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A20-1264

State of Minnesota
In Supreme Court

Schroeder, et al.,

Appellants,

vs.

Minnesota Secretary of State Simon,

Appellee.

BRIEF OF AMICUS CURIAE ISALAH

ISALAH

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IDENTITY AND INTEREST OF *AMICUS CURIAE*¹

ISAI AH is an organization of congregations, clergy, people of faith and small businesses acting collectively towards racial and economic justice in the state of Minnesota. ISAI AH was founded in 2000 through the merger of three independent congregation-based community organizations: Great River Interfaith Partnership (GRIP) in the St. Cloud area; Interfaith Action in Greater Minneapolis; and the St. Paul Ecumenical Alliance of Congregations (SPEAC) in Greater St. Paul. In 2017, ISAI AH's reach was significantly expanded through the membership of 30 mosques and Islamic Centers, 200 childcare centers, and several dozen Black-owned barber shops. By uniting these constituencies in a statewide organization, ISAI AH strengthens the ability of Minnesota residents to work together for racial and economic justice.

ISAI AH's approximately 500,000 constituents span a wide range of demographics. As an organization, ISAI AH represents a racially diverse body of newcomers and long-time residents who live in cities, suburbs, and rural areas. Though its members may be demographically diverse, ISAI AH constituents share a common vision of putting their values into action in the public arena. ISAI AH's nucleus of power is centered on the ability to mobilize volunteers, engage political candidates and representatives, and reach people

¹ ISAI AH certifies that this brief was not authored in whole or in part by counsel for either party to this appeal and that no other person or entity contributed monetarily towards its preparation or submission.

through impactful social media campaigns.

ISAI AH's 501 (c)4 arm, Faith in Minnesota, is a political home for people of faith who are acting boldly and prophetically to create people-centered politics in Minnesota. Faith in Minnesota provides a platform for moral citizenship by organizing and advocating in Minnesota's elections and political process. It is a vehicle for creating a Minnesota that is inclusive and just. In addition to a broad base of congregations, clergy, and people of faith throughout the state, Faith in Minnesota has five constituencies: Barbershops and Black Congregation Cooperative (BBCC), the Muslim Coalition, the Latinx community, The Kids Count on Us Coalition of 500 childcare centers, and Greater Minnesota.

The interests of ISAI AH are public. ISAI AH provides the communities it serves with advocacy, leadership development, and collective action and issue campaigns, as a springboard for justice for all Minnesotans. ISAI AH leaders work with public officials at the local, regional, state, and federal level to advance understanding of a broad range of issues impacting its communities. Several of these issues, such as those relating to civic engagement, mass incarceration, sentencing reform, immigration, healthcare, and racial inequity, have direct impact on a person's ability to vote. Though this case has the potential to impact ISAI AH constituents directly, the reach of this case extends far more broadly to all Minnesotans. Democracy can only be fully realized if voting rights are equally distributed and robustly supported.

ISAI AH supports Appellants' position that voting rights must be restored for people with felony convictions who are barred from voting while they are on supervision or

probation. ISALAH has advocated for issues that contribute to felony disenfranchisement: ending the school-to-prison pipeline, reforming juvenile justice, sentencing reform, probation reform and removing barriers and supporting people in their path towards redemption.

ARGUMENT

The right to vote is enshrined in the Minnesota Constitution and is central to a free and democratic society. Minn. Const., art. VII, § 1; *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1962). Voting was not a right afforded to all people in the United States until the passage of the 15th Amendment in 1870. U.S. Const. amend. XV, § 1. Even after the passage of the 15th Amendment, Black voters were subjected to discriminatory registration practices, poll taxes, threats, and violence calculated to discourage voting activity. Aderson Bellegarde Francois, *To Make Freedom Happen: Shelby County v. Holder, the Supreme Court, and the Creation Myth of American Voting Rights*, 34 N. ILL. U. L. REV. 529, 544 (2014). Such overt mechanisms for disenfranchising voters based on race are now illegal. *See* Voting Rights Act, 42 U.S.C. § 1973, *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

However, the Supreme Court in *Shelby County v. Holder*, 570 U.S. 529 (2013), opened the door for states to eliminate voting mechanisms that resulted in increased accessibility to exercising voting rights. A 2018 report by the U.S. Commission on Civil Rights (a bipartisan, independent commission of the United States federal government) found a rise in discriminatory laws making it harder for historically marginalized people to

vote. U.S. Commission on Civil Rights, *An Assessment of Minority Voting Rights Access in the United States*, 2018 Statutory Report (Sept. 12, 2018) accessed at https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

