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**STATE OF MINNESOTA  
IN SUPREME COURT**

Amreya Rahmeto Shefa,

Respondent/Cross-Appellant,

vs.

Attorney General Keith Ellison,  
in his official capacity,

Appellant/Cross-Respondent,

Governor Tim Walz,  
in his official capacity,

Respondent/Cross-Appellant,

and

Chief Justice Lorie Gildea,  
in her official capacity,

Appellant/Cross-Respondent.

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**BRIEF OF AMICI CURIAE PARDON RECIPIENTS  
JESSE BRULA, GINA EVANS, SETH EVANS, AND AMBER JOCHEM**

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Andrew Joel Crowder (#0399806)  
**BLACKWELL BURKE P.A.**  
431 South Seventh Street, Suite 2500  
Minneapolis, MN 55415  
(612) 343-3206  
acrowder@blackwellburke.com

*Attorney for Respondence/Cross-  
Appellant Amreya Rahmeto Shefa*

Jason Marisam (#0398187)  
Peter J. Farrell (#0393071)  
**OFFICER OF ATTORNEY GENERAL**  
445 Minnesota Street, Suite 1400  
St. Paul, MN 55101-2131  
(651) 757-1175  
jason.marisam@ag.state.mn.us  
peter.farrell@ag.state.mn.us

*Attorneys for Appellant/Cross-  
Respondent Attorney General Keith  
Ellison, in his Official Capacity*

Robert J. Gilbertson (022361X)  
Caitlinrose H. Fisher (0398358)  
Virginia R. McCalmont (0399496)  
**FORSGREN FISHER MCCALMONT  
DEMAREA TYSVER LLP**  
225 South Sixth Street, Suite 1750  
Minneapolis, MN 55402  
(612) 474-3300  
bgilbertson@forsgrenfisher.com  
vmccalmont@forsgrenfisher.com  
cfisher@forsgrenfisher.com

*Attorneys for Amicus Curiae Pardon  
Recipients, Jesse Brula, Gina Evans, Seth  
Evans, and Amber Jochem*

Barry M. Landy (#0391307)  
Kyle W. Wislocky (#0393492)  
Jacob F. Siegel (#0399615)  
**CIRESI CONLIN LLP**  
225 South 6<sup>th</sup> Street, Suite 4600  
Minneapolis, MN 55402  
(612) 361-8200  
bml@ciresiconlin.com  
kww@ciresiconlin.com  
jfs@ciresiconlin.com

*Attorneys for Respondent/Cross-  
Appellant Governor Tim Walz, in his  
Official Capacity*

Scott Flaherty (#388354)  
**TAFT STETTINIUS & HOLLISTER  
LLP**  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402-2157  
(612) 977-8400  
sflaherty@taftlaw.com

*Attorney for Appellant/Cross-  
Respondent Chief Justice Lorie Gildea,  
in her Official Capacity*

Beth Forsythe (#0386688)  
**DORSEY & WHITNEY LLP**  
50 S 6<sup>th</sup> St, #1500  
Minneapolis, MN 55402  
Phone: 612-492-6747  
forsythe.beth@dorsey.com

*Attorney for Amicus Curiae The Great  
North Innocence Project*

Edwin H. Caldie (#0388930)  
**STINSON LLP**  
50 South Sixth Street, Suite 2600  
Minneapolis, MN 55402  
Telephone: (612) 335-1500  
Ed.caldie@stinson.com

Christina J. Hansen (pro hac vice)  
**STINSON LLP**  
1625 N. Waterfront Parkway, #300  
Wichita, Kansas 67206  
Telephone: (316) 265-8800  
Christina.hansen@stinson.com

Teresa J. Nelson (#0269736)  
**AMERICAN CIVIL LIBERTIES  
UNION OF MINNESOTA**  
2828 University Ave SE  
Suite 160  
PO Box 14720  
Minneapolis, MN 55414  
Telephone: (651) 529-1692  
tnelson@aclu-mn.org

*Attorneys for Amicus Curiae America  
Civil Liberties Union of Minnesota*

Daniel J. Koewler (#388460)  
**RAMSEY LAW FIRM PLLC**  
2780 Snelling Ave N, #330  
Roseville, MN 55113  
Telephone: (651) 604-0000  
dan@ramsayresults.com

JaneAnne Murray (#384887)  
**MURRAY LAW LLC**  
The Flour Exchange Building  
310 4<sup>th</sup> Ave S, #5010  
Minneapolis, MN 55416  
Telephone: (612) 339-5160  
jm@mlawllc.com

*Attorneys for Amicus Curiae  
Minnesota Association of Criminal  
Defense Lawyers*

Elizabeth Richards (#0181420)  
2230 Carter Ave, Suite 10  
St. Paul, MN 55108  
Telephone: (612) 349-4611  
Lizrichards360@gmail.com

Rana S. Alexander (#03339606)  
**STANDPOINT**  
2233 University Ave. W., Suite 150  
St. Paul, MN 55114  
rana@standpointmn.org

*Attorney for Amici Violence Free  
Minnesota, Minnesota Coalition  
Against Sexual Assault, and Standpoint*

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## INTRODUCTION

At the core of this case is a question of constitutional construction. But riding on this Court’s interpretation of those 125-year-old words are the fates of countless Minnesotans who may seek pardons. Reasons for seeking pardons vary. Some individuals desire eligibility or consideration for certain kinds of jobs or promotions. Others want to own a gun, serve this Country in the armed forces, or travel freely. Still others seek validation for the hard work that they have put into rehabilitation—for recognition that they are more than their criminal records. But whatever the reasons that bring an individual to apply for a pardon, those who have received this extraordinary relief agree that it is transformative.

Jesse Brula, Gina Evans, Seth Evans, and Amber Jochem (collectively, the “Pardon Recipients”) are four individuals whose lives have been transformed by the “act of grace” that a pardon represents.<sup>1</sup> And because the purpose and power of a pardon should inform this Court’s interpretation of Article V, § 7 of the Minnesota Constitution, the Pardon Recipients are uniquely situated to speak to why the Governor of Minnesota, acting in conjunction with the Pardon Board, should have broad discretion to grant pardons—without the unconstitutional hinderance of an unanimous-vote requirement. The Pardon Recipients accordingly submit this brief

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<sup>1</sup> No counsel for a party authored this brief in whole or in part. No person or entity other than the amici curiae and their counsel made a monetary contribution to the preparation or submission of the brief.

in support of the positions of Respondents/Cross-Appellants Amreya Shefa and Governor Tim Walz.

