MINNESOTA STATE LEGISLATURE GIVEN THE FINAL WORD ON FELON DISENFRANCHISEMENT AFTER SUPREME COURT OF MINNESOTA AFFIRMS ITS CONSTITUTIONALITY

SCHROEDER V. SIMON, 985 N.W.2D 529 (MINN. 2023).

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I. INTRODUCTION

In *Schroeder v. Simon*,[1] the Minnesota Supreme Court affirmed a decision from the Minnesota Court of Appeals, holding that Minnesota Statutes, section 609.165, which disenfranchised felons who were living amongst the community during a term of parole, probation, or supervised released, did not violate the equal protection principle or the fundamental right to vote contained in the Minnesota Constitution.[2] The court also held that article VII, section 1, of the Minnesota Constitution, which defines the scope of the right to vote in Minnesota, does not guarantee the restoration of voting rights to felons upon release from incarceration.[3] However, the court, recognizing the concerning consequences stemming from felon disenfranchisement, expressly deferred to the Minnesota Legislature to have the final say on this issue.[4] Shortly after the Minnesota Supreme Court published its opinion in *Schroeder*, the state's legislative body took the court up on this offer, passing a law that would dramatically shift the landscape of felon voting rights in Minnesota.[5]

This Comment will begin by discussing the background and procedural posture of the *Schroeder* case, before shifting to a conversation on helpful background information on the issue of felon disenfranchisement through present day, both in Minnesota and the broader United States. Next, this Comment will discuss each of the three opinions published by the Minnesota Supreme Court in *Schroeder*—the majority opinion plus one concurrence and one dissent—before shifting to the Minnesota Legislature's response to this case. Lastly, this Comment argues that, despite some flawed logic from the majority opinion in this case, the deference to the Minnesota Legislature was the correct outcome based on how the state has historically resolved felon voting rights issues, as well as contemporary trends within the United States on this matter.

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1. 985 N.W.2d 529 (Minn. 2023).
2. *Id.* at 533–34.
3. *Id.* at 534.
4. *Id.* at 557.
5. *See Ex-felons on Parole and Probation Now Allowed to Vote in Minnesota,* PRISON LEGAL NEWS (Oct. 15, 2023), https://www.prisonlegalnews.org/news/2023/oct/15/ex-felons-parole-and-probation-now-allowed-vote-minnesota/.

II. STATEMENT OF THE CASE

Jennifer Schroeder was thirty years old and had recently become a mother when she was convicted of felony drug possession in 2014.[6] Schroeder was sentenced to one year of incarceration, but a forty-year probation term following release would prevent her from casting a ballot until 2053, at which point she would be seventy-one years old.[7] During her probation term, Shroeder earned a degree in addiction counseling and now assists those who face similar challenges as she did prior to her arrest,[8] while also doing volunteer work in her community.[9]

Elizer Eugene Darris was convicted of homicide as an adult at age fifteen and was sentenced to life in prison.[10] Ultimately, Darris was released from incarceration in 2016 but would be under supervision, and thus, unable to register to vote, until 2025.[11] Darris used his incarceration as a wake-up call to turn his life around,[12] earning a GED, an associate's degree, and getting married while incarcerated.[13] Like Schroeder, Darris has done work to benefit the community during his period of supervised release. He has worked with the ACLU of Minnesota as an organizer, among other jobs, and volunteered in the community as a mentor, reentry coach, and political campaign staffer.[14] As of February 2024, Darris serves as the Chief Visionary Officer for the Darris Group, a consulting company he founded which specializes in political,

6. Esme Murphy, *One Woman's Journey from Serving Jail Time to Winning Back the Right to Vote*, CBS NEWS (June 29, 2023, 6:10 PM), https://www.cbsnews.com/minnesota/news/one-womans-journey-from-serving-jail-time-to-winning-back-the-right-to-vote/.

7. *Id.*

8. Jennifer Schroeder, *My Conviction Meant 40 Years Without A Vote. Not Anymore.*, ACLU (Mar. 21, 2023), https://www.aclu.org/news/voting-rights/my-conviction-meant-40-years-without-a-vote-not-anymore.

9. *Schroeder*, 985 N.W.2d at 534.

10. Peter Callaghan, *With ACLU, Formerly Incarcerated Minnesotans Ask to Intervene in Suit Challenging Restoration of Voting Rights*, MINNPOST (Sept. 6, 2023), https://www.minnpost.com/state-government/2023/09/with-aclu-formerly-incarcerated-minnesotans-ask-to-intervene-in-suit-challenging-restoration-of-voting-rights/. After spending nearly two decades in prison, Darris successfully appealed his first-degree murder charge and was resentenced to twenty-five years for second-degree murder. Laura Yuen, *Life After Lockup: An Inmate's First Year Out*, MPR NEWS (Nov. 1, 2017, 5:00 AM), https://www.mprnews.org/story/2017/11/01/life-after-lockup-an-inmates-first-year-out.

11. Callaghan, *supra* note 10.

12. See Yuen, *supra* note 10.

13. *Id.*

14. *Schroeder*, 985 N.W.2d at 534.

governmental, NGO,[15] and business strategy, with a focus on community-driven solutions.[16]

In October 2019, Schroeder, Darris, and two other Minnesotans, each of whom had previously been convicted of a felony but at the time were living amongst the community and completing their sentences on either probation, parole, or supervised release, brought suit against Minnesota's Secretary of State, Steve Simon, in his official capacity.[17] The petitioners[18] sought an order from the court requiring the Secretary of State to swiftly and permanently implement measures to reinstate voting rights to convicted felons who have returned to the community.[19] Petitioners relied on three legal theories, each pertaining to the relationship between provisions of the Minnesota Constitution and Minnesota Statutes, section 609.165, the "statutory mechanism for restoring voting rights" and other civil rights to those who have been denied their constitutional rights due to a felony conviction.[20]

First, the petitioners argued that section 609.165 violated article VII, section 1, of the Minnesota Constitution, which sets the parameters for which Minnesota citizens have the right to vote while enumerating specific persons who "shall not be entitled or permitted to vote," including "a person who has been convicted of . . . [a] felony, unless restored to civil rights."[21] The petitioners argued that this state constitutional provision should be interpreted as automatically restoring a felon's civil rights—including their ability to cast a ballot—upon release from confinement, including when sentenced to probation.[22] The court of appeals rejected

15. NGO stands for non-governmental organization, which are "non-profit, charitable or voluntary group[s] . . . created and operated in a local community, on a regional or nationwide basis or a global capacity." Brian O'Connell, *What Is an NGO (Non-Governmental Organization)?*, THESTREET (Feb. 5, 2021, 10:13 AM), https://www.thestreet.com/politics/what-is-a-non-governmental-organization-15065652.

16. *About Elizer Darris, Chief Visionary Officer, Darris Group*, DARRIS GROUP, http://darrisgroup.com/about-us (last visited Feb. 20, 2024). In 2021, Darris was appointed to the Minnesota State Board of Public Defense by Governor Tim Walz, becoming the first formerly incarcerated person to hold this position. *Id.*

17. *See* Schroeder v. Simon, 962 N.W.2d 471, 475 (Minn. Ct. App. 2021), *aff'd*, Schroeder v. Simon, 985 N.W.2d 529 (Minn. 2023). The court of appeals ultimately dismissed the claims of the two plaintiffs as moot after their felony sentences expired and their right to vote was restored. 985 N.W.2d 529, 534 n.1.

