No. A21-1264

State of Minnesota
In Supreme Court

JENNIFER SCHROEDER, ELIZER EUGENE DARRIS, CHRISTOPHER JAMES JECEVICUS-VARNER, AND TIERRE DAVON CALDWELL,

Plaintiffs-Petitioners,

v.

MINNESOTA SECRETARY OF STATE STEVE SIMON, IN HIS OFFICIAL CAPACITY,

Defendant-Respondent.

PETITION FOR REVIEW

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Petitioners bring claims under the Minnesota Constitution to challenge the statutory scheme that disenfranchises more than 53,000 Minnesotans living in the community on probation, parole, or supervised release following felony convictions. Given the lack of any governmental interest served by disenfranchising persons who live and work in our communities and the profoundly disproportionate impact of that practice on persons of color, Petitioners request that this Court review the constitutionality of the statutes that disenfranchise them and the Court of Appeals' decision denying them relief. *See* Minn. R. Civ. App. P. 117 subd. 2(a)–(d) ("Rule 117").

ISSUES PRESENTED FOR REVIEW

1. The undisputed record demonstrates that the legislative practice of denying voting rights to persons living in the community on probation, parole, or supervised release disproportionately disenfranchises persons of color, and the Legislature has never articulated any purpose for doing so. Can a statutory scheme survive heightened rational-basis review when, for no substantiated reason, it establishes a classification that causes significant racial disparities with respect to the right to vote and directly converts disparities in the criminal justice system into racial political inequality? The Court of Appeals answered "yes," on the ground that the statutes at issue do not facially discriminate based on race.
2. Should a legislative scheme that denies voting rights to persons living in the community be subject to strict scrutiny under Article I of the Minnesota Constitution because voting is a fundamental right and Minnesota courts have a constitutional role to ensure that the political branches do not deny Minnesotans the right to vote for no reason? While

acknowledging that no court has previously addressed the meaning of the Article VII felony-disenfranchisement clause or its application to persons who have been restored to the right to live in the community, the Court of Appeals answered "no" based on its interpretation of Article VII and its holding that the fundamental right to vote does not apply to Petitioners.

3. The legislative history of the challenged statutory scheme does not contain any rationale for disenfranchising members of the community; the Legislature instead expressed an interest in restoring voting rights to facilitate rehabilitation and a return to political participation. The disenfranchisement of persons living in the community undermines that purpose. Can a statutory scheme that deprives Petitioners of the right to vote in contradiction to the only articulated rationale for the scheme survive any form of constitutional review, whether rational-basis review or the balancing test that Minnesota courts apply to electoral regulations that burden the right to vote? The Court of Appeals answered "yes," because it ruled that Petitioners do not have a right to vote.

STATEMENT OF CRITERIA SUPPORTING PETITION

This Petition implicates all Rule 117 criteria supporting review of the Court of Appeals' decision, and the issues go to the core of this Court's constitutional role to ensure that fundamental political rights of the State's citizens are not unconstitutionally abridged.

First, the questions presented are important. Rule 117 subd. 2(a). Petitioners, along with 53,000 other Minnesotans, continue to be deprived of a basic right of citizenship and made a political underclass by the challenged statutory scheme. And with no legislative consideration, the disenfranchisement scheme causes disturbing racial inequities: it denies

voting rights to 8.3% of otherwise eligible American Indian voters and 4.5% of otherwise eligible Black Minnesotans, compared to just 0.9% of white Minnesotans. (ADD-37.) The Court's review of these statutes is vital to the State's electoral democracy.

Second, Petitioners seek review of a decision that ruled on the constitutionality of a statute. *See* Rule 117 subd. 2(b). Petitioners challenge the constitutionality of Minnesota Statutes Sections 201.145 and 609.165, which combine to disenfranchise persons living in the community on probation, parole, or supervised release. There is no dispute that, at minimum, the Legislature has the authority to restore voting rights to Petitioners, yet the Court of Appeals' decision foregoes meaningful judicial review of the exercise of that discretion. This Court should review a Court of Appeals decision that allows the Legislature to deprive Petitioners of the right to vote with no effective judicial recourse.