### **ARGUMENT**

The Minnesota Constitution provides the Governor of Minnesota, “in conjunction with the board of pardons,” the “power to grant reprieves and pardons after conviction for an offense against the state.” Minn. Const. art. V, § 7. Minnesota law provides that the Pardon Board may grant an absolute or conditional pardon, a commutation of sentence, or, upon sentence discharge, a pardon extraordinary. Minn. Stat. § 638.02, subs. 1, 2. A pardon extraordinary may be granted if, among other conditions, the applicant “is of good character and reputation.” Minn. Stat. § 638.02, subd. 2. When granted, a pardon “has the effect of setting aside and nullifying the conviction and of purging the person of it.” *Id.*

The setting aside and nullification of a criminal conviction is transformative. But this transformative power has been unduly limited as a result of Minnesota’s unique statutory structure for the Pardon Board, resulting in an unconstitutional constraint on the Governor’s pardon power. This constraint on the Governor’s power not only violates the Minnesota Constitution in multiple respects, but also thwarts the very purpose of the constitutionally-enshrined pardon power.

**I. Pardons have an unparalleled ability to transform the lives of those with criminal records.**

A pardon is a constitutionally enshrined “act of grace, proceeding from the power intrusted with the execution of the laws.” *United States v. Wilson*, 32 U.S. 150, 160 (1833). Each of the Pardon Recipients’ lives, and the lives of those around them, has been forever changed as a result of being extended this act of grace. The dramatic impact of a pardon enables those with criminal records, such as the Pardon Recipients, to be relieved of the tens of thousands of consequences that can flow from criminal convictions and to fully participate in society.

**A. The Pardon Recipients’ stories illustrate the transformative power of pardons.**

Each of the Pardon Recipients was convicted of at least one felony. All of the Pardons Recipients rehabilitated themselves, maintaining clean records for over a decade and making the world a safer and more compassionate place. But despite their rehabilitation, the Pardon Recipients were significantly inhibited in their professional and personal lives by their convictions until the Governor of Minnesota, acting in conjunction with the Pardon Board, granted them pardons.

***Jesse Brula***

Jesse Brula grew up on the Iron Range in Northern Minnesota, a model student and community member. Then he got to college and started experimenting with drugs and alcohol. In the words of one of the supporters of Mr. Brula’s pardon application, Mr. Brula, “[l]ike many young people . . . made a stupid mistake in his

youth.”<sup>2</sup> While in his 20s, Mr. Brula committed a felony drug offense. He pleaded guilty. Beginning in February 2008, Mr. Brula spent 16 months in prison and another eight months on parole. Mr. Brula was discharged from parole on January 27, 2010.<sup>3</sup>

The gravity of the drug-sale offense terrified Mr. Brula. He attempted to accomplish all he could before being convicted, recognizing that life would become much more difficult once that felony offense was part of his criminal record. Mr. Brula completed his bachelor’s degree at St. Cloud State University in 2006. He attended a treatment program for substance-use disorder in 2007. He worked with vulnerable adults. And Mr. Brula did not stop his self-improvement even after he was saddled with a felony conviction. After being released from custody, Mr. Brula completed additional schooling at Ridgewater College to become a Licensed Alcohol and Drug Counselor (“LADC”). Mr. Brula has worked as an LADC since July 2011. He gives 100% to his counseling work and is one of the “most respected employees” at the treatment program at which he is employed.<sup>4</sup>

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<sup>2</sup> Application of Jesse Brula for Pardon Extraordinary at p. 14 of 27 (dated Nov. 22, 2019) (hereinafter “Brula Pardon App.”).

<sup>3</sup> *Id.* at 4 of 27.

<sup>4</sup> *Id.* at 10 of 27.

Mr. Brula received a pardon in 2020.<sup>5</sup> Perhaps the most meaningful impact of Mr. Brula’s pardon, and the very first accomplishment that Mr. Brula wrote about in his pardon application, is one that is less tangible. As Mr. Brula put it, “[a] pardon would help me close the book on a very difficult period of my life.”<sup>6</sup> And that is precisely what it did. For Mr. Brula, receiving a pardon was miraculous, and it felt like he was finally able to move forward from a terrible mistake of his past. Mr. Brula also did not want the mistake of his past to impact his wife and any of their children. He and his wife love to travel and wanted to be able to travel the world together, which would not be possible with a felony record.<sup>7</sup> Similarly, Mr. Brula did not want his son to be limited as a result of his father’s mistake. He now can envision hunting or taking a trip to Canada with his new son, both of which would not have been possible had Mr. Brula not received a pardon.

### ***Gina Evans***

Gina Evans was part of a “dysfunctional family growing up,”<sup>8</sup> although she also emphasized in her pardon application that she “knew right from wrong and

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<sup>5</sup> Dan Ganin, *2020 Legislative Report, Minn. Bd. of Pardons* at 3 (Jan. 25, 2021).

<sup>6</sup> Brula Pardon App. at 8 of 27.

<sup>7</sup> *See id.* at 8 of 27.

<sup>8</sup> Susan-Elizabeth Littlefield, *Trees of Hope: After Kicking Drugs, Seth & Gina are Giving Back*, CBS Minn. (Dec. 9, 2014, 10:58 pm) (hereinafter “*Seth & Gina are Giving Back*”), <https://minnesota.cbslocal.com/2014/12/09/trees-of-hope-after-kicking-drugs-seth-gina-are-giving-back/> (last visited Aug. 22, 2021).

chose wrong.”<sup>9</sup> Ms. Evans became addicted to drugs by the age of 15.<sup>10</sup> She entered the foster-care system and dropped out of high school.<sup>11</sup> She used drugs until she was 29 and committed a variety of offenses during that time, including drug possession, theft, financial transaction card fraud, check forgery, and motor-vehicle theft.<sup>12</sup> In 2001, Ms. Evans’ parental rights were involuntarily terminated.<sup>13</sup> In total, Ms. Evans served three terms in the Shakopee Women’s Prison and was convicted of 12 felonies.<sup>14</sup>

After being released from her last stint in prison, Ms. Evans reached a point in her life where she decided “no more.”<sup>15</sup> A significant turning point was her mother’s adoption of Ms. Evans’ two children, a “failure” that Ms. Evans describes as “truly the breaking point for me in my addiction and the beginning of my recovery.”<sup>16</sup> Ms. Evans entered and completed treatment, graduated from a 2-year college

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<sup>9</sup> Application of Gina Evans for Pardon Extraordinary at 59 of 292 (dated Nov. 19, 2015) (hereinafter “Gina Evans Pardon App.”).