18. Throughout this piece, petitioners shall refer to the Minnesota citizens who are convicted felons and brought suit against the Minnesota Secretary of State. In February 2020, both parties filed cross-motions for summary judgment, which the district court granted to the Secretary of State in an unpublished order and memorandum. *See* 962 N.W.2d at 476.

19. *Schroeder*, 985 N.W.2d at 535.

20. *See id.* at 534–35, 546.

21. *Schroeder*, 962 N.W.2d at 475–77 (quoting Minn. Const. art. VII, §1).

22. *Id.* at 478.

this argument briskly based on a simple plain-faced reading of the provision.[23]

Next, the court addressed the petitioners' assertion that section 609.165 violated the equal protection clause contained in article I, section 2, of the Minnesota Constitution.[24] The Secretary of State successfully argued that the petitioners, being on some form of supervised release, are not similarly situated to other previously convicted felons who have completed their sentence.[25] The court cited the "numerous restrictions on [their] freedom that do not apply to persons whose sentences have expired."[26] In other words, the mere fact that the petitioners, as felons living amongst the community on supervised release, were "sufficiently dissimilar"[27] from felons who were neither incarcerated nor on supervised release, was "a sufficient and independent basis for the conclusion that section 609.165 does not violate the equal protection principle [contained in] the Minnesota Constitution."[28]

Petitioner's final contention was that section 609.165 violates the due-process clause contained in article I, section 7, of the Minnesota Constitution.[29] While petitioners attempted to frame the issue broadly as an infringement on the fundamental right to vote,[30] the Secretary of State saw the statute as pertaining only to the franchise rights of felons,[31] a group who historically had no fundamental right to vote in

23. *See id.*

24. *Id.* at 475.

25. *Id.* at 482–83. In Minnesota, when evaluating an equal protection claim, the law requires consideration of a so-called "threshold question," which asks "whether the claimant is treated differently from others whom the claimant is similarly situated in all relevant aspects." *Id.* at 482 (emphasis omitted) (quoting State v. Holloway, 916 N.W.2d 338, 347 (Minn. 2018)). If it is determined that an equal protection claimant is treated no differently than others to whom they are similarly situated, no equal protection violation has occurred. *Id.*

26. *Id.* at 483. Examples of these restrictions on the freedoms of felons under supervised release that do not apply to felons who have wholly completed their sentence include, inter alia, the possibility that the supervised release be revoked, leading to reimprisonment, and forced compliance with "nine standards of release," such as limitations on possessing firearms, requirements about meeting with a supervising agent, and the inability to leave Minnesota without written consent from that supervising agent. *Id.* at 483.

27. *Id.* at 482 (quoting Fletcher Props., Inc. v. City of Minneapolis, 947 N.W.2d 1, 22 (Minn. 2020)).

28. *Id.* at 483.

29. *Id.* at 475.

30. *See* Opening Brief and Addendum of Plaintiffs-Appellants at 30, Schroeder v. Simon, 962 N.W.2d 471 (Minn. Ct. App. 2021) (No. A20-1264).

31. *See* Brief of Respondent at 17–18, Schroeder v. Simon, 962 N.W.2d 471 (Minn. Ct. App. 2021) (No. A20-1264).

Minnesota.[32] The court agreed with the Secretary of State and found that the petitioners' claim did not implicate a fundamental right,[33] meaning that, in order to be constitutional under a substantive due process claim, the statute merely had to have a permissible objective, implement reasonable means to achieve that objective, and not involve arbitrary or capricious legislative actions.[34] In rejecting the petitioners' substantive due process claim, the court found that the Minnesota Legislature was authorized to enact a statute on restoration of felon voting rights, the means they chose to restore said rights were rational, and the decision-making process used by the legislature to enact section 609.165, in which they relied on the recommendations of an authorized commission, was not arbitrary.[35]

Ultimately, the Minnesota Supreme Court granted review of this case on the issues of whether section 609.165 violated the fundamental right to vote contained in article VII, section 1, of the Minnesota Constitution, as well as plaintiffs-appellants' equal protection claim.[36] The court also decided to take up the issue of whether article VII, section 1, requires that by virtue of release from incarceration alone, an individual has their civil rights, including the fundamental right to vote, restored.[37]

III. BACKGROUND

A. *History of Felon Voting Disenfranchisement in Minnesota*

Prior to Minnesota ratifying its state constitution in 1857 and achieving statehood in 1858,[38] The Organic Act of 1849 established the boundaries and governing body of the Minnesota Territory.[39] Section 5 of this Act covered voter eligibility in the Minnesota Territory, which was limited to "every free white male above the age of twenty-one years" who was at the time both a resident of the territory, and was either a United States citizen or had taken an oath declaring their intent to become a

32. *See infra* Section III.A.
33. *Schroeder*, 962 N.W.2d at 485. The court reached this conclusion in the context of petitioners' equal protection claim. *Id.*
34. *Id.* at 486.
35. *Id.* at 486–87.
36. Schroeder v. Simon, 985 N.W.2d 529, 533 (Minn. 2023).
37. *Id.*
38. MARY JANE MORRISON, THE MINNESOTA STATE CONSTITUTION: A REFERENCE GUIDE 5–6 (2002). This made Minnesota the thirty-second state to join the Union. *Id.* at 6. The 1857 Enabling Act authorized citizens of the Minnesota Territory to draft a constitution and establish a government in preparation for being admitted as a state. *Id.* at 5.
39. *Id.* at 5.

United States citizen and their support of the United States Constitution.[40] Despite this, the provision expressly gave power to the legislative body of the newly organized Minnesota Territory to set laws on voter qualification after the territory held its first election.[41] In 1851, the Minnesota Territory legislature acted on this authority, passing a statute that barred persons convicted of a felony from casting a vote "unless restored to civil rights."[42] Those same territorial statutes granted the Governor of Minnesota, via a gubernatorial pardon, authority to restore civil rights.[43] After a contentious debate,[44] the disenfranchisement of those convicted of a felony (or treason) "unless restored to civil rights" was adopted into the Minnesota Constitution and can currently be found in article VII.[45] Furthermore, a provision to this effect "carried over into the first set of Minnesota statutes enacted in 1858" and was joined by "a provision granting the Governor the power to restore civil rights through the pardon power."[46]

In the nearly 170 years since the Minnesota Constitution was first ratified, article VII, section 1, defining who is eligible to vote in

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40. Organic Act of 1849, ch. 121, § 5, 9 Stat. 403 (1849).

41. *Id.*

42. *Schroeder*, 985 N.W.2d at 540 (quoting Minn. Rev. Stat. (Terr.) ch. 5, § 2 (1851)).

43. *Id.*

44. The Minnesota constitutional convention, which convened on July 13, 1857, quickly split into two separate conventions on party lines, failing to have a true meeting as a whole. Douglas A. Hedin, *The Quicksands of Originalism: Interpreting Minnesota's Constitutional Past*, 30 WM. MITCHELL L. REV. 241, 242–43 (2003). One firsthand reporter covering the convention stated that tensions were so high that "[an] open outbreak . . . was anticipated, and many members of both [the Democratic and Republican factions of the convention] went armed, to be prepared for any emergency." *Id.* at 243 (quoting HARLAN P. HALL, H. P. HALL'S OBSERVATIONS 20 (4th ed. 1905)). The Minnesota Constitution in place at the time Minnesota achieved statehood was a compromise document between these partisan factions of the convention and was created by a ten-person compromise committee, meeting in secret, using the raw materials produced by both the Democratic and Republican constitutional conventions. *Id.* at 242–43. Because of the dysfunctional nature of the Minnesota constitutional convention, as well as the fact that the compromise committee did not keep any record of its proceedings, the Minnesota Supreme Court has been reluctant to make decisions based on the deliberations of the delegates. *Id.* at 243–44. It is also occasionally argued that Minnesota has two separate constitutions, in part because the five Democrats and five Republicans on the compromise committee hand-wrote the compromise agreement, leading to differences in punctuation and other minor details. MORRISON, *supra* note 38, at 6.