Finally, the lower courts have departed from this Court's established law by, *inter alia*, refusing to apply heightened rational-basis review to a legislative classification that disproportionately burdens the voting rights of racial minorities. *See* Rule 117 subd. 2(c). While failing to identify *any* legislative rationale supporting a statutory scheme that disproportionately excludes persons of color from political participation, the Court of Appeals provided no persuasive grounds to refuse to apply *State v. Russell*, 477 N.W.2d 886 (Minn. 1991), notwithstanding this Court's affirmation of that decision in *Fletcher Properties, Inc. v. City of Minneapolis*, 947 N.W.2d 1 (Minn. 2020). This Court should clarify that *Russell* means what it says: that heightened rational-basis review is "particularly appropriate" when "the challenged classification appears to impose a substantially disproportionate burden on the very class of persons whose history inspired

the principles of equal protection." *Russell*, 477 N.W.2d at 889. Clarification of that proposition will have statewide impact given the effect of the disenfranchisement scheme on tens of thousands of otherwise eligible voters throughout the state. *See* Rule 117 subd. 2(d).

Review by this Court is necessary. The standard of review is *de novo* because the appeal stems from a grant of summary judgment against Petitioners.

STATEMENT OF THE CASE

Like so many others on community supervision, Petitioners actively contribute to their communities through work, family, payment of taxes, and civic participation, but they are denied the right to vote by the statutory scheme they challenge. Specifically, Section 201.145 excludes Petitioners from the statewide voter registration system until their "civil rights have been restored." In turn, Section 609.165 denies restoration of voting rights until discharge of sentence. The Legislature's refusal to restore voting rights to all persons living in the community violates the Article I guarantee of equal protection and Article VII protections of the fundamental right to vote, as alleged in Petitioners' Complaint.

ARGUMENT

A. The State's Disenfranchisement Scheme Violates Equal Protection and Cannot Survive Heightened Rational-Basis Review

In *Russell*, the Court confronted a statutory classification that was racially neutral on its face yet disproportionately burdened racial minorities, and the Court responded by applying heightened rational-basis review. *Russell*, 477 N.W.2d at 889. The "more

stringent standard of review" codified in *Russell* refuses to assume that classifications causing disparate racial impacts serve some valid purpose whether or not one has ever been stated. *Id*. Instead, heightened rational-basis review requires review of the legislative record to identify a purpose that has actually been articulated and substantiated. *Id.* As the Court explained again in *Fletcher Properties*, 947 N.W.2d at 19, courts must "require actual (and not just conceivable or theoretical) proof" that a classification that "adversely affects one race differently" serves a legislative purpose. Heightened rational-basis review also requires a "tighter fit" between the stated government interest and the classification. *Id.* at 19–20 n.12.

This Court's consistent jurisprudence requires application of heightened rational-basis review here. There is no dispute that the challenged statutory scheme disproportionately disenfranchises persons of color by classifying persons on community supervision as ineligible to vote. The undisputed numbers are stark: Black Minnesotans and Native Minnesotans are **4.9** and **9.0** times more likely to be disenfranchised by the legislative classification than whites. (ADD-37.) The Legislature's classification directly causes racial political inequality with respect to the right to vote. Heightened rational-basis review must be applied to ensure that the Legislature has some valid purpose causing this disparity.

The Court of Appeals contradicted *Russell* by refusing to apply heightened rational-basis review because the statutes impose a "racially neutral criterion." (ADD-23.) That reasoning reads *Russell* out of existence: statutes with race-based classifications disadvantaging racial minorities are subject to strict scrutiny, while *Russell* requires

heightened rational-basis review of facially neutral statutes that cause disparate impacts. As in *Russell*, the classification challenged here disproportionately impacts persons of color. That fact triggers heightened rational-basis review.