Examining the effects of *Shelby v. Holder*, the Commission found ongoing discrimination in voting procedures including states enacting restrictive voter laws, such as closures of polling places, cuts to early voting, purges of voter rolls and imposition of strict voter ID laws. *Id* at 277. The Commission chair warned that "This level of ongoing discrimination confirms what was true before 1965, when the Voting Rights Act became law, and has remained true since 1965: Americans need strong and effective federal protections to guarantee that ours is a real democracy." *Id* at 287. Voting rights continue to require robust Constitutional and statutory protections. If Minnesota desires to extend such protections to all of its citizens, felony disenfranchisement must necessarily be addressed.

The Minnesota Constitution states that, "a person who has been convicted of treason or felony" could not vote "unless restored to civil rights." Minn. Const. art. VII, § 2. Minn. Stat. § 609.165, subd. 1 provides that "When a person has been deprived of civil rights by reason of conviction of a crime and is thereafter discharged, such discharge shall restore the person to all civil rights and to full citizenship, with full right to vote and hold office, the same as if such conviction had not taken place, and the order of discharge shall so provide." Minn. Stat. § 609.165, subd. 1. According to the statute, discharge may be "(1) by order of the court following stay of sentence or stay of execution of sentence, or (2) upon expiration of sentence." Minn. Stat. § 609.165, subd. 2. ISAI AH supports Appellants'

argument that the Legislature did not intend for community supervision to extend the period to which felony disenfranchisement applies. Appellants' Brief at 5.

The application of this law impacts about 53,000 Minnesotans. Appellants' Brief at 11. The Minnesota Constitution Due Process clause provides that "[n]o person shall . . . be deprived of life, liberty or property without due process of law." Minn. Const. art. I, § 7. The Due Process clause protects fundamental rights including the right to vote.

ISAIAH has made strides to address the components of mass incarceration that contribute to the number of people who are affected by this law. However, the impact of this law is immeasurable and amounts to voter suppression in violation of the Due Process Clause.

I. MASS INCARCERATION FEEDS FELONY DISENFRANCHISEMENT.

The impact of felony disenfranchisement is amplified by systematic mass incarceration. Rebecca Harrison Stevens, Meagan Taylor Harding, Joaquin Gonzalez, Emily Eby, *Handcuffing the Vote: Diluting Minority Voting Power Through Prison Gerrymandering and Felon Disenfranchisement*, 21 Scholar: St. Mary's L. Rev. & Soc. Just. 195 (2019). Incarceration dramatically increased from 1,372 people in prison in 1974 to 9,178 in 2018. Appellant's Brief at 13. The number of people serving probationary sentences increased in lockstep from 4,604 people in 1974 to 45,770 in 2018. *Id.* Minnesota had the fourth highest rate of community supervision among 48 for which data was

available. *Id.* In effect, 1% of Minnesota’s voting-age adults are currently disenfranchised. *Id.*

The state’s response to the increase in people being incarcerated has focused on prison expansion. If the system is producing more felons, this equates to a system that is designed to deny more people the right to vote. Therefore, a discussion of felony disenfranchisement would be incomplete without a discussion of mass incarceration.

The system of mass incarceration disproportionately impacts people of color. Appellants’ Brief at 16; ACLU, *Blueprint for Smart Justice in Minnesota* (2019), accessed at <https://www.aclu-mn.org/en/blueprint-smart-justice-minnesota>. In 2017, the adult Black imprisonment rate in Minnesota was more than 10 times higher than the white adult imprisonment rate. *Id.* at 10. Black people represented 34 percent of the prison population yet comprised 6 percent of the state adult population. *Id.* Indigenous people are imprisoned at nearly 14 times the rate of white adults in Minnesota. *Id.* Native American people represented 10 percent of the Minnesota prison population yet comprised only 1 percent of the state adult population. *Id.*

The prison system is fed by a juvenile justice system in a school-to-prison pipeline. Schools have outsourced discipline to juvenile courts through School Resource Officers; the number of School Resource Officers have steadily increased in the past decade. Justice Policy Institute, *Education Under Arrest: The Case Against Police in Schools*, (2011), accessed at http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullr

[eport.pdf](#). During the 2011-2012 school year, 92,000 students were arrested during school. U.S. Department of Education Office for Civil Rights, Civil Rights Data Collection Data Snapshot: School Discipline (2014), accessed at <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>. As of January 2019, there were 256 people in Minnesota prisons who were under age 18 when they were sentenced in adult court. *Blueprint for Smart Justice Minnesota* at 10. In 2016, 15 percent of all arrests were of youth under age 18. *Id.* Anecdotally, white youth are driven home and historically marginalized youth are taken to juvenile detention centers.

