
**STATE OF MINNESOTA
IN SUPREME COURT**

JENNIFER SCHROEDER, *et al.*,
PETITIONERS,

v.

MINNESOTA SECRETARY OF STATE STEVE SIMON,
in his official capacity,
RESPONDENT.

**BRIEF FOR AMICI CURIAE THE DISTRICT OF COLUMBIA, CALIFORNIA,
CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, MAINE, MARYLAND,
MASSACHUSETTS, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK,
RHODE ISLAND, VERMONT, VIRGINIA, AND WASHINGTON
IN SUPPORT OF PETITIONERS**

KATHERINE M. SWENSON

(No. 0389280)

AMRAN A. FARAH

(No. 0395354)

Greene Espel PLLP

222 S. Ninth Street, Suite 2200

Minneapolis, MN 55402

(612) 373-8389

kswenson@greeneespel.com

afarah@greeneespel.com

*Attorneys for Amicus Curiae
the District of Columbia*

KARL A. RACINE

Attorney General for the District of Columbia

LOREN L. ALIKHAN

Solicitor General

CAROLINE S. VAN ZILE

Principal Deputy Solicitor General

SAMSON J. SCHATZ

Assistant Attorney General

Office of the Solicitor General

Office of the Attorney General

400 6th Street, NW, Suite 8100

Washington, D.C. 20001

(202) 727-6287

loren.alikhan@dc.gov

Tara P. Kalar
World Without Genocide
875 Summit Avenue
Saint Paul, MN 55105

***Amici ISALAH, World Without
Genocide***

Anthony B. Sanders
Institute for Justice
520 Nicollet Mall, Suite 550
Minneapolis, MN 55402

Anya Bidwell
Adam Shelton
Institute for Justice
901 North Glebe Road, Suite 900
Arlington, VA 22203

Amicus Institute for Justice

Joseph Plumer
Plumer Law Office
9352 North Grace Lake Road Southeast
Bemidji, MN 56601

Riley F. Plumer
Hobbs, Straus, Dean & Walker, LLP
1899 L Street NW, Suite 1200
Washington, D.C. 20036

***Amicus Red Lake Band of
Chippewa Indians***

Jeffrey A. Wald
Assistant Ramsey County Attorney
Ramsey County Attorney's Office
345 Wabasha Street North, Suite 120
Saint Paul, MN 55102

Amicus Ramsey County Attorney's Office

Sarah E. Pruett
Jenna K. Johnson
Ballard Spahr LLP
80 South Eighth Street
2000 IDS Center
Minneapolis, MN 55402-2119

Louis P. Petrich
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2915

***Amicus The American Probation and Parole
Association***

Anthony G. Edwards
City of Saint Paul
Office of the City Attorney
750 City Hall and Court House
15 West Kellogg Boulevard
Saint Paul, MN 55102

James R. Rowader, Jr.
City of Minneapolis
Office of the City Attorney
350 South Fifth Street
City Hall Room 210
Minneapolis, MN 55415

***Amici City of Saint Paul, City of
Minneapolis***

Henry A. Blair, III
Mitchell Hamline School of Law
875 Summit Avenue
Saint Paul, MN 55105

Marc A. Al
Andrew J. Pieper
Andrew P. Moratzka
Riley A. Conlin
Emily C. Atmore
Stoel Rives LLP
33 South Sixth Street, Suite 4200
Minneapolis, MN 55402

Amicus Volunteers of America

Julie A. Ebenstein
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

Craig S. Coleman
Jeffrey P. Justman
Thomas K. Pryor
Kirsten L. Elfstrand
Michael M. Sawers
Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Teresa J. Nelson
David P. McKinney
America Civil Liberties Union of
Minnesota
2828 University Avenue Southeast
Suite 160
Minneapolis, MN 55414

***Appellants Jennifer Schroeder,
Christopher Jecevicus-Varner, and
Tierre D. Caldwell***

***Amici League of Women Voters
Minnesota, Common Cause,
Minnesota Second Chance Coalition***

Bradford W. Colbert
Legal Assistance to Minnesota Prisoners
Legal Practice Center
875 Summit Avenue
Saint Paul, MN 55105

Joshua B. Esmay
Legal Rights Center
1611 Park Avenue South
Minneapolis, MN 55404

Emily H. Turner
All Square
4047 Minnehaha Avenue
Minneapolis, MN 55406

***Amici Legal Assistance to Minnesota
Prisoners, Amicus Legal Rights Center, and
All Square***

Mark R. Bradford
Maria P. Brekke
Bassford Remele
100 South 5th Street, Suite 1500
Minneapolis, MN 55402

Amicus Minnesota Black Lawyers

Jason B. Marisam
Angela Behrens
Office of the Attorney General
445 Minnesota Street, Suite 1100
Saint Paul, MN 55101

Respondent Steve Simon

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IDENTITY AND INTEREST OF THE AMICI CURIAE¹