45. MINN. CONST., art. VII, § 1.

46. *Schroeder*, 985 N.W.2d at 541. This first set of Minnesota state statutes also included legislation which governed the gubernatorial pardon power, authorizing the Governor to "grant pardons . . . upon the petition of the person convicted" under any restrictions or limitations deemed appropriate. *Id.* (quoting MINN. STAT. ch. 117, § 233 (1858)).

Minnesota elections, has been amended many times.[47] Though these amendments have often been used to expand suffrage to historically disenfranchised groups—including women, non-white men, Native Americans—as well as to reduce the age of voting eligibility,[48] the provision prohibiting convicted felons from voting unless their civil rights have been restored remains in the Minnesota Constitution.[49]

From a statutory standpoint, the Minnesota Legislature, in 1963, opened a far more accessible avenue for restoring civil rights than seeking a gubernatorial pardon. Section 609.165 of the Minnesota Statutes was, at the time of its enactment, the most expansive felon voting restoration in Minnesota to date.[50] And though it has narrowed in scope since 1963,[51] the law still provides for a full restoration of civil rights upon "discharge."[52] Subdivision 2 defines discharge as either via a court order following the stay or execution of a sentence, or "upon expiration of sentence."[53] As of 2022, the policy decision to disenfranchise convicted felons until their sentences expired impacted over 46,000 Minnesotans, or about eighty-four percent of Minnesota's convicted felon population, who were living in their communities while under probation, on parole, or any other form of supervised release.[54]

47. MORRISON, *supra* note 38, at 208.

48. *Schroeder*, 985 N.W.2d at 537 n.6. It is worth noting that some of these amendments arose to reflect amendments to the Federal Constitution. For example, "Between 1942 and 1944, the official published versions of the Minnesota Constitution removed the word 'male' from [article VII, section 1], in recognition of the Nineteenth Amendment to the United States Constitution." *Id.*; *see also* U.S. CONST. amend. XIX, § 1 (forbidding the United States or any state from denying or abridging the right to vote on account of sex).

49. MINN. CONST. art. VII, § 1. In 1974, Minnesota voters elected to adopt a comprehensive "Structure and Form" Amendment to the state constitution, which served to update nearly one-third of the verbiage of the original constitution and reorganize the state constitution generally. Fred L. Morrison, *An Introduction to the Minnesota Constitution*, 20 WM. MITCHELL L. REV. 287, 294 (1994). This led to minor alterations to the felon disenfranchisement constitutional provision unless their civil rights were restored, but these changes were merely stylistic as opposed to substantive. *See Schroeder*, 985 N.W.2d at 536 n.5.

50. *Schroeder*, 985 N.W.2d at 546.

51. *Id.* at 546 n.13.

52. MINN. STAT. ANN. § 609.165, subdiv. 1 (2025).

53. MINN. STAT. ANN. § 609.165, subdiv. 2 (2025).

54. KEVIN MUHITCH & KRISTEN M. BUDD, MINNESOTA SHOULD RESTORE VOTING RIGHTS TO OVER 55,000 CITIZENS (2d ed. 2023), https://www.sentencingproject.org/app/uploads/2023/01/Minnesota-Voting-Rights-for-People-with-Felony-Convictions.pdf. This figure is particularly notable due to Minnesota's status as one of the states with the lowest imprisonment rate in the United States, while simultaneously ranking sixth in community supervision rate. *Id.*

B. History of Felon Voting Disenfranchisement in the United States

The concept of depriving convicted criminals of their ability to vote has its roots in prominent ancient democracies,[55] and felon disenfranchisement laws have been present in the American legal system dating back to the 1600s.[56] Although twenty-nine states had provisions in their constitutions prohibiting (or allowing the state legislature to prohibit) felons from voting in 1868,[57] these measures did not become "a significant barrier to U.S. ballot boxes" until the post-Civil-War reconstruction era.[58] This coincided with the expansion of voting rights to African American men via the Fifteenth Amendment to the Federal Constitution.[59] During this time period, many states broadened their felon disenfranchisement laws so as to revoke voting rights from anyone convicted of any felony, while simultaneously altering their criminal code to target black citizens.[60] These two converging events are closely linked.[61]

55. *See* Lindsay Dreyer, *Felon Disenfranchisement: What Federal Courts Got Wrong and How State Courts Can Address It*, 48 MITCHELL HAMLINE L. REV. 1, 2–3 (2022).

56. George Brooks, *Felon Disenfranchisement: Law History, Policy and Politics*, FORDHAM URB. L.J. 851, 852–53 (2005). It is widely believed that early felon disenfranchisement laws in the United States were heavily influenced by the social contract theory, championed by John Locke, which posits that every individual who enters a society has consented, via the "social contract," to being governed by a set of laws, and that those who violate such laws, and by extension, the social contract, should no longer be permitted to participate in the society's rulemaking process. *See id.* at 853–54 & n.21; Afi S. Johnson-Parris, *Felon Disenfranchisement: The Unconscionable Social Contract Breached*, 89 VA. L. REV. 109, 117 (2003).

57. Martha Guarnieri, *Civil Rebirth: Making the Case for Automatic Ex-Felon Voter Restoration*, 89 TEMP. L. REV. 451, 457–58 (2017). In 1868, only thirty-seven states were in existence. *Id.* at 458.

58. Erin Kelley, *Racism & Felony Disenfranchisement: An Intertwined History*, BRENNAN CTR. FOR JUST. (May 9, 2017), https://www.brennancenter.org/publication/racism-felony-disenfranchisement-intertwined-history.

59. *Id. See generally* U.S. CONST. amend. XV, § 1 ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.").

60. Kelley, *supra* note 58. Because of the broad nature of the Minnesota Constitution's felon disenfranchisement provision, Minnesota, unlike many other states, did not need to amend its constitution in order to pass legislation to expand felon disenfranchisement. Dreyer, *supra* note 55, at 6–7.

61. *See* Kelley, *supra* note 58; *see also* Jeff Manza et al., *The Racial Origins of Felon Disenfranchisement*, *in* LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 67 (2006) ("When African Americans [made] up a larger proportion of a state's prison population, that state [was] significantly more likely to adopt or extend felon disenfranchisement.").

