

STATE OF MINNESOTA
IN SUPREME COURT
A25-_____

Lisa Demuth and Harry Niska,
Petitioners,

vs.

Minnesota Secretary of State Steve
Simon, *Respondent.*

**MEMORANDUM IN SUPPORT
OF PETITION FOR WRIT
OF QUO WARRANTO**

After this Court ruled that the Minnesota House of Representatives lacks a quorum, Secretary of State Steve Simon has seized control of the House and exercised that control in a way that could prevent it from *ever* obtaining a quorum. Ending the constitutional crisis and restoring a functioning Legislature requires the Court to put a stop to this violation of the Constitution.

It is now two weeks and counting since the current legislative session began, and the House of Representatives has lacked a quorum that entire time. As the Court is aware, two weeks ago, 67 Members of the House convened at the legally prescribed time and place for the legislative session as Simon presided. 66 other Members of the House refused to appear.¹ That situation remains unchanged: 67 Members of the House are continuing to meet, with Simon continuing to preside due to the lack of a quorum to elect House officers, while 66 other Members refuse to appear. Nor is there any indication that the 66 absent Members will soon change their minds and begin attending legislative sessions.

¹ A special election for the vacant seat has not yet been scheduled.

Our Constitution is perfectly clear about what should happen in a situation like this. Article IV, Section 13 provides that “[a] majority of each house constitutes a quorum to transact business, but a smaller number may adjourn from day to day and compel the attendance of absent members in the manner and under the penalties it may provide.” As presiding officer of the House, then, the Secretary of State’s constitutional duty in the absence of a quorum is clear: he must entertain motions by the Members present, including motions to compel the attendance of absent members or to adjourn to a time and place specified in the motion, and preside over votes on those motions.

Simon has utterly flouted that duty. He has seized control of the House and shut it down. Twice now, Simon has announced the lack of a quorum and immediately declared the House adjourned. Simon has allowed no motions and no votes, even when Members of the House have tried to raise them in his presence. He has allowed no opportunity for the Members present to exercise the powers specifically prescribed by Article IV, Section 13. Instead, an elected executive-branch official has declared the unilateral power to end the House of Representatives’ sessions and prevent the House from taking any action.

Simon has engaged in this violation of the separation of powers without a shred of legal justification. In the absence of a quorum, Article IV, Section 13 expressly gives the power of adjournment (and compelling absent members) to ***the Members present***, not to the presider. Settled legislative practice is fully consistent with that.² So a unilateral shutdown of the House by the presider

² See *Mason’s Legislative Manual* § 192 (“When a quorum is not present, a call of the house takes precedence over all other motions.”); § 193 (“When a quorum is not present, a call is, in effect, demanded. Any member may raise the

(with or without a quorum) would be plainly unauthorized even if the presider were a member of the House who had been duly elected to leadership by the other Members. It *certainly* is unauthorized when the presider is an executive-branch official who is *not* a member of the House, and who is prohibited by Article III from exercising any legislative power. Minn. Stat. §§ 3.05 and 5.05, which authorize the Secretary of State to preside over the House until a Speaker is elected, do not even hint that they grant such a sweeping power—and if they did, they would be blatantly unconstitutional.

This is exactly the sort of usurpation of power that *quo warranto* is meant to prevent. *State ex rel. Palmer v. Perpich*, 182 N.W.2d 182 (Minn. 1971) (upholding *quo warranto* petition against lieutenant governor’s overreach in presiding over Senate). In deciding Simon’s previous petition in this matter, the Court made clear that its role is to determine the constitutional rules that govern this dispute. And two essential constitutional principles are at stake here: the constitutional bar on Simon’s exercise of legislative power, and the House’s express constitutional power to adjourn or compel the attendance of absent members even when it lacks a quorum. This Court’s intervention is

question of no quorum, and if a quorum is not present, the house must either order a call or adjourn.”); § 190 (“The purpose of a call of the house is to compel the attendance of absent members.”); § 210 (“Where a roll call shows there is not a quorum present, it does not automatically adjourn the body; the body possesses the power to issue a call of the house or to entertain the motion to adjourn.”); § 208 (“It is a rule of parliamentary procedure applicable to all legislative bodies that less than a quorum have the power to adjourn. It is in this respect the motion to adjourn differs from all other motions. It is, of course, necessary that a body that finds itself without a quorum have a means of terminating its daily sessions.”); § 578 (“The presiding officer may not refuse to put any motion that is in order.”).

required to prevent an escalating separation-of-powers crisis and to restore a functioning Legislature.

Dated: January 30, 2025

s/Samuel W. Diehl
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