Amici curiae the District of Columbia, California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Rhode Island, Vermont, Virginia, and Washington (“Amici States”) submit this brief in support of petitioners. Felon disenfranchisement is the product of a patchwork of state laws, which vary widely. In recent years, however, a trend has emerged: based on doubts about the efficacy of disenfranchisement, states have begun moving away from broadly disenfranchising former felons. The District of Columbia, Maine, and Vermont do not restrict in any way the voting rights of convicted felons, including those currently in prison. Nat’l Conf. of State Legislatures, *Felon Voting Rights* (June 28, 2021).² An additional 21 states automatically restore voting rights to any felon not serving an incarceratory sentence or upon release from incarceration. *Id.*³

¹ The District of Columbia hereby certifies that its counsel authored this brief in whole, that no counsel for a party authored this brief in whole or in part, and that no person or entity other than the District has made a monetary contribution to the preparation or submission of this request.

² Available at <https://bit.ly/3y12S3N>. All websites were last visited on September 15, 2021.

³ Those states include California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, and Washington. Nat’l Conf. of State Legislatures, *supra*. Washington’s law goes into effect on January 1, 2022. Wash. Sec’y of State, *Elections: Felony Convictions and Voting Rights*, <https://bit.ly/3tPyk4F>. Louisiana also restores the right to vote to formerly convicted people, including those under community supervision, but not until five years after they have been released from incarceration. Christopher Uggen et al., The Sentencing Project, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction* 5 (Oct. 30, 2020), <https://bit.ly/3eOln3n>.

Still, an estimated 5.2 million people across the United States were barred from voting in the 2020 election cycle because of state laws that disenfranchise individuals who were convicted of felony offenses, including more than 55,000 Minnesotans on probation or supervised release. Christopher Uggen et al., *The Sentencing Project, Locked-Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction* 4, 16 (Oct. 30, 2020).⁴

“[O]n the whole,” according to recent survey data, “Americans are unsure of the goals of disenfranchisement.” Bruce E. Cain & Brett Parker, *The Uncertain Future of Felon Disenfranchisement*, 84 *Mo. L. Rev.* 935, 949 (2019). “[R]estoration of voting rights,” by contrast, can “provide[] a clear marker of reintegration and acceptance as a stakeholder in a community of law-abiding citizens.” Christopher Uggen & Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 *Am. Soc. Rev.* 777, 794 (2002). Recent state initiatives to expand the franchise—which range from repealing permanent disenfranchisement laws to instituting administrative systems that notify returning citizens of their rights—embrace the notion that allowing former felons to vote benefits both the returning citizens and the communities they rejoin.

Although the Amici States have reached different conclusions on how best to realize the benefits of felon re-enfranchisement, they share an interest in promoting civic participation and public safety by reintegrating former felons as full-fledged, productive

⁴ Available at <https://bit.ly/3eOln3n>.

members of their societies. The Amici States’ experiences expanding the franchise have been positive and underscore the benefits of restoring the right to vote to returning citizens. Moreover, the disproportionate impact of felon disenfranchisement laws on voters of color raises serious state constitutional and democratic concerns. Minnesota’s felon disenfranchisement law, Minn. Stat. § 609.165, which conditions restoration of voting rights on a former felon’s completion of probation, parole, or supervised release, is out of step with these important interests. The Amici States thus urge this Court to reverse the decision of the Minnesota Court of Appeals.

ARGUMENT

I. Minnesota Statutes § 609.165 Is Out Of Step With Recent Efforts By States To Expand The Franchise To Formerly Incarcerated Individuals.

Over the past 25 years, half of the states, including many of the Amici States, “have changed their laws and practices to expand voting access to people with felony convictions.” Uggen et al., *Locked-Out 2020*, *supra*, at 4; *see* Jean Chung, The Sentencing Project, *Voting Rights in the Era of Mass Incarceration: A Primer* 5-6 (July 28, 2021).⁵ These reform efforts include laws repealing lifetime disenfranchisement, allowing felons to vote while completing the terms of their probation or parole, eliminating requirements to pay court fines and fees, and providing information to returning citizens about their voting rights and voter registration. *See* Morgan McLeod, The Sentencing Project, *Expanding the Vote: Two Decades of Felony Disenfranchisement Reform* 3-4 (Oct. 2018).⁶

⁵ Available at <https://bit.ly/3xXQSzV>.

⁶ Available at <https://bit.ly/3lisbst>.

For example, the last handful of states to permanently disenfranchise individuals convicted of felonies have now done away with those bans. *See* Voting Restoration Amendment, Ballot Initiative 14-01 (Fla. 2018) (replacing permanent ban with a rule that restores voting rights upon completion of sentence); Andrew A. Green, *Felons Gain Right to Vote*, Balt. Sun (Apr. 25, 2007) (describing Maryland law restoring voting rights upon completion of sentence);⁷ L.B. 53, 99th Leg., 1st Sess. § 1 (Neb. 2005) (repealing lifetime disenfranchisement and automatically restoring voting rights two years after completion of sentence); A.B. 431, 80th Sess. § 3 (Nev. 2019) (automatically restoring voting rights of all felons upon release from prison); S.B. 204, 2001 Reg. Sess. § 2 (N.M. 2001) (replacing lifetime disenfranchisement with system that restores voting rights upon completion of one's sentence). Delaware also amended its laws to repeal permanent disenfranchisement except as to those who commit enumerated disqualifying felonies, and Wyoming lifted restrictions on the ability of felons convicted of nonviolent offenses to regain the right to vote upon completion of their sentences. *See* Del. Const. art. V, § 2; Del. Code Ann. tit. 15, § 6102-6103 (2020); H.B. 75, 64th Leg., 2017 Gen. Sess. § 1, 2017 Wyo. Sess. Laws 504.