C. *The National Conversation Today*

In the past few decades, the general trend has been in the direction of reinstating a felon's right to vote at some point, although the method of doing so is a state-by-state policy decision.[62] Despite a wide variance in approaches taken by the several states on this issue, there are three broad categories which outline the high-level attributes of a state's process for possible restoration of felon voting rights. First, as of July 2025, twenty-three U.S. states automatically restore voting rights to felons upon their release from incarceration.[63] Fifteen states, on the other hand, deprive felons of their voting rights not only during their period of incarceration but also for an additional period of time thereafter—usually during a parole or probationary period—after which the right to vote is automatically restored.[64] Finally, ten states indefinitely disenfranchise felons who have been convicted for certain crimes, or require a pardon from the governor to restore voting rights.[65]

In light of the difference in approaches taken by each state regarding felon voting rights, as well as the political divide on the issue,[66] various arguments both in support and opposition of disenfranchisement have been made by scholars, politicians and others. One common position against felon disenfranchisement is that denying ex-felons who are re-entering society the right to take part in the political process causes them

62. *Restoration of Voting Rights for Felons*, NAT'L CONF. OF STATE LEGISLATURES (July 17, 2025), https://www.ncsl.org/elections-and-campaigns/felon-voting-rights.

63. *Id.* Note that "automatic restoration" does not necessarily mean that a released felon is automatically registered to vote, but merely that their right is restored and that the onus is on the felon to register themselves. *Id.* Some states require that formerly incarcerated persons be provided voter registration information upon their release. *Id.*

64. *Id.* Fifteen states implement some variation of this method as of July 2025. *Id.* In these states, it is not uncommon for the felon to have to pay any outstanding fees, fines or other form of restitution before regaining their right to vote. *Id.*

65. *Id.* In some of these states, a felon must endure an additional waiting period following the completion of their sentence (including parole or probation) or take some form of additional action before having their right to vote restored. *Id.* Again, the states who fall into this grouping are calculated as of July 2025. *Id.*

66. *See, e.g.*, PEW RSCH. CTR., REPUBLICANS AND DEMOCRATS MOVE FURTHER APART IN VIEWS OF VOTING ACCESS 9 (2021), https://www.pewresearch.org/wp-content/uploads/sites/20/2021/04/PP_2021.04.22_voting-access_REPORT.pdf (citing a poll showing that, while 70% of Americans favor allowing people convicted of felonies to vote after serving their sentences, only 55% of Republicans support this, compared to 84% of Democrats); Jordan Williams, *Democrats Move to Expand Voting Rights for Felons*, HILL (Apr. 25, 2021, 11:00 AM), https://thehill.com/homenews/campaign/550010-democrats-move-to-expand-voting-rights-for-felons/ ("Democratic states are moving to expand the voting rights of felons as the GOP seeks to tighten voting rules . . . . New York, Washington and Virginia have all recently taken legislative or executive action ensuring previously incarcerated [citizens] will have easier access to the ballot box.").

to remain isolated, which goes against the principles of the criminal justice system and its primary objective of rehabilitating criminals.[67] Furthermore, because many ex-felons living amongst the community are employed taxpayers, often raising families, it is unreasonable to deprive them of their voice in the policymaking process.[68] Others view the right to vote as inalienable for all US citizens, regardless of their criminal history,[69] or point to the drastic disparate racial impact[70] as reasons to re-enfranchise felons in at least some capacity.

On the other hand, proponents of felon disenfranchisement often rely on the Lockean "social contract" concept that influenced early felon disenfranchisement laws in the United States.[71] They argue that violation of the law is a de facto breach of the social contract that binds members of society together, and as a result the perpetrator also forfeits the right to dictate in any way the political path of society.[72] Similarly,

67. 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); *see also* Richardson v. Ramirez, 418 U.S. 24, 79 (Marshall, J., dissenting) (citations omitted) ("[T]he denial of the right to vote to [former felons] is a hindrance to the efforts of society to rehabilitate former felons and convert them into law-abiding and productive citizens.").

68. *See* Christopher Uggen et al., *Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders*, 605 ANNALS AM. ACAD. POL. & SOC. SCI. 281, 305 (2006); *see also Richardson*, 418 U.S. at 79 (Marshall, J., dissenting) (citations omitted) ("[Ex-felons] are as much affected by the actions of government as any other citizens, and have as much of a right to participate in governmental decision-making"); FEDERAL INTERAGENCY REENTRY COUNCIL, REENTRY MYTH BUSTER! ON FEDERAL TAXES, https://www.irs.gov/pub/irs-utl/reentry_council_mythbuster_federal_taxes.pdf ("Incarceration neither changes one's obligation to pay taxes . . . nor prohibits the receipt of tax credits and deductions upon release.").

69. Daniel Nichanian, *Bernie Sanders Explains Why He Supports Voting Rights for All Citizens*, APPEAL (Apr. 30, 2019), https://theappeal.org/politicalreport/bernie-sanders-explains-why-he-supports-voting-rights-for-all-citizens/. Senator Bernie Sanders represents the state of Vermont, one of only two states with no felony disenfranchisement for incarcerated felons. *Id.*

70. *See* Patricia A. Homan & Tyson H. Brown, *Sick and Tired of Being Excluded: Structural Racism in Disenfranchisement as a Threat to Population Health Equity*, 41 HEALTH AFFS. 219, 220 (2022), https://www.healthaffairs.org/doi/epdf/10.1377/hlthaff.2021.01414 (stating that the felony disenfranchisement rates are 370% greater among Black Americans compared to non-Black Americans). In 2006, the United Nations Human Rights Committee charged that U.S. felon disenfranchisement policies are discriminatory and in violation of international law and specifically cited concerns regarding the fact that this practice "disproportionately impacts the rights of minority groups." *U.N. Committee Says U.S. Bans on Former Prisoner Voting Violate International Law*, ACLU (Aug. 25, 2006), https://www.aclu.org/documents/un-committee-says-us-bans-former-prisoner-voting-violate-international-law.

71. *See, e.g.*, Brooks, *supra* note 56, at 853–54.

72. *See* Daniel S. Goldman, Note, *The Modern-Day Literacy Test?: Felon Disenfranchisement and Race Discrimination*, 57 STAN. L. REV. 611, 641 (2004). Keeping

those in favor of felon disenfranchisement often appeal to the morality—or the perceived lack thereof—of criminals, fearing that felons will not vote with society's best interest in mind or might even vote in a way that will loosen the law and allow them to legally carry out what were once illicit activities.[73] States have historically gone so far as to equate felons with persons with mental illness to drive home this point.[74] Prevention of voter fraud is another argument made by supporters of felon disenfranchisement, although there is little evidence to support this claim.[75]

IV. THE COURT'S REASONING

The Minnesota Supreme Court, in a 6 to 1 decision[76] that included three separate opinions, affirmed the appeals court holding that section 609.165 of the Minnesota Statutes did not violate the state constitution based on any of the three provisions challenged by the plaintiffs.[77]
Justice Paul Thissen, writing for the majority, tackled three key issues which the court took up review to determine. First, the court considered the petitioners' contention that article VII, section 1, of the Minnesota Constitution provides for an automatic restoration of voting rights to felons upon their release or discharge from incarceration.[78] Next, the court briefly analyzed whether section 609.165 of the Minnesota statutes violated petitioners' fundamental right to vote.[79] Finally, the court examined the petitioners' assertion that section 609.165 violated the equal protection principle contained in the Minnesota Constitution.[80]

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with the theme of political divide on the issue of felon disenfranchisement, Republican Senator Mitch McConnell took this point of view, stating on the Senate floor that "States have a significant interest in reserving the vote for those who have abided by the social contract . . . ." *Id.* at 641–42.

73. Erika Stern, *"The Only Thing We Have to Fear Is Fear Itself": The Constitutional Infirmities with Felon Disenfranchisement and Citing Fear as the Rationale for Depriving Felons of Their Right to Vote*, 48 LOY. L.A. L. REV. 703, 716–18 (2015).

