Nos. A25-1220, A25-1221

STATE OF MINNESOTA
IN SUPREME COURT

Housing First Minnesota,
Appellant,

v.

City of Corcoran,
Respondent,

Housing First Minnesota,
Appellant,

v.

City of Dayton,
Respondent.

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA AND AMERICAN CIVIL LIBERTIES UNION

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INTEREST OF *AMICI CURIAE*[1]

The American Civil Liberties Union of Minnesota ("ACLU of Minnesota") is a nonprofit, nonpartisan membership organization devoted to protecting civil rights and liberties for all Minnesotans. The American Civil Liberties Union ("ACLU"), with approximately 1.6 million members, is among the oldest, largest, and most active civil rights organization in the United States. For decades, the ACLU of Minnesota and the ACLU have litigated questions involving civil liberties in state and federal courts.

Among the liberty interests critical to amici and their members is access to the judicial system. Preserving the justiciability of legal issues—thus ensuring that provisions of the Minnesota Constitution are not just words on paper but meaningful guarantees for the people of Minnesota—is essential to our democracy. It is in defense of justiciability and access to justice that amici write in this case, as they have in other cases throughout the country. *See, e.g.*, Brief of Amici Curiae ACLU of Montana and ACLU Supporting Appellees, *Held v. State*, 560 P.3d 1235 (Mont. 2024); Brief of Amici Curiae ACLU of Utah and ACLU Supporting Appellants, *Natalie R. v. State*, 567 P.3d 550 (Utah 2025).

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[1] Under Rule of Civil Appellate Procedure 129.03, amici state that no counsel for a party authored this brief in whole or in part and no other person or entity, other than the *amici curiae*, their members, or their counsel, made a monetary contribution to the preparation or submission of the brief.

INTRODUCTION

The legislative, executive, and judicial branches of Minnesota's government are "instituted for the security, benefit and protection of the people, in whom all political power is inherent." Minn. Const. art. I, § 1. The judicial branch's role in that system includes adjudicating cases contesting the legality of actions by the other branches. This is one of those cases. Plaintiff Housing First Minnesota alleges that two Minnesota cities are imposing illegal building fees. The judiciary can adjudicate that allegation, just as it adjudicates countless other cases in which one party alleges that another party violated a regulation or law.

The Cities' contrary claim—that this case presents a nonjusticiable political question—is wrong. This case has nothing to do with the political question doctrine.

The Minnesota Constitution, not federal law, dictates justiciability in Minnesota courts. Interpreting that Constitution, this Court has held that a nonjusticiable political question can arise only where a power is retained by the people or specifically delegated by the Minnesota Constitution to a co-equal branch of government. *In re McConaughy*, 119 N.W. 408, 417 (Minn. 1909). In articulating that doctrine, this Court has expressly rejected the broader version of the political question doctrine that the U.S. Supreme Court has

articulated for the federal courts. *See Cruz-Guzman v. State*, 916 N.W.2d 1, 8 n.4 (Minn. 2018).

Neither the narrow version of the political question doctrine under Minnesota law nor the broader federal doctrine applies here. The Cities suggest that the political question doctrine bars courts from reviewing municipalities' compliance with the State Building Code's requirement that building permit fees be proportionate to the actual costs of the services provided. *See* MINN. R. 1300.0160(2) (2020). For that argument to have any merit, the Minnesota Constitution would have to, at a minimum, expressly delegate the unreviewable authority to set building fees to either the Legislature or the Executive branch. It does no such thing. Far from giving any branch of state government the unfettered authority to impose building fees in any amount—from $1 to $1 trillion—the Minnesota Constitution says precisely nothing about building fees. That is enough to doom the Cities' political question argument under any existing doctrine, whether state or federal.

Nor should the political question doctrine be expanded to encompass this case. Taken to its logical conclusion, the Cities' position is that the Legislature can insulate entire categories of government action from judicial review simply by delegating certain tasks to an agency. If the Legislature could do that, then the entire field of administrative law would be rendered nonjusticiable in

Minnesota courts. The Cities have not explained why that would be appropriate. *See* Resp. Br. Ct. App. 37.