Other states have restored the right to vote to some or all individuals living in their communities who are still under the supervision of the criminal justice system. Earlier this year, Connecticut, New York, and Washington passed laws restoring voting rights to all non-incarcerated former felons. S.B. 1202, 2021 Gen. Assemb., June Spec. Sess. § 98

⁷ Available at <https://bit.ly/3ltf9Zb>.

(Conn. 2021) (restoring voting rights to parolees; probationers' voting rights had previously been restored); S.B. 830B, 2021-2022 Reg. Sess. §§ 1-3 (N.Y. 2021) (restoring voting rights upon release from incarceration); H.B. 1078, 2021 Reg. Sess. § 1 (Wash. 2021) (restoring voting rights to those not in confinement, effective January 1, 2022). Additionally, California, Colorado, Louisiana, Maryland, New Jersey, and Rhode Island have variously restored voting rights to certain citizens completing the terms of either their felony probation or parole. *See* California Proposition 17, Voting Rights Restoration for Persons on Parole Amendment (Cal. 2020) (amending Cal. Const. art. II, §§ 2, 4 to restore voting rights to parolees);⁸ H.B. 19-1266, 72nd Gen. Assemb., 1st Reg. Sess. § 3, 2019 Colo. Sess. Laws 2642 (restoring voting rights to parolees); H.B. 265, 2018 Reg. Sess. § 1 (La. 2018) (restoring voting rights to former felons, including those on parole or probation, who have not been incarcerated in the past five years); H.B. 980, 2015 Reg. Sess. § 1 (Md. 2015) (restoring voting rights to parolees and probationers upon release from incarceration); A.B. 5823, 2018-2019 Reg. Sess. § 2 (N.J. 2019) (restoring voting rights to parolees and probationers); H.B. 7938, 2006 Gen. Assemb., Jan. Sess. § 1 (R.I. 2006) (restoring voting rights upon discharge from incarceration).

In addition to enacting laws altering the standards for restoration, states have taken steps to better facilitate restoration efforts. In California, Illinois, New Jersey, New Mexico, New York, and Washington, among others, state agencies must now notify former

⁸ Before the passage of Proposition 17, California permitted citizens subject to felony community supervision (essentially probation) and those serving felony sentences in county jail to vote. *See* A.B. 2466, 2015-2016 Reg. Sess. (Cal. 2016).

felons of the process for seeking restoration of voting rights and/or provide information about voting rights to felons by the time of their release from incarceration. *See* Cal. Elec. Code §§ 2105.5, 2105.6 (effective Jan. 1, 2018) (requiring corrections officials to provide information about voting rights restoration online and in person to felons leaving prison); 730 Ill. Comp. Stat. 200/10, /15 (effective Jan. 1, 2020) (establishing civics program for soon-to-be released inmates to learn about, *inter alia*, voting rights); N.J. Stat. Ann. § 30:1B-6.2(b) (effective July 1, 2020) (requiring that soon-to-be-released inmates be provided with “[g]eneral written information on the inmate’s right to vote”); N.M. Stat. Ann. § 31-13-1(C) (effective June 17, 2005) (requiring that a “person who has served the entirety of a sentence imposed for a felony conviction” be “inform[ed] . . . that the person is entitled to register to vote”); N.Y. Corr. Law § 75 (effective Mar. 31, 2011 and amended May 4, 2021) (requiring that former felons be notified of their right to vote and be provided with a voter registration application and registration assistance prior to release); Wash. Rev. Code § 72.09.275 (effective July 28, 2019) (similar). These measures help to reduce confusion among returning citizens by advising them of the process for regaining the right to vote.

In addition to legislative and executive action, courts have also required re-enfranchisement where state laws have run afoul of federal or state constitutional rights. *See, e.g., Hunter v. Underwood*, 471 U.S. 222, 233 (1985) (holding that Alabama’s felon-disenfranchisement scheme violated the federal Equal Protection Clause); *Williams v. Tyler*, 677 F.2d 510, 516-17 (5th Cir. 1982) (reversing the district court’s grant of summary judgment and remanding for trial on the question of whether Mississippi violated the

federal Equal Protection Clause in selectively enforcing its felon disenfranchisement laws); *McLaughlin v. City of Canton*, 947 F. Supp. 954, 976 (S.D. Miss. 1995) (holding that disenfranchisement on the basis of a misdemeanor conviction violated plaintiff’s federal equal-protection rights); *Cnty. Success Initiative v. Moore*, No. 19-CVS-15941, 2020 WL 10540948, at *6 (N.C. Super. Ct. Sept. 4, 2020) (holding that a law that conditioned restoration of voting rights on the ability to make financial payments violated the North Carolina Equal Protection Clause and Ban on Property Qualifications).

