

No. A20-1264

STATE OF MINNESOTA
IN COURT OF APPEALS

JENNIFER SCHROEDER, *et al.*,
PLAINTIFFS-APPELLANTS,

v.

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

ON APPEAL FROM A JUDGMENT OF THE DISTRICT COURT
NO. 62-CV-19-7440

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

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IDENTITY AND INTEREST OF THE AMICI STATES¹

The District of Columbia, California, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Rhode Island, Vermont, Virginia, and Washington (“Amici States”) submit this brief in support of Plaintiffs-Appellants. Felon disenfranchisement is the product of a patchwork of state laws, which vary widely. In recent years, however, a trend has emerged: based on doubts about the efficacy of disenfranchisement, states have begun moving away from broadly disenfranchising former felons. Heading into the November election, the District of Columbia, Maine, and Vermont did not restrict in any way the voting rights of convicted felons, including those currently in prison. Nat’l Conf. of State Legislatures, *Felon Voting Rights* (Oct. 1, 2020).² An additional eighteen states automatically restore voting rights to any felon not serving an incarceratory sentence or upon release from incarceration. *Id.*³ And Connecticut, Louisiana, and New York allow certain formerly convicted people under community supervision to vote. Christopher Uggen et al., The Sentencing Project, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction* 5

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

² Available at <https://bit.ly/2ULmUhf>.

³ Those States include Colorado, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah. With the passage of ballot Proposition 17 this month, California joined these ranks. See Patrick McGreevy, *Prop. 17, Which Will Let Parolees Vote in California, Is Approved by Voters*, L.A. Times (Nov. 4, 2020), <https://lat.ms/38A6O2s>.

(Oct. 30, 2020).⁴ Still, an estimated 5.2 million people across the United States were barred from voting in this year’s election because of state laws that disenfranchise individuals who were convicted of felony offenses, including over 55,000 Minnesotans on probation or supervised release. *Id.* at 4, 16.

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

Although the Amici States have reached different conclusions on how best to realize the benefits of felon re-enfranchisement, they share an interest in promoting civic participation and public safety by reintegrating former felons as full-fledged, productive members of their societies. The Amici States’ experiences expanding the franchise have been positive and underscore the benefits of restoring the right to vote to citizens who have

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

been reintegrated into their communities. Moreover, the disproportionate impact of felon disenfranchisement laws on voters of color raises serious state constitutional and democratic concerns. Minnesota’s felon disenfranchisement law, Minn. Stat. § 609.165, which conditions restoration of voting rights on a former felon’s completion of probation, parole, or supervised release, is out of step with these important interests. The Amici States thus urge this Court to reverse the district court’s judgment.

ARGUMENT

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

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

For example, the last handful of states to permanently disenfranchise individuals convicted of felonies have now done away with those bans. *See* Voting Restoration Amendment, Ballot Initiative 14-01 (Fla. 2018) (replacing permanent ban with a rule that restores voting rights upon completion of sentence); Andrew A. Green, *Felons Gain Right*

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

to Vote, Balt. Sun (Apr. 25, 2007) (describing Maryland law restoring voting rights upon completion of sentence);⁶ L.B. 53, 99th Leg., 1st Sess. § 1 (Neb. 2005) (repealing lifetime disenfranchisement and automatically restoring voting rights two years after completion of sentence); A.B. 431, 80th Sess. § 3 (Nev. 2019) (automatically restoring voting rights of all felons upon release from prison); S.B. 204, 2001 Reg. Sess. § 2 (N.M. 2001) (replacing lifetime disenfranchisement with system that restores voting rights upon completion of one's sentence). Delaware also amended its laws to repeal permanent disenfranchisement except as to those who commit enumerated disqualifying felonies, and Wyoming lifted restrictions on the ability of felons convicted of nonviolent offenses to regain the right to vote upon completion of their sentences. *See* Del. Const. art. V § 2; Del. Code Ann. tit. 15, § 6102-6103; H.B. 75, 64th Leg., 2017 Gen. Sess. § 1, 2017 Wyo. Sess. Laws 504.

