

STATE OF MINNESOTA
IN SUPREME COURT

Drake Snell, et al.,

**PETITION FOR REVIEW OF DECISION
OF THE COURT OF APPEALS
AND ADDENDUM**

Petitioners,

vs.

APPELLATE COURT CASE NUMBER:
A21-0626

Tim Walz, Governor of Minnesota, in
his official capacity, et al.

Respondents.

DATE OF FILING OF COURT OF APPEALS
DECISION: July 10, 2023

Petitioners Drake Snell, *et al.*, request Supreme Court review of the above-entitled decision of the court of appeals (the “Decision”). The court of appeals held that the Minnesota Emergency Management Act, Minn. Stat. § 12.01, *et seq.*, authorizes the Governor to declare a peacetime emergency. As this Court already held earlier this year, this is an important question of statewide significance. *Snell v. Walz*, 985 N.W.2d 277, 280-81 (Minn. 2023) (“*Snell I*”). The Court should therefore grant review and, we submit, reverse the Decision.

STATEMENT OF THE LEGAL ISSUE

- 1. Whether the Minnesota Emergency Management Act of 1996 authorizes the Governor to declare a peacetime emergency based on a public-health emergency such as the COVID-19 pandemic.**

The court of appeals held that the Act authorizes the Governor to declare a peacetime emergency based on a public-health emergency such as COVID-19. (Add. 16). In doing

so, the court held that COVID-19 is unambiguously an “act of nature” under Minn. Stat. § 12.31, subd. 2. (Add. 12). The court also held that, based on the limited scope of remand, it could not review whether its interpretation of the Act declaring the COVID-19 pandemic an “act of nature” and, correspondingly, granting the Governor broad legislative authority, causes the Act to violate Article III, section 1 of the Minnesota Constitution. (Add. 15-16). The court therefore affirmed the dismissal of Petitioners’ petition for a writ of quo warranto on its merits. (Add. 16).

CRITERIA GOVERNING REVIEW

Review is appropriate under Minn. R. Civ. App. P. 117, subds. 2(a) and (d)(2-3). First, this case raises important questions on which this Court should rule. Second, a decision by this Court will help develop, clarify, or harmonize the law, the resolution of the issues raised in this case will have statewide impact, and the questions raised in this case are likely to recur unless resolved by this Court.

STATEMENT OF THE CASE

On July 20, 2020, Governor Tim Walz issued Executive Order 20-81 (“EO 20-81”), which, until it was rescinded on May 6, 2021, generally required Minnesotans to wear face coverings in indoor public spaces. Governor Walz based his authority to issue EO 20-81 on the emergency powers the Legislature delegated to the Governor via the Minnesota Emergency Management Act, Minnesota Statutes, Chapter 12 (the “Act”).

Petitioners brought a quo-warranto petition to stop the Governor and Attorney General from exceeding their legal authority under Minnesota law related to the declaration of the COVID-19 peacetime emergency and the enforcement of Executive Order 20-81.

Petitioners challenged the Governor’s power to declare an emergency based on COVID-19 in part because it does not threaten both life *and* property. Doc. 21 (Am. Pet. ¶¶ 63, 66); Appellants’ Br., June 14, 2021, at 26; Reply Br., Aug. 11, 2021, at 14-15; Appellants’ Supp. Br., Mar. 3, 2023, at 5-8; *see also* Doc. 63 (Pet’rs’ Reply Mem. at 9). Petitioners also argued that there is no record evidence of damage to property caused by COVID-19 itself. Appellant’s Br. 26-27; Appellants’ Supp. Br. 5-7. Petitioners also alleged and argued that section 12.31 required that local government resources must be inadequate to address COVID-19, Am. Pet. ¶¶ 72-75, which the Governor failed to support, *id.*; Appellants’ Supp. Br. 5-8.

The district court granted Respondents’ motion to dismiss the petition for quo warranto, and Petitioners appealed. The court of appeals dismissed Petitioners’ appeal on mootness grounds. This Court affirmed in part and reversed in part, directing the court of appeals as follows:

[W]e...remand to the court of appeals to consider the merits of Snell’s appeal of his claim that the Minnesota Emergency Management Act does not allow the Governor to declare a peacetime emergency in response to the COVID-19 pandemic.

Snell v. Walz, 985 N.W.2d 277, 291 (Minn. 2023).

On remand, the court of appeals held that the Act authorizes the Governor to declare a peacetime emergency for a public-health crisis because a pandemic is unambiguously an “act of nature” and affirmed the dismissal of the Petition for a Writ of Quo Warranto. (Add. 16). On remand, Petitioners also argued that if the court of appeals held Chapter 12 to be ambiguous as to whether a public-health emergency for a pandemic like COVID-19 is

authorized, it should consider whether an interpretation that it is authorized results in a violation of the Minnesota Constitution’s nondelegation doctrine. Appellants’ Supp. Br. 8-10. The court of appeals declined to address whether its interpretation of the Act causes the Act to violate Article III, section 1 of the Minnesota Constitution. (Add. 16).

ARGUMENT

I. The Court Should Settle, With Finality, Whether the Governor May Declare a Peacetime Emergency for a Public-Health Crisis Like COVID-19 Under the Minnesota Emergency Management Act, and What Is Required for That Declaration.