Faith-based organizations recognize mass incarceration as a significant moral and spiritual problem in addition to a legal or political problem. Amy Levad, *Repairing the Breach: Faith-Based Community Organizing to Dismantle Mass Incarceration. Religions* (2019). The problem of mass incarceration invokes “moral and spiritual questions about who we are, individually and collectively, who we aim to become, and what we are willing to do now.” Levad at 2 (quoting Michelle Alexander. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Press (2010)). For the past 20 years, ISIAAH has worked to address issues underlying mass incarceration, with a varying degree of recent successes and challenges. Absent the court determining Minnesota’s scheme of felony disenfranchisement to be unconstitutional, each component contributing to mass incarceration will need to be addressed through legislation in order to have a meaningful impact on felony disenfranchisement.

A. For every complex problem there is an answer that is clear, simple, and wrong.

A singular solution to address mass incarceration does not exist because the criminal justice system is so complex. As a start, ISAI AH examined the role of race and white supremacy. In 2010, ISAI AH partnered with John Powell who developed a curriculum, *Shining the Light; Revealing Our Choice*, that formed the basis of ISAI AH's understanding of race in its advocacy efforts. ISAI AH was successful in garnering support from its constituencies to address mass incarceration because ISAI AH was able to create a productive dialogue examining the role of systematic racism.

In 2013, ISAI AH began to advocate at the Legislature to restore voting rights to people on probation. By 2015, hundreds of ISAI AH volunteer leaders mobilized to advocate for the passage of a bill, S.F. 355, in the Minnesota Senate that would restore voting right to the formerly incarcerated as part of the Restore the Vote Coalition made up of 72 organizations from across Minnesota including public safety organizations, governmental bodies, advocacy organizations, and faith-based groups. An ISAI AH constituent who had been prevented from voting due to a 10-year term of probation provided key testimony during committee hearings. Her story was so compelling that a Senator opposing the bill cited her testimony in the floor debate as impetus to restore voting rights to people on probation. Unfortunately, although the bill passed the Minnesota Senate, it failed to get a hearing in the House and ultimately died.

In 2016, ISAI AH received a grant supporting the work of the organization to address components of mass incarceration. The grant enabled ISAI AH to develop an agenda of

proposed solutions and advocate at a local level for issues contributing to mass incarceration: eliminating cash bail for non-violent, low-level offenses; increasing transparency and restraint in charging decisions and sentencing recommendations; strengthening diversion and restorative justice programs; stop collecting country of origin information from people who have been arrested; and ending cooperation with ICE through the county jail.

Building from the work that occurred in 2016, ISALAH organized its constituencies affected by mass incarceration. In 2017, with assistance from ISALAH organizers, the Greater Friendship Missionary Baptist Church and Ascension Catholic Church hosted two separate large public meetings called “Restoring the Breach” with Hennepin County officials to advocate for the agenda developed in 2016. In 2018, ISALAH hosted a forum with county commissioner, attorney, and sheriff candidates and Latinx, African-American, and white communities, to continue the conversation.

Making a legislative change for any group requires time, money, and human capital. Making a legislative change for a group of historically marginalized people requires coordinating schedules of people who are not typically available during the day, undertaking targeted fundraising efforts to raise a significant amount of fiscal resources, and training historically marginalized people to be comfortable to use their voices to speak truth to power. Even when those efforts were successful, the legislature was unwilling to address mass incarceration, in part or whole, because of its overwhelmingly complexity. Because of the lack of political capital, the Court should look at the issue of felony

disenfranchisement with heightened scrutiny. See *State v. Russell*, 477 N.W.2d 886, (Minn. 1991).