Because Minnesota's independent and narrow political question doctrine serves the Minnesota Constitution's robust guarantees of individual rights, this Court should decline the Cities' invitation to expand the state's political question doctrine beyond its current boundaries—and beyond the boundaries of any version of the doctrine known to amici.

ARGUMENT

I. Housing First's claim is not barred by the political question doctrine as articulated by this Court or federal courts.

This is a routine case of statutory and administrative law. The Minnesota Legislature enacted laws authorizing an administrative agency, the Department of Labor and Industry ("DLI"), to adopt a building code. MINN. STAT. § 326B.106(1)(a) (2025). DLI has done so, including by promulgating a rule that requires building fees to be "proportionate to the actual cost of the service for which the fee is imposed." MINN. R. 1300.0160(2) (2020). The Petitioner, Housing First Minnesota, argues that two cities, Corcoran and Dayton, have adopted building-fee ordinances that exceed their authority under this rule. Plaintiffs bring comparable cases all the time. They might win. They might lose. But, under this Court's political question doctrine, and even under the more expansive version of that doctrine articulated by federal courts, a lawsuit challenging the legality of fees charged by a municipality comes nowhere close to being a nonjusticiable political question.

A. This Court has developed a narrow, Minnesota-specific version of the political question doctrine.

Minnesota "ha[s] not adopted the [U.S.] Supreme Court's analysis in *Baker v. Carr* to resolve whether a case presents a political question." *Cruz-Guzman v. State*, 916 N.W.2d 1, 8 n.4 (Minn. 2018) (citing *Baker v. Carr*, 369

U.S. 186, 217 (1962)). As recently as 2018, this Court "decline[d] to do so." *Id.* Instead, Minnesota law's political question doctrine is narrower. It recognizes only two categories of nonjusticiable political questions, and both categories are limited by the countervailing "duty of the judiciary to . . . declare" when the executive and legislative branches "ha[ve] clearly transcended . . . limitations" imposed by the state constitution. *Id.* at 10 (quoting *Rippe v. Becker*, 57 N.W. 331, 336 (Minn. 1894)).

This first category comprises matters which are "to be exercised by the people in their primary political capacity." *In re McConaughy*, 119 N.W. 408, 415 (Minn. 1909). The Court once implied that whether a constitution had been enacted in the first instance might be a power to be exercised by the people. *Id.* at 412 (quoting *State v. Swift*, 69 Ind. 505, 518 (1880)). But amici have identified no case where this Court found a nonjusticiable political question in this category.

The second category comprises "matters which the people have *by the Constitution* delegated to" another branch of government. *Id.* at 417 (emphasis added). To invoke this category, it is not enough to show that a plaintiff challenges a government action "of a political nature." *Id.* After all, "every officer under a constitutional government must act according to law and subject to its restrictions, and every departure therefrom or disregard thereof

must subject him to the restraining and controlling power of the people, acting through the agency of the judiciary." *Id.* Instead, a nonjusticiable political question will generally arise under this category only where "[p]roviding a remedy . . . necessarily require[s] the judiciary to exercise the powers of" another branch of government. *Cruz-Guzman*, 916 N.W.2d at 9. Thus, notwithstanding the Court's narrow statement that certain political questions could be nonjusticiable, it remains "well within the province of the judiciary" to declare whether the other branch has exercised those delegated powers as required by the Constitution. *Id.* at 9–10 (citing *Holmberg v. Holmberg*, 588 N.W.2d 720, 726 (Minn. 1999)).