<sup>10</sup> Caryne Sullivan, *From “Doing Dirt” to Doing Good*, carynm.sullivan (June 7, 2013), <https://carynmsullivan.com/from-doing-dirt-to-doing-good-a-story-of-recovery-and-redemption/> (last visited Aug. 22, 2021).

<sup>11</sup> *Id.*

<sup>12</sup> See Gina Evans Pardon App. at 59 of 292.

<sup>13</sup> See Littlefield, *Seth & Gina are Giving Back*; see also Gina Evans Pardon App. at 52–57 of 292.

<sup>14</sup> Littlefield, *Seth & Gina are Giving Back*.

<sup>15</sup> *Id.*

<sup>16</sup> Gina Evans Pardon App. at 60 of 292.

program, and has been drug-free ever since. In 2006, Ms. Evans was hired by the treatment program that had helped her. This year, she celebrates 15 years of employment.

Gina Evans received a pardon in 2016.<sup>17</sup> The primary reason she sought a pardon was for the sake of her son, who was 15 years old when she submitted her pardon application.<sup>18</sup> Her mother, who had custody over her son, was “not in the best health.”<sup>19</sup> Ms. Evans feared that, should something happen to her mother, her son could end up in foster care.<sup>20</sup> She desired to “pursue regaining custody or adopting him back.”<sup>21</sup> Additionally, Ms. Evans wanted “employment flexibility” that she lacked with her criminal record.<sup>22</sup> Ms. Evans described her interest in relocating to a warmer climate, and her concern that her “criminal record will keep me from finding gainful employment in another state or another industry.”<sup>23</sup> Finally, receiving a pardon enabled Ms. Evans to have a record that reflects her significant

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<sup>17</sup> Lisa Netzer, *2016 Legislative Report, Minn. Bd. of Pardons* at 3 (Feb. 2017).

<sup>18</sup> Gina Evans Pardon App. at 60 of 292.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 61 of 292.

<sup>23</sup> *Id.*

rehabilitation. As Ms. Evans puts it, “Those are things that I did. It’s not who I am.”<sup>24</sup>

### ***Seth Evans***

Seth Evans was addicted to substances by the age of 13. By the age 16, he had accumulated 16 felony arrests.<sup>25</sup> He used “just about every drug that’s imaginable.”<sup>26</sup> After turning 18, and fueled by substance-use disorder, Mr. Evans committed a number of additional criminal offenses. These offenses included controlled-substance possession and sales, fleeing the scene of a motor-vehicle accident, and writing a bad check. All of Mr. Evans’ crimes were related to his drug use.<sup>27</sup> The felony offenses made it practically impossible for him to find employment in his rural community, which, in turn, led Mr. Evans to commit further crimes in order to obtain money.

Mr. Evans was serving time in prison for his last offense when a judge gave him a shot at attending a treatment program in lieu of spending more time in prison. Mr. Evans grabbed that shot and hasn’t looked back. He completed one year of drug treatment at a Minnesota treatment program, graduating in February 2005. Two

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<sup>24</sup> Sullivan, *From “Doing Dirt” to Doing Good*.

<sup>25</sup> Application of Seth Evans for Pardon Extraordinary at 41 of 62 (dated May 30, 2019) (hereinafter “Seth Evans Pardon App.”).

<sup>26</sup> Littlefield, *Seth & Gina are Giving Back*.

<sup>27</sup> Seth Evans Pardon App. at 2 of 62.



years later, he joined the program staff at the treatment facility. And since 2010, he has worked at Twin Cities Ministries—a non-profit he co-founded—as the Director of Corrections Ministries. Through his ministry work, Mr. Evans serves as the Chaplain at Ramsey County Adult Detention Center. He even worked with Ramsey County to develop the PRIME housing unit (Positive Respectful Inmates Managed Effectively) at the Adult Detention Center.<sup>28</sup> The inmates in that special housing unit attended classes on healthy relationships, understanding addiction, and anger management, the latter two of which Mr. Evans taught.<sup>29</sup> As Mr. Evans put it in his pardon application, “[e]very day I help others . . . whose lives are being destroyed by addiction through education, intervention, counselling, treatment, housing, finding jobs, etc.”<sup>30</sup> Mr. Evans also helps “families, churches and society to cope with the destruction of addicted people in their lives and communities.”<sup>31</sup>

Mr. Evans received a pardon in 2019.<sup>32</sup> Receiving a pardon has transformed his life. To start, it has enabled him to have an even more positive impact through his ministry. Before receiving a pardon, Mr. Evans had been denied access to

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<sup>28</sup> *Id.* at 15, 18 of 62.

<sup>29</sup> *Id.* at 15 of 62.

<sup>30</sup> *Id.* at 13 of 62.

<sup>31</sup> *Id.*

<sup>32</sup> Dan Ganin, *2019 Legislative Report, Minn. Bd. of Pardons* at 3 (Jan. 10, 2020).

minister at multiple correctional institutions “because of [his] criminal history.”<sup>33</sup> Even the Undersheriff of the Ramsey County Adult Detention Center “initially was hesitant” to permit Mr. Evans to serve as a volunteer chaplain, and decided to do so only after a different member of the Ramsey County Sheriff’s Office “pressed the issue and vigorously supported Seth.”<sup>34</sup> Mr. Evans is now able to “reach and motivate more people to change their lives,” since his record is no longer a barrier to working with correctional facilities.<sup>35</sup> Personally, receiving a pardon means that Mr. Evans can participate in more ways in his children’s lives, including by hunting with his son. He also can live at a home that he owns in Florida, a state that, before receiving a pardon, he was not allowed to visit “for more than 30 days at a time because of [his] criminal history.”<sup>36</sup> His and his wife’s dream of retiring to that Florida home is now a reality.