The extent of the Governor’s authority to declare a peacetime emergency for a public-health crisis like COVID-19 is an urgent issue of substantial statewide importance. This Court so held in the first appeal of this case. *Snell I*, 985 N.W.2d at 280-81. Petitioners cannot say it better than the Court did:

Specifically, we conclude that the claim Snell raises regarding the scope of the Governor’s authority under the Act is an important issue of statewide significance that should be decided now.

....

The peacetime emergency declaration and the executive orders implemented afterward assert that the Act empowers the Governor to enter emergency orders to respond to the COVID-19 pandemic. The orders issued following the emergency declaration impacted all Minnesotans in nearly every aspect of their lives, restricting their freedoms to move about, to conduct business, and to practice religion. The Executive Order about which appellants specifically complain is an example of the scope of the power the Governor contends he has under the Act. But there are many other examples in the wide-ranging orders the Governor issued to address the COVID-19 pandemic.

....

We also conclude that this important legal issue should be decided now so that any lack of clarity can be settled before it is necessary for a governor to invoke the Act again.

Snell I, 985 N.W.2d at 284-85.

The Court's holding remains true. The State of Minnesota needs this Court to finally decide the important issue raised in this appeal to establish an authoritative interpretation of the MEMA. While the court of appeals' decision was precedential, its interpretation is not binding on future courts in the same manner that this Court's interpretation is. As this Court has held:

But the legislature has provided that “[w]hen a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language.” Minn. Stat. § 645.17(4) (2008). The court of appeals is not “a court of last resort.” See *Anderson-Johanningmeier v. Mid-Minnesota Women's Ctr., Inc.*, 637 N.W.2d 270, 276 (Minn. 2002) (stating that the court of appeals is not the court of last resort with respect to statutory construction).

Krummenacher v. City of Minnetonka, 783 N.W.2d 721, 730 n.12 (Minn. 2010).

Thus, while Petitioners acknowledge the precedential effect of the court of appeals' decision, only this Court can issue a decision establishing the construction of statutory language which the legislature is deemed to intend “in subsequent laws on the same subject matter.” Minn. Stat. § 645.17(4). It is imperative that our legislators are equipped to know how to write future laws related to public-health emergencies which so substantially affect Minnesotans' lives, livelihoods, and personal safety.

Additionally, the Court should review the issue presented because the court of appeals' interpretation leaves important questions open to future debate within the scope of this Court's prior remand, and the Court can answer these important questions here and now. Among these questions, it is unclear from the court of appeals' opinion whether the Governor must demonstrate—with some sort of evidentiary showing—the MEMA's statutory predicates before declaring a peacetime emergency for a pandemic like COVID-19.

The MEMA’s language supports the requirement of an evidentiary showing. It states that a “peacetime declaration of emergency may be declared *only* when” (1) an “act of nature” (2) “endangers life *and* property,” and (3) “local government resources are inadequate to handle the situation.” Minn. Stat. § 12.31, subd. 2 (emphasis added). That these criteria exist, and that a declaration may “only” be made if they do, must mean that *some* showing is required. Petitioners have argued that the Governor has not made any showing that these criteria were met. Appellants’ Supp. Br. 5-8. Respondents have gone so far as to argue that the Governor need not make any showing at all. *Northland Baptist Church v. Walz*, 530 F. Supp. 3d 790, No. 20-CV-1100-WMW-BRT, ECF No. 56, at p. 33 (July 13, 2020) (“Second, absent from the text of section 12.31—and all of Chapter 12—is *any* requirement that when declaring a peacetime emergency, the Governor must explain in the text of any executive order how local government resources are inadequate.”) (emphasis in original).

The court of appeals appeared to assume no showing was required, and it did not grapple with the issue of whether “local government resources” were adequate to handle COVID-19 across Minnesota in March 2020. (Add. 5-13). But both the language of the law and the statements of its authors support Petitioners. Rep. Duke Powell, who sponsored the law, emphasized the existence of certain “thresholds” that must be met for an emergency to be declared, and that those thresholds might exist in one county and not another, and likewise the emergency might not be “trigger[ed]” in one county even if it is in another. Hearing on H.F. 1555 before the House Comm. on Health, Policy and Finance, 84th Minn. Leg., Reg. Sess. (Mar. 15, 2005) (“H.F. 1555 Hearing”), available at

<https://www.lrl.mn.gov/media/file?mtgid=844125> (00:01:57-00:03:01) (Statement of Rep. Powell) (emphasis in original audio). As for “local government resources,” “local government” is defined under Minn. Stat. § 12.03, subd. 5d: “the meaning given in Code of Federal Regulations, title 44, section 206.2 (2012).” That provision, in turn, includes essentially all government entities other than states or the federal government. See 44 C.F.R. § 206.2. “Resources” is undefined, but as Rep. Powell said, local government resources likely include “all responders, including police and healthcare providers.” H.F. 1555 Hearing, 00:02:00-00:02:21 (Rep. Powell).

Governor Walz never met these predicates in declaring a peacetime emergency related to COVID-19. This Court should grant review of this case to answer questions left open by the court of appeals’ decision below.

CONCLUSION

Petitioners respectfully request that this Court grant review on the legal issue presented in this case.

Dated: August 8, 2023

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE
WITH MINN. R. APP. P. 117, SUBD. 3**

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Dated: August 8, 2023

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