Cruz-Guzman illustrates this distinction between *adjudicating* the legality of actions by another branch of government, which this Court can certainly do, and *exercising* the powers of another branch, which this Court will not do. There, this Court held that a challenge under the state constitution's Education Clause was justiciable. *Id.* The Education Clause delegates an affirmative duty to the Legislature: the duty "to establish a general and uniform system of public schools." Minn. Const. art. XIII, § 1. But determining "whether the Legislature has violated [this] constitutional duty" did not require the judiciary to exercise legislative power. *Cruz-Guzman*, 916 N.W. 2d at 9. On the contrary, "appellants' claims ask[ed] the judiciary to answer a yes

or no question—whether the Legislature has violated its constitutional duty." *Id.*; *cf. McConaughy*, 119 N.W. at 421–42 (even if a court lacks a "process by which to make effective the judgment it may render[,] . . . it has power to determine" the underlying issue (citing *Hopkins v. City of Duluth*, 83 N.W. 536 (Minn. 1900))). It was "well within" the judiciary's power to answer that question. *Cruz-Guzman*, 916 N.W.2d at 9.

In contrast, this Court held that a nonjusticiable political question arose when the Legislature and Governor locked horns over the state's biennial spending package. *Ninetieth Minn. State Senate v. Dayton*, 903 N.W.2d 609, 623 (Minn. 2017). Asked to rule on the validity of the Governor's line-item vetoes of appropriations to fund the Legislature, this Court declined to "assess, weigh, and judge the motives of co-equal branches of government engaged in a quintessentially political process." *Id.* (citing *McConaughy*, 119 N.W. at 417). This Court has explained that it exercises restraint in such cases because "it is not [the courts'] role to comment on the wisdom of either the appropriations or the exercise of the item veto." *Inter Fac. Org. v. Carlson*, 478 N.W.2d 192, 197 (Minn. 1991). This justification does not apply outside of a dispute between two other branches of government over "a quintessentially political process." *Dayton*, 903 N.W.2d at 623.

This Court has also stated that a political question may exist where there are "detailed, specific tools provided by our constitution to resolve political disputes" outside of the courts. *Id.* at 625. The judiciary need not "referee political disputes between our co-equal branches of government over appropriations and statewide policy decisions when those branches have both *an obligation and an opportunity to resolve those disputes between themselves*." *Id.* at 624 (emphasis added); *see also McConaughy*, 119 N.W. at 418 (noting that the courts may refrain from deciding a constitutional case only if the Constitution "impos[es] the duty in the particular instance on some other special tribunal."). The doctrine is thus confined to cases where the Constitution specifies alternatives to the judicial process.

B. Applying Minnesota's political question doctrine to this case would be an unwarranted extension of the doctrine.

The political question doctrine, as articulated by this Court, has nothing to do with this case. The Cities ask this Court to apply the political question doctrine not to a power constitutionally retained by the people or specifically delegated to a co-equal branch of government, but rather to an administrative agency's purported authority to oversee compliance with a regulation promulgated by that same agency. In short, the Cities seek a drastic expansion of the doctrine that threatens to swallow all of administrative law. Amici have

identified no case in any state or federal court stretching political questions this far. This Court should not be the first and only to do so.

Housing First claims that the Cities' permit fees violate the State Building Code's ("Code") requirement that municipally imposed permit fees be "fair, reasonable, and proportionate to the actual cost of the service for which the fee is imposed." MINN. R. 1300.0160(2) (2020). The Code is an administrative regulation promulgated by DLI pursuant to its statutory authority to "establish a code of standards for . . . construction," including "duties and responsibilities for code administration." MINN. STAT. § 326B.106(1)(a) (2025). DLI "may enforce all applicable law" under the Code, MINN. STAT. § 326B.082(1) (2025), but the agency does not use this enforcement authority to evaluate municipalities' fee schedules. *See* Petr. Br. 54 (reporting that DLI informed Petitioner it does "not hear claims challenging the validity of the Cities' ordinances").

Any authority delegated by the legislature to DLI to evaluate fees does not implicate either category of political question recognized by Minnesota law. Evaluating building fees for proportionality is not a power "to be exercised by the people in their primary political capacity." *McConaughy*, 119 N.W. at 417. Where, as here, Minnesotans have no constitutional control over an issue, a power is not "to be exercised by the people." *See id*. Nor is evaluating building-

fee proportionality "specifically delegated [by the Constitution] to some other department or particular officer of the government." *Id*. This is so for at least three reasons.