74. *See id.* at 716–17.

75. Dreyer, *supra* note 55, at 27. This is especially true in states that place a blanket restriction on the voting rights of all felons, regardless of type of crime they committed. *Id.*

76. Peter Callaghan, *Despite Planned Appeal, Minnesota's Law Allowing Those Out of Jail to Vote Appears Settled*, MINNPOST (Dec. 20, 2023), https://www.minnpost.com/elections/2023/12/despite-planned-appeal-minnesotas-law-allowing-those-convicted-of-felonies-out-of-jail-to-vote-appears-settled/.

77. Schroeder v. Simon, 985 N.W.2d 529, 533 (Minn. 2023); *see also* Schroeder v. Simon, 962 N.W.2d 471, 487 (Minn. Ct. App. 2021).

78. Schroeder v. Simon, 985 N.W.2d 529, 533 (Minn. 2023).

79. *See id.*

80. *Id.* Over the years, the Minnesota Supreme Court has applied the equal protection guarantee under several state constitutional provisions, including article I, section 2; article

The concurring opinion, despite joining the majority in finding that section 609.165 is constitutionally permissible, differentiates itself from the majority by pushing back on its framing of the parties' arguments for the equal protection threshold question.[81]

Justice Natalie Hudson, both the lone dissenter and the only Black justice on the court,[82] argued that section 609.165 violates the equal protection guarantee found in the Minnesota Constitution by creating a disparate impact based on racial classification.[83] Justice Hudson also rejected the notion that disenfranchisement of felons who are not incarcerated helps to accomplish the legislature's stated purpose for section 609.165,[84] and sharply criticized the majority's reasoning that no equal protection violation can exist because the statute increases the number of eligible voters in Minnesota.[85]

A. Majority Opinion

1. Article VII, Section 1, Does Not Grant Voting Rights to Felons Automatically Upon Release from Imprisonment

The majority opinion begins by assessing the petitioners' argument that article VII, section 1, of the Minnesota Constitution provides for felon re-enfranchisement upon release from incarceration.[86] Article VII, section 1, defining voter eligibility in Minnesota elections, states that:

X, section 1; and article XII. *See* Miller Brewing Co. v. State, 284 N.W.2d 353, 354 (Minn. 1979) ("The issue for resolution . . . is whether the classifications established by [a statute] . . . contravene[d] the equal protection guarantees contained in Minn. Const. art. 1 s 2, and art. 10, s 1."); Loew v. Hagerle Bros., 33 N.W.2d 598, 601 (Minn. 1948) ("The constitutional prohibition against special legislation . . . does not prevent the legislature . . . from dividing a subject into classes, and a classification made pursuant to a public purpose, which has a rational basis . . . ."); *see also* Fletcher Props., Inc. v. City of Minneapolis, 947 N.W.2d 1, 20 n.13 (Minn. 2020) (establishing that the special legislation clauses analyzed in Loew is now found in article XI of the Minnesota Constitution).

81. *See Schroeder*, 985 N.W.2d at 558 (Anderson, J., concurring).

82. Caroline Cummings, *Minnesota Supreme Court Rules Current Law Barring Some Felons from Voting is Constitutional*, CBS NEWS (Feb. 15, 2023, 11:02 AM), https://www.cbsnews.com/minnesota/news/minnesota-supreme-court-rules-barring-felons-from-voting-isnt-uncontstitutional/; *see* J. Patrick Coolican, *Minnesota Supreme Court Gets Us Closer to Ending the Travesty of Minnesota School Segregation*, NEWS FROM THE STATES (Dec. 14, 2023, 9:43 AM), https://www.newsfromthestates.com/article/minnesota-supreme-court-gets-us-closer-ending-travesty-minnesota-school-segregation.

83. *Schroeder*, 985 N.W.2d at 562–64 (Hudson, J., dissenting).

84. *Id.* at 565–67.

85. *See id.* at 564–65.

86. *Id.* at 536 (majority opinion).

> Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct . . . . The following persons shall not be entitled or permitted to vote at any election in this state: A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; a person under guardianship, or a person who is insane or not mentally competent.[87]

The majority states that this language is unambiguous and means that convicted felons, similar to a non-citizen or a person under the age of eighteen, are excluded from the group of people who are entitled to vote and could potentially be prohibited permanently from holding such a right "unless restored to civil rights."[88] The court then cuts to the chase and states what is at the heart of the dispute pertaining to the language of article VII, section 1, which is the true meaning of the term "unless restored to civil rights."[89] According to petitioners, being restored to civil rights means restoration to life in the community, which takes place upon release from prison.[90] The Minnesota Secretary of State, on the other hand, interprets this language to require an affirmative act from the government expressly restoring a felon's right to vote, which the state legislature carried out via section 609.165.[91]

The court expressed skepticism of the petitioners' interpretation of the clause on textual grounds, noting that the absence of any mention of restoration to life in the community or upon release from incarceration is inconsistent with a finding that it was the drafters' intent to make restoration of civil rights occur upon such events.[92] The majority instead lends credence to the Secretary of State's interpretation of the clause, as the words "unless restored to civil rights" are compatible with the requirement of a government-established process as opposed to the occurrence of an event not discussed in the state constitution or any other law.[93]

87. MINN. CONST. art. VII, § 1.
88. *Schroeder*, 985 N.W.2d at 536–37.
89. *See id.* at 537.
90. *Id.* at 538.
91. *Id.*
92. *Id.* Here, the court cites its own precedent applying similar logic in statutory interpretation as opposed to the framers of the Minnesota Constitution. *Id.*; *see* Buzzell v. Walz, 974 N.W.2d 256, 265 (Minn. 2022) (stating that, if the Minnesota Legislature intended to fill a gap in the state constitution, the court would expect that lawmakers "would have taken a much more direct path to do so").
93. *Schroeder*, 985 N.W.2d at 538.

Next the court addressed petitioners' historical argument, namely that the framers of the Minnesota Constitution, in deciding between the "unless restored to civil rights" language and language which expressly stated that the Governor and the Legislature may restore a felon to civil rights, chose the former.[94] In rejecting this argument, the court pointed out the absence of any record as to how the competing partisan constitutional conventions made the decision to implement the language that would be used in article VII, section 1.[95]

Furthermore, the court took up an extensive discussion of the proposed Republican felon voting provision,[96] concluding that the Republican delegation understood the disqualifying portion of the provision to be a permanent bar on felon voting, and that without a restoration clause of some kind, there would be no mechanism to restore the right to vote.[97] The court concluded that this meant no framers of the state constitution believed that "persons convicted of a felony would be restored automatically to the right to vote upon release from incarceration," based on the text ratified into the Minnesota Constitution combined with the process of those framers whose language was not adopted.[98]

To support its analysis, the court also discussed the history of Minnesota statutes pertaining to the restoration of civil rights to felons.[99] For example, the first statute upon which petitioners relied, ratified in 1867, reinstated civil rights to any convicted felon who completed a prison sentence without any recorded disciplinary violations.[100] While the petitioners framed this statute as providing for automatic restoration of civil rights upon completion of a term of incarceration without any infractions of prison rules, the court pushed back on this, deeming that the "need for the warden to certify the lack of rules infractions" is an affirmative act.[101] This, combined with the fact that the statute did not restore civil rights to felons who were released from prison but received disciplinary infractions while incarcerated, differentiated the 1867 legislation from an automatic restoration statute.[102]

