recall statute where “the statute and case law appear to allow [the official] considerable discretion”); *Chandler v. Otto*, 693 P.2d 71 (Wash. 1984) (en banc) (finding no malfeasance under similar recall statute where petition failed to “state with specificity substantial conduct **clearly** amounting to . . . malfeasance” and rather “attack[ed] the judgment” of the official (emphasis added)).

The Governor’s authority to sign legislation into law is set out clearly in the Constitution: “Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it[.]” Minn. Const. art. IV, § 23. Here, the Governor performed his constitutional duty by signing legislation duly passed by the legislature. Performance of constitutional duties, without more, cannot constitute malfeasance. Indeed, the Governor is immune from civil litigation for signing a bill into law. *See Advanced Auto Transp., Inc. v. Pawlenty*, Civ.

No. 10-159, 2010 WL 2265159, at *3 n.7 (D. Minn. June 2, 2010) (The “governor cannot be sued for signing a bill into law under the doctrine of absolute legislative immunity”).

A recall is not the correct vehicle for Petitioners’ assertions that the PRO Act law itself is constitutional, inconsistent with existing law, and expands the holding of *Doe v. Gomez*. Even if those claims were correct, a recall proceeding is not the appropriate forum for resolving issues of statutory interpretation. *In re Walz* (“*Walz II*”), No. A20-0984, Order at 8 (Minn. filed August 13, 2020). As the Court has repeatedly noted, the legal sufficiency of a recall petition should not turn on “nothing more than the reviewing justice’s, and subsequently the supreme court’s, subjective judgment about whether certain conduct is right or wrong.” *In re Ventura*, 600 N.W.2d at 719. Instead, to meet the recall standard, a proposed petition must allege facts demonstrating that an official's conduct was unlawful or wrongful because it was “contrary to a legal standard established by law, rule or case law.” *Id.*

First, even if Petitioners were correct that the PRO Act expands the right to abortion beyond *Doe v. Gomez* (a question that the Court need not and should not resolve in this proceeding), there is nothing illegal about that. *Doe v. Gomez* established a fundamental constitutional right to abortion in Minnesota, and the PRO Act enshrines that right in law. Providing enhanced protections for a fundamental constitutional right would not violate any law, much less constitute malfeasance by the Governor.

Second, the PRO Act does not conflict with Section 145.412, because the PRO Act codifies into statute the fundamental right to abortion that has been the law in Minnesota

since *Doe v. Gomez*. Section 145.412 and the fundamental right to abortion have coexisted since 1995. Even if there were a conflict, however, there would be no malfeasance because it is not unlawful to sign a law that contradicts with an earlier one. The Legislature passed a law of statutory interpretation in 1941 to aid courts in reconciling laws that are in conflict. Minn. Stat. § 645.26. Such a statute would be unnecessary if it was unlawful for the legislature to pass and the Governor to sign laws that conflict with each other. The Minnesota Supreme Court has cited Section 645.26 over one hundred times, and not once has the Court stated or implied that it was unlawful for a governor to have signed a law that conflicted with another statutory provision. *See also In re Walz* (“*Walz III*”), No. A20-1231, Order at 7-8 (Minn. filed Oct. 12, 2020) (discussing how to interpret irreconcilable provisions).

Third, the PRO Act does not impair any rights guaranteed by the 14th Amendment of the U.S. Constitution. To the contrary, the United States Supreme Court has declared that “the authority to regulate abortion must be returned to the people and their elected representatives.” *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2279 (2022). That is exactly what Minnesotans and their elected representatives have done: regulate abortion access and codify the constitutional right to an abortion in law. According to *Dobbs*, the 14th Amendment is silent on abortion. Moreover, the Court should presume laws are constitutional. *See* Minn. Stat. § 645.17(3); *see also In the Matter of J.M.M.*, 937 N.W.2d 743, 752 (Minn. 2020).

Dismissal is especially warranted here, where the dispute involves complicated and important issues of constitutional interpretation. The Governor is not prohibited from signing laws where the constitutionality of the law may be in doubt. Indeed, although the legislature does not intend to violate the Constitution of the United States or of Minnesota, Minn. Stat. § 645.17(3), the legislature acknowledges that a provision of law it passes may sometimes be found to be unconstitutional, *see* Minn. Stat. § 645.20 (regarding severability). In other words, Petitioners’ mere belief that a statute is unconstitutional falls far short of the standard they must meet. The recall process does not lend itself to resolving complicated issues of constitutional interpretation. The remedy for constituents who disagree with an elected official’s policy position is not the recall procedure. *See In re Radinovich*, No. A13-0829, Order at 3 (Minn. filed May 20, 2013); *Jacobsen v. Nagel*, 255 Minn. 300, 305, 96 N.W.2d 569, 573 (1959). Instead, to meet the high standard for a recall, the Petition must allege facts demonstrating that the Governor’s conduct was unlawful or wrongful because it was “contrary to a legal standard *established* by law, rule or case law.” *In re Ventura*, 600 N.W.2d at 719; *Walz II*, at 8. There is no such authority here and therefore the Petition fails to meet the second factor.⁴