B. Addressing sentencing guidelines has not been successful in reducing felony disenfranchisement.

ISAI AH has advocated for bringing uniformity to the Minnesota Drug Sentencing Guidelines that cap or reduce terms of community supervision. Minnesota has the fifth highest rate of community supervision in the country. Appellant’s Brief at 14. As of 2018, roughly 100,000 people in Minnesota were on probation- more than twice as many as Wisconsin. *Id.* This may be explained by the lengthy terms of probation that Minnesota state law allows for; the average length of probation has exceeded five years. *Id.* The more people who are subject to longer terms of incarceration and probation, the more people who will experience voter disenfranchisement and for a longer period of time.

In 2015, ISAI AH organized dozens of people to attend a public hearing of the Minnesota Sentencing Guidelines Commission (MSGC) to speak out in support of reforming drug sentencing guidelines for first time drug-offenders. Minnesota Sentencing Guidelines Commission, Public Hearing Summary (December 23, 2015), accessible at https://mn.gov/sentencing-guidelines/assets/MSGC_Public_Hearing_Summary_Dec_23_2015_tcm30-90828.pdf.

Eight ISAI AH constituents provided testimony in support of proposed changes that would incentive treatment for chemical dependency in the sentencing guidelines. The MSGC voted 7-3 in favor of the changes which “stop punishing addiction with prison time,

but rather, treat it.” Peter Cox, MPR News, *New guidelines reduce sentences for certain drug crimes in Minnesota*, (December 31, 2015 8:34am) <https://www.mprnews.org/story/2015/12/30/new-drug-sentencing-guidelines>

In 2016, ISALAH offered a letter of support for a document submitted by prosecutors, law enforcement, and defense attorneys entitled “Drug Sentencing Reform Agreement.” This served as the basis for SF 3481 which became the Drug Sentencing Reform Act. The 2016 DSRA “intended...drug offenders who should be in prison spend time behind bars, while others who may be more amenable to prison alternatives like treatment or probation would not be sentenced to serve time.” Minnesota Sentencing Guidelines Commission, Report to the Legislature (January 12, 2018), accessible at https://mn.gov/msgc-stat/documents/legislative-report-archive/2018_MN_Sentencing_Guidelines_Comm_Report_to_the_Legislature.pdf.

The law’s provisions took effect August 1, 2016.

Also in 2016, ISALAH met with the Minnesota Sentencing Guideline Commission to oppose a rule that would allow prosecutors to increase a person’s “criminal history score”—a key factor in determining length of sentence—based on the older standard effective prior to passage of SF 3481, otherwise known as “The Drug Sentencing Reform Act.” ISALAH, through Brian Fullman, leader of ISALAH’s Barbershops and Black Congregation Cooperative Program, argued that “Criminal History Scores are a cloud hanging over someone’s head which only drives racial disparities in the system.” The committee voted 6-5 in opposition to longer prison sentences for drug addicts. David

Chanen, *Minn. commission votes down drug-sentencing change*, Star Tribune (December 30, 2016, 10:07pm), [accessed at https://minnesota.cbslocal.com/2016/12/30/minnesota-drug-sentencing-guidelines/](https://minnesota.cbslocal.com/2016/12/30/minnesota-drug-sentencing-guidelines/)

In 2018, the Minnesota Sentencing Guidelines Commission made modest changes to how those convicted of crimes while on probation or parole are sentenced. In December of 2018, ISALAH attended a public hearing to speak out against the proposed changes that create an entirely new category of crimes which more harshly sentences those who are convicted multiple times because the change increased the impact of sentencing in communities of color. The Commission missed the opportunity, however, to shorten the time a past conviction hangs over the head of an individual.

In 2019, the Sentencing Guidelines Commission considered a measure that would cap felony-sentence probation terms to five years. Again, the Commission heard compelling testimony from an ISALAH constituent that was noted in the press. The ISALAH constituent testified that her lengthy probation term caused her to be unable to vote or participate in a meaningful way in the community. Liz Sawyer, *Speakers Make the Case for Capping Felony Probation at 5 years* (December 20, 2019), [accessed at https://www.startribune.com/speakers-make-the-case-for-capping-felony-probation-at-5-years/566360372/](https://www.startribune.com/speakers-make-the-case-for-capping-felony-probation-at-5-years/566360372/). On January 9, 2020, the Commission voted 8-3 to approve the cap effective August 1, 2020.

ISALAH was prompted to address the Sentencing Guidelines, in part because representatives hesitant to restore the vote to people on probation suggested that the real

issue was the imposition of lengthy terms of probation. In addition, ISAI AH recognizes that the real nucleus of power is the Sentencing Guideline Commission, which is a group of appointed officials that employ a process that is largely unaccountable to the public.