94. *Id.* at 539.
95. *Id.* at 540.
96. *Id.* at 539–43. The Republican proposal explicitly gave the Legislature or the Governor the power to restore civil rights, and thus, voting rights, to felons. *See id.* at 539.
97. *See id.* at 540–41.
98. *Id.* at 541.
99. *Id.* at 540–42.
100. *Id.* at 541; *see* Dreyer, *supra* note 55, at 32.
101. *Schroeder*, 985 N.W.2d at 541–42.
102. *Id.*

Ultimately, the majority summarized the rule set forth under article VII, section 1, of the Minnesota Constitution as disenfranchising felons in Minnesota "unless [their] right to vote is restored by some affirmative act or, or mechanism established by, the government."[103]

2. The Right to Vote is Fundamental in Minnesota

Unlike the court of appeals, the Minnesota Supreme Court accepted petitioners' argument that the issue in the case surrounded the constitutionality of a statute infringing on the right to vote at large, as opposed to pertaining merely to felon voting rights. According to the court, it is indisputable that the right to vote is fundamental.[104] However, the citizens of Minnesota have the power—granted by their state constitution—to limit that fundamental right, and are bound only by the limits found in the the United States Constitution and other provisions of the Minnesota Constitution.[105] Based on this power held by the Minnesota citizens, as well as their earlier analysis that the language of article VII, section 1, of the state constitution unambiguously "means that a person convicted of a felony . . . is excluded from the set of persons who have a right to . . . vote,"[106] the court concluded that "a statute denying persons convicted of a felony the entitlement or permission to vote" could not plausibly violate this fundamental right.[107]

103. *Id.* at 545.

104. *Id.*; *see also* Erlandson v. Kiffmeyer, 659 N.W.2d 724, 730 (Minn. 2003) (quoting State *ex rel.* South St. Paul v. Hetherington, 61 N.W.2d 737, 741 (Minn. 1953)) (asserting that the right to vote is a fundamental and personal right that is essential to preserving democracy).

105. *Schroeder*, 985 N.W.2d at 545–46. *See generally* U.S. CONST. amend. XV, § 1 ("The right of citizens of the United States to vote shall not be denied or abridged by . . . any State on account of race, color, or previous condition of servitude."); U.S. CONST. amend. XIX ("The right of citizens of the United States to vote shall not be denied or abridged by . . . any State on account of sex."); U.S. CONST. amend. XXVI, § 1 ("The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by . . . any State on account of age."); McDonald v. Bd. of Election Comm'rs of Chi., 394 U.S. 802, 807 (1969) (citing Lassiter v. Northampton Cnty. Bd. Of Elections, 360 U.S. 45, 50 (1966)) (establishing that states have long been granted broad authority to determine the conditions that must be met for citizens to exercise their fundamental right to vote).

106. *Schroeder*, 985 N.W.2d at 536–37.

107. *Id.* at 546; *see also* Richardson v. Ramirez, 418 U.S. 24, 56 (1974) (reversing a California Supreme Court decision which held that excluding felons who had completed their sentences and a period of supervised release was inconsistent with the Equal Protection Clause contained in the Fourteenth Amendment of the U.S. Constitution).

3. The Majority's Equal Protection Analysis

The majority begins its equal protection analysis of Minnesota Statutes, section 609.165, by defining its terms. Section 609.165 provides that "[w]hen a person has been deprived of civil rights by reason of conviction of a crime and is thereafter discharged, such discharge shall restore the person to all civil rights . . . [with full right to vote] . . . the same as if such conviction had not taken place . . . ."[108] Discharge is defined in subdivision 2 of the statute, which for convicted felons, occurs "upon expiration of sentence,"[109] interpreted by the court as the completion of the sentence, "including any period of supervised release following release from prison."[110] The court framed this statute against the backdrop of article VII, section 1, of the Minnesota Constitution, as well as the history of legislative action in Minnesota regarding felon franchise rights, as an "expan[sion of] the voting rights of those convicted of a felony."[111] The primary purpose of this framing of the statute was to push back against the perspective laid out in the dissenting opinion,[112] as it ultimately "[did] not prevent [the majority] from engaging in an equal protection analysis."[113]

The majority's equal protection begins by "address[ing] the threshold issue of whether [petitioners] are similarly situated to persons convicted of a felony whose rights have been restored."[114] Because the majority had already found that neither the Minnesota Constitution nor the United States Constitution bestows a fundamental franchise right to felons, the state legislature may treat similarly situated people differently.[115] From there, the majority must choose a standard of review for their equal protection analysis, and then apply their selected framework.[116]

108. MINN STAT. ANN. § 609.165, subdiv. 1 (2023).
109. MINN STAT. ANN. § 609.165, subdiv. 2 (2023).
110. *Schroeder*, 985 N.W.2d at 546. This interpretation is supported by the Advisory Committee Comment's stated purpose in enacting section 609.165. *See* MINN STAT. § 609.165, Advisory Comm. cmt. (1963) ("It is believed that where a sentence has either been served to completion or where the defendant has been discharged after parole or probation his rehabilitation will be promoted by removing the stigma . . . resulting from the denial of his civil rights.").
111. *Schroeder*, 985 N.W.2d at 546–47.
112. *See id.* at 548.
113. *Id.*
114. *Id.* at 549.
115. *See* Fletcher Props., Inc. v. City of Minneapolis, 947 N.W.2d 1, 20 (Minn. 2020).
116. *Schroeder*, 985 N.W.2d at 549.

a. Similarly Situated "Threshold"

To determine whether the petitioners are similarly situated to others whom they claim to be treated differently than, the inquiry is "whether the law creates distinct classes within a broader group of similarly situated persons or whether those treated differently by the law are sufficiently dissimilar from others such that the law does not create different classes."[117] According to the majority, section 609.165 regulates persons who have lost their right to vote due to a felony conviction in accordance with article VII, section 1, of the Minnesota Constitution.[118] This led the majority to conclude that the classifications generated by the statute was between convicted felons who have been "discharged," and thus re-enfranchised, and convicted felons who have not been discharged and remain disenfranchised.[119]

In assessing whether these two groups were "sufficiently dissimilar," the majority stated that the "only relevant question was whether the conduct that led to differential treatment was the same."[120] This was based on Minnesota Supreme Court precedent only a year prior in *State v. Lee*,[121] which discussed the constitutionality of a statute that imposed a compulsory five-year conditional release period on sexually dangerous persons who had been convicted of assaulting a treatment facility employee, where no such conditional release period was imposed on persons committed as mentally ill and dangerous who were convicted for the same crime.[122] In *Lee*, the Minnesota Supreme Court rejected arguments that several factors were irrelevant to the similarly situated inquiry, because the differences did not relate to the specific distinction being challenged.[123] The mere fact that the challenged government action was based on a statute imposing punishment on institutionalized patients who assaulted treatment staff meant the classes generated by the statute were between two similarly situated parties.[124] The threshold inquiry was therefore met and an equal protection inquiry could proceed.[125]

117. *Id.* at 550 (quoting State v. Lee, 976 N.W.2d 120, 126 (Minn. 2022)).
118. *Id.*
119. *Id.* at 552.
120. *Id.* at 551.
121. State v. Lee, 976 N.W.2d 120 (Minn. 2022).
122. *Id.* at 125.
123. *Id.* at 127–28. Such factors include the different reasons for commitment to a mental institution where the crime was committed, the difference in commitment procedures for the two groups within the statutory classification, and the fact that members of each class may reside in different institutions and be subject to different programs. *Id.*
124. *Id.* at 128.
125. *Id.* at 128–29.

