

STATE OF MINNESOTA
IN SUPREME COURT

FILED

June 28, 2021

OFFICE OF
APPELLATE COURTS

Jennifer Schroeder, Elizer Eugene Darris,
Christopher James Jecevics-Varner, and
Tierre Davon Caldwell,

Appellate File No. A20-1264

Plaintiffs-Petitioners,

Ramsey County District Court
Case No. 62-CV-19-7440

v.

Minnesota Secretary of State Steve
Simon, in his official capacity,

Defendant-Respondent.

**UNOPPOSED
REQUEST TO PARTICIPATE AS *AMICI CURIAE* BY
LEAGUE OF WOMEN VOTERS MINNESOTA, COMMON CAUSE
MINNESOTA, AND THE MINNESOTA SECOND CHANCE COALITION**

TO: The Honorable Justices of the Minnesota Supreme Court and all parties of record:

This appeal concerns the fundamental political right to vote as guaranteed by the Minnesota Constitution, affects more than 52,000 Minnesotans today, and will affect many more Minnesotans in the future. (District Court Index 2, ¶45.) The League of Women Voters Minnesota, Common Cause Minnesota, and the Minnesota Second Chance Coalition respectfully seek leave pursuant to Minnesota Rule of Civil Appellate Procedure 129 to participate before this Court as *amici curiae*, and to file one joint *amicus* brief. The request is unopposed (*see* Exhibit A). The court of appeals allowed *amicus* participation below.

I. BACKGROUND

The United States has a long history of suppressing voting rights, whether through outright denial in the text of the United States and state constitutions, poll taxes, literacy taxes, state statutes and local regulations legalizing racial segregation, or by marginalizing certain classes of voters—especially women, African Americans, and Native Americans. Voting rights have also been suppressed through intimidation.¹ Attempts to defy these laws or resist intimidation have frequently resulted in arrests, fines, jail sentences, violence, and deaths. And while voting-suppression tactics have changed over time, the overall aim has continued unabated. *See, e.g., Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020); <https://archive.thinkprogress.org/exclusive-new-voter-id-restriction-in-north-dakota-threatens-hundreds-of-natives-ability-to-vote-49937a379793/>.

Here, two Minnesotans with felony convictions² challenge their voting disenfranchisement under Minn. Stat. § 201.014, subd. 2(1). Elizer Darris was 15 when he was arrested, 17 when convicted, and released from prison almost five years ago. (Index 58, ¶6.) Jennifer Schroeder, addicted since age 12, bounced around from foster home to foster home, and group home to group home. (Index 57, ¶¶2-3.) Sadly, her 2013 drug-possession conviction “was almost a relief.” (*Id.*) She was sentenced to 365 days in jail and 40 years’ probation. (*Id.* at ¶5.)

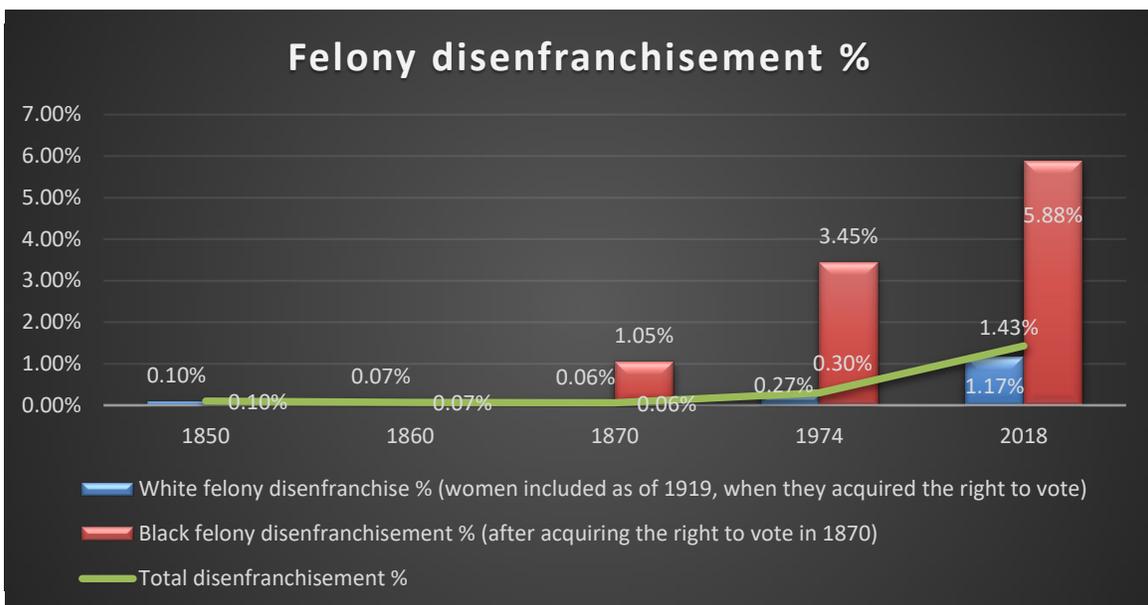
Petitioners present very different stories, but are both employed and active in the