Other states have restored the right to vote to some or all individuals living in their communities who are still under the supervision of the criminal justice system. In last month's election, California voters approved an amendment to the state constitution to restore voting rights to all non-incarcerated people, including parolees. Patrick McGreevy, *Prop. 17, Which Will Let Parolees Vote in California, Is Approved by Voters*, L.A. Times (Nov. 4, 2020).⁷ Additionally, Colorado, Connecticut, Louisiana, Maryland, New Jersey, New York, and Rhode Island have variously restored voting rights to certain citizens

⁶ Available at <https://bit.ly/3ltf9Zb>.

⁷ Available at <https://lat.ms/38A6O2s>. Prior to the passage of Proposition 17, California permitted citizens subject to felony community supervision (essentially probation) and those serving felony sentences in county jail to vote. *See* A.B. 2466, 2015-2016 Reg. Sess. (Cal. 2016).

completing the terms of either their felony probation or parole. *See* H.B. 19-1266, 72nd Gen. Assemb., 1st Reg. Sess. § 3, 2019 Colo. Sess. Laws 2642, 2643 (restoring voting rights to parolees); H.B. 5042, 2001 Gen. Assemb., Jan. Sess. § 3 (Conn. 2001) (restoring voting rights to probationers); H.B. 265, 2018 Reg. Sess. § 1 (La. 2018) (restoring voting rights to former felons, including those on parole or probation, who have not been incarcerated in the past five years); H.B. 980, 2015 Reg. Sess. § 1 (Md. 2015) (restoring voting rights to parolees and probationers upon release from incarceration); A.B. 5823, 2018-2019 Reg. Sess. § 2 (N.J. 2019) (restoring voting rights to parolees and probationers); N.Y. Exec. Order No. 181 (Apr. 18, 2018) (restoring voting rights to parolees upon release from prison);⁸ H.B. 7938, 2006 Gen. Assemb., Jan. Sess. § 1 (R.I. 2006) (restoring voting rights upon discharge from incarceration).

In addition to enacting laws altering the standards for restoration, some states have implemented administrative systems to better facilitate restoration efforts. In California, Illinois, New Jersey, New Mexico, New York, and Washington, among others, state agencies must now notify felons of the process for seeking restoration of voting rights or provide information about their voting rights prior to or on release from incarceration. *See* Cal. Elec. Code §§ 2105.5, 2105.6 (effective Jan. 1, 2018) (requiring corrections officials to provide information about voting rights restoration online and in person to felons leaving prison); 730 Ill. Comp. Stat. 200/10, /15 (effective Jan. 1, 2020) (establishing civics

⁸ New York already permits felons on probation to vote. *See* N.Y. Elec. Law § 5-106(3).

program for soon-to-be released inmates to learn about, *inter alia*, voting rights); N.J. Stat. Ann. § 30:1B-6.2(b) (effective July 1, 2020) (requiring that soon-to-be-released inmates be provided with “[g]eneral written information on the inmate’s right to vote”); N.M. Stat. Ann. § 31-13-1(C) (effective June 17, 2005) (requiring that a “person who has served the entirety of a sentence imposed for a felony conviction” be “inform[ed] . . . that the person is entitled to register to vote”); N.Y. Elec. Law § 75 (effective Mar. 31, 2011) (requiring that former felons be notified of their right to vote and be provided with a voter registration application upon release); Wash. Rev. Code § 72.09.275 (effective July 28, 2019) (similar). These measures help to reduce confusion among returning citizens by advising them of the process for regaining the right to vote.

In addition to legislative and executive action, courts have also required re-enfranchisement where state laws have run afoul of federal or state constitutional rights. *See, e.g., Hunter v. Underwood*, 471 U.S. 222, 233 (1985) (holding that Alabama’s felon disenfranchisement scheme violated the federal Equal Protection Clause); *Williams v. Tyler*, 677 F.2d 510, 516-17 (5th Cir. 1982) (reversing the district court’s grant of summary judgment and remanding for trial on the question of whether Mississippi violated the federal Equal Protection Clause in selectively enforcing its felon disenfranchisement laws); *McLaughlin v. City of Canton*, 947 F. Supp. 954, 976 (S.D. Miss. 1995) (holding plaintiff’s federal equal-protection rights were violated when he was disenfranchised on the basis of a misdemeanor conviction); *Community Success Initiative v. Moore*, No. 19-CVS-15941, slip op. at 11-12 (N.C. Super. Ct. Sept. 4, 2020) (holding that a North Carolina law that

conditioned restoration of voting rights on the ability to make financial payments violates the North Carolina Equal Protection Clause).