First, far from giving the Legislative or Executive branches the unreviewable authority to set building fees in any amount, the Minnesota Constitution has nothing whatsoever to say about building permit fees. The constitutional basis for the Code is the Constitution's implicit grant of legislative authority to regulate activities "within the legitimate concern of the state." *State v. Edwards*, 177 N.W.2d 40, 42 (Minn. 1970). This exercise of general legislative powers falls far short of a "specific[] delegat[ion]" of a power to a nonjudicial branch, which exists only where the constitutional text is explicit. *McConaughy*, 119 N.W. at 417.

Disregarding that a political question must be premised on a specific *constitutional* delegation, *Cruz-Guzman*, 916 N.W.2d at 9, the Cities argued to the Court of Appeals that "[e]nforcement of the State Building Code and regulation of building-permit fees has been 'specifically delegated' by the state *legislature* to [DLI]." Resp. Br. Ct. App. 38 (emphasis added). This argument misunderstands the political question doctrine and threatens the separation of powers. The doctrine does not enable the Legislature to insulate a category of

state action from judicial review by delegating enforcement authority to an administrative agency.

Second, even if the Minnesota Constitution delegated building-fee authority to DLI or the Legislature, courts could still consider the merits of this case because "[p]roviding a remedy" does not "necessarily require the judiciary to exercise the powers of" another branch of government. *Cruz-Guzman*, 916 N.W.2d at 9. Just as a court considering the *Cruz-Guzman* plaintiffs' Education Clause claim could "answer [the] yes or no question [of] whether the Legislature" had violated its duties, *id.*, so too could a court decide whether the Cities' permit fees are "proportionate to the actual cost of the service for which the fee is imposed." MINN. R. 1300.0160 (2020). Determining whether a municipality has complied with a regulation "is well within the province of the judiciary." *Cruz-Guzman*, 916 N.W.2d at 9–10 (citing *Holmberg*, 588 N.W.2d at 726).

Third, deeming this case nonjusticiable simply because an executive agency has issued a relevant regulation would risk rendering all agency decision-making unreviewable. To be sure, this Court has indicated that, when a regulation is ambiguous, Minnesota courts should sometimes defer to an agency's reasonable interpretation when adjudicating the merits of a case. *See, e.g.*, *In re Denial of Contested Case Hearing Requests*, 993 N.W.2d 627, 646

(Minn. 2023). But such deference is a far cry from closing the courthouse doors altogether; on the contrary, it is part of an adjudication of the merits. Yet closing the courthouse doors is what the Cities demand here. That cannot be right.

Indeed, this Court has previously assessed whether a municipal ordinance conflicts with the Code. *See City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 9–10 (Minn. 2008). Minnesota courts have also considered challenges to municipal permit fees under Rule 1300.0160 and interpreted and applied exemptions under the Code without voicing any concern that the rule somehow raised a political question. *See, e.g.*, *Centra Homes, LLC v. City of Norwood Young Am.*, 834 N.W.2d 581, 587 (Minn. Ct. App. 2013); *Cullen v. City of Minneapolis*, No. A09-595, 2010 WL 1541220, at *3 (Minn. Ct. App. Apr. 20, 2010). Applying the political question doctrine here would take these questions, which Minnesota courts are equipped and skilled to answer, and remove them from courts' cognizance.[2]

[2] For similar reasons, the Cities' invocation of the separation-of-powers doctrine does not make Housing First's claim nonjusticiable. Before the Court of Appeals, the Cities cited a single case for the proposition that "[t]he courts have no power to compel the legislature to act." Resp. Br. Ct. App. 36–57 (quoting *Smith v. Holm*, 19 N.W.2d 914, 916 (Minn. 1945)). But no one has asked any court to compel the legislature, or even DLI, to do anything. On the contrary, Housing First seeks a declaration of its rights and a determination of whether the Cities' conduct complies with the law. This claim is at the core of judicial power: "the power that adjudicates upon the rights of persons or

C. This case also does not present a political question under federal doctrine.

Federal law does not control whether Minnesota courts can hear disputes concerning Minnesota law. But even if it did, Housing First's claim would not raise a political question.

