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**No. A20-1264
State of Minnesota
In Supreme Court**

JENNIFER SCHROEDER, ELIZER EUGENE DARRIS, CHRISTOPHER JAMES
JECEVICUS-VARNER, AND TIERRE DAVON CALDWELL,

Plaintiffs-Petitioners,

v.

MINNESOTA SECRETARY OF STATE STEVE SIMON, IN HIS OFFICIAL
CAPACITY,

Defendant-Respondent.

**BRIEF OF THE AMERICAN PROBATION AND PAROLE ASSOCIATION AS
AMICUS CURIAE SUPPORTING APPELLANTS**

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STATEMENT OF AMICUS CURIAE

The American Probation and Parole Association (“APPA”) respectfully submits this brief as amicus curiae in support of Plaintiffs-Appellees.¹ The APPA is an international association of professionals who work in probation, parole, and community-based corrections. The APPA is a non-profit organization founded in Houston, Texas, in 1974 and is now based in Lexington, Kentucky. The APPA’s membership in the United States includes more than 1,700 individual probation or parole officers, as well as more than 200 state and local probation and parole agencies, who together employ more than 25,000 probation and parole professionals. All told, the APPA represents the interests of the probation and parole officers who supervise and support more than five million individuals on probation and parole.

In Minnesota, the APPA’s members include the Minnesota Association of Community Corrections Act Counties,² which is an association of 35 counties that operate corrections programming, and the Minnesota Association of County Probation Officers, which is an association of hundreds of probation and parole officers.

¹ Counsel certifies that this brief was authored by the undersigned counsel for *amicus curiae*, the American Probation and Parole Association. No person or entity other than *amicus curiae* made any monetary contribution to the preparation or submission of this brief.

² “MACCAC” is an association of counties in Minnesota who operate corrections programming in their communities pursuant to the provisions of the Minnesota Community Corrections Act of 1973, Minn. Stat. ch. 401.

The APPA provides training, education, and technical assistance to its members in support of its mission to promote a fair and effective system of community justice for individuals in the parole and probation system. The APPA conducts two major conferences each year; publishes a quarterly journal, *Perspectives*, dedicated to issues of concern to the probation and parole community; and conducts both on-site and online training programs for its members on a year-round basis.

As part of its work, the APPA has focused on ways in which the parole and probation systems can be improved to better reintegrate offenders back into society. The APPA has found that restoring the right to vote to ex-offenders who have been released from incarceration is of critical importance to that mission. As detailed below, providing released offenders with the right to vote gives them an important stake in the community, allows them to reintegrate as full-fledged members of the community rather than second-class citizens, allows them to teach their children the importance of voting, and provides many other community benefits. Accordingly, in 2007, the APPA adopted a formal resolution advocating for the full “restoration of voting rights upon completion of an offender’s prison sentence,” and for “no loss of voting rights while on community supervision.”³ In addition, the Executive Director of the APPA has testified before

³ Am. Prob. & Parole Ass’n, *Resolution Supporting Restoration of Voting Rights* (Sept. 2007), https://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IB_Resolution&wps_key=3c8f5612-9e1c-4f60-8e8b-1bf46c00138e.

Congress on the importance of restoring voting rights.⁴ The APPA has also filed an amicus brief in several other cases in support of restoring voting rights to ex-offenders.⁵

The APPA thus has deep knowledge of the parole and probation systems in Minnesota and elsewhere around the country, and a strong commitment to the importance of voting rights to the reintegration of ex-offenders into the community. In light of this, the APPA respectfully submits this Brief to emphasize the importance of restoring the right to vote to individuals upon their release from prison and to explain how arbitrarily disenfranchising citizens following completion of their sentence, probation, and/or parole does not serve—but, in fact, undermines—the rehabilitation and reintegration of offenders and negatively impacts their communities.