### ***Amber Jochem***

As a young teenager, Amber Jochem found herself spending time around a bad crowd. She had two children before the age of 19. Despite the challenges of being a teenage mother, she was attentive and hard-working, obtaining her GED

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<sup>33</sup> Seth Evans Pardon App. at 13 of 62.

<sup>34</sup> *Id.* at 15 of 62.

<sup>35</sup> *Id.* at 13 of 62.

<sup>36</sup> *Id.*

between the births of her two children.<sup>37</sup> After having her second child, Ms. Jochem was introduced to methamphetamine by her child's father and her younger sister. This began Ms. Jochem's 14-year active use of and addiction to methamphetamine. During her period of drug use, Ms. Jochem received convictions for possession of narcotics, auto theft, and financial-card-related fraud.

In 2009, following her 20th arrest, Ms. Jochem was given the opportunity by the court system to go through a treatment program instead of serving a lengthy prison sentence.<sup>38</sup> She graduated from that program and has been continuously sober since. Ms. Jochem now works for that treatment program as a regional outreach manager. She helps people find their way to the very treatment program that saved her life.<sup>39</sup> She also has custody over and is raising her two grandchildren, ages 8 and 6 years old.

Ms. Jochem received a pardon in 2018.<sup>40</sup> For Ms. Jochem, receiving a pardon has meant greater financial stability and deeper involvement in her grandchildren's

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<sup>37</sup> Precious Fondren, *Amber Jochem's Journey is Proof Overcoming Addiction is a Long Road*, *Odyssey* (Apr. 10, 2018), <https://www.theodysseyonline.com/overcoming-addiction-is-long-road> (last visited Aug. 22, 2021).

<sup>38</sup> Ryan Juntti, *Trees of Hope: Minnesota Adult & Teen Challenge Program Graduates Giving Back*, *WDIO Minn.* (Dec. 23, 2019, 7:14 PM), <https://www.wdio.com/news/minnesota-adult-teen-challenge-program-graduates/5587413/> (last visited Aug. 22, 2021).

<sup>39</sup> *Id.*

<sup>40</sup> Dan Ganin, *2018 Legislative Report, Minn. Bd. of Pardons* at 3 (Feb. 2019).

lives. With her criminal record, it was exceedingly difficult to find employment and a place to rent, which, as Ms. Jochem observes, are two of the “most important things” in order to “financially take care of yourself.” Given the stigma around criminal records, it is of little surprise that the first employer to take a chance on Ms. Jochem was the treatment program she attended, because they understood her character and rehabilitation in ways that other prospective employers did not. Even more meaningful to Ms. Jochem, however, has been the removal of barriers to fully participate in the lives of the grandchildren that she is raising. When Ms. Jochem applied to volunteer at her grandchildren’s school, her application was initially denied because of her criminal record. This “broke [her] heart,” as she had no idea how she would explain to her young grandchild that she would not be able to attend school field trips. Ms. Jochem now knows that she will pass background checks with flying colors, and her previous criminal record—old as it was—won’t be a barrier in her or her grandchildren’s lives moving forward.

**B. The Pardon Recipients’ stories illustrate the permanent collateral, financial, and emotional consequences of criminal records.**

Pardons serve a key purpose—eliminating a criminal record and the many consequences that follow it. The Pardon Recipients’ experiences show that no matter how much progress and rehabilitation is made, criminal records remain significant barriers in the lives of those who have convictions on their records. Herein lies the power of a pardon—giving those who have rehabilitated themselves

an opportunity to have a record that reflects who they are presently, as opposed to who they once were or the mistakes they made in the past.

Punishment for criminal offenses does not end with discharge from probation.<sup>41</sup> According to the American Bar Association, there are more than 45,000 collateral consequences that flow from a criminal conviction in the United States.<sup>42</sup> The National Inventory of Collateral Consequences of Conviction reports that there are 560 collateral consequences of criminal conviction enshrined in Minnesota law alone.<sup>43</sup> Many of these laws restrict individuals with criminal

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<sup>41</sup> Lahny Silva, *Clean Slate: Expanding Expungements and Pardons for Non-Violent Federal Offenders*, 79 Univ. Cin. L. Rev. 155, 205 (2011) (hereinafter “*Clean Slate*”) (“Federal and state regulations continue punishment long after release.”).

<sup>42</sup> ABA Criminal Justice Section, *Collateral Consequences of Criminal Convictions Judicial Bench Book* at 2, <https://www.ojp.gov/pdffiles1/nij/grants/251583.pdf> (last visited Aug. 22, 2021).

<sup>43</sup> National Inventory of Collateral Consequences of Conviction, *Collateral Consequences Inventory*, <https://niccc.nationalreentryresourcecenter.org/consequences> (last visited Aug. 22, 2021).

convictions from being eligible for certain jobs,<sup>44</sup> housing,<sup>45</sup> and public assistance.<sup>46</sup> This has a profound impact on an individual's ability to provide for her basic needs.

The U.S. Commission on Civil Rights reports that “[d]ue to the collateral consequences of criminal convictions, 1 in 4 Americans are locked out of the labor market.”<sup>47</sup> A Northwestern University study found that ex-offenders are only one-half to one-third as likely as non-offenders to *even be considered* by employers.<sup>48</sup> And even when extended a job, a criminal record can profoundly affect earning potential. A 2018 study by the Brookings Institution found that only 55 percent of formerly incarcerated people reported earnings in their first full year after release, and of those who had any employment, the median annual income was just

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<sup>44</sup> See, e.g., Minn. Stat. §§ 609B.100–130 (cross-referencing statutes that restrict employment and licensing for individuals with certain criminal convictions); *id.* § 609B.108 (“Section 44.11 requires the municipal personnel board to reject candidates or eligible persons who have been found guilty of criminal conduct.”).

<sup>45</sup> See, e.g., 42 U.S.C. § 13661(c) (codifying “[a]uthority to deny admission to criminal offenders”—or even individuals who have a “criminal offender” as a “member of the[ir] . . . household”—to federally assisted housing).

<sup>46</sup> See Minn. Stat. § 256D.024; see also, e.g., Marc Mauer & Virginia McCalmont, *A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits*, The Sentencing Project (Sept. 2015), <https://www.sentencingproject.org/wp-content/uploads/2015/12/A-Lifetime-of-Punishment.pdf> (last visited Aug. 22, 2021).

<sup>47</sup> U.S. Comm’n on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities* at 35 (June 2019) (hereinafter “USCCR Briefing Paper”), <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf> (last visited Aug. 22, 2021).

<sup>48</sup> Devah Pager, *The Mark of a Criminal Record*, 108 Am. J. of Sociology at 937, 960 (2003).

\$10,090.<sup>49</sup> Other studies suggest that there is a 10–20% “wage penalty’ of incarceration,” due in part to the “stigmatization and legal employment restrictions that ex-offenders face.”<sup>50</sup> The negative effects of a criminal conviction on employment prospects are exacerbated for people of color.<sup>51</sup>

These barriers to finding meaningful employment are particularly troubling because post-release employment, such as that secured by the Pardon Recipients, has been tied to significant decreases in recidivism.<sup>52</sup> Further, lack of access to living-wage employment can further complicate the ability to secure shelter, with the result that “formerly incarcerated individuals face a high risk of housing insecurity and homelessness.”<sup>53</sup> A corresponding lack of access to certain public benefits means that there’s no safety net to fall back on.

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<sup>49</sup> Adam Looney & Nicholas Turner, The Brookings Inst., *Work and Opportunity Before and After Incarceration* at 1 (Mar. 2018), [https://www.brookings.edu/wp-content/uploads/2018/03/es\\_20180314\\_looneyincarceration\\_final.pdf](https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf) (last visited August 22, 2021).

<sup>50</sup> Silva, *Clean Slate*, 79 Univ. Cin. L. Rev. at 165–66.

<sup>51</sup> USCCR Briefing Paper at 35–36 (“60% of all black applicants with criminal records did not receive callbacks or job offers, compared to 30% of all white applicants with criminal records”); see also Pager, *The Mark of a Criminal Record*, 108 Am. J. of Sociology at 959–60 (analyzing racial differences in effects of a criminal record).

<sup>52</sup> See Silva, *Clean Slate*, 79 Univ. Cin. L. Rev. at 162 (“Post-release employment appears to be a, if not the, determinative factor in post-release success . . . . [According to one study] post-release employment appears to cut the recidivism rate by almost half.”).

<sup>53</sup> USCCR Briefing Paper at 60–61.

The collateral consequences of criminal convictions also impact an individual’s ability to participate fully in civil society. A criminal record can restrict an individual’s right to vote<sup>54</sup> and to serve on a jury.<sup>55</sup> People with criminal records may not be able to own guns,<sup>56</sup> travel freely,<sup>57</sup> adopt children,<sup>58</sup> or serve in the armed forces.<sup>59</sup> And for non-U.S. citizens, a criminal conviction can mean facing the risk of deportation—as Amreya Shefa herself does.<sup>60</sup>

Before receiving their pardons, the Pardon Recipients exemplified the ways in which collateral consequences can profoundly impact the lives of those with

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<sup>54</sup> See Minn. Stat. § 201.014, subd. 2 (“The following individuals are not eligible to vote. Any individual: (1) convicted of treason or any felony whose civil rights have not been restored[.]”).

<sup>55</sup> See Minn. Gen. R. Prac. 808(b)(6) (“To be qualified to serve as a juror, the prospective juror must be . . . [a] person who has had their civil rights restored if they have been convicted of a felony.”).

<sup>56</sup> See Minn. Stat. § 624.713 (listing those ineligible to possess a firearm); see also Minn. Stat. § 609.165, subd. 1a.

<sup>57</sup> See, e.g., 22 U.S.C. § 2714 (describing passport limitations). Many countries and even states restrict entry for those with criminal records. See, e.g., *Overcoming Criminal Convictions*, Government of Canada, <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/inadmissibility/overcome-criminal-convictions.html#a1> (last visited Aug. 23, 2021) (stating that a person who has “committed or been convicted of a crime . . . may not be allowed into Canada”).

<sup>58</sup> See Minn. Stat. § 259A.10, subd. 4 (stating that an “adoptive parent is prohibited from receiving adoption assistance of behalf of an otherwise eligible child if the background study reveals” certain felony convictions).

<sup>59</sup> See 10 U.S.C. § 504(a) (“No person who . . . has been convicted of a felony, may be enlisted in any armed force.”).

<sup>60</sup> See Amreya Shefa’s Opening Br. at 9–10 (Aug. 19, 2021).



criminal convictions. The Pardon Recipients struggled to find employment, receiving their first meaningful jobs from a treatment program that knew them or because of the intervention of some person of influence. The Pardon Recipients struggled to find stable and affordable housing. For Gina Evans, this meant sharing housing with others, which she worried increased the likelihood that she would relapse into substance abuse and criminal activity. The Pardon Recipients were significantly limited in their ability to travel domestically and internationally. Seth Evans could not live at a home he owns in Florida, and Jesse Brula was forced to change his honeymoon plans, given the risk that he could be turned away at the Mexican border. And the Pardon Recipients who had or cared for children were unable to fully participate in their lives. Ms. Evans could not volunteer at her child's school, vote on the school schedule, or be a chaperone on field trips before receiving a pardon. Like Ms. Evans, Ms. Jochem was informed that her criminal conviction meant that she could not volunteer at the school her grandchildren attended. And Mr. Evans was unable to pursue a real-estate co-venture or go hunting with his son.

These restrictions on daily activities were difficult enough. But each of the Pardon Recipients also struggled with the guilt, shame, and stigma that a criminal record carries. Mr. Brula describes his criminal record as an "F on a report card" that impacted everything from employment and housing to his ability to date romantic partners. Mr. Evans says that he no longer recognizes the person who is

described in the criminal complaints against him. One of the supporters of his pardon application agreed, writing that “Seth lives a life emblematic of transformation.”<sup>61</sup> But even with this significant transformation, Mr. Evans’ record meant that he couldn’t separate fully himself from that person in the criminal complaint. “It really wears on you, mentally and emotionally,” he says.

This, then, is the aspect of a pardon that is truly transformative—an “act of grace” that allows the recipient to regain her dignity, self-regard, and place in society. To Mr. Evans, “the biggest benefit of my pardon was that it gave me the ability to start forgiving myself and feel more like the person I actually am.” According to Mr. Brula, a “heavy burden lifted” with his pardon, and he felt “free” for the first time in years. Or as Ms. Evans puts it, her criminal conviction caused her to “lose [her] voice”—and her pardon restored it.

## **II. The current barriers to the Governor’s ability to grant pardons frustrate the purpose of the pardon power.**

A pardon clears the path for individuals with criminal records to fully participate in society. This unparalleled opportunity, however, has been constrained by Minnesota’s statutory unanimity requirement for the Pardon Board. The current Pardon Board structure thwarts the purpose of pardons. Vesting broader pardon power with the Governor is not only mandated by the Minnesota

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<sup>61</sup> Seth Evans Pardon App. at 19 of 62.

Constitution, but is also most consistent with the compassionate purpose of pardons.

**A. Minnesota’s approach to pardons is unusual and has resulted in fewer and fewer pardons.**

Minnesota is one of only a handful of states in which the governor sits with others on a pardon board.<sup>62</sup> About two dozen states give the governor sole authority to grant pardons. Although “a handful of other states have multiple-member boards, . . . most lean heavily on the governor to make the final decision.”<sup>63</sup>

Minnesota’s unusual statutory requirement of unanimous agreement among a three-member pardon board comprised of elected officials has led to a strikingly low number of pardons granted compared to many other states. In Oklahoma, for example, the governor can exercise pardon power with a favorable recommendation from a majority of the state’s Board of Pardon and Parole. Okla. Const. art. VI, § 10. In that state, pardons are granted, on a per-capita basis, more than nine times as often as in Minnesota.<sup>64</sup> Similar to Minnesota, Nevada has a pardon board on which

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<sup>62</sup> Andy Mannix & Briana Bierschbach, *Far from Grace: How Minnesota Radically Changed the Way it Forgives Criminals*, MinnPost (July 30, 2015), <https://www.minnpost.com/politics-policy/2015/07/far-grace-how-minnesota-radically-changed-way-it-forgives-criminals/> (last visited Aug. 23, 2021).

<sup>63</sup> *Id*; see also *50-State Comparison: Pardon Policy & Practice*, Restoration of Rights Project, <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisoncharacteristics-of-pardon-authorities-2/> (last visited Aug. 23, 2021).

<sup>64</sup> *50-State Comparison: Pardon Policy & Practice*, Restoration of Rights Project (“[F]or the past fifteen years, the [Oklahoma] governor has approved more than 100

the governor, attorney general, and state supreme-court justices sit, but pardons are made on a majority vote that (until a change prompted by a November 2020 statewide vote) had to include the governor. *Compare* Nev. Const. art V, § 14 (2020), *with* Nev. Const. art V, § 14 (1982). Recently, Nevada’s system has generated three times as many pardons as Minnesota’s on a per-capita basis. Several other states have much higher multiples:

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pardons every year, and this number has continued to grow, with about 150 grants in 2019.”).

State <sup>65</sup>	Avg # Pardons Considered Annually	Avg # Granted Annually	Grant Rate	Population <sup>66</sup>	Avg # Granted per 1 million population	Avg per 1 million multiple of Minnesota
Delaware <sup>67</sup>	407	396	97%	989,948	400	133
Alabama <sup>68</sup>	767	558	73%	5,024,279	111	37
S. Carolina <sup>69</sup>	719	476	66%	5,118,425	93	31
Georgia <sup>70</sup>	924	573	62%	10,711,908	54	18
Oklahoma <sup>71</sup>	NA	~110	NA	3,959,353	28	9
Nevada <sup>72</sup>	62	30	49%	3,104,614	10	3
Minnesota <sup>73</sup>	76	17	23%	5,706,494	3	

<sup>65</sup> The pardon data in this table is based on the most recently available five years of pardon activity for each state.

<sup>66</sup> The population figures are derived from 2020 Census data. See Brynn Epstein & Daphne Lofquist, *U.S. Census Bureau Today Delivers State Population Totals for Congressional Apportionment* (Apr. 26, 2021), <https://www.census.gov/library/stories/2021/04/2020-census-data-release.html> (last visited Aug. 23, 2021) (interactive population map).

<sup>67</sup> See Margaret Love, *Delaware Pardon Statistics 1988-2019*, Collateral Consequences Res. Ctr. (Nov. 9, 2019), <https://ccresourcecenter.org/delaware-pardon-statistics-1988-present/> (last visited Aug. 23, 2021) (based on pardon data from 2014–2018).

<sup>68</sup> See *Annual Reports*, Ala. Bureau of Pardons & Paroles, <https://paroles.alabama.gov/resources/annual-reports/> (last visited Aug. 23, 2021) (based on Annual Reports for years 2015–2016 to 2019–2020).

<sup>69</sup> *South Carolina, Restoration of Rights & Record Relief*, Restoration of Rights Project, [https://ccresourcecenter.org/state-restoration-profiles/south-carolina-restoration-of-rights-pardon-expungement-sealing/#II\\_Pardon\\_policy\\_practice](https://ccresourcecenter.org/state-restoration-profiles/south-carolina-restoration-of-rights-pardon-expungement-sealing/#II_Pardon_policy_practice) (last visited Aug. 23, 2021) (based on pardon data from 2012–2017).

<sup>70</sup> *Annual Reports*, Georgia State Board of Pardons and Paroles, <https://pap.georgia.gov/office-communications-news-publications-and-events/publications/annual-reports> (last visited Aug. 23, 2021) (based on Annual Reports for 2016 to 2020).

Alabama, South Carolina, and Georgia grant 37, 31, and 18 times as many pardons, respectively, as Minnesota does, on a per-capita basis.

In addition to lagging behind other states, Minnesota's approach to pardons has resulted in a dramatic decline in clemency over time. From the 1940s through the 1980s, Minnesota granted 94% of applications for pardons extraordinary and 87% of all types of pardon applications.<sup>74</sup> In those same five decades, the Pardon Board commuted 741 sentences, or 84% of those considered.<sup>75</sup>

Since 1992, according to analysis of the annual reports on the Department of Corrections' website, the grant rate for all types of pardon applications has

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<sup>71</sup> *Oklahoma, Restoration of Rights & Record Relief*, Restoration of Rights Project, <https://ccresourcecenter.org/state-restoration-profiles/oklahoma-restoration-of-rights-pardon-expungement-sealing/> (last visited Aug. 23, 2021) (stating that “[f]or the past fifteen years, the Oklahoma governor has approved more than 100 pardons every year, and this number has continued to grow, with about 150 grants in 2019”).

<sup>72</sup> *Nevada, Restoration of Rights & Record Relief*, Restoration of Rights Project, [https://ccresourcecenter.org/state-restoration-profiles/nevada-restoration-of-rights-pardon-expungement-sealing/#II\\_Pardon\\_policy\\_practice](https://ccresourcecenter.org/state-restoration-profiles/nevada-restoration-of-rights-pardon-expungement-sealing/#II_Pardon_policy_practice) (last visited Aug. 23, 2021) (based on pardon data from 2013–2017).

<sup>73</sup> *Annual Reports*, Minn. Dep't of Corr., <https://mn.gov/doc/about/pardon-board/annual-reports/> (last visited Aug. 23, 2021) (based on Annual Reports for 2016 to 2020).

<sup>74</sup> Mannix & Bierschbach, *Far From Grace: How Minnesota radically changed the way it forgives criminals*.

<sup>75</sup> *Id.*

plummeted from 87% to 33%.<sup>76</sup> And while 84% of commutations were granted in the previous five decades, since 1992 the Pardon Board has granted a total of four of the 379 full pardon/commutation applications, or just 1%.<sup>77</sup> The Pardon Board's overall grant rate has declined 30% (and more than 11 percentage points) in just the past dozen years, falling from 38.4% in 1992–2008 to just 27.0% from 2009 through last year.<sup>78</sup>

The Pardon Recipients believe that these numbers tell only a small piece of the story about who is applying for and receiving pardons. It is not lost on the Pardon Recipients that behind each of their pardons was the advocacy of someone in a position of power who helped set them on the path to receiving a pardon. For example, Jesse Brula was dismissed from an LADC internship after the Minnesota Department of Human Services deemed him unqualified to work with vulnerable adults due to his criminal record. A state representative with whom Mr. Brula had a longstanding relationship worked with Mr. Brula to persuade the Department to reconsider. The Department did so and, as a result, Mr. Brula was re-hired for the internship that enabled him to become a fully licensed LADC. The CEO of the host

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<sup>76</sup> See *Annual Reports*, Minn. Dep't of Corr., <https://mn.gov/doc/about/pardon-board/annual-reports/>. Analysis of the annual reports shows that from 1992 through 2020, only 32.6% (or 444 of 1363) pardon applications were granted.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

organization for that internship (for whom Mr. Brula now works) wrote the very first letter submitted in support of Mr. Brula's pardon application. And because Mr. Brula's spouse and mother-in-law are both attorneys, he benefitted from the assistance of counsel throughout the entire pardon process. The other Pardon Recipients have similar stories of receiving a first chance or powerful advocacy from people in influential positions who personally knew them and their stories of rehabilitation. And each of the Pardon Recipients received a first big career break from within the chemical-dependency realm of employment, where their potential employers were better equipped to view their felony records in the context of their substance use, as opposed to an automatic disqualification for employment.

Although the Pardon Recipients are grateful for the support and advocacy that led to their pardons, they worry that not everyone with a criminal record is able to access the same opportunities, leading to even greater barriers to clemency. Pardon Recipient Seth Evans has attended many pardon-board hearings, and at each was struck by how few people who appeared to be people of color were even applying for pardons. Mr. Evans' observations are consistent with data from other states.<sup>79</sup> The Pardon Recipients fear that Minnesota's current pardon system makes

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<sup>79</sup> Greater Philadelphia Economy League, *Pardons as an Economic Investment Strategy: Evaluating a Decade of Data in Pennsylvania* (Apr. 2020) (stating that in 2017, people who were white "filed three times more pardon applications than minorities").



it even more difficult for historically disadvantaged populations to seek the same second chance that they received.

Not everyone with a criminal record rehabilitates him- or herself. But the Pardon Recipients know that there are many others like them who have done so and who should receive meaningful consideration for a pardon.

**B. The Governor should have broad discretion to grant pardons.**

As the Pardon Recipients' stories make clear, pardons have an unparalleled potential to transform the lives of those who receive them. The pardon power is "one of the most benevolent powers of [a] chief executive, bestowing mercy and forgiveness on those to whom it is granted."<sup>80</sup> Pardons reflect the constitutionally-enshrined principle that in some circumstances "the public welfare will be better served by inflicting less than what the judgment fixed." *Biddle v. Perovich*, 274 U.S. 480, 486 (1927).

The data above, however, shows that that unparalleled opportunity to transform lives and further the public welfare has been constrained in Minnesota. *See supra* Section II.A.<sup>81</sup> The Pardon Board should operate to ensure that the pardon power is not exercised corruptly. But it should not deprive the Governor of his or

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<sup>80</sup> Silva, *Clean Slate*, 79 Univ. Cin. L. Rev. at 175.

<sup>81</sup> *See also* Mannix & Bierschbach, *Far from Grace: How Minnesota Radically Changed the Way it Forgives Criminals* (describing Governor Dayton as acknowledging that the "three-member system . . . leads to fewer pardons").

her constitutionally granted discretion to use the power of the executive to show compassion and mercy to a diverse range of deserving Minnesotans.

A broad pardon power best enables the Governor to recognize and honor significant rehabilitation. The Governor’s act of compassion in conjunction with the Pardon Board enabled each of the Pardon Recipients to finally move beyond their convictions and fully participate in society. In many ways, the Pardon Recipients are better equipped for certain jobs, including those involving work with inmate populations, than other members of the general public. As one supporter of Mr. Evans’ pardon application wrote, Mr. Evans is uniquely “skilled in working with” populations struggling with addiction, hopelessness, and crime, because of the “mistakes made in his own past.”<sup>82</sup> Or, as one state senator said of Ms. Evans, “who better to work with drug abusers than someone who has walked in their shoes?”<sup>83</sup> But despite being uniquely qualified for these roles, Mr. and Mrs. Evans’ criminal records were a barrier to occupying them—until they were pardoned.

Apart from rehabilitation, a broad pardon power enables the Governor to set aside convictions for other extraordinary and compelling reasons. In December 2020, the Pardon Board—which consisted solely of two members of the Pardon Board, due to a recusal of a third—commuted the life sentence of Myron

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<sup>82</sup> Seth Evans Pardon App. at 24 of 62.

<sup>83</sup> Gina Evans Pardon App. at 129 of 292.

Burrell. Mr. Burrell had been convicted of murder, despite a lack of any hard evidence of guilt and despite the fact that the “case’s lead homicide detective had offered a man \$500 to provide Mr. Burrell’s name.”<sup>84</sup> When granting Mr. Burrell a commutation, the Governor said “We cannot turn a blind eye to the developments in science and law as we look at this case.”<sup>85</sup> As the Governor aptly put it, the pardon power provides a mechanism to reconsider criminal convictions when advances in science, society, and law demonstrate that it is in the interests of justice to do. In this respect, the pardon power serves as an important “check [by the executive] on the other two branches of government by flagging harsh and inflexible criminal statutes and by challenging outcomes of criminal cases.”<sup>86</sup>

Finally, a broad pardon power provides hope and incentive to those seeking to break free from the cycle of poverty and instability that can follow criminal convictions. The Pardon Recipients are living proof to those trapped in lives of crime that one day, if a person commits to rehabilitation, he or she may be relieved

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<sup>84</sup> Will Wright, *Minnesota Release Myon [sic] Burrell, Man Given Life Sentence After a Murder*, New York Times (Dec. 15, 2020), <https://www.nytimes.com/2020/12/15/us/myon-burrell-released-commuted.html> (last visited Aug. 23, 2021).

<sup>85</sup> Vanessa Romo, *Minnesota Commutes Life Sentence of Man Convicted as Teen of Shooting 11-Year-Old*, NPR (Dec. 16, 2020, 12:38 AM), <https://www.npr.org/2020/12/16/946985330/minnesota-commutes-life-sentence-of-man-convicted-as-teen-of-shooting-11-year-ol> (last visited Aug. 23, 2021).

<sup>86</sup> Silva, *Clean Slate*, 79 Univ. Cin. L. Rev. at 175.

of the many impediments to fully participating in society that a criminal record can create. Mr. Brula, for example, is able to use his story of being pardoned to inspire those he counsels who are in a state of despair due to the barriers they face to earning a living wage and finding stable housing. And removing barriers to full societal participation benefits more than just the individuals pardoned. Individuals with pardons will be able to find employment and housing that would have been previously off limits due to their criminal backgrounds, leading to more stable lives for themselves and those around them. *See supra* Section I.B. Individuals who may become eligible for pardons will be incentivized to remain law abiding and, if their crimes were related to substance use, sober.<sup>87</sup> And more individuals such as the Pardon Recipients will be able to provide a model and motivation to others, for what the future may hold for those who put in the hard work rehabilitation requires.

A broad pardon power vested in the Governor, acting in conjunction with the Pardon Board but without an unanimity requirement, is most consistent with the constitutionally-enshrined power and purpose of pardons. The data on clemency in

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<sup>87</sup> A robust study of recidivism for Pennsylvania pardon recipients found that of 1,082 individuals who received pardons over a decade, only one subsequently committed a crime of violence—or less than .092% of pardon recipients. Ryan Allen Hancock & Carl Oxholm III, *Pardons and Public Safety: Examining a Decade of Recidivism Data in Pennsylvania*, Philadelphia Lawyers for Social Equity (Aug. 2020), <https://www.plsephilly.org/wp-content/uploads/2020/08/PA-Pardon-Recidivism-Study-2008-2018-pv-August-2020.pdf> (last visited Aug. 23, 2021); *see also, e.g.*, Silva, *Clean Slate*, 79 Univ. Cin. L. Rev. at 162 (noting that employment dramatically reduces recidivism).

Minnesota as compared to other states and over time shows that the Pardon Board's current statutory structure frustrates the purpose of the pardon power. The balance of power should be reset so that individuals with criminal records have a better shot at receiving the great "act of grace" of a pardon. Our State will be more just and compassionate place for it.

### **CONCLUSION**

For the reasons stated herein, amici Jesse Brula, Gina Evans, Seth Evans, and Amber Jochem respectfully ask that this Court affirm the ruling of the district court that Minn. Stat. §§ 638.01 and 638.02, subd. 1 impermissibly infringe on the pardon powers vested in the Governor by the Minnesota Constitution.

**FORSGREN FISHER MCCALMONT  
DEMAREA TYSVER LLP**

Dated: August 23, 2021

*s/ Caitlinrose H. Fisher*

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Robert J. Gilbertson (022361X)

Caitlinrose H. Fisher (0398358)

Virginia R. McCalmont (0399496)

225 South Sixth Street, Suite 1750

Minneapolis, MN 55402

(612) 474-3300

[bgilbertson@forsgrenfisher.com](mailto:bgilbertson@forsgrenfisher.com)

[cfisher@forsgrenfisher.com](mailto:cfisher@forsgrenfisher.com)

[vmccalmont@forsgrenfisher.com](mailto:vmccalmont@forsgrenfisher.com)

*Attorneys for Amicus Pardon Recipients  
Jesse Brula, Gina Evans, Seth Evans, and  
Amber Jochem*

## CERTIFICATE OF COMPLIANCE

This brief complies with the word limitations of Minn. R. Civ. App. P. 132.01, subd. 3(c). The brief was prepared with proportional font, using Version 16.52 Microsoft Word in Office 365, which reports that the brief contains 6,672 words.

*s/ Caitlinrose H. Fisher* \_\_\_\_\_  
Caitlinrose H. Fisher