In total, nearly half of states restore voting rights to some or all parolees or probationers. And even many that do not, like Florida, Nebraska, and New Mexico, have taken steps towards liberalizing the terms and conditions of their states’ felon disenfranchisement systems. All told, these trends reflect a clear and growing consensus among states toward facilitating restoration and expanding the franchise, a consensus with which Minnesota’s felon disenfranchisement system—untouched since 1963—is out of step. In fact, while the percentage of the voting-age population that is disenfranchised as a result of felony convictions has declined in the United States overall since 2016, *see* Uggen et al., *Locked Out 2020*, *supra*, at 4, it has increased in Minnesota, *compare id.* at 16, with Christopher Uggen et al., The Sentencing Project, *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016*, at 15 (Oct. 2016) (increasing from 1.5 percent to 1.6 percent).⁹ The percentage of disenfranchised Minnesotans who are denied the right to vote *because* they are currently serving terms of community supervision

⁹ Available at <https://bit.ly/3nihtTw>.

is extraordinarily high and climbing—the rate increased from 81 percent in 2016 to 85 percent in 2020. *Compare* Uggen et al., *6 Million Lost Voters*, *supra*, at 15, *with* Uggen et al., *Locked Out 2020*, *supra*, at 16.

Minnesota is also out of step with other Midwestern states. Indiana has roughly an equal voting-age population, and Illinois and Ohio both have more than twice the voting-age population, yet Minnesota disenfranchises more people because of felony convictions than each of those three states, and it disenfranchises almost as many people as Illinois and Indiana combined. *See* Uggen et al., *Locked Out 2020*, *supra*, at 16. The main reason for the disparities is that Illinois, Indiana, and Ohio do not disenfranchise probationers or parolees, while Minnesota does. *See id.* at 5.

II. Expanding The Franchise To Those Living In The Community Can Promote Civic Participation And Improve Public Safety.

As discussed, states have successfully expanded the franchise to former felons in recent years. These efforts reflect the Amici States’ understanding that restoring voting rights to former felons helps these individuals to fully reintegrate into their communities, thereby fostering civic participation and improving public safety. After all, probation, parole, and supervised release are intended to be periods of social and civic reintegration. Probationers, parolees, and supervisees raise families, hold jobs, pay taxes, and participate in their communities. Accordingly, extended disenfranchisement is counterproductive to rehabilitating returning citizens and reforming those individuals into productive members of their societies. Put simply, it is in states’ interest to broaden the franchise to former felons who have successfully returned home.

A. Evidence shows that allowing former felons to vote fosters civic participation, decreases recidivism, and promotes public safety.

It is well established that individuals who engage in prosocial behavior when released from incarceration are more likely to reintegrate into their communities and desist from criminal activities. Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193, 196 (2004). Indeed, studies suggest that “attachment[s] to social institutions such as families and labor markets increase the reciprocal obligations between people and provide individuals with a stake in conforming behavior.” *Id.*

In much the same way, allowing former felons to vote can foster prosocial behavior. When former felons vote, “they are doing what all voters do: actively endorsing the political system.” Alec C. Ewald, *An “Agenda for Demolition”: The Fallacy and the Danger of the “Subversive Voting” Argument for Felony Disenfranchisement*, 36 Colum. Hum. Rts. L. Rev. 109, 130 (2004) (emphasis omitted). Participating in the political process “produces citizens with a generalized sense of efficacy, who believe that they have a stake in the political system,” which, “in turn, fosters continued political participation.” Uggen & Manza, *Voting and Subsequent Crime and Arrest*, *supra*, at 198. In this way, civic restoration “communicates to the ex-felon that she or he is still part of the community and has a stake in the democratic process.” *Restoring Voting Rights of Felons Is Good Public Policy, VCU Expert Says*, VCU News (Apr. 26, 2016).¹⁰ When individuals are excluded from this process, by contrast, they “express a feeling of being an ‘outsider.’”

¹⁰ Available at <https://bit.ly/3pjGr6L>.

Mark Haase, *Civil Death in Modern Times: Reconsidering Felony Disenfranchisement in Minnesota*, 99 Minn. L. Rev. 1913, 1927 (2015).

The experiences of the Amici States confirm that when a returning citizen is fully reintegrated into his or her community, including by regaining the right to vote, “it can help transform one’s identity from deviant to law-abiding citizen.” Erika Wood, Brennan Ctr. For Just., *Restoring the Right to Vote* 8 (May 2009).¹¹ Accordingly, in their efforts to expand the franchise, the Amici States embrace the idea that “restoring voting rights to ex-felons may facilitate reintegration efforts and perhaps even improve public safety.” Christina Beeler, *Felony Disenfranchisement Laws: Paying and Re-Paying a Debt to Society*, 21 U. Pa. J. Const. L. 1071, 1088 (2019) (internal quotation marks omitted). For example, the California Secretary of State launched an online tool for returning citizens, in part because “[c]ivic engagement can be a critical piece in reintegrating formerly incarcerated Californians into their communities and reducing recidivism.” Press Release, Cal. Sec’y of State, *Secretary of State Alex Padilla Launches ‘Restore Your Vote’ Tool to Help Californians with Criminal Convictions Know Their Voting Rights* (Oct. 17, 2018) (internal quotation marks omitted).¹²

Studies of former felons’ voting behavior support this conclusion. A report by the Florida Parole Commission noted a decrease in recidivism beginning in April 2007, when the Florida Executive Clemency Board amended its rules to automatically restore the

¹¹ Available at <https://bit.ly/3511E8b>.

¹² Available at <https://bit.ly/3eNWFjI>.

voting rights of most nonviolent felons upon completion of their sentences. *Compare* Fla. Parole Comm’n, *Status Update: Restoration Of Civil Rights (RCR) Cases Granted 2009 And 2010*, at 7 (2011), *with id.* at 13.¹³ The report found that among former felons granted the right to vote in 2009 and 2010, approximately 11 percent had reoffended as of May 2011. *Id.* at 13. This compares favorably to the 33 percent three-year rate of recidivism among individuals released before the new rules were adopted. *Id.* at 7.

Another study found “consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior.” Uggen & Manza, *Voting and Subsequent Crime and Arrest*, *supra*, at 213. This survey of one thousand former high school students analyzed “the effects of voting participation in the 1996 election upon self-reported crime and arrest in the years from 1997 to 2000.” *Id.* at 200. The study found that “[a]mong former arrestees, about 27% of the non-voters were re-arrested, relative to 12% of the voters.” *Id.* at 205. These studies suggest that “[w]hile the single behavioral act of casting a ballot is unlikely to be the sole factor that turns felons’ lives around, the act of voting manifests the desire to participate as a law-abiding stakeholder in a larger society.” *Id.* at 213.

Many in the law enforcement community have endorsed this view by supporting states’ efforts to restore voting rights. For example, a police officer testified before the Maryland legislature that re-enfranchisement “promotes the successful reintegration of formerly incarcerated people, preventing further crime and making our neighborhoods

¹³ Available at <https://bit.ly/3neef36>.

safer.” Wood, *Restoring the Right to Vote*, *supra*, at 11 (quoting *Voter Registration Protection Act: Hearing on S.B. 488 Before S. Comm. on Educ., Health & Envtl. Affairs*, 2007 Leg., 423rd Sess. 1 (Md. 2007) (written testimony of Ron Stalling, Nat’l Black Police Ass’n)).¹⁴ Similarly, a former city police chief in Rhode Island wrote that disenfranchisement “disrupts the re-entry process and weakens the long-term prospects for sustainable rehabilitation,” whereas “[v]oting—like reconnecting with family, getting a job, and finding a decent place to live—is part of a responsible return to life in the community.” Dean Esserman & H. Philip West, *Without a Vote, Citizens Have No Voice*, *The Providence J.* (Sept. 25, 2006).¹⁵

State legislators have similarly endorsed the notion that restoring voting rights encourages former felons to rejoin society as productive members of their communities. In Colorado, for example, the legislature declared that restoring voting rights to parolees “will help to develop and foster in these individuals the values of citizenship that will result in significant dividends to them and society as they resume their places in their communities.” H.B. 19-1266, 72nd Gen. Assemb., 1st Reg. Sess. § 1(c), 2019 Colo. Sess. Laws 2642-43. The New Jersey legislature, for its part, found that “[t]here is no evidence that denying the right to vote to people with criminal convictions serves any legitimate public safety purpose.” N.J. Stat. Ann. § 19:4-1.1(f). State legislatures have also recognized that restoring the franchise benefits their communities more broadly by

¹⁴ Available at <https://bit.ly/3kNYsGN>.

¹⁵ Available at <https://bit.ly/2IyxIMQ>.

promoting civic participation. According to the Rhode Island legislature, “[r]estoring the right to vote strengthens our democracy by increasing voter participation and helps people who have completed their incarceration to reintegrate into society.” R.I. Gen. Laws § 17-9.2-2(a)(1).

Policymakers have also observed that by welcoming former felons back as full-fledged members of their communities, re-enfranchisement can improve overall public safety. For example, the sponsors of New York’s recent legislation, which reinstates voting rights upon release from felony incarceration, justified the bill in part by noting that “[i]f the goal of imprisonment is truly to prevent individuals from straying from the confines of our laws and society’s norms, then facilitati[ng] reentrance into the voting process should be an essential component of rehabilitation and reintegration during community supervision.” Sen. Leroy Comrie et al., Sponsor’s Memo, S.B. 830B (2021).¹⁶ Washington State legislators similarly credited testimony that “restoration of the right to vote encourages offenders to reconnect with their community and become good citizens, thus reducing the risk of recidivism.” H. Comm. on State Gov’t & Tribal Affairs, Report on H.B. 1517, 2009 Reg. Sess., at 3 (Wash. 2009). And the Assemblyman who authored the recently passed amendment to the California Constitution also described restoring parolees’ rights to vote as “good for democracy and good for public safety.” Patrick

¹⁶ Available at <https://bit.ly/3ybO1nj>.

