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September 9, 2025

The Honorable Christy Hormann
Freeborn County Courthouse
411 S. Broadway
Albert Lea, MN 56007

RE: *Jacob Schlichter, The Smoking Tree LLC v. City of Albert Lea, Albert Lea City Council*, Court File No. 24-CV-25-1434

Dear Judge Hormann:

We represent Respondents City of Albert Lea, Albert Lea City Council in the above-referenced case and write in response to the correspondence you received on September 8, 2025, from counsel for Petitioners Jacob Schlichter and The Smoking Tree LLC. This letter, and associated filings, request the Court issue a peremptory writ of mandamus. For the reasons set forth below, the request for a peremptory writ should be denied. If the Court is inclined to grant any mandamus relief, Respondents respectfully request issuance of an alternative writ only, with a schedule permitting Respondents to answer and assemble the record.

I. THE COURT LACKS SUBJECT MATTER JURISDICTION TO ISSUE ANY WRIT OF MANDAMUS, WHETHER PEREMPTORY OR ALTERNATIVE.

“Mandamus is an extraordinary legal remedy awarded, not as a matter of right, but in the exercise of sound judicial discretion and upon equitable principles.” *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. App. 1995). To obtain mandamus relief, a petitioner must show the defendant:

- (1) failed to perform an official duty clearly imposed by law;
- (2) that, as a result, the petitioner suffered a public wrong specifically injurious to the petitioner; and,
- (3) that there is no other adequate legal remedy.

N. States Power Co. v. Minnesota Metro. Council, 684 N.W.2d 485, 491 (Minn. 2004).

A. Petitioners have an adequate remedy at law – their parallel certiorari appeal – so mandamus does not lie and the Court lacks subject matter jurisdiction.

It is well-established under Minnesota law, “[w]hen a statutory right to review a municipal body's quasi-judicial decision is lacking, certiorari is the *exclusive* method to seek judicial review.” *Reetz v. City of Saint Paul*, 956 N.W.2d 238, 243 (Minn. 2021)

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(emphasis added); see also *Plunkett v. First Nat. Bank of Austin*, 262 Minn. 231, 246, 115 N.W.2d 235, 245 (1962); *Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992) (holding “writ of certiorari was *the only mechanism* by which [petitioner] could obtain judicial review.”) (emphasis added); and, *Cnty. of Washington v. City of Oak Park Heights*, 818 N.W.2d 533, 542 (Minn. 2012) (concluding “certiorari review under Minn. Stat. ch. 606 provides the exclusive method for review of the decision.”).

Thus, if a party attempts to seek a writ of mandamus, when certiorari is the exclusive remedy, the “district court lacks jurisdiction to issue a writ of mandamus” because “an adequate legal remedy exists.” *Lund v. Minnesota State Colleges & Universities*, 615 N.W.2d 420, 423 (Minn. App. 2000); see also *Silver Bay Area Citizens Concerned for Quality Educ. v. Lake Superior Sch. Dist. No. 381*, 448 N.W.2d 92, 95–96 (Minn. App. 1989) (“As such, certiorari was an adequate remedy in this case and the district court lacked jurisdiction to issue a writ of mandamus.”).

Petitioners acknowledge they “have obtained a writ of certiorari from the Minnesota Court of Appeals and are litigating that case” to challenge the City Council’s action. *Petition* at ¶41. Accordingly, because “certiorari [is] available . . . the district court lack[s] jurisdiction to issue a writ of mandamus.” *Lund*, 615 N.W.2d at 424 (Minn. App. 2000).

B. The Court should dismiss the Petition consistent with its obligations to review the writ for compliance.

In Minnesota, mandamus is now a statutory remedy. “The proper procedure for the conduct of mandamus proceedings is governed entirely by” Minnesota Statutes Ch. 586, “which must be followed in order to effect a valid issuance of a writ of mandamus.” *State v. Anderson*, 239 Minn. 144, 146, 58 N.W.2d 257, 259 (1953). “It is elementary” and “well-settled” under Minnesota law, an action governed by statute requires strict compliance with the statute for the Court to obtain and exercise jurisdiction. *State by Lord v. Radosevich*, 82 N.W.2d 70, 72 (Minn. 1957); *Land O’Lakes Dairy Co. v. Hintzen*, 31 N.W.2d 474, 476 (Minn. 1948). Mandamus is no different, and a district court lacks jurisdiction to issue a valid writ in “the absence of a justiciable controversy.” *State ex rel. Smith v. Haveland*, 223 Minn. 89, 94–95, 25 N.W.2d 474, 478 (1946); see also *Friends of Animals & Their Env’t (FATE) v. Nichols*, 350 N.W.2d 489, 491–92 (Minn. App. 1984) (“To obtain a writ of mandamus, petitioner must meet the statutory standing requirements...”).

Appellate courts in Minnesota make clear a district court faced with a mandamus petition has an obligation to screen the petition for statutory compliance: “We emphasize that a district court must still take care to follow the procedural directives of the mandamus statute, including the requirement that an alternative writ ‘state concisely the facts showing the obligation of the defendant to perform the act, and the

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defendant's omission so to do.' Minn. Stat. § 586.03." *Ly v. Harpstead*, 16 N.W.3d 788, 806 n.10 (Minn. App. 2025), *review denied* (Apr. 15, 2025).

Here, this duty to screen a mandamus petition warrants dismissal of the petition in its entirety for lack of subject matter jurisdiction. *Lund*, 615 N.W.2d at 423; *Silver Bay*, 448 N.W.2d at 95–96. Yet, to the extent the Court is uncomfortable with this fact, at most the Court should issue an alternative writ under Minn. Stat. § 586.03 and set a schedule, which permits Respondents to file a Motion to Dismiss, and fully brief the absence of the Court's subject matter jurisdiction, among other issues with Petitioners' request.

An alternative writ "functions essentially like a summons in a typical civil proceeding, allowing a defendant to respond to the mandamus petitioner's allegations." 14 *Cherrywood, LLC v. City of N. Oaks*, 993 N.W.2d 287, 293 (Minn. App. 2023), *review denied* (July 9, 2024). Upon issuance of an alternative writ of mandamus, "the defendant in a mandamus proceeding may elect to move to dismiss or answer the petition. If the defendant moves to dismiss and that motion is denied, the defendant may then answer in accordance with the Minnesota Rules of Civil Procedure." *Ly*, 16 N.W.3d at 807.

A peremptory writ, on the other hand, may only issue "[w]hen the right to require the performance of the act is clear, and it is apparent that no valid excuse for nonperformance can be given." Minn. Stat. § 586.04.

Applied here, these principles require denial of a peremptory writ and, at most, consideration of an alternative writ with a responsive pleading.

In sum, Petitioners possess an adequate remedy at law via their certiorari appeal, which bars any writ of mandamus, but especially a peremptory writ of mandamus. Accordingly, the Court should dismiss the petition, or in the alternative, the Court should issue an alternative writ only and set a reasonable schedule for Respondents to file a dispositive motion and, if necessary, answer. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Kuboushek', with a stylized, cursive script.

Jason J. Kuboushek