I. STATEMENT OF THE CASE AND FACTS

The APPA adopts the Statement of the Case and Statement of the Facts set forth in the Brief of Petitioners Jennifer Schroeder, et al.

A. INTRODUCTION

This Brief will focus on the devastating practical impact of Minnesota’s policies and practices regarding felon disenfranchisement. As shown below, the disenfranchisement of ex-offenders undermines their successful reintegration into the community, and harms

⁴ *Democracy Restoration Act of 2009: Hearing on H.R. 3335 Before the Subcomm. on the Constitution, Civil Rights & Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. 59 (2010) (statement of Carl Wicklund, Executive Director, American Probation & Parole Association) [hereinafter *Hearing on H.R. 3335*].

⁵ See *Hand v. Desantis*, 946 F.3d 1272 (11th Cir. 2020); *Hopkins v. Hosemann*, No. 19-60662 (5th Cir. appeal filed Sept. 3, 2019); *Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010); *Voice of the Ex-Offender v. State*, 249 So. 3d 857 (La. Ct. App. 2018).

them, their families, their children, and their communities. The exercise of the right to vote entails far more than the simple act of casting a ballot. Voting is one of the basic foundations of citizenship and provides a tangible pathway to responsible civic engagement for ex-offenders and their families. Denying released offenders this basic right affects each of them on a personal level: it takes away their full dignity as citizens and separates them from the rest of their community—effectively reducing them to second-class citizens. What is more, denial of this right affects everyone else in their communities by making their reintegration into society more difficult, increasing recidivism and social ostracism, lowering community participation in the political process, and hindering effective policing.

II. ARGUMENT

A. ARBITRARY DISENFRANCHISEMENT OF EX-OFFENDERS UNDERMINES THEIR SUCCESSFUL REINTEGRATION AND HARMS THEIR COMMUNITIES

i. The Impact of Minnesota’s Disenfranchisement Practices

The Minnesota Constitution automatically disenfranchises any individual who has been convicted of a felony, “unless restored to civil rights.” Minn. Const. art. VII, § 1. In turn, the process for the restoration of these civil rights is governed by statute. *See* Minn. Stat. § 609.165 (originally enacted as Criminal Code of 1963, 1963 Minn. Laws 1198). Specifically, Subdivision 1 of § 609.165 restores voting rights automatically upon “discharge[.]” of the criminal sentence, something which Subdivision 2 states may occur “by order of the court following stay of sentence or stay of execution of sentence” or “upon expiration of sentence.” *Id.* But while Minnesota is ahead of some other states in at least providing a mechanism for the automatic restoration of voting rights, this statutory scheme

still leaves the thousands of Minnesotans—those who live in the community while on probation, parole, or supervised release—in limbo.

Here in Minnesota, approximately 64,700 people, or 1.6% of the voting age population, are disenfranchised, the vast majority of whom are either on parole (8,100) or probation (46,950).⁶ As is discussed in detail in the Brief of Petitioners Jennifer Schroeder, et al., over the last fifty years, the number of persons living in Minnesota communities while on probation or parole has increased exponentially. And, importantly, while Minnesota’s felon disenfranchisement scheme affects all ethnicities, it has had a particularly pernicious effect on people of color. For example, Black and Latinx Minnesotans are disproportionately disenfranchised: 7.24% of voting age Black Minnesotans and 3.71% of Latinx Minnesotans are disenfranchised.⁷ With all this in mind, the arbitrariness of the Minnesota law is readily apparent.

ii. Arbitrarily Disenfranchising Citizens Prevents Ex-Offenders from Fully Rejoining Society

It is well-documented that civic engagement plays a vital role in the successful transformation from prisoner to citizen.⁸ When an individual identifies as a responsible

⁶ See The Sentencing Project, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction* 16, tbl.3 (Oct. 15, 2020) <https://www.sentencingproject.org/wp-content/uploads/2020/10/Locked-Out-2020.pdf#page=16>.