Now that probation caps apply to people being sentenced as of August 1, 2020, there are still approximately 53,000 people that are affected by longer probation terms. And the probation caps are only discretionary; a judge may make an upward departure at their discretion and without accountability to the Guidelines. Probation caps will not remedy the situation for people whose terms are so austere that even missing a meeting could result in additional prison time. *See* Affidavit of Tom Pryor. As long as mass incarceration is a problem, probation caps will help in restoring the vote sooner, but will not completely or squarely address the issue of restoring the vote to people who live, work, and pay taxes in the community.

C. The School-to-Prison pipeline contributes to felony disenfranchisement.

The prison system is fed by a juvenile justice system in a school-to-prison pipeline that overutilizes School Resource Officers as a mechanism for discipline. The juvenile justice system is administered in a piecemeal fashion, county-by-county, without any single government agency that provides statewide regulatory oversight. The system disproportionately targets historically marginalized youth.

In 2013, ISAI AH began to address the school-to-prison pipeline with a focus on policies that reduced overreliance on suspension and expulsion, and discipline methods

that funneled at-risk youth into the criminal justice system. ISAI AH also focused on pursuing regulations that would ensure state oversight of the juvenile justice system.

In 2014, ISAI AH led a successful campaign for moratoria on suspensions and expulsions of elementary-aged students in four Minnesota school districts. This work led to advocacy to adopt and fund the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI) throughout the state. The goals of JDAI are to decrease the number of youth unnecessarily or inappropriately detained; reduce the number of youth who fail to appear in court or re-offend pending adjudication; redirect public funds towards effective juvenile justice processes and public safety strategies; reduce the disproportionate minority confinement and contact of the juvenile justice system; and improve the juvenile justice system overall.

In 2015, ISAI AH joined the Juvenile Law Center as an amicus curiae in *Miller v. Alabama*, 567 U.S. 460 (2012). The Supreme Court held that established life sentences without parole for juveniles are unconstitutional. The Supreme Court later held that its decision should be applied retroactively to those currently serving life sentences who committed crimes as juveniles. *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).

In February 2016, ISAI AH supported a bill that included reforms ending the indiscriminate shackling of youth in the courtroom, ending Juvenile Life Without Parole, ending mandatory minimums and encouraging police diversion programs to keep kids out of jail. In spite of bipartisan support, the bill ultimately failed. ISAI AH continues to advocate for reforms to the juvenile justice system.

Minnesota's youth inevitably become Minnesota's voters. Minnesota uses the juvenile justice system as a means of discipline. While perhaps unintentional, the system drives youth towards prison resulting in felony disenfranchisement. Policies that would disrupt the pipeline do not have widespread bipartisan support. The push for youth towards prison combined with the disparate impact on communities of color results in communities that are cut off at the knees by the lack of political input for entire generations.

D. The state's response to mass incarceration has focused on prison expansion.

Because the state's prison population was growing so quickly, the Minnesota Department of Corrections considered expanding prison facilities, including the use of for-profit prisons. ISALAH opposed private prisons due to the lack of morality exhibited in their conditions. While prison executives made \$12 million per year, conditions in the prison were noted to be substandard and unsafe for people incarcerated and those who guard them.

In 2015, due to the rapidly increasing prison population, the Department of Corrections considered opening a shuttered for-profit prison in Appleton, Minnesota operated by Corrections Corporation of America (CCA). CCA is the largest private prison owner and operator in the US. CCA rebranded as CoreCivic to avoid the negative connotations it received as CCA. CCA purchased the Appleton facility in 1997 and closed the facility in 2010.

In 2015, ISALAH constituents testified at the Prison Population Task Force meeting where the use of CCA private prison was an agenda item. Minister Toya Woodland, who

was then affiliated with ISAI AH, opposed the use of private prisons and stated at the October 21, 2015 meeting “We need to restore families not destroy them [through imprisonment][.]” Chris Steller, *Where to house all of Minnesota’s inmates?*, Minnesota Lawyer, (October 29, 2015) accessed at <https://minnlawyer.com/2015/10/29/where-to-house-all-of-minnesotas-inmates/>. The facility in Appleton was described as having “served ‘spoiled and wormy food’... [to inmates] and forcing them to defecate in plastic bags.” Tad Vezner, *Appleton prison proponents try to take ‘private’ out of the debate*, St. Paul Pioneer Press, (March 21, 2017, 10:45p.m.), [accessed at https://www.twincities.com/2017/03/21/appleton-prison-proponents-try-to-take-private-out-of-the-debate/](https://www.twincities.com/2017/03/21/appleton-prison-proponents-try-to-take-private-out-of-the-debate/). ISAI AH followed up with a letter to the Senate opposing the Appleton facility.