Federal courts find that issues are non-justiciable where there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department[] or a lack of judicially discoverable and manageable standards for resolving it." *Baker v. Carr*, 369 U.S. 186, 217 (1962).[3] Neither condition is met here, and applying political question doctrine to this case under federal law would turn federal administrative law on its head. That Housing First's claim does not raise a political question under more expansive federal doctrine underscores just how unsound the Cities' argument is under Minnesota law.

The Minnesota Constitution includes no "textually demonstrable . . . commitment" of the power to evaluate building permit fees

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property, and to that end declares, construes and applies the law." *In re Hunstiger*, 153 N.W. 869, 870 (Minn. 1915)

[3] *Baker* lists four other categories of political questions, but the U.S. Supreme Court has since focused only on these two. *See, e.g.*, *Nixon v. United States*, 506 U.S. 224, 228 (1993); *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012).

to the executive or the legislature. *See supra* pages 8–9. Moreover, courts have "judicially discoverable and manageable standards" to determine whether a fee is "proportionate" to the services provided. For example, this Court has developed a "lodestar method" that calculates attorney fees based on the reasonable number of attorney hours and the reasonable cost of those hours. *See Green v. BMW of N. Am., LLC*, 826 N.W.2d 530, 535 (Minn. 2013). Courts could use this—or an even simpler method that asks the city to report how much it costs to process and issue a permit—to evaluate the proportionality of building permit fees. And assessing the proportionality of a fee is far more straightforward than some tasks the U.S. Supreme Court has found are "judicially discoverable and manageable." *See, e.g.*, *Baker*, 369 U.S. at 217 (allowing federal courts to assess racial gerrymandering claims).

Moreover, given recent developments in federal administrative law, it is inconceivable that the federal political question doctrine requires any court to deem a case nonjusticiable in deference to an administrative agency. In *Loper Bright Enterprises v. Raimondo*, the U.S. Supreme Court disavowed its previous system of deference to administrative agencies' interpretations of their governing statutes. 603 U.S. 369, 412 (2024). Five years earlier, that Court "zombified" its precedent requiring deference to agencies' interpretations of their own regulations. *Kisor v. Wilkie*, 588 U.S. 558, 592

(2019) (Gorsuch, J., concurring). Thus, at present, federal courts do not afford agencies even a modicum of deference when reviewing their legal determinations. But, under the Cities' view of the political question doctrine, courts would have to be deferential in the extreme—by staying out of the fray entirely wherever an agency has the power to adjudicate. As under Minnesota law, that cannot be right.

II. Minnesota's political question doctrine should not be expanded to include this case.

Minnesota's political question doctrine should not be expanded to render this case nonjusticiable. If anything, the doctrine should be contracted.

A. The federal political question doctrine expressly applies only to federal courts because it derives from constraints on federal judicial power.

The political question doctrine developed by federal courts is premised on limitations the federal Constitution places on the federal judiciary. Considering the vast "differences in the regulatory scope of the federal and state judiciaries, the diversity of state institutions, and the special familiarity of state judges with the actual working of those institutions, variations among state and federal constitutional rules ought to be both expected and welcomed." Lawrence Gene Sager, *Foreword: State Courts and the Strategic Space Between the Norms and Rules of Constitutional Law*, 63 TEX. L. REV. 959, 976 (1985).

Such is the case here: federal courts have never urged state supreme courts to adopt the federal political question doctrine.