⁴ Moreover, litigating important issues of constitutional interpretation through an expedited recall process would circumvent and nullify sound standing principles. *See, e.g., Kennedy v. Carlson*, 544 N.W.2d 1, 6 (Minn. 1996) (a justiciable controversy must exist—i.e., a litigant must show a direct and imminent injury—before a Minnesota court can determine the constitutionality of a statute); *see also* Minn. Stat. § 211C.05.

III. THE PETITION DOES NOT ALLEGE FACTS SUFFICIENT TO SHOW THE GOVERNOR ACTED “SUBSTANTIALLY OUTSIDE THE SCOPE OF [HIS] AUTHORITY.”

The fourth element of malfeasance requires that the Petition allege facts sufficient to show that an official acted “substantially outside the scope of [his] authority.” Minn. Stat. § 211C.01, subd. 2. The term “substantially” must be given meaning within the recall statute. *See Jackson v. Mortg. Elec. Registration Sys., Inc.*, 770 N.W.2d 487, 496 (Minn. 2009). Thus, it is not enough to show that an official may have acted outside the scope of this authority. The challenged conduct must be substantially outside the scope of his authority. Such a limitation makes sense within the context of the recall statute, which allows recall only for cases of serious malfeasance. *See In re Ventura*, 600 N.W.2d at 718 (explaining that acts giving rise to serious malfeasance must be “evil conduct or an illegal deed, the doing of that which one ought not to do, the performance of an act by an officer in his official capacity that is wholly illegal *and* wrongful”). To read “substantially” out of the statute would undermine the requirement of serious malfeasance and could subject an elected official to recall for any perceived technical noncompliance with a rule or law.

As set forth above, *supra* § II, the Governor lawfully signed a law pursuant to his constitutional authority found in Minn. Const. Art. IV, § 23: “Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it[.]” Acting in accordance with the Minnesota constitution is clearly within the scope of Governor’s authority, and it is clearly not substantially outside the scope of that authority. Here, the Petition does not even attempt to allege that any conduct of the Governor was “substantially” outside the scope of

his authority, other than to take issue with the merits of the law. Accordingly, the Petition should be dismissed.

IV. THE PETITION DOES NOT ALLEGE SPECIFIC FACTS TO ESTABLISH THAT THE GOVERNOR’S CONDUCT “SUBSTANTIALLY INFRINGES ON THE RIGHTS OF ANY PERSON OR ENTITY.”

The fifth and final element of the test for malfeasance focuses on the impact of the Governor’s conduct on other people. It asks whether the allegedly unlawful conduct “substantially infringes on the rights of any person or entity.” *See* Minn. Stat. § 211C.01, subd. 2. Again, the “proposed petition” itself must “allege[] specific facts that, if proven” would satisfy this element. Minn. Stat. § 211C.05. The Petition must include “a concise, accurate, and complete synopsis of the specific facts that are alleged to warrant recall.” Minn. Stat. § 211C.03.

The Petition never identifies with specificity which citizens’ rights are being infringed upon and never asserts that the infringement is “substantial.” Each of these failures is fatal. The Petition itself must allege each element of the test for malfeasance, and if it does not, it must be dismissed. *See In re Kiffmeyer*, 673 N.W.2d at 829.

Petitioners seem to imply that it was unlawful for the Governor to sign a law that did not include “restrictions” on abortions later in pregnancy. But the PRO Act in fact codified what has been the law in Minnesota since 1995, when the Minnesota Supreme Court recognized that the Minnesota Constitution guarantees a fundamental right to abortion. In other words, the PRO Act protected rights already recognized by the Minnesota Supreme Court. It did not reduce rights of any person or entity, and Petitioners fail to provide any facts to the contrary. Accordingly, the Petition should be dismissed.

CONCLUSION

For all of the foregoing reasons, the Governor respectfully requests that the Chief Justice dismiss the Petition in its entirety pursuant to Minn. Stat. § 211C.05, subd. 1.

Dated: March 24, 2023

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ **Janine Kimble**

LIZ KRAMER (#0325089)
Solicitor General
JANINE KIMBLE (#0392032)
Assistant Attorney General

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
(651) 757-1010 (Voice)
liz.kramer@ag.state.mn.us

Attorneys for Governor Tim Walz

|#5450566-v3