In 2017, ISAI AH attended the Public Safety/Judiciary Conference Committee to oppose SF 803. ISAI AH supported testimony opposing the private prison with a study of 532 people incarcerated in Minnesota conducted by the Minnesota Department of Corrections that found that, for people released between 2007 and 2009 from the Appleton facility, the chances of a person being arrested rose by 13 percent and increased chances of being reconvicted by 22 percent.

As a solution, ISAI AH proposed bipartisan precinct caucus language supporting a resolution prohibiting for-profit incarceration corporations from operating in the State of Minnesota. The MN DFL adopted this resolution. DFL, *State Convention Passed Resolutions* (2020) accessed at <https://www.dfl.org/wp-content/uploads/2020/08/State->

[Convention-Passed-Resolutions-2020.pdf](#). This adoption has resulted in proposed legislation in the state house and state senate to ban for-profit prisons. Minn. Sen. J., 91st Leg., Reg. Sess. 4842 (2020), Minn. H.J., 91st Leg., Reg. Sess. 6106 (2020).

The system will continue to expand to accommodate more imprisoned people until or unless the root causes of mass incarceration are addressed. ISAI AH will continue to oppose the use of for-profit prisons.

II. RESTORING THE VOTE IS AN OPPORTUNITY FOR REDEMPTION AND RECONCILIATION.

Amongst the case law and statistics, it is easy to lose the human aspect associated with felony disenfranchisement. ISAI AH, in part as a faith-based organization, puts an emphasis on the value of redemption and reclaiming power and provides the structure and support for people attempting personal and societal redemption.

A. Redemption is a vital part of a rehabilitation.

Justice exists at the intersection of retribution and redemption. Where lawmakers and courts have failed to recognize the role of redemption in the criminal justice system and instead favored retribution, faith-based organizations recognize the importance of redemption. Redemption is defined as, “The act or instance of reclaiming or regaining possession by paying a specific price.” Redemption, Black’s Law Dictionary (11th ed. 2019). Redemption is rooted in dignity, forgiveness, love, and reconciliation that can foster righteousness, peace, and wholeness—for the redemption of individuals and our society as a whole. Levad at 11.

Redemption should equally be a goal of justice. Retribution does not create wholeness, it merely continues the cycle of pain. Levad at 11. Redemptive life narratives are associated with positive personality traits, such as altruism, compassion, conscientiousness, and emotional stability. Jen Guo, Miriam Klevan & Dan P. McAdams, *Personality Traits, Ego Development, and The Redemptive Self*, 42 PERSONALITY AND SOC. PSYCHOL. BULL. 1551 (2016). Redemption necessarily requires an element of overcoming suffering, which is a strong predictor of wellbeing. See, e.g., Dan P. McAdams, Jeffrey Reynolds, Martha Lewis, Allison H. Patten & Phillip J. Bowman, *When Bad Things Turn Good and Good Things Turn Bad: Sequences of Redemption and Contamination in Life Narrative, and Their Relation to Psychosocial Adaptation in Midlife Adults and in Students*, 27 PERSONALITY AND SOC. PSYCHOL. BULL. 472, 475-476 (2001).

ISAIAH organizer Brian Fullman, who has personally experienced incarceration said, “Once you label a person a violent offender, you cut off part of their humanity. No one should be defined by their worst act. People need to see that they can change. If prison hasn’t gotten them on a better path, all we’re doing is teaching people how to be tougher criminals. There’s no justice and no redemption there.”