¹ *See, e.g.,* <https://www.politico.com/story/2016/11/suppress-black-vote-trump-campaign-230616>.

² The court of appeals dismissed as moot the appeals brought by Christopher Jecevicus-Varner and Tierre Caldwell. (Petitioners’ Addendum at 8 n.2.)

community. (Indexes 57-59, 62.) For example, Ms. Schroeder became the first person in her family to graduate from college. She is an addiction counselor, pays taxes, volunteers, and is active in her church. (Index 57, ¶¶6-10.) But, like her co-Petitioner and so many other non-incarcerated Minnesotans, she cannot vote.

The record shows that in 1850 in Minnesota, “the percentage of persons subject to felony disenfranchisement would have been less than 0.1%.” (Index 56 at 12.) By 1860, Minnesota’s population had grown more than 28-fold, but the percentage of Minnesotans subject to felony disenfranchisement was still less than 0.1%. (*Id.*) While Minnesota’s population has grown steadily since, the felony-disenfranchisement rate increased exponentially. By 1974, the percentage of Minnesotans subject to felony disenfranchisement had tripled. (*Id.* at 13.) By 2018, that percentage had increased more than 4.7-fold compared to 1974, to 1.43%. (*Id.*) Shockingly, the African American felony-disenfranchisement percentage is 5.88% of the Black voting-age population, or more than four times the total disenfranchisement rate (Index 56 at 14):



II. *AMICI* HAVE A PUBLIC INTEREST

The nonpartisan League of Women Voters encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. It envisions a democracy where every person has the desire, right, knowledge, and confidence to participate. The League grew out of 80 years of protest over women not being allowed to vote and, since 1848, has been fiercely committed to secure the sacred right to the elective franchise.

Common Cause Minnesota is a state office of Common Cause, a nonpartisan, grassroots organization dedicated to upholding the core values of American democracy. It works to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process.

The Minnesota Second Chance Coalition is a bipartisan nonprofit consisting of hundreds of nonprofit member organizations and individuals. Collectively, its members believe in second chances and advocate for fair and responsible laws, policies, and practices that enable individuals who have been involved in the justice system to fully support themselves and contribute to their communities to their full potential. That includes having an official voice in self-governance, as people—no matter their past mistakes—have equal dignity and should have equal say in who represents them and what laws govern them.

III. *AMICI* SUPPORT REVIEW AND REVERSAL

Proposed *amici* urge this Court to grant the petition for further review and seek to

support reversal of the court of appeals' published decision affirming entry of summary judgment in favor of the Secretary of State.

This case warrants review under Minn. R. Civ. App. P. 117, subd. 2(a) because it raises not only important but fundamental constitutional issues regarding the elective franchise, race, and equality, all of which have been unlawfully avoided by the lower courts by ignoring the threshold question whether most of the crimes on the ever-expanding list of modern-day felonies are even within the scope of the deprivation of the elective franchise provided for in Article VII of the Minnesota Constitution.