On the contrary, the U.S. Supreme Court has acknowledged that "state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989); *cf. Warren v. ACOVA, Inc.*, No. A24-0450, 2026 WL 2249009, at *7 n.7 (Minn. Aug. 5, 2026) ("Our court is not bound by the standing constraints of Article III of the United States Constitution." (citation omitted)). Even Justice William Brennan—the author of *Baker v. Carr*—admonished state courts that they "need not apply federal principles . . . of justiciability that deny litigants access to the courts." William J. Brennan, *State Constitutions and the Protections of Individual Rights*, 90 HARV. L. REV. 489, 501 (1977).

As with all federal justiciability rules, the federal political question doctrine is based on the text of Article III of the U.S. Constitution, which limits the "judicial power of the United States"—not states. U.S. Const. art. III. Consistent with Article III, federal political question cases ask only "whether there is an 'appropriate role for *the Federal Judiciary*' in remedying the problem" asserted by the plaintiff. *Rucho v. Common Cause*, 588 U.S. 684, 696 (2019) (emphasis added) (quoting *Gill v. Whitford*, 585 U.S. 48, 60 (2018)). Nothing in federal precedent suggests, let alone commands, that state courts

should develop political question doctrines under which they refuse to address questions arising under their own state laws.

B. The text of Minnesota's Constitution and this Court's application of other justiciability doctrines weigh against any expansion of Minnesota's political question doctrine.

Far from requiring adoption of the federal political question doctrine or encouraging the expansion of existing state doctrine, the text of the Minnesota Constitution and this Court's precedents on other justiciability doctrines counsel in favor of narrowing the state's political question doctrine.

Minnesota's constitution guarantees Minnesotans a robust judiciary capable of ensuring remedies for violations of their rights. "The powers of government shall be divided into three distinct departments: legislative, executive and judicial," and "[n]o person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others." Minn. Const. art. III, § 1. While this clause bars courts from exercising legislative or executive power, it also prevents them from shirking their "special duty [to] determin[e] the limitations which the law places upon all official action." *McConaughy*, 119 N.W. at 417. This special duty reflects "the restraining and controlling power of the people, acting through the agency of the judiciary; for it must be remembered that the people act through the courts, as well as through the executive or the Legislature." *Id.*

Relatedly, Minnesota's "[g]overnment is instituted for the security, benefit and protection of the people, in whom all political power is inherent," Minn. Const. art. I, § 1. The state constitution also guarantees that "[e]very person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws." Minn. Const. art. I, § 8. These clauses are not just "a string of glittering generalities." *Rhodes v. Walsh*, 57 N.W. 212, 213 (Minn. 1893). They mean that "[t]he exercise of official . . . power" must be "enforced within the constitutional restrictions, and it should pause when the danger line is reached, and the life, liberty, or property of the citizen becomes thereby imperiled." *Id.*; *see also State v. Lindquist*, 869 N.W.2d 863, 873 (Minn. 2015) ("The right to a remedy for wrongs is 'a fundamental concept of [Minnesota's] legal system.'" (citation omitted)).

Consistent with the Minnesota Constitution's express protection of the judiciary's role in adjudicating rights and ensuring remedies, Minnesota Courts take a broad view of justiciability. For example, mootness in Minnesota courts "is not 'a mechanical rule that is automatically invoked whenever the underlying dispute between the parties is settled or otherwise resolved'; it is 'a flexible discretionary doctrine.'" *Snell v. Walz*, 985 N.W.2d 277, 284 (Minn.

2023) (quoting *Dean v. City of Winona*, 868 N.W.2d 1, 4 (Minn. 2015)). Instead, "courts may consider a moot issue when it is 'functionally justiciable' and an important matter of 'statewide significance' that requires immediate decision." *Id.* (quoting *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984)). By contrast, mootness under the federal constitution is jurisdictional. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90 (2013) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006)).