The state continues to use retributive models of justice favoring political disenfranchisement while retribution models statistically lead to recidivism, thus having little impact on an individual’s morals. *See generally* Tom R. Tyler, *Why People Obey the Law*, Princeton University Press (2006). Christian Danish philosopher Søren Kierkegaard

famously espoused that government is ill-equipped to effectuate individual moral change. Kierkegaard had little faith in the state's ability to cure an individual's morals, but rather thought "to be improved by living in the state is just as doubtful as being improved in a prison." Søren Kierkegaard, *Politics and the State*, PROVOCATIONS: SPIRITUAL WRITINGS OF SØREN KIERKEGAARD, 342 (2014). Kierkegaard further felt the state lacks the ability to develop virtuous people. Rather, he said "to believe this is like believing the best place for a watchmaker . . . to work is aboard a ship in a heavy sea." *Id.*

The Founding Fathers favored a state capable of dispensing mercy. Alexander Hamilton said, "without an easy access to exceptions in favor of unfortunate guilt, justice [is] too sanguinary and cruel." Federalist 74 (Hamilton). Notably, Hamilton here is speaking of the necessity of the state to show mercy to offenders comprehensively through a full state pardon. *Id.* Returning political participation to felons living in the community is in keeping with the mercy Hamilton sees as necessary to prevent justice from being "sanguinary and cruel."

Anecdotally, many people within ISIAAH's constituencies feel the same way. It is extremely difficult for people on probation to see themselves as worthy of redemption. People who are given access to procedural fairness are statistically far more likely to exhibit pro-social community building behaviors whereas people who do not have access to justice are much more likely to fall into recidivism. *See* Tom R. Tyler, *Why People Obey the Law*, Princeton University Press (2006).

ISIAAH has partnered with churches in an effort called, "Save the People." The

effort paired church communities with people within those communities who were formerly incarcerated to provide opportunities to interact within the community in a meaningful way. This partnership intended to reduce the likelihood that the impact of incarceration is felt on multiple generations.

People who are on probation have experienced struggle. Redemption is not possible without regaining or reclaiming after paying a price. Minnesota's scheme of felony disenfranchisement prolongs suffering and prioritizes retribution over redemption. The existing disenfranchisement scheme does not fully embody justice.

B. Felony disenfranchisement further marginalizes power.

Communities that feel the impact of mass incarceration feel the impact of the convergence of felony disenfranchisement and political rights, and their power is marginalized and undercounted. For many years, ISAI AH has also undertaken a significant "Get Out the Vote" effort and has called for voter protections in elections.

In 2012, ISAI AH was a key partner in the "Our Vote Our Future" campaign to defeat the proposed constitutional amendment to require photo identification at the polls. Concerned about the voter suppression implications of such a policy, ISAI AH mobilized thousands of volunteers who logged hundreds of thousands of calls to Minnesota voters to urge them to vote no. Voters rejected the amendment by a 53 percent to 46 percent margin.

As for voter engagement, in 2018, ISAI AH conducted precinct caucus trainings for 5,000 Minnesotan voters. The trainings prepared voters to attend precinct caucuses and included an agenda of issues relating to economic and racial justice, including restoring

voting rights to people on probation or supervised release. Some of these trainings were conducted in mosques to increase awareness of civic engagement amongst those of Islamic faith. A handful of state representatives made an attempt to stoke prejudices and delegitimize the trainings by characterizing the training as a way to “mobilize Muslims to infiltrate precinct caucuses.” ISALAH as an organization is interested in encouraging civic participation amongst all people, with a historic focus on people of faith. Precinct caucus trainings provide an important opportunity for historically underrepresented communities to fully and powerfully engage in civic life.

ISALAH is able to provide support for civic engagement but that only goes so far. ISALAH cannot restore power wholesale to communities that have been impacted by generations of felony disenfranchisement. State law ties the hands of organizations such as ISALAH when mass incarceration disrupts the balance of power.

CONCLUSION

This case provides an important opportunity for this Court to restore voting rights to people who live, work, and pay taxes in the community. Felony disenfranchisement is so widespread because mass incarceration exists. Without swift court action, felony disenfranchisement will continue to impact historically marginalized communities at an increasingly disproportionate rate. Absent court action, legislation to address the components of mass incarceration will take decades and is not guaranteed to squarely address felony disenfranchisement. Minnesota’s scheme of felony disenfranchisement is devoid of redemptive values and instead places an unnecessary premium on retribution.

ISIAIAH asks that the court consider the value of redemption in making its determination. For these reasons, *amicus curiae* ISIAIAH supports Appellants and respectfully request that the Court find that Minnesota's disenfranchisement scheme violates Minnesota's constitutional guarantee of equal protection and due process.

Dated: September 16, 2021

Respectfully submitted,

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