In total, nearly half of states restore voting rights to some or all parolees or probationers. And even many that do not, like Florida, Nebraska, and New Mexico, have taken steps towards liberalizing the terms and conditions of their states' felon disenfranchisement systems. All told, these trends reflect a clear and growing consensus among states toward facilitating restoration and expanding the franchise, a consensus with which Minnesota's felon disenfranchisement system—untouched since 1963—is out of step. In fact, while the percentage of the voting-age population that is disenfranchised as a result of felony convictions declined in the United States overall since 2016, *see* Uggen et al., *Locked Out 2020*, *supra*, at 4, it increased in Minnesota, *compare id.* at 16, with Christopher Uggen et al., The Sentencing Project, *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016*, at 15 (Oct. 2016) (increasing from 1.5 percent to 1.6 percent).⁹ And the percentage of those disenfranchised Minnesotans who are currently serving terms of community supervision increased from 81 percent in 2016 to 85 percent in 2020. *Compare* Uggen et al., *6 Million Lost Voters*, *supra*, at 15, with Uggen et al., *Locked Out 2020*, *supra*, at 16.

Compare Minnesota with three other midwestern states—Indiana, with roughly an equal voting age population, and Illinois and Ohio, both with more than twice the voting age population. *See* Uggen et al., *Locked Out 2020*, *supra*, at 16. Minnesota

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

disenfranchises more people because of felony convictions than each of the three; and it disenfranchises almost as many people as Illinois and Indiana combined. *See id.* The main reason for the disparities is that Illinois, Indiana, and Ohio do not disenfranchise probationers or parolees, while Minnesota does. *See id.* at 5.

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

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

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

It is well established that individuals who engage in prosocial behavior when released from incarceration are more likely to reintegrate into their communities and desist from criminal activities. Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193, 196 (2004). Indeed, studies observe that “attachment to social institutions such as families and

labor markets increase the reciprocal obligations between people and provide individuals with a stake in conforming behavior.” *Id.*

In much the same way, allowing former felons to vote can foster prosocial behavior; when former felons vote, “they are doing what all voters do: actively endorsing the political system.” Alec C. Ewald, *An “Agenda for Demolition”: The Fallacy and the Danger of the “Subversive Voting” Argument for Felony Disenfranchisement*, 36 Colum. Hum. Rts. L. Rev. 109, 130 (2004) (emphasis omitted). Participating in the political process “produces citizens with a generalized sense of efficacy, who believe that they have a stake in the political system,” which, “in turn, fosters continued political participation.” Uggen & Manza, *Voting and Subsequent Crime and Arrest*, *supra*, at 198. In this way, civic restoration “communicates to the ex-felon that she or he is still part of the community and has a stake in the democratic process.” *Restoring Voting Rights of Felons Is Good Public Policy*, *VCU Expert Says*, VCU News (Apr. 26, 2016).¹⁰ When individuals are excluded from this process, by contrast, they “express a feeling of being an ‘outsider.’” Mark Haase, *Civil Death in Modern Times: Reconsidering Felony Disenfranchisement in Minnesota*, 99 Minn. L. Rev. 1913, 1926 (2015).

The experience of the Amici States confirms that when a returning citizen is fully reintegrated into his or her community, including by regaining the right to vote, “it can help transform one’s identity from deviant to law-abiding citizen.” Erika Wood, Brennan Ctr.