⁷ *Id.* at 17–18, tbl.4, 5. There are approximately 2,150 disenfranchised Black Minnesotans on parole and 7,705 on probation and 586 disenfranchised Latinx Minnesotans on parole and 2,797 on probation. *Id.*

⁸ Christy A. Visher & Jeremy Travis, *Transitions from Prison to Community: Understanding Individual Pathways*, 29 Ann. Rev. Soc. 89, 97 (2003).

citizen, including by participating in volunteer work, community involvement, and voting, it benefits his or her transition back into the community:

People who are a part of the decision making process not only have a greater investment in the decisions, but a greater investment in society as well. . . . Those who participate in the democratic process have a greater investment in the resulting decisions, and more importantly, an investment in preserving that process.⁹

Indeed, the “desire to ‘be productive and give something back to society’” is critical to full reintegration into the community.¹⁰ The restoration of voting rights for ex-offenders sends a message that they have repaid their debt to society and are being welcomed back as valuable members of their communities.

This is borne out by recent events in Virginia, where former Governor Terry McAuliffe restored the voting rights of more than 170,000 formerly incarcerated citizens between 2013 and 2018.¹¹ Since then, many of these individuals voted for the first time since their imprisonment, and their comments on that experience reflect the great personal and civic impact of their ability to participate in our democracy. LaVaughn Williams, who

⁹ Holona Leanne Ochs, “*Colorblind*” Policy in *Black and White: Racial Consequences of Disenfranchisement Policy*, 34 Pol’y Stud. J. 81, 89 (2006).

¹⁰ Christopher Uggen, Jeff Manza & Angela Behrens, ‘*Less Than the Average Citizen*’: Stigma, Role Transition and the Civic Reintegration of Convicted Felons, in *After Crime and Punishment: Pathways to Offender Reintegration* 263 (Shadd Maruna & Russ Immarigeon eds., 2004) (quoting Shadd Maruna, *Making Good: How Ex-convicts Reform and Rebuild Their Lives* (2001)).

¹¹ Laura Vozzella, *Va. Gov. McAuliffe Says He Has Broken U.S. Record for Restoring Voting Rights*, Wash. Post (Apr. 27, 2017), [goo.gl/XAP5uL](https://www.washingtonpost.com/news/energy-environment/wp/2017/04/27/va-gov-mcauliffe-says-he-has-broken-u-s-record-for-restoring-voting-rights/); Vann R. Newkirk II, *How Letting Felons Vote is Changing Virginia*, The Atlantic (Jan. 8, 2018), [https://bit.ly/2CTIpVO](https://www.theatlantic.com/ideas/archive/2018/01/how-letting-felons-vote-is-changing-virginia/).

had not voted in decades, said after voting, “I now felt like a citizen. I now felt like I will make a difference in some kind of way.”¹² Muhamad As-saddique Abdul-Rahman voted for the first time in his life at age 53, having been imprisoned for a felony at age 16. Abdul-Rahman explained: “[H]aving my right to vote back has made me feel whole as a human being.”¹³

Other states, including New York and Louisiana, have achieved similar goals through executive and legislative processes. In April 2018, former New York Governor Andrew Cuomo signed an Executive Order restoring voting rights to individuals on parole supervision.¹⁴ In May 2018, Louisiana enacted legislation automatically restoring voting rights to convicted felons who have been out of prison for five years, even if they remain on probation or parole.¹⁵

iii. Arbitrarily Disenfranchising Citizens Who Have Committed Felonies Harms Their Families and Communities

Preventing ex-offenders from voting also harms their families and their communities. Evidence suggests that when heads of households are disenfranchised, the

¹² Sam Levine, *In Virginia, Ex-Felons Voted for the First Time After Regaining Their Rights*, Huffpost (Nov. 8, 2017), goo.gl/RNGZ2T.

¹³ Camila DeChalus, *In Virginia, Ex-Felons Find Empowerment in the Voting Booth*, CNN Politics (Nov. 5, 2016, 5:18 PM), goo.gl/78qr2E.