The Court of Appeals declined to address whether the disenfranchisement scheme can survive heightened rational-basis review. It cannot. The Legislature has never articulated a reason to disenfranchise anyone living in the community. Instead, when adopting Section 609.165, the Legislature explained that voting rights should be restored at discharge of sentence "to promote the rehabilitation of the defendant and his return to this community as an effective participating citizen." (ADD-55.) That interest is directly at odds with the decision to deprive persons living in the community of the right to vote. Given the contradiction between the classification and the Legislature's only stated interest in it, heightened rational-basis review precludes the courts from assuming that the persistence of this arbitrary scheme is benign.

B. The Disenfranchisement Scheme Should Be Subject to Strict Scrutiny

Minnesota courts consistently apply strict scrutiny whenever citizens face disenfranchisement. *See Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 733 (Minn. 2003). The Court of Appeals declined such review because it found that Article VII disenfranchises Petitioners, not the Legislature. That ruling was erroneous for at least three reasons.

First, the Court of Appeals interpreted Article VII as disenfranchising people convicted of felonies "unless restored to civil rights *by the Legislature*." That emphasized text, of course, is nowhere to be found in Article VII. Minn. Const. art. VII, § 1. As Petitioners showed with an exhaustive review of the historical record, both the text and

history of Article VII indicate that it should be read to restore Petitioners' voting rights upon release from incarceration and restoration of their right to live in the community.

Second, even if the Court declines to adopt Petitioners' interpretation of Article VII, Respondent concedes that the Legislature has discretion to restore their voting rights at any time. Nothing in Article VII requires Petitioners' *continued* disenfranchisement. The disenfranchisement scheme is therefore a deliberate legislative decision to deny voting rights to Petitioners and other persons living in the community. Thus, Petitioners lack a right to vote because of an act of legislative discretion, and any discretionary denial of voting rights should be strictly scrutinized. Even if the Constitution includes a grant of discretion to the Legislature, that authority must be subject to meaningful judicial review to ensure that it is exercised in a manner consistent with equal protection and Minnesota's other constitutional guarantees.

Third, while Article VII contains specific exceptions to universal adult franchise, legislative expansion of those exceptions beyond their narrowest terms must be subject to searching judicial review. It is anathema to the State's constitutional order to construe Article VII to give the Legislature carte blanche to grant or deny voting rights without meaningful review by the courts.

C. The Disenfranchisement Scheme Cannot Survive Any Form of Constitutional Review

The sheer arbitrariness of the disenfranchisement scheme condemns it under any version of equal protection review. With respect to the rights, freedoms, and responsibilities relevant to voting, Petitioners are similarly situated to all others living in

the community. The Legislature's interest lies in returning those living in the community to "effective participating citizen[s]," (ADD-55), but it arbitrarily chose to perpetuate their disenfranchisement in contradiction to that purpose. Classifying Petitioners as second-class citizens deprived of voting rights serves no purpose.

The same result is reached if the Court applies the balancing test used to review electoral regulations that burden the right to vote. *See Kahn v. Griffin*, 701 N.W.2d 815, 832–33 (Minn. 2005) (balancing the "character and magnitude" of the burden on voting rights against any "important regulatory interest" the government establishes to support it). Here, the burden on Petitioners' right to vote is absolute; Ms. Schroeder, on probation for drug possession, is disenfranchised until 2053. Respondent has never asserted, much less established, any countervailing government interest served by denying Petitioners the right to vote.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant their Petition for Review.

Date: June 22, 2021

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Certification of Brief Length

I hereby certify that this petition conforms to the requirements of Minn. R. Civ. App. P. 117, subd. 3, regarding length and format for a petition. The length of this petition is 1,957 words. This petition was prepared using Microsoft Word 2016 software.

Dated: June 22, 2021

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