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

for Justice, *Restoring the Right to Vote* 8 (May 2009).¹¹ Accordingly, efforts by the Amici States to expand the franchise embrace the idea that “restoring voting rights to ex-felons may facilitate reintegration efforts and perhaps even improve public safety.” Christina Beeler, *Felony Disenfranchisement Laws: Paying and Re-Paying a Debt to Society*, 21 U. Pa. J. Const. L. 1071, 1088 (2019) (internal quotation marks omitted). For example, the New York Governor justified exercising his executive power to restore voting rights to parolees, in part, by observing there is “a strong positive correlation between the civic engagement associated with voting and reduced rates of recidivism, which improves the public safety for all New Yorkers.” N.Y. Exec. Order No. 181, at 1. The California Secretary of State launched an online tool for returning citizens, also, in part, because “[c]ivic engagement can be a critical piece in reintegrating formerly incarcerated Californians into their communities and reducing recidivism.” Press Release, Cal. Sec’y of State, *Secretary of State Alex Padilla Launches ‘Restore Your Vote’ Tool to Help Californians with Criminal Convictions Know Their Voting Rights* (Oct. 17, 2018) (internal quotations omitted).¹²

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

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

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

Comm’n, *Status Update: Restoration Of Civil Rights (RCR) Cases Granted 2009 And 2010*, at 6 (2011).¹³ The report found that between April 2007 and March 2011—the period during which the amended rules were in place—approximately 11 percent of former felons reoffended, as compared with 33 percent of individuals released before the new rules were adopted. *Id.* at 7, 13.

Another study found “consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior.” Uggen & Manza, *Voting and Subsequent Crime and Arrest*, *supra*, at 213. This survey of one thousand former high school students analyzed “the effects of voting participation in the 1996 election upon self-reported crime and arrest in the years from 1997 to 2000.” *Id.* at 200-01. The study found that “[a]mong former arrestees, about 27% of the non-voters were re-arrested, relative to 12% of the voters.” *Id.* at 205. These studies suggest that “[w]hile the single behavioral act of casting a ballot is unlikely to be the sole factor that turns felons’ lives around, the act of voting manifests the desire to participate as a law-abiding stakeholder in a larger society.” *Id.* at 213.

Many in the law enforcement community have endorsed this view by supporting states’ efforts to restore voting rights. For example, a police officer testified before the Maryland legislature that re-enfranchisement “promotes the successful reintegration of formerly incarcerated people, preventing further crime and making our neighborhoods safer.” Wood, *Restoring the Right to Vote*, *supra*, at 11 (quoting *Voter Registration*

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

Protection Act: Hearing on S.B. 488 Before S. Comm. on Educ., Health & Env't Affairs, 2007 Leg., 423rd Sess. 1 (Md. 2007) (written testimony of Ron Stalling, Nat'l Black Police Ass'n)).¹⁴ Similarly, a former city police chief in Rhode Island wrote that disenfranchisement “disrupts the re-entry process and weakens the long-term prospects for sustainable rehabilitation,” whereas “[v]oting—like reconnecting with family, getting a job, and finding a decent place to live—is part of a responsible return to life in the community.” Dean Esserman & H. Philip West, *Without a Vote, Citizens Have No Voice*, *The Providence J.* (Sept. 25, 2006).¹⁵

State legislators have similarly endorsed the notion that restoring voting rights encourages former felons to rejoin society as productive members of their communities. In Colorado, for example, the legislature declared that restoring voting rights to parolees “will help to develop and foster in these individuals the values of citizenship that will result in significant dividends to them and society as they resume their places in their communities.” H.B. 19-1266, 72nd Gen. Assemb., 1st Reg. Sess. § 1(c), 2019 Colo. Sess. Laws 2642. States have also recognized that restoring the franchise benefits their communities more broadly by promoting civic participation. According to the Rhode Island legislature, “[r]estoring the right to vote strengthens our democracy by increasing voter participation and helps people who have completed their incarceration to reintegrate into society.” R.I. Gen. Laws § 17-9.2-2(a)(1).

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

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

Policymakers have also observed that by welcoming former felons back as full-fledged members of their communities, re-enfranchisement can improve overall public safety. Washington State legislators thus credited testimony that “restoration of the right to vote encourages offenders to reconnect with their community and become good citizens, thus reducing the risk of recidivism.” H. Comm. on State Gov’t & Tribal Affairs, Report on H.B. 1517, 2009 Reg. Sess., at 3 (Wash. 2009). The Assemblyman who authored the recently passed amendment to the California Constitution also described restoring parolees’ rights to vote as “good for democracy and good for public safety.” McGreevy, *supra*. And the New Jersey legislature found that “[t]here is no evidence that denying the right to vote to people with criminal convictions serves any legitimate public safety purpose.” N.J. Stat. Ann. § 19:4-1.1(f).