Standing, likewise, is a flexible, prudential doctrine under the Minnesota Constitution. As this Court very recently emphasized, Minnesota "is not bound by the standing constraints of Article III of the United States Constitution." *Warren*, 2026 WL 2249009, at *7 n.7 (citing *Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 221 N.W.2d 162, 165 (Minn. 1974)). While "the presence of a justiciable controversy [i]s essential to [courts'] exercise of jurisdiction," *Schowalter v. State*, 822 N.W.2d 292, 298 (Minn. 2012), "a justiciable controversy does not require 'such an actual right of action in one party against the other as would justify a granting of consequential relief.'" *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 309 (Minn. 2017) (quoting *Minneapolis Fed'n of Men Tchrs., Loc. 238, A.F.L. v. Bd. of Ed. of City of Minneapolis*, 56 N.W.2d 203, 205 (Minn. 1952)). On the contrary, a court can weigh in where there is "'a right on the part of the complainant to be relieved of an uncertainty and

insecurity arising out of an actual controversy with respect to his rights, status, and other legal relations with an adversary,' even though 'the *status quo* between the parties has not yet been destroyed or impaired.'" *Id.* (quoting *Minneapolis Fed'n of Men Tchrs.*, 56 N.W.2d at 205).

Minnesota's mootness and controversy doctrines reflect the unremarkable fact that the state's justiciability doctrines are responsive to its constitutional guarantees of three robust, independent branches, a government constituted by and for the people, and an individual right to a remedy. Minnesota's political question doctrine should also reflect those constitutional principles and be defined narrowly in service of judicial vindication of rights.[4]

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[4] This backdrop of broad justiciability aligns with Housing First and other amici's argument that the Minnesota Uniform Declaratory Judgment Act ("Act") does not require an independent cause of action. The Act plainly enables "[a]ny person . . . whose rights, status, or other legal relations are affected by [certain forms of state action] . . . [to] obtain a declaration of [their] rights, status, [and] other legal relations." MINN. STAT. § 555.02.

The ACLU of Minnesota regularly invokes the Act to obtain relief for its clients and therefore supports Housing First and other amici's defense of the Act as a way for Minnesotans to vindicate their rights. *See, e.g.*, *Esparza v. Nobles County*, No. 07-CV-18-751, slip op. at 7 (Minn. Dist. Ct. Blue Earth Cnty. Jan. 30, 2020) (granting declaratory relief requiring probable cause before a person can be transferred from state to ICE custody); *OutFront Minnesota v. Piper*, No. 62-CV-15-7501, 2016 WL 11898980, at *19 (Minn. Dist. Ct. Ramsey Cnty. Nov. 14, 2016) (finding in declaratory action that a state statute excluding gender affirming care from public-assistance benefits for indigent persons violated the equal protection clause of the Minnesota Constitution); *Corey-Gruenes v. Freeborn Cnty.,* No. 24-CV-25-2086 (Minn.

C. Similarly situated state courts have declined to adopt the federal political question doctrine.

The decisions of other state supreme courts also demonstrate that, if anything, Minnesota's political question doctrine should be narrowed rather than expanded.[5] Several of those decisions have declined to adopt the federal political question doctrine—opting instead for a narrowly tailored doctrine rooted in state constitutional principles and precedent.[6] And two of those

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Dist. Ct. Freeborn Cnty. Dec. 19, 2025) (pending case seeking declaratory judgment that county's agreement with ICE pursuant to Section 287(g) of the Immigration and Nationality Act is ultra vires and outside the scope of its legal authority); *L.S. v. Detroit Lakes Pub. Sch. Dist.*, No. 03-CV-26-1886 (Minn. Dist. Ct. Becker Cnty. Sept. 22, 2026) (pending case seeking declaratory judgment that school board resolution banning rainbow stickers, posters, flags, and buttons violates the free speech and equal protection clauses of the Minnesota Constitution).

[5] This Court has cited other state supreme courts for persuasive precedent on political questions. *See, e.g.*, *Cruz-Guzman v. State*, 916 N.W.2d 1, 12 (Minn. 2018) (citing cases from West Virginia, Connecticut, and Kentucky); *In re McConaughy*, 119 N.W. 408, 417 (Minn. 1909) (citing cases from Wisconsin, Kansas, and Illinois).