¹⁴ N.Y. Exec. Order No. 181, *Restoring the Right to Vote for New Yorkers on Parole* (Apr. 18, 2018), <https://on.ny.gov/2N6sUft>.

¹⁵ Melinda Deslatte, *Voting Rights Bill for Some Louisiana Felons Wins Passage*, U.S. News & World Report (May 17, 2018), <https://bit.ly/2tIOe1N>; Office of the Governor of La., *Notice: Bills Signed, Vetoed by Gov. Edwards* (June 5, 2018), <https://bit.ly/2tKPNw6>.

level of civic engagement for the entire family drops.¹⁶ In many cases, voting is an experience that is passed on from parent to child. Parents often take their children into the voting booth at young ages, exposing the children to their first act of civic engagement. Research confirms that “[a] parent’s electoral participation plays a significant role in determining whether his child will become civically engaged.”¹⁷ One study found that a parent’s political participation had the greatest effect—more than any other factor—on a child’s later decision to vote once eligible.¹⁸

Moreover, the effect of disenfranchisement extends further than the ex-offender’s household; it affects other members of the community as well.¹⁹ Studies have found that where there are restrictions on the right to vote for some members of a community, overall voter participation drops, “even among people who are legally eligible to vote.”²⁰ For example, one study found that in the 1996 and 2000 presidential elections, there was lower

¹⁶ Erika Wood, Brennan Ctr. for Justice, *Restoring the Right to Vote* 13 (2009), <https://goo.gl/Gr5pMG>.

¹⁷ *Id.*; see also Eric Plutzer, *Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood*, 96 *Am. Pol. Sci. Rev.* 41, 43 (2002).

¹⁸ Plutzer, *supra* note 17, at 48.

¹⁹ See Wood, *supra* note 16, at 12; Martha Guarnieri, *Civil Rebirth: Making the Case for Automatic Ex-Felon Voter Restoration*, 89 *Temp. L. Rev.* 451, 480-81 (2017) (“Voting and civic participation are connected with prosocial behavior, such as participation in stable work and family relationships.”).

²⁰ Marc Mauer, *Disenfranchising Felons Hurts Entire Communities*, FOCUS, May/June 2004, at 5, goo.gl/zY6w5f; see also Arman McLeod, et al., *The Locked Ballot Box: The Impact of State Criminal Disenfranchisement Laws on African American Voting Behavior and Implications for Reform*, 11 *Va. J. Soc. Pol’y & L.* 66, 80 (2003).

voter turnout in states with the most restrictive criminal disenfranchisement laws, and higher turnout in states with less restrictive criminal disenfranchisement.²¹

iv. Granting Ex-Offenders the Right to Vote Enhances Public Safety

Finally, in addition to helping individuals re-enter their communities, reinstating the right to vote is strongly tied to lower recidivism rates and increased public safety.²² Research suggests that there are “consistent differences between voters and non-voters in rates of subsequent arrests, incarceration, and self-reported criminal behavior.”²³ One study found that former offenders who voted were half as likely to be re-arrested than those who did not.²⁴ Another study found that states that permanently disenfranchise ex-offenders experience significantly higher rates of repeat offenses than those that do not.²⁵ Voter disenfranchisement serves “only to further alienate and isolate a group of individuals at a time when they are trying to re-integrate into society.”²⁶ Indeed, disenfranchisement

²¹ McLeod, *supra* note 20, at 77.

²² Amy Heath, *Cruel and Unusual Punishment: Denying Ex-Felons the Right to Vote*, 25 *Am. U. J. Of Gender, Soc. Pol’y & L.* 327, 356 (2017).

²³ Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 *Colum. Hum. Rts. L. Rev.* 193, 213 (2004).

²⁴ *Id.* at 205.