McGreevy, *Prop. 17, Which Will Let Parolees Vote in California, Is Approved by Voters*, L.A. Times (Nov. 4, 2020).¹⁷

In sum, the Amici States share the view that expanding the franchise to returning citizens is not only just and legally required, but also good policy.

B. Felon-disenfranchisement laws like Minnesota Statutes § 609.165 do not promote rehabilitation.

Minnesota contends—and the courts below accepted—that post-release disenfranchisement promotes rehabilitation. Def.’s Resp. Summ. J. Mem. 8; District Ct. Order 9-10; *Schroeder v. Simon*, 962 N.W.2d 471, 486 (Minn. Ct. App. 2021). Not so. For one, the legislative history on which Minnesota relies to support this contention says nothing about the portion of Section 609.165 at issue in this case: the disenfranchisement of those on probation, parole, and supervised release. Recall that prior to the enactment of Section 609.165, the restoration of voting rights to former felons was discretionary. *Id.* at 479-80. Section 609.165 made restoration automatic, after completion of probation, parole, or supervised release. *Id.* at 477 (quoting Advisory Comm’n on Revision of the Criminal Code, *Proposed Minnesota Criminal Code* 42 (1962)). The legislative history in question concerns only the change from a discretionary restoration process to an automatic one, not the point at which the automatic process kicks in. *Id.* So, while it is true, as the court of appeals noted, that the commission that recommended revising Minnesota’s criminal code “expressed the view that *automatically* restoring civil rights upon the

¹⁷ Available at <https://lat.ms/38A6O2s>.

expiration of a sentence would be ‘desirable to promote the rehabilitation of the defendant and his return to the community,’” it is beside the point. *Id.* at 486 (emphasis added) (quoting Advisory Comm’n on Revision of the Criminal Code, *supra*, at 42). What the Minnesota Legislature in 1963 believed about the rehabilitative impact of automatic versus discretionary restoration of voting rights does not address the rehabilitative impact of disenfranchising those serving terms of probation, parole, or supervised release. Post-incarceration disenfranchisement requires its own justification, and Minnesota has offered none. Indeed, Minnesota ironically is using the prior rationale for *expanding* franchise rights to justify refusing any further expansion. That refusal contrasts with the practice of other states, where there is a growing consensus that once felons have completed their terms of incarceration and returned to their communities, the penalty of continued disenfranchisement does not further states’ interests.

Broad policies of post-release disenfranchisement “conflict[] with the rehabilitative goals of the criminal justice system by discouraging civic participation.” Beeler, *supra*, at 1087-88. As discussed above, voting serves an important function, as it “invests” returning felons in “our democracy while reminding them of the reciprocal responsibilities that citizens share.” Wood, *Restoring the Right to Vote*, *supra*, at 11. Denying returning citizens the “ability to participate in the political process” only “further isolates and segregates ex-felons re-entering into society.” Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 408 (2012). This extended exclusion, in turn, conveys the message “that ex-offenders are beyond redemption.” Pamela S. Karlan, *Convictions and*

Doubts: Retribution, Representation, and the Debate Over Felon Disenfranchisement, 56 Stan. L. Rev. 1147, 1166 (2004).

Indeed, studies suggest that disenfranchisement may be positively correlated with recidivism. For example, a study of individuals released from prison in 15 states in 1994 revealed that “individuals who are released in states that permanently disenfranchise [offenders]” are “roughly ten percent more likely to reoffend than those released in states that restore the franchise post-release,” even when controlling for such factors as an individual’s criminal history, race, and gender, and a state’s rate of unemployment. Hamilton-Smith & Vogel, *supra*, at 426-27.

Accordingly, because Minnesota’s continued disenfranchisement of people serving terms of community supervision plainly does not further, and in fact might hinder, rehabilitation, the lower courts erred in crediting that rationale as a justification for the law.

III. The Stark Disproportionate Impact That Felon Disenfranchisement Has On Communities Of Color Raises Profound State Constitutional and Democratic Concerns.

The Amici States also recognize the importance of restoring voting rights to returning citizens given the disparate impact of felon disenfranchisement laws on minority communities.