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

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

Minnesota contends—and the district court accepted—that post-release disenfranchisement promotes rehabilitation. Def.’s Resp. Summ. J. Mem. at 8; District Ct. Order 9-10. Not so. For one thing, the statute’s legislative history does not actually support the state’s rehabilitation rationale. Recall, “[t]he enactment of Minn. Stat. § 609.125 in 1963[] converted the process of restoring the right to vote from a discretionary model to an automatic one.” District Ct. Order 9. To the extent the Minnesota legislature in 1963 believed that establishing a system that automatically restores voting rights would promote

returning citizens' rehabilitation, that reasoning does not address the rehabilitative impact of disenfranchising those who are serving terms of probation, parole, or supervised release. Instead, there is a growing consensus that once felons have completed their terms of incarceration and returned to their communities, the penalty of continued disenfranchisement does not further states' interests.

Broad policies of post-release disenfranchisement “conflict[] with the rehabilitative goals of the criminal justice system by discouraging civic participation.” Beeler, *supra*, at 1087-88. As discussed above, voting serves an important function, as it “invests” returning felons in “our democracy while reminding them of the reciprocal responsibilities that citizens share.” Wood, *Restoring the Right to Vote, supra*, at 11. Denying returning citizens the “ability to participate in the political process” only “further isolates and segregates ex-felons re-entering into society.” Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 Berkeley La Raza L.J. 407, 408 (2012). This extended exclusion, in turn, conveys the message “that ex-offenders are beyond redemption.” Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate Over Felon Disenfranchisement*, 56 Stan. L. Rev. 1147, 1166 (2004).

Indeed, studies suggest that disenfranchisement may be positively correlated with recidivism. For example, a study of individuals released from prison in fifteen states in 1994 revealed that “individuals who are released in states that permanently disenfranchise are roughly nineteen percent more likely to be rearrested” and “roughly ten percent more

likely to reoffend than those released in states that restore the franchise post-release.” Hamilton-Smith & Vogel, *supra*, at 426, 427.

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

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

The Amici States also recognize the importance of restoring voting rights to returning citizens given the disparate impact of felon disenfranchisement laws on minority communities. Unfortunately, this country’s mass incarceration problem “has disproportionately impacted people of color,” and “the disparities in incarceration rates by race ultimately become disparities in voting rights.” Beeler, *supra*, at 1085. Consequently, in the November 2020 election, more than 6.2 percent of the Black voting-age population in the United States could not vote due to felon disenfranchisement laws, as compared with only 1.7 percent of the non-Black voting-age population. Uggen, *Locked Out 2020*, *supra*, at 4. Furthermore, although the data is less comprehensive, at least 560,000 Latinx Americans, or over 2 percent of the Latinx voting-eligible population, is disenfranchised due to felony convictions. *Id.* In Minnesota, these disparities are even starker: more than 7.2 percent of the Black voting-age population and over 3.7 percent of the Latinx voting-age population are disenfranchised. *Id.* at 17-18. Additionally, the latest available data display a similar disparity in the Minnesotan American Indian population: 5.9 percent of

the American Indian voting-age population is disenfranchised because of felony convictions. Christopher Uggen & Suzy McElrath, *Draft Report on Felon Disenfranchisement in Minnesota* 5 (Oct. 14, 2012).¹⁶