At the time of the adoption of the Minnesota Constitution, felony disenfranchisement was reserved for a small range of severe conduct and only applied to a small number of imprisoned Minnesotans. *See* Mark Haase, *Civil Death in Modern Times: Reconsidering Felony Disenfranchisement in Minnesota*, 99 Minn. L. Rev. 1913, 1923 (2015). Because freedoms not yielded to the State through the Constitution are reserved to the people, and because Minn. Stat. § 201.014, subd. 2(1) (rendering certain persons ineligible to vote) far exceeds the scope of Article VII of the Minnesota Constitution, that statute is both facially unconstitutional and unconstitutional as applied. As such, this appeal also presents issues under subdivision 2(b) of Rule 117.

Finally, further review is merited under subdivisions 2(d)(2) and (3) of Rule 117. As noted above, the laws at issue in this case affect more than 52,000 Minnesotans, residing in every county, continue to affect others on a daily basis, and present recurring problems in every election—local, state, and federal. The challenged statutes are unlawful and immoral, and the remedy is both straightforward and within this Court's control and very

purpose—to serve as the final guardian of the rights and protections provided in Minnesota’s Constitution.

IV. AMICUS PARTICIPATION WILL BENEFIT THE COURT

Requests for leave to file *amicus* briefs are freely granted, “to ensure the development of a more complete appellate record.” *Breza v. City of Minnetrista*, 706 N.W.2d 512, 515 n.1 (Minn. Ct. App. 2005).

Plaintiffs-Petitioners challenge the decisions below, holding that while voting is a fundamental right in Minnesota, (i) persons with any felony conviction do not enjoy that right, (ii) only the traditional rational-basis standard of review applies to Plaintiffs-Petitioners’ equal-protection claim, and (iii) a rational basis exists for Minnesota’s statutory framework of disenfranchisement and re-enfranchisement.

Proposed *amici* respectfully submit that the courts below both interpreted the complaint too narrowly—failing to address the fundamental claim therein under Article VII of the Minnesota Constitution—and that the lower courts reached an incorrect conclusion. As the Secretary recognized below (Index 72 at 5), Plaintiffs-Petitioners have argued that “disenfranchisement should be limited to convictions of felony offenses that existed at statehood.” But this critical threshold issue was skipped by the lower courts. Additionally, Minnesota’s statutory framework of disenfranchisement and restoration of voting rights fails respectively on substantive and procedural due process grounds. Procedural due process issues exist, especially for persons convicted of a felony whose civil rights are restored through expiration of their sentence. *See* Minn. Stat. § 609.165, subd. 2(2). The current process fails to provide any formal, coherent process by which one

can inquire whether—or not—their voting rights have been restored except through voter registration. But registering to vote while ineligible is a felony in its own right, Minn. Stat. § 201.054, subd. 2, thus exposing those who have previously been convicted of a felony to renewed felony prosecution for violation of Minn. Stat. §§ 201.014 and 201.054 if they misunderstand their right to vote. They can avoid prosecution risk only by forfeiting their voting rights.

On an issue of such fundamental importance as voting, which the U.S. Supreme Court has consistently and rightfully characterized as “preservative of all rights,” *see, e.g., Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964) (*quoting Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)), and because this action currently impacts more than 52,000 Minnesotans, it is appropriate to allow the submission of non-duplicative *amicus* arguments and additional information regarding the challenges faced by those who are least able to advocate for themselves.

V. CONCLUSION

Proposed *amici* League of Women Voters Minnesota, Common Cause Minnesota, and the Minnesota Second Chance Coalition respectfully submit that this case deserves further review and that the larger context for the appeal and *amici*’s arguments would likely escape the Court’s consideration without their involvement and contributions. Accordingly, they respectfully seek leave to file one joint *amicus* brief.

Respectfully submitted,

STOEL RIVES LLP

Dated: June 28, 2021

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WORD-COUNT CERTIFICATE

Pursuant to Minn. R. Civ. App. P. 129.01(c), this request for leave to participate as an *amicus curiae* is certified to contain 1,493 words, exclusive of the caption and the signature block. It has been prepared in 13-point font using Microsoft Office 365 ProPlus.

STOEL RIVES LLP

Dated: June 28, 2021

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