This differs from the approach taken by the Minnesota Court of Appeals in *Schroeder*. There, the court determined that, because each class consisted of persons whose conduct led to a felony conviction, and each class was at one point deprived of voting rights by section 609.165, the threshold inquiry was not satisfied. This, to the court of appeals, was "a sufficient and independent basis for the conclusion that section 609.165 does not violate the equal protection principle [contained in the Minnesota Constitution]."[126]

The Minnesota Supreme Court concluded in the case at issue that appellants are persons who *have not* been discharged and that they are similarly situated with those who *have* been discharged in that both have been convicted of a felony and lost their right to vote.[127] So, it had to engage in a full equal protection analysis of their claim.[128]

b. Choosing a Standard of Review

After concluding that the petitioners were in fact similarly situated to those who were convicted felons but had been discharged under section 609.165, the majority in the Minnesota Supreme Court shifted its analysis to choosing a standard of review for its equal protection analysis.[129] The majority swiftly eliminated both the strict scrutiny[130] and intermediate scrutiny standards,[131] and established that the

126. Schroeder v. Simon, 962 N.W.2d 471, 483 (Minn. Ct. App. 2021), aff'd, 985 N.W.2d 529 (Minn. 2022). It is worth noting that the Minnesota Court of Appeals' decision in *Schroeder* was published over a year prior to the state supreme court's decision in *Lee*, which is perhaps a reason for the disconnect on this issue between the court of appeals and the supreme court. *See id.*; State v. Lee, 976 N.W.2d 120 (Minn. 2022).

127. Schroeder v. Simon, 985 N.W.2d 529, 552 (Minn. 2023).

128. *Id.*

129. *Id.*

130. *Id.* The rationale provided for not applying strict scrutiny was the earlier conclusion "that section 609.165 [did] not implicate the fundamental right to vote . . . ." *Id.*; *see also* Ulland v. Growe, 262 N.W.2d 412, 415 (Minn. 1978) ("[R]egulations which have the effect of infringing the right to vote will be strictly scrutinized."). Strict scrutiny is "[t]he most exacting form of review," and when applied, a statute is subject to less deference and increased scrutiny by the court. Schroeder v. Simon, 962 N.W.2d 471, 481 (Minn. Ct. App. 2021).

131. Schroeder v Simon, 985 N.W.2d 529, 552 (Minn. 2023). Neither petitioners nor the Secretary of State argued for application of intermediate scrutiny, which the majority cited as their reason for forgoing the framework. *Id. See generally* State *ex rel.* Forslund v. Bronson, 305 N.W.2d 748, 750 (Minn. 1981) (applying intermediate scrutiny to statutory classifications based on gender); Craig v. Boren, 429 U.S. 190, 197 (1976) (establishing that under an intermediate scrutiny standard, a statutory classification "must serve important governmental objectives and must be substantially related to achievement of those objectives").

ultimate decision will be between heightened or traditional rational basis review.[132]

Precedent from the Minnesota Supreme Court establishes that heightened rational basis is applied when the classification generated by a statute has a demonstrable and adverse racial effect.[133] This much the majority concedes.[134] However, the majority, relying on dicta in its own precedent, added a requirement that petitioners prove causation between section 609.165 and these disproportionate effects.[135] Per the majority, this causation was not established because it is the unchallenged provision in the Minnesota Constitution—affirmed by Minnesotans—that denied the right to vote to all convicted felons unless restored to civil rights, and the challenged statute functions to reduce the raw numbers and percentages of disenfranchised persons of all races.[136] This led the majority to conclude that the relevant inquiry is whether the legislative decision to restore voting rights upon discharge, as defined in section 609.165, has a demonstrable and adverse impact on one race versus others.[137]

In concluding that the petitioners did not carry their burden of proof to show a demonstrable adverse racial impact, the majority noted the relative leniency of section 609.165 compared to article VII, section 1,[138] and that "the record does not include sufficient evidence to . . . answer the necessary question of whether section 609.165 . . . demonstrably and adversely affects Black and Native American Minnesotans compared to the status quo established by . . . article VII, section 1."[139] The majority here failed to explain how the broad reduction in felon disenfranchisement caused by section 609.165 in the context of Minnesota's broader history on this issue, and their analysis of the evidentiary record is out of sync with the assertions made in the facts section of the opinion.[140] With that, the majority concludes that the equal

132. *Schroeder*, 985 N.W.2d at 552.

133. Fletcher Props., Inc. v. City of Minneapolis, 947 N.W.2d 1, 19 (Minn. 2020).

134. *See Schroeder*, 985 N.W.2d at 553 ("The simple fact that Minnesota denies the right to vote to persons who have been convicted of a felony has disproportionate racial impacts. That is a deeply disturbing reality in Minnesota.").

135. *See id.*

136. *See id.*

137. *Id.*

138. *See id.* at 553–54.

139. *Id.* at 554–55.

140. *See id.* at 535 (citing data submitted by petitioners from 2018 which established that, if felon voting rights were to be restored be restored by virtue of being released or excused from incarceration, approximately 87% of white Minnesotans who were barred from voting exclusively because of a felony conviction that had not been discharged would be re-enfranchised, compared to approximately 76% for Black Minnesotans, and

protection analysis of section 609.165 will implement a traditional rational basis standard of review.[141]

c. Section 609.165 Survives a Rational Basis Review

The rational basis standard is satisfied if it is merely one rational means, not necessarily the best means, of achieving a legitimate policy goal of the legislature.[142] Per the majority, both parties agree that the legislature's "only policy goals in enacting section 609.165 were to foster rehabilitation and remove stigma," and that restoring rights is one rational method, though perhaps an incomplete method, to accomplish these purposes.[143] As such, section 609.165 survives rational basis review, and thus does not violate the equal protection principle contained in the Minnesota Constitution.[144]

d. Conclusion: An Invitation to the Legislature

After recapping its opinion, and reiterating its conclusion that section 609.165 is constitutional, the majority takes an interesting step by "recogniz[ing] the troubling consequences, including disparate racial impacts, flowing from the disenfranchisement of persons convicted of a felony,"[145] and explicitly reiterates the legislature's power to "respond to those consequences."[146] The final words in the majority opinion implore the Minnesota legislature to take action, stating that "[w]e should all take care that persons not be deprived of the ability to participate in the political process . . . ."[147]

B. Concurrence

The concurring opinion authored by Justice Barry Anderson analyzes only the threshold question that serves as "the starting point of each

approximately 79% of Native American Minnesotans). *See generally* MINN. JUST. RSCH. CTR., FELON DISENFRANCHISEMENT IN MINNESOTA (2019), https://e038407e-8024-4a7f-8f8c-ce70d24cbc8c.filesusr.com/ugd/d2a74f_d6009880598a476ab2e596337f500731.pdf (containing the data cited by petitioners).

141. *Schroeder*, 985 N.W.2d at 557.

142. *Id.* at 555; *see also* Fletcher Props v. City of Minneapolis, 947 N.W.2d 1, 19 (Minn. 2020) ("[A] law subject to rational basis review does not violate the equal protection principle of the Minnesota Constitution when it is a rational means of achieving a legislative body's legitimate policy goal.").

143. *Schroeder*, 985 N.W.2d at 555.

144. *Id.*

145. *Id.* at 557.