Unfortunately, this country’s mass incarceration problem “has disproportionately impacted people of color,” and “the disparities in incarceration rates by race ultimately become disparities in voting rights.” Beeler, *supra*, at 1085. Consequently, in the November 2020 election, more than 6.2 percent of the Black voting-age population in the United States could not vote due to felon disenfranchisement laws, as compared with only

1.7 percent of the non-Black voting-age population. Uggen, *Locked Out 2020*, *supra*, at 4. Furthermore, although the data is less comprehensive, at least 560,000 Latinx Americans, or over 2 percent of the Latinx voting-eligible population, is disenfranchised due to felony convictions. *Id.* In Minnesota, these disparities are even starker: more than 7.2 percent of the Black voting-age population and over 3.7 percent of the Latinx voting-age population are disenfranchised. *Id.* at 17-18. Additionally, the latest available data displays a similar disparity in the Minnesotan American Indian population: 5.9 percent of the American Indian voting-age population is disenfranchised because of felony convictions. Christopher Uggen & Suzy McElrath, *Draft Report on Felon Disenfranchisement in Minnesota* 5 (Oct. 14, 2012).¹⁸

Furthermore, there is evidence that the existence of disenfranchisement laws—as well as misinformation about their scope—is more likely to deter Black individuals from voting than their white counterparts. A 2009 study found that “eligible and registered [B]lack voters were nearly 12 percent less likely to cast ballots if they lived in states with lifetime disenfranchisement policies,” as compared with white voters, whose “probability of voting decreased by only 1 percent in such states.” Erin Kelley, Brennan Ctr. For Just., *Racism & Felony Disenfranchisement: An Intertwined History* 3 (May 2017).¹⁹ According to another scholar, “in states with restrictive criminal disenfranchisement laws, the probability of voting declines for African-Americans, even if they do not possess a criminal

¹⁸ Available at <https://bit.ly/3ppYpEL>.

¹⁹ Available at <https://bit.ly/38Dn3vs>.

record,” because “[t]he fact that so many are barred from voting . . . makes exercising the franchise less a part of the fabric of the community.” Anthony C. Thompson, *Unlocking Democracy: Examining the Collateral Consequences of Mass Incarceration on Black Political Power*, 54 How. L.J. 587, 607 (2011). And yet another scholar observed “that neighborhoods that are home to lost voters—and particularly neighborhoods with large Black populations—systematically turn out for local elections at lower rates than otherwise similar neighborhoods.” Kevin Morris, *Neighborhoods and Felony Disenfranchisement: The Case of New York City*, Urb. Affs. Rev. 1, 19 (2020). In short, barring “so many” returning citizens in minority communities from voting disconnects these communities from the political process, “precipitating a negative ripple effect.” Thompson, *Unlocking Democracy, supra*, at 607.

Felon disenfranchisement’s disproportionate racial impact can also have distorting effects on the functioning of democracy, as the political voices of minority communities are muted. The concern is not only the disproportionate number of Black, Latinx, and American Indian Minnesotans who lose their political voices, but also the more systemic impact disenfranchisement has on these former felons’ communities by diminishing their voting power. See Anthony C. Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C. L. Rev. 255, 282-83 (2004). Communities with large numbers of disenfranchised citizens necessarily have less of a say in who represents them at the federal, state, and local levels—and thus lack influence over many matters that affect their daily lives. As one example, parents who live in communities affected by restrictive voting restoration laws may not be heard on a referendum to increase taxes to support

schools or in efforts to “prevent yet another waste incinerator from moving in nearby.” Christopher Haner, *Felon Disenfranchisement: An Inherent Injustice*, 26 J. Civ. Rts. & Econ. Dev. 911, 917 (2013) (quoting Elizabeth A. Hull, *The Disenfranchisement of Ex-Felons* 1-5 (2006)). Lower voter turnout is also associated with less inclusive healthcare policies, which, in turn, cause an increase in the “health disparities” that already exist between voters and non-voters. Nicolas Yagoda, *Addressing Health Disparities Through Voter Engagement*, 17 *Annals Fam. Med.* 459, 460-61 (2019); see Jonathan Purtle, *Felon Disenfranchisement in the United States: A Health Equity Perspective*, 103 *Am. J. Pub. Health* 632, 632 (2013) (explaining how “felon disenfranchisement might affect health by means of inequitable public policies that differentially allocate resources for health and the inability to participate fully in society, including by voting”). Restoring the vote to probationers and parolees will foster political participation in minority communities, which have been long disadvantaged by felon disenfranchisement laws.

To that end, many states have expressly recognized the disparate impact of restrictive restoration systems. In the debates over New York’s recent re-enfranchisement legislation, for instance, one co-sponsor declared that felon disenfranchisement “is a racial issue,” because “[a]lthough African-Americans comprise only 12 percent of the country’s general population, they account for 40 percent of those who are disenfranchised.” N.Y. Assembly, *Debate on Senate Bill 830B*, at 52 (Apr. 21, 2021) (statement of Assembly Member Bichotte Hermelyn). Likewise, in Rhode Island, the legislature noted that “[b]y denying so many the right to vote, criminal disenfranchisement laws dilute the political power of entire minority communities.” R.I. Gen. Laws § 17-9.2-2(a)(4). And the

Assemblyman who authored the California Proposition that restored voting rights to parolees touted the measure's power to "right a wrong and restore voting rights for a marginalized community and people of color." McGreevy, *supra*.

Minnesota's attempts to deny the disparate racial impact of its own disenfranchisement regime are unpersuasive. Minnesota contends that because Section 609.165 reinstates the voting rights of all former felons after parole, probation, or supervised release on a race-neutral basis, it does not cause racial disparities. Resp't's Br. in the Minn. Ct. App. 20-23; *see Schroeder*, 962 N.W.2d at 485. Instead, Minnesota maintains, the significant disparity in the percentage of disenfranchised citizens of color compared to that of white citizens is merely the product of other racial disparities in the criminal justice system, such as rates of arrest or conviction. Resp't's Br. in the Minn. Ct. App. 22-23. But this argument proves too much. The fact that a policy manifests and exacerbates other forms of racial discrimination is no basis for ignoring its own disparate impact. To the contrary, laws like Minnesota's that channel into the democratic process discrimination initiated elsewhere are particularly concerning, because they impair the ability of disadvantaged groups to redress discrimination through ordinary political means. Indeed, arguments like Minnesota's could be used to defend indisputably discriminatory devices like literacy tests, the disparate impact of which depended on antecedent educational inequalities. *See Daniel S. Goldman, Note, The Modern-Day Literacy Test?: Felon Disenfranchisement and Race Discrimination*, 57 *Stan. L. Rev.* 611, 614 (2004). Such arguments are no more convincing today than they were in the past and should be rejected.

In addition to distorting the democratic process, the manifest disparate impact of Minnesota’s felon disenfranchisement regime raises serious state constitutional concerns. As this Court has explained, laws that “demonstrably and adversely affect[] one race differently than other races” are subject to heightened scrutiny under the Equal Protection Clause of the Minnesota Constitution, “even if the lawmakers’ purpose in enacting [such a] law was not to affect any race differently.” *Fletcher Props., Inc. v. City of Minneapolis*, 947 N.W.2d 1, 23-24 (Minn. 2020).

In short, restoring voting rights benefits returning citizens and their communities in numerous ways, including by fostering civic participation, promoting public safety, and eliminating some of the structural barriers that disproportionately affect minority communities and mute their political voices.

CONCLUSION

The Court should reverse the decision of the Minnesota Court of Appeals.

Respectfully submitted,

GREENE ESPEL PLLP

/s/ Katherine M. Swenson
KATHERINE M. SWENSON
(No. 0389280)
AMRAN A. FARAH
(No. 0395354)

222 S. Ninth Street, Suite 2200
Minneapolis, MN 55402
kswenson@greeneespel.com
afarah@greeneespel.com
(612) 373-8389

*Attorneys for Amicus Curiae the
District of Columbia*

OFFICE OF THE ATTORNEY GENERAL DISTRICT OF COLUMBIA

KARL A. RACINE
Attorney General for the District of Columbia

LOREN L. ALIKHAN
Solicitor General

CAROLINE S. VAN ZILE
Principal Deputy Solicitor General

SAMSON J. SCHATZ
Assistant Attorney General
Office of the Solicitor General

400 Sixth Street, NW, Suite 8100
Washington, D.C. 20001

Dated: September 16, 2021

On behalf of:

ROB BONTA
Attorney General
State of California
1300 I Street
Sacramento, CA 95814

KATHLEEN JENNINGS
Attorney General
State of Delaware
820 North French Street
Wilmington, DE 19801

KWAME RAOUL
Attorney General
State of Illinois
100 West Randolph Street, 12th Floor
Chicago, IL 60601

BRIAN E. FROSH
Attorney General
State of Maryland
200 Saint Paul Place
Baltimore, MD 21202

AARON D. FORD
Attorney General
State of Nevada
100 North Carson Street
Carson City, NV 89701

HECTOR BALDERAS
Attorney General
State of New Mexico
P.O. Drawer 1508
Santa Fe, NM 87504

WILLIAM TONG
Attorney General
State of Connecticut
165 Capitol Avenue
Hartford, CT 06106

CLARE E. CONNORS
Attorney General
State of Hawaii
425 Queen Street
Honolulu, HI 96813

AARON M. FREY
Attorney General
State of Maine
6 State House Station
Augusta, ME 04333

MAURA HEALEY
Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

ANDREW J. BRUCK
Acting Attorney General
State of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
Trenton, NJ 08625

LETITIA JAMES
Attorney General
State of New York
28 Liberty Street
New York, NY 10005

PETER F. NERONHA
Attorney General
State of Rhode Island
150 South Main Street
Providence, RI 02903

THOMAS J. DONOVAN, JR.
Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609

MARK R. HERRING
Attorney General
Commonwealth of Virginia
202 North Ninth Street
Richmond, VA 23219

ROBERT W. FERGUSON
Attorney General
State of Washington
1125 Washington Street SE
P.O. Box 40100
Olympia, WA 98504

CERTIFICATE OF COMPLIANCE

I further certify that this brief complies with the type-volume limitation in Minn. R. Civ. App. P. 132, subd. 3(c)(1), because the brief contains 5,320 words, excluding exempted parts. This brief also complies with the typeface and type style requirements of Minn. R. Civ. App. P. 132, subd. 1, because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman 13 point.

/s/ Katherine M. Swenson
KATHERINE M. SWENSON (No. 0389280)