²⁵ Guy Padraic Hamilton-Smith & Matthew Vogel, *The Ballot as Bulwark: The Impact of Felony Disenfranchisement on Recidivism* 1 (Aug. 30, 2011) [hereinafter *The Ballot as Bulwark*], <https://goo.gl/jGTmcm>.

²⁶ Guy Padraic Hamilton-Smith & Matthew Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 *La Raza L. J.* 407, 413 (2015).

creates a “perpetual criminal underclass unable to fully rejoin society after their sentence is served,” which only increases the potential for an increase in criminal activity.²⁷

B. PROBATION AND PAROLE OFFICERS—THOSE CLOSEST TO UNDERSTANDING THE INTERESTS AT STAKE—ADVOCATE FOR GRANTING THE FRANCHISE TO OFFENDERS

Probation and parole officers are the state officials most directly responsible for reintegrating offenders back into society after their term of imprisonment. Among these officers, there is a growing consensus that voting plays an important role in the reintegration process.²⁸ In addition to the APPA, which passed its resolution in support of restoring voting rights in 2007, other organizations including the American Correctional Association,²⁹ the National Black Police Association,³⁰ and the Association of Paroling Authorities International,³¹ to name a few, have passed their own resolutions. And as the American Correctional Association maintains in its resolution, any ban prohibiting an individual from voting, after successful discharge from correctional supervision is

²⁷ *The Ballot as Bulwark*, *supra* note 25, at 21.

²⁸ *See Hearing on H.R. 3335*, *supra* note 4, at 60.

²⁹ Am. Corr. Ass’n, *Public Correctional Policy on Restoration of Voting Rights for Felony Offenders (No. 2005-3)*, in *Public Correctional Policies* 87 (Jan. 27, 2010).

³⁰ Nat’l Black Police Ass’n, *Resolution on Restoring Voting Rights* (June 1, 2008), goo.gl/Z4uVPk.

³¹ Ass’n of Paroling Auths. Int’l, *Resolution on Restoring Voting Rights* (Apr. 30, 2008), <http://www.apaintl.org/resolutions.html>.

“contradictory to the goals of a democracy, the rehabilitation of felons, and their successful reentry to the community.”³²

This position has been echoed and reinforced by prosecutors, police officers, and other officials intimately familiar with the parole and probation systems. “Annually, we spend millions to rehabilitate offenders and bring them back into society only to let an outdated system push them back with one hand while we pull with the other,” argues one former prosecutor from Kentucky.³³ The former President of the Police Executive Research Forum explains that it is “better to remove any obstacles that stand in the way of offenders resuming a full, healthy productive life.”³⁴ And the former President of the Police Foundation argues that, rather than treating ex-offenders as a “pariah class,” “we need to bring people back as whole citizens” in order to have “effective policing.”³⁵

In his 2004 State of the Union address, then-President George W. Bush declared that “America is the land of second chances, and when the gates of the prison open, the path ahead should lead to a better life.”³⁶ The experiences of probation and parole officials, who are deeply involved in ensuring that the State’s interests are enforced, show the

³² See Am. Corr. Ass’n, *supra* note 29, at No. 2005-3.

³³ R. David Stengel, *Let’s Simplify the Process for Disenfranchised Voters*, Cent. Ky. News-J. (Jan. 28, 2007), <https://bit.ly/2Kia8Ea>.

³⁴ See Wood, *supra* note 16, at 10.

³⁵ *Id.*

³⁶ President George W. Bush, *State of the Union Address*, White House Archives (Jan. 20, 2004), goo.gl/dhEiVR.

importance of granting voting rights to ex-offenders and the ineffectiveness of disenfranchising them.

III. CONCLUSION

For the foregoing reasons, this Court should declare that disenfranchising persons on probation, parole, or supervised release is unconstitutional.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limitations of Minn. R. App. P. 132.01 subd. 3(a).
This brief was prepared with proportional font, using Microsoft Word, which reports that
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/s/ Sarah E. Pruett
Sarah E. Pruett