146. *Id.*

147. *Id.*

[equal protection] formulation . . . ."[148] Specifically, the concurring opinion accuses the majority of "rel[ying] on an argument that was not raised by the parties to find the threshold similarly situated requirement to the equal protection analysis satisfied"[149] in violation of the principle of party presentation.[150]

According to the concurrence, petitioners limited the scope of their argument for the similarly situated issue to the broad comparison between themselves—as felons who were free from incarceration but not discharged and restored to civil rights—and all eligible voters in Minnesota.[151] The concurrence agrees with the Secretary of State, as well as the court, that this comparison "is irrelevant to the similarly situated analysis [because] . . . the Minnesota Constitution treats persons who have been convicted of a felony differently than those who have not been convicted of a felony and [petitioners] are not challenging the legitimacy of that provision."[152] This, according to the concurrence, should end the equal protection analysis altogether.[153] And the court violated the principle of party presentation by advancing another approach to the similarly situated inquiry: namely that the petitioners conduct made them sufficiently similar to a narrower group than all Minnesota voters, that being discharged and re-enfranchised felons.[154]

C. Dissent

Justice Natalie Hudson was the lone dissenter, concluding that Minnesota Statutes, section 609.165, fails under the equal protection guarantee set forth in article I of the Minnesota Constitution.[155]

1. Heightened Rational Basis Should Have Been Applied

The dissent concludes that heightened rational basis, "a more stringent equal protection principle that 'holds lawmakers to a higher

148. *Id.* at 559 (Anderson, J., concurring).
149. *Id.* at 558.
150. *Id.* This principle was established as a requirement in the adversary system by the Supreme Court in *Greenlaw v. United States* and posits that the court must rely on parties to frame the issues for the court to decide. *See* Greenlaw v. United States, 554 U.S. 237, 243 (2008); *see also* NASA v. Nelson, 562 U.S. 134, 147 n.10 (2011) ("The premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them." (quoting Carducci v. Regan, 714 F.2d 171, 177 (D.C. Cir 1983)).
151. *Schroeder*, 985 N.W.2d at 555 (Anderson, J., concurring).
152. *Id.* at 560.
153. *Id.*
154. *Id.*; *see supra* Section IV.A(3)(a).
155. *Id.* at 561 (Hudson, J., dissenting).

standard' when a statute restricts a fundamental right or has a racially disparate impact," should have been applied to section 609.165.[156] To support this claim, the dissent examines the line of cases in Minnesota establishing the heightened rational basis standard of review, beginning with *State v. Russell.*[157] There, the Minnesota Supreme Court held unconstitutional a drug possession statute that "ha[d] a discriminatory impact on black persons"[158] by applying a "stricter standard of rational basis review,"[159] which the court deemed to be particularly appropriate in light of the challenged classification imposing a disproportionate burden on "the very class of persons whose history inspired the principles of equal protection."[160] The *Russell* Court makes no mention of a statute being passed with any intent to have a racially disparate impact in order for this standard to apply. This principle was affirmed by the Minnesota Supreme Court as recently as 2020 in *Fletcher Properties, Inc. v. City of Minneapolis*, interpreting *Russell* as "hold[ing] lawmakers to a higher standard of evidence" where a classification generated by statute demonstrably and adversely affects one race versus others, regardless of any race-neutral purpose of enacting the law put forth by the lawmakers.[161]

The dissent then pushed back on the assertion that petitioners had failed to meet their evidentiary burden in its discussion of the racial-classification-in-practice theory set forth in *State v. Frazier*,[162] establishing that "evidence must invoke—through a robust and reliable record—the same variety of skepticism as a statute that makes a racial classification on its face."[163] Per the dissent, petitioners have put forth sufficient uncontested evidence to show that section 609.165 has such a disparate racial impact and creates a racial classification in practice.[164] The evidence showed such a racial classification by establishing that "white voting-age Minnesotans are eligible to vote at a . . . much higher-percentage than voting-age Black and Native American Minnesotans . . . ."[165]

156. *Id.* (quoting Fletcher Props., Inc. v. City of Minneapolis, 947 N.W.2d 1, 19 (Minn. 2020)).
157. *Id.*; State v. Russell, 477 N.W.2d 886, 902 (Minn. 1991).
158. *Russell*, 477 N.W.2d at 887.
159. *Id.* at 889.
160. *Id.*
161. *Fletcher Props.*, 947 N.W.2d at 19.
162. State v. Frazier, 649 N.W.2d 828, 836 (Minn. 2002).
163. *See* Schroeder v. Simon, 985 N.W.2d 529, 562–63 (Minn. 2023) (Hudson, J., dissenting) (citing *Frazier*, 649 N.W.2d at 833–36).
164. *Id.* at 563.
165. *Id.* at 564.

2. Link Between Section 609.165 and the Disparate Racial Impact

While the majority framed section 609.165 as a lenient measure that decreased the total amount of disenfranchised Minnesotans, the dissent took a different approach, describing the statute as a "gatekeeper to the franchise."[166] Under this view, the statute serves not as a generous decision by the legislature to reduce the harshness of the Minnesota Constitution, but rather an extension of the racial disparities found in felon disenfranchisement at large.[167] The dissent sees section 609.165 as continuing to hinder the powerless, whose disenfranchisement begets further discrimination due to their lack of ability to influence the political system.[168]

The dissent argues that article VII, section 1, does not make felony disenfranchisement the default setting, as the majority and concurrence believed, but instead places the issue in the hands of the legislature.[169] It is this legislative decision, rather than the Minnesota Constitution, that led to the disparate racial impact, thus making the similarly situated threshold question a juxtaposition between all voting aged Minnesota citizens as opposed to the narrow position of re-enfranchised versus disenfranchised felons.[170]

The dissent states that closer scrutiny should be applied in light of the racial disparity which stems from the legislative decision, and that the majority's decision to ignore this cry effectively sanctions this harmful classification regime that ultimately reduces the political power of persons of color in Minnesota.[171] The dissent brutally calls this out by asserting that the Minnesota Supreme Court, as an institution, is "better than this," and should not stand idly by and wait for another body to correct the discriminatory system of felon disenfranchisement.[172]

166. *Id.*
167. *See id.*
168. *See id.*
169. *Id.* at 565.
170. *See id.* To support this position the dissent cites the *Russell* case which, per the dissent, compares the racial disparities promulgated by a legislative choice and those not promulgated by a legislative choice. *See id.* at 564–65; State v. Russell, 477 N.W.2d 886, 887–89 (Minn. 1991). The dissent argues that petitioners' challenge is only to the legislative decision to extend felon disenfranchisement to those who are no longer incarcerated but remain on supervised release, as opposed to other statutes which arguably cause disproportionate arrest, incarceration or conviction of persons of color. *Schroeder*, 985 N.W.2d at 565 (Hudson, J., dissenting). This logic leaves no intervening cause between the legislative decision—which caused a racial classification—and the disparate impact of that classification. *Id.*
171. *Schroeder*, 985 N.W.2d at 565–66 (Hudson, J., dissenting).
172. *See id.* at 565.

3. Section 609.165 Does Not Have a Tight Enough Fit Between Government Interest and Means Chosen to Survive Heightened Rational Basis

To survive heightened rational basis, a statute must have a "'tighter fit' than the fit required under traditional rational basis review between the government's interest in enacting [the statute] and the statute's means to achieve that interest."[173]

While conceding that rehabilitation—which is agