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STATE OF MINNESOTA
IN SUPREME COURT

Amreya Rahmeto Shefa,

Respondent/Cross-Appellant,

vs.

Governor Timothy Walz, in his official capacity,

Respondent/Cross-Appellant,

and

Attorney General Keith Ellison, in his official capacity;

Chief Justice Lorie Gildea, in her official capacity,

Appellants/Cross-Respondents.

**BRIEF OF AMICUS CURIAE VIOLENCE FREE MINNESOTA, MINNESOTA
COALITION AGAINST SEXUAL ASSAULT, AND STANDPOINT**

VIOLENCE FREE MINNESOTA
MINNESOTA COALITION AGAINST
SEXUAL ASSAULT

Elizabeth J. Richards (#081420)
2230 Carter Avenue #10
St. Paul, MN 55108
(612) 379-4611
Lizrichards360@gmail.com

STANDPOINT

Rana S. Alexander (#0333906)
2233 University Avenue W, Suite 150
St. Paul, MN 55114
(612) 343-9842
rana@standpointmn.org

Attorney for Amici Standpoint

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

Scott M. Flaherty (#0388354)
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*

Andrew J. Crowder (#0399806)
Blackwell Burke P.A.
431 South Seventh Street, Suite 2500
Minneapolis, MN 55415
(612) 343-3206
acrowder@blackwellburke.com

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

Barry M. Landy (#0391307)
Kyle W. Wislocky (#0393492)
Jacob F. Siegel (#0399615)
Ciresi Conlin LLP
225 South Sixth Street, Suite 4600
Minneapolis, MN 55402
(612) 361-8200
bml@ciresiconlin.com
kww@ciresiconlin.com
jfs@ciresiconlin.com

*Attorneys for Appellant/Cross-
Respondent Governor Tim Walz*

Peter J. Farrell (#0393071)
Jason Marisam (#0398187)
Office of Attorney General
State of Minnesota
445 Minnesota Street, Suite 900
St. Paul, MN 55101-2131
(612) 757-1350
Peter.farrell@ag.state.mn.us
Jason.marisam@ag.state.mn.us

*Attorney for Appellant/Cross-Respondent
Attorney General Keith Ellison*

Beth Forsythe (#0386688)
Dorsey & Whitney, LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
(612) 492-6747
Forsythe.beth@dorsey.com

*Attorney for Amicus Curiae The Great
North Innocence Project*

Daniel J. Koewler (#0388460)
Ramsey Law Firm PLLC
2780 Snelling Avenue N., Suite 330
Roseville, MN 55113
(651) 604-0000
dan@ramsayresults.com

JaneAnne Murray (#0394887)
Murray Law LLC
The Flour Exchange Building
310 Fourth Avenue S, Suite 5010
Minneapolis, MN 55416
(612) 339-5160
jm@mlawllc.com

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

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

Christina J. Hansen (*pro hac vice*)
Stinson LLP
1625 N. Waterfront Parkway, Suite 300
Wichita, KS 67206
(316) 265-8800
Christina.hansen@stinson.com

Teresa J. Nelson (#0269736)
American Civil Liberties Union of
Minnesota
2828 University Avenue SE, Suite 160
PO Box #14720
Minneapolis, MN 55414
(612) 529-1692
tnelson@aclu-mn.org

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

Robert J. Gilbertson (#022361X)
Caitlinrose H. Fisher (#0398358)
Virginia R. McCalmont (#0399496)
Forsgren Fisher McCalmont Demarea
Tysver LLP
Capella Tower
225 South Sixth Street, Suite 1750
Minneapolis, MN 55402
(612) 474-3300
bgilbertson@forsgrenfisher.com
cfisher@forsgrenfisher.com
vmccalmont@forsgrenfisher.com

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

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INTEREST AND QUALIFICATION OF THE AMICUS

Violence Free Minnesota, the Minnesota Coalition Against Sexual Assault and Standpoint have a public interest in this case.¹

Violence Free Minnesota (VFMN) is a private, non-profit membership organization, which serves as a statewide coalition for local, regional, and statewide organizations that provide shelter and services to victims of intimate partner violence and their families. VFMN provides training and technical assistance for member programs, works to improve public policy for survivors of domestic violence, and promotes community education to law enforcement, schools, the general public and others. The member organizations of VFMN, with consultation and assistance provided by VFMN, provide shelter and legal advocacy every year to thousands of survivors of domestic and sexual violence. VFMN and its member programs advocate for survivors of intimate partner violence in criminal court and work to mitigate the collateral consequences that too often negatively impact domestic violence victims.

The Minnesota Coalition Against Sexual Assault (MNCASA) is a private nonprofit organization representing seventy sexual assault victim advocacy programs statewide. Its member programs and allies also include health care providers, community groups, and law enforcement agencies whose employees and volunteers support victims of sexual

¹ Pursuant to Minn. R. Civ. P. 129.03, the amicus states (1) that no counsel for any party in this action authored this brief, in whole or in part, and (2) that no person or entity other than the amicus curiae, their members, and their counsel made any monetary contribution to the preparation or submission of this brief.

assault. MNCASA represents the interests of these stakeholders in matters of public policy, media outreach, prevention awareness, and community organizing around issues of sexual violence on both the state and national levels. MNCASA's Sexual Violence Justice Institute (SVJI) is dedicated specifically to addressing the broader criminal justice issues surrounding sexual violence. SVJI receives federal and state technical assistance funds to provide resources and training to advocates, law enforcement officers, prosecutors, medical providers, corrections professionals, and others who become involved when a sexual assault comes to the attention of the criminal justice system. SVJI works with twelve Minnesota-based teams to promote victim-centered criminal justice and community responses to sexual assault. SVJI also regularly offers technical assistance nationally.

Standpoint (formerly the Battered Women's Legal Advocacy Project) is a private, non-profit organization that serves as a statewide agency providing legal consultation, training, and resources to domestic and sexual violence victims and their advocates, attorneys, and system professionals. Standpoint consults yearly with thousands of domestic and sexual violence victims and their advocates, many of whom are involved in the criminal justice system.

VFMN, MNCASA, and Standpoint have a strong interest in the interpretation of Minn. Stat. § 638.02 and its relationship to the Minnesota Constitution and the powers of the Minnesota Board of Pardons. All three organizations join Respondents/Cross-Appellants Amreya Rahmeto Shefa and Governor Walz in urging the Supreme Court to uphold the District Court decision finding Minn. Stats. § 638.01 and § 638.02, subd. 1 unconstitutional.

ARGUMENT

THE BOARD OF PARDONS HAS AN IMPORTANT ROLE FOR DOMESTIC & SEXUAL VIOLENCE VICTIMS TO RIGHT INJUSTICES

1. Role of Board of Pardons to Right Individual Injustices

The Minnesota Constitution creates an executive branch power of pardon. Minn. Const. art. V § 7.

While not required, each state's constitution has created some form of executive branch clemency or pardon. The structure and procedures for exercise of that power vary between the states but fall into three primary categories: (1) the state's constitution grants exclusive authority to the governor; (2) the state's constitution grants exclusive authority to an executive board; or (3) the state's constitution provides that the governor and an executive body shall share the clemency power². Kathleen Ridolfi & Seth Gordon, *Gubernatorial Clemency Powers: Justice or Mercy?*, CRIM. JUST., Fall 2009 .

Under any pardon process, the power of pardon is a broad and essential power that is separate from the judicial system. The act of granting a pardon is "...an act of grace, bestowed by the government through its duly authorized officers or department, and is designed to relieve an individual from the unforeseen injustice, because of extraordinary facts and circumstances peculiar to the case, of applying the punishment provided in a

² 29 states give clemency power exclusively to the governor (AK,AR,CA,CO,HI,IL,IA, KS, KY, ME, MD, MI, MS, MO NH, NM, NY, NC, ND, OH, OR, SD, TN, VT, VA, WA ,WV, WI, and WY). In 12 states, the Governor shares the power with an administrative board or panel (AZ, DE, FL, IN, LA, MA, MT, NH, OK, PA, RI, and TX). In 9 states the power of clemency rests with an executive board (AL, CT, GA, ID, MN, NE, NV, SC, and UT).

general statute which, under ordinary circumstances, is just and beneficial. However, a pardon is more than a mere act of private grace proceeding from an individual having the power to exercise it, and is a part of the constitutional scheme; properly granted, it is also an act of justice, supported by a wise public policy.” 59 Am. Jur. 2d Pardon and Parole § 11.

Pardon is not merely an extension of the judicial appeal process, a last review from the criminal legal system. Rather, the pardon exists separate from the judicial system and is not constrained by the same legal precedents and legal interpretations. A pardon can respond to the personal characteristics and experiences of an individual’s situation in ways that the judicial system cannot.

Amreya Shefa’s case is a prime example of the ability of a pardon to address personal circumstances to right an injustice. Amreya Shefa was convicted of first degree manslaughter and served her full sentence. The motivation behind her request for a pardon is to avoid deportation to Ethiopia. If deported, Amreya Shefa faces likely death from the hands of her husband’s family. These facts and circumstances do not have a place within the state’s judicial system. Instead, it is the extra-judicial pardon process that can consider these facts and through an act of grace, grant a pardon to Amreya Shefa.

2. The Importance of Pardon to Address Systemic Disparities

Clemency and pardons are critical processes for victims of domestic and sexual violence. Pardon is an avenue to right injustices that the judicial system is not set up to address.

Rates of domestic and sexual violence are high. The Center for Disease Control, through their National Intimate Partner and Sexual Violence Survey, found that one in four adult women have experienced sexual violence, physical violence and/or stalking by an intimate partner. Center for Disease Control and Prevention, Preventing Intimate Partner Violence,

<https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html> (Aug. 20, 2021). In Minnesota, we know that more than 65,000 victims of domestic & sexual violence seek services from advocacy programs each year. MN Office of Justice Programs, FY19 Demographics of Victims Served as Reported by Program Type <https://dps.mn.gov/divisions/ojp/forms-documents/Documents/CVS/FY19Demos.pdf> .

Victims of domestic and sexual violence too often find themselves as criminal defendants. For instance, victims may face charges of aiding and abetting their abusive partners in the commission of crimes or they may face assault and murder charges when responding to the violence they experience. Sue Osthoff, *When Victims Become Defendants: Battered Women Charged with Crimes*, Women, Crime, and Criminal Justice, edited by Claire Renzetti and Lynn Goodstein. Los Angeles: Roxbury, 2001. Approximately half of all women who are incarcerated have experienced past physical and/or sexual abuse. Caroline Wolf Harlow, *Prior Abuse Reported by Inmates and Probationers*, Bureau of Justice Statistics, U.S. Dept. of Justice. Office of Justice Programs. April 1999. Various studies have shown that women who have experienced domestic and sexual violence are most likely to kill as an act of self-defense. Carolyn Block & Antigone Christakos, *Intimate Partner Homicide in Chicago Over 29 Years*,

Crime & Delinquency 41, (2003). Patricia Gagne, *Battered Women's Justice: The Movement for Clemency and the Politics of Self-Defense*, New York: Twayne Publishers, 1998. Elizabeth Dermody Leonard, *Convicted Survivors: The Imprisonment of Battered Women Who Kill*, Albany: State University of New York Press, 2002. Typically, these victims have no prior criminal record but often receive long and severe sentences. Angela Browne, *When Battered Women Kill*, New York: Free Press 1987. Osthoff, *Id.*

The pardon process can be an effective tool for addressing the disparate impacts of criminal sentences on victims of violence.

Amreya Shefa was raped, beaten, and abused on a daily basis. (Doc. 14, Ex. Q, at 13.) The day that she killed Habibie Tesema followed yet another sexual assault. The trial court found that a self-defense argument was not available to Amreya Shefa as she used excessive force in response to the violence she faced from her husband. Many victims of violence find themselves in this precarious position where they cannot avail themselves of appropriate legal defenses due to a lack of understanding of the realities faced by victims. While legal theories and applications are continuing to evolve in this area, the pardon process can grant relief to those where the appropriate level of understanding or knowledge was not yet present at the time of their conviction. Pardon is not relitigation of the case but rather a way to consider extenuating circumstances that warrant an act of mercy and to take into consideration things that have no way to be accounted for within the criminal legal system. Minnesota's criminal justice system did not (maybe cannot) account for the physical and sexual violence that Amreya Shefa experienced on a daily basis from her husband. Minnesota's criminal justice system did not account for the

significant impact that violence had on Amreya Shefa and how that influenced her actions on that day. The state legal system also doesn't have a way to consider the implications that Amreya Shefa's conviction has within the federal immigration system, or to account for the impact of the homicide conviction being likely deportation and death. The pardon process is where these things can be considered.

3. Pardon to Bridge Gaps as Legal Theory Evolves

The judicial system's understanding of domestic and sexual violence has changed in recent decades and continues to evolve. This evolution is demonstrated in the use of expert testimony in domestic and sexual violence cases.

Those who work within the criminal legal system know that jurors search for reasons to doubt, rather than reasons to believe, allegations of domestic and sexual violence. The public/jurors have expectations of how victims should act and what are reasonable actions for victims to take in response to violence from an intimate partner. These expectations are not consistent with the realities of most victims. Thus, we see the development of expert testimony in domestic and sexual violence cases to help bridge this gap of knowledge and educate factfinders on circumstances such as counterintuitive victim behavior

It was in the 1970's that Lenore Walker developed Battered Woman Syndrome to explain how a domestic violence victim's acts of violence/murder could be understood as a response to abuse. Minnesota courts recognized Battered Woman Syndrome as a defense in 1989, *State v Hennum*, 441 N.W.2d 793 (Minn. 1989), and as a prosecutorial expert testimony approach in 1997. *State v. Grecinger*, 569 N.W.2d 189 (Minn. 1997).

However, by the late 90's, the understanding around a victim's use of violence within a violent relationship had changed. The U.S. Dept. of Justice issued a report that stated that the term Battered Woman Syndrome is no longer useful or appropriate. "The term does not reflect the breadth of empirical knowledge now available concerning battering and its effects." National Institute of Justice, National Institute of Justice, *The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials; Report Responding to Section 40507 of the Violence Against Women Act*, NCJ 160972 (1996). The courts, through expert testimony, have continued to change and grow the understanding of reasonable actions of victims of violence. Newer case law recognizes expert testimony on the counter-intuitive actions of victims. *State v White*, No. A07-1801 (Minn. Ct. App Jan 13, 2009)(UNPUBLISHED).

A similar evolution has happened with sexual violence cases. In 1974, Ann Burgess and Lynda Holmstrom developed Rape Trauma Syndrome to explain the behaviors of sexual assault victims – countering prevalent rape myths around consent and delays in reporting. Minnesota courts did not permit this type of expert testimony in sexual assault cases. In 1982, under the *Saldana* case, expert testimony in a sexual assault case was prohibited. *State v Saldana*, 324 N.W.2d 227 (Minn. 1982). The *Saldana* case stood as a prohibition to this testimony for almost thirty years. It was 2011 when the court overturned the blanket prohibition against expert testimony on typical rape victim behavior. *State v. Obeta*, 796 N.W.2d 282 (Minn. 2011).

For those who work with domestic and sexual violence victims on a daily basis, we see the gap between what we know from experience to be happening with victims and

what is recognized and admissible within the criminal system for understanding the context of victims' actions.

The pardon process can bridge this gap. The pardon board can look beyond the criminal legal system's accepted defenses and allowable expert testimony and use a broader and different lens to evaluate the justice or injustice of an individual's conviction.

The Board of Pardons is the safety net for those cases where the criminal legal system has not or could not adequately assess victim's claims of self-defense or account for the impacts of violence perpetrated against them. A pardon can consider the context and realities of domestic and sexual violence in a way that the court system cannot.

4. Additional Considerations and Potential Unjust Outcomes for Immigrant Victims

A growing body of research shows that immigrant women are particularly vulnerable to domestic violence and “tend to have fewer resources, stay longer in the relationship, and sustain more severe physical and emotional consequences as a result of the abuse and the duration of the abuse than other battered women in the United States.” Giselle Aguilar Hass, Nawal Ammar, & Leslye Orloff, *Battered Immigrants and U.S. Citizen Spouses*, (Washington, DC: Legal Momentum, April 24, 2006). Research also indicates that such abuse is related to women's immigration status. Of the immigrant women who reported abuse, 31% reported that the abuse increased after immigration and 9% reported that the abuse began with immigration. In cases where immigrant women are married to abusers who are U.S. citizens, the victim's immigration status created a power dynamic that fostered further abuse. *Id.*

The fact that immigration status is closely tied to abuse and that immigration issues are federal, not state, makes it all the more important that there be a safety net process such as a pardon that can be available for immigrant victims of intimate partner violence.

CONCLUSION

The pardon is such a powerful tool to right injustices for domestic and sexual violence victims. The effect of unanimity for the board of pardons gives absolute veto power to one person. The Chief Justice has used the absolute veto power with regularity.

VFMN, MNCASA and Standpoint respectfully urge the Supreme Court to uphold the District Court decision that Minn. Stats. §638.01 and §638.02 Subd. 1 are unconstitutional.

NOTICE IS HEREBY GIVEN TO ALL PARTIES

RESPECTFULLY SUBMITTED,

Dated August 22, 2021

/s/ Elizabeth J. Richards

ELIZABETH J. RICHARDS
Minnesota Attorney License No. 081420
2230 Carter Avenue #10
St. Paul, MN 55108
Telephone: (612) 379-4611
Lizrichards360@gmail.com
**Attorney for Violence Free Minnesota &
Minnesota Coalition Against Sexual Abuse**

/s/ Rana S. Alexander

RANA S. ALEXANDER
Minnesota Attorney License No. 0333906
2233 University Avenue W, Suite 150

St. Paul, MN 55114
(612) 343-9842
rana@standpointmn.org
Attorney for Standpoint

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I hereby certify that this Brief of Amicus Curiae conforms to the requirements of Minnesota Rules of Appellate Procedure 132.01, subds. 1-3. This brief was prepared using Microsoft Word 2008. This brief has been produced using 13-point Times New Roman font, contains 209 lines, 2,508 words, and is 10 pages in length, not including the Table of Contents, Table of Authorities and Certificate of Brief Length.

RESPECTFULLY SUBMITTED,

Dated August 23, 2021

/s/ Elizabeth J. Richards

BY: ELIZABETH J. RICHARDS

Minnesota Attorney License No. 081420

2230 Carter Avenue #10

St. Paul, MN 55108

Telephone: 612.379.4611

Lizrichards360@gmail.com

**Attorney for Violence Free Minnesota &
Minnesota Coalition Against Sexual Assault**