[6] Other such states include Montana, New Mexico, Oklahoma, South Dakota, Virginia, West Virginia, California, Massachusetts, New York, and Pennsylvania. *See Larson v. State By & Through Stapleton*, 434 P.3d 241, 252 n.6 (Mont. 2019); *Mutz v. Mun. Boundary Comm'n*, 688 P.2d 12, 19 (N.M. 1984); *Okla. Educ. Ass'n v. State ex rel. Okla. Legislature*, 158 P.3d 1058 (Okla. 2007); *Davis v. State*, 804 N.W.2d 618, 641 (S.D. 2011); *Commonwealth v. Cnty. Bd. of Arlington Cnty.*, 232 S.E.2d 30, 44 (Va. 1977); *Jefferson Cnty. Found., Inc. v. W. Va. Econ. Dev. Auth.*, 875 S.E.2d 162, 172 (W. Va. 2022); *Schabarum v. Cal. Legislature*, 70 Cal. Rptr. 2d 745 (1998); *Backman v. Sec'y of the Com.*, 441 N.E.2d 523, 527 (Mass. 1982); *N.Y. State Inspection, Sec. & L. Enf't Emps.,*

decisions, by supreme courts in Wyoming and Colorado, are particularly instructive. Notably, the separation-of-powers provisions of those states' constitutions are almost identical to that of Minnesota's. *See* Minn. Const. art. III; Wyo. Const. art. II; Colo. Const. art. III.

In *State v. Campbell County School District*, the Wyoming Supreme Court undertook a lengthy analysis of the political question doctrine. 32 P.3d 325, 333 (Wyo. 2001) (finding the doctrine inapplicable to school funding actions). It held, in no uncertain terms, that "[t]he federal doctrine of nonjusticiable political question, as discussed and applied in *Baker* and later federal decisions, has no relevancy and application in state constitutional analysis." *Id.* at 334. Instead, considering how to apply separation-of-powers principles to disputes that implicate the legislature and political process, the court explained: "When insufficient action in the legislative process occurs, judicial monitoring in the remediation phase can help check political process defects . . . . When these defects lead to continued constitutional violations, judicial action is entirely consistent with separation of powers principles and the judicial role." *Id.* at 332–33 (internal citation omitted).

Dist. Council 82, AFSCME, AFL-CIO v. Cuomo, 475 N.E.2d 90, 93 (N.Y. 1984); *William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 170 A.3d 414, 439 (Pa. 2017).

The Wyoming Supreme Court went on to describe the widespread criticisms of the federal political question doctrine with quotes from Justice Brennan and Professors Alexander Bickel, Erwin Chemerinsky, and Robert B. Keiter. The criticisms range from the confusing nature of the doctrine, to the difficulty in applying the *Baker* factors in a uniform or principled way, to its inapplicability to state courts more generally. As the court explained, "[l]eading scholars debate whether the political question doctrine even exists, its wisdom and validity, and its scope and rationale." *Id.* at 334 (citations omitted).

The Colorado Supreme Court reached a near-identical conclusion when it considered the federal political question doctrine. *See Lobato v. State*, 218 P.3d 358, 370 (Colo. 2009) (declining to find that the adequacy of the state's education financing system is a nonjusticiable political question). The court noted that while it "has cited or applied the *Baker* justiciability analysis only in rare circumstances," it "has never invoked this test to preclude judicial review of a statute's constitutionality." *Id.* at 368. And the court emphasized the "[i]mportant differences [that] exist between federal and state constitutional law on judicial power and the separation of powers." *Id.* at 370. Notably, the court also expressed concern that "[a] ruling that the plaintiffs'

claims are nonjusticiable would give the legislative branch unchecked power, potentially allowing it to ignore its constitutional responsibility." *Id.* at 372.

CONCLUSION

Because the Minnesota Constitution guarantees the state's citizens three vigorous branches of government and an opportunity to vindicate their rights, amici respectfully ask this Court to find that Housing First's claim does not implicate the political question doctrine and reject any invitation to expand that doctrine.

Respectfully submitted,

Dated: October 2, 2026

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