Furthermore, there is evidence that the existence of disenfranchisement laws—as well as misinformation about their scope—is more likely to deter Black individuals from voting than their white counterparts. A 2009 study found that “eligible and registered [B]lack voters were nearly 12 percent less likely to cast ballots if they lived in states with lifetime disenfranchisement policies,” as compared with white voters, whose “probability of voting decreased by only 1 percent in such states.” Erin Kelley, Brennan Ctr. for Justice, *Racism & Felony Disenfranchisement: An Intertwined History* 3 (May 2017).¹⁷ According to another scholar, “in states with restrictive criminal disenfranchisement laws, the probability of voting declines for African-Americans, even if they do not possess a criminal record,” because “[t]he fact that so many are barred from voting . . . makes exercising the franchise less a part of the fabric of the community.” Anthony C. Thompson, *Unlocking Democracy: Examining the Collateral Consequences of Mass Incarceration on Black Political Power*, 54 *How. L.J.* 587, 607 (2011). And yet another scholar observed “that neighborhoods that are home to lost voters—and particularly neighborhoods with large Black populations—systematically turn out for local elections at lower rates than otherwise similar neighborhoods.” Kevin Morris, *Neighborhoods and Felony Disenfranchisement:*

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

¹⁷ Available at <https://bit.ly/38Dn3vs>.

The Case of New York City, Urb. Affs. Rev. 19 (2020). In short, barring “so many” returning citizens in minority communities from voting “makes exercising the franchise less a part of the fabric of the community, precipitating a negative ripple effect.” Thompson, *Unlocking Democracy*, *supra*, at 607.

As a result, the disproportionate impact of felon disenfranchisement can have distorting effects on the whole system, as the political voices of minority communities are muted. To be sure, the concern is not simply that a disproportionate number of Black, Latinx, and American Indian Minnesotans lose their political voices, but rather that those former felons’ communities have diminished voting power. See Anthony C. Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C. L. Rev. 255, 282-83 (2004). And when communities lose their political voice, they have less of a say in who represents them at the federal, state, and local levels—and thus lack influence over many matters that affect their daily lives. As one example, parents who live in communities affected by restrictive voting restoration laws may not be heard on a referendum to increase taxes to support schools or in efforts to “prevent yet another waste incinerator from moving in nearby.” Christopher Haner, *Felon Disenfranchisement: An Inherent Injustice*, 26 J. Civ. Rts. & Econ. Dev. 911, 935 (2013) (quoting Elizabeth A. Hull, *The Disenfranchisement of Ex-Felons* 1-5 (2006)). Lower voter turnout is also associated with less inclusive healthcare policies, which, in turn, cause an increase in the “health disparities” that already exist between voters and nonvoters. Nicolas Yagoda, *Addressing Health Disparities Through Voter Engagement*, 17 Annals Fam. Med. 459, 460-61 (2019); see Jonathan Purtle, *Felon Disenfranchisement in the United States: A Health Equity*

Perspective, 103 Am. J. Public Health 632, 632 (2013) (explaining how “felon disenfranchisement might affect health by means of inequitable public policies that differentially allocate resources for health and the inability to participate fully in society, including by voting”). Restoring the vote to probationers or parolees will foster political participation in minority communities, which have been long disadvantaged by felon disenfranchisement laws.

To that end, many states have expressly recognized the disparate impact of restrictive restoration systems. In the New York executive order mentioned above, for instance, the Governor declared that “the disenfranchisement of individuals on parole has a significant disproportionate racial impact thereby reducing the representation of minority populations.” N.Y. Exec. Order No. 181, at 1. Likewise, in Rhode Island, the legislature noted that “[b]y denying so many the right to vote, criminal disenfranchisement laws dilute the political power of entire minority communities.” R.I. Gen. Laws § 17-9.2-2(a)(4). Most recently, the Assemblyman who authored the aforementioned California Proposition that restored voting rights to parolees touted the measure’s power to “right a wrong and restore voting rights for a marginalized community and people of color.” McGreevy, *supra*.

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

CONCLUSION

The Court should reverse the district court's judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that pursuant to Minn. R. Civ. App. P. 129.02, on November 23, 2020, seven days after the time allowed for filing the Appellants' Opening Brief, this brief was served through this Court's electronic filing system to all parties registered counsel and the Clerk of the Court.

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CERTIFICATE OF COMPLIANCE

I further certify that this brief complies with the type-volume limitation in Minn. R. Civ. App. P. 132, subd. 3(c)(1) and this Court's October 26, 2020 Order because the brief contains 4,616 words, excluding exempted parts. This brief also complies with the typeface and type style requirements of Minn. R. Civ. App. P. 132, subd. 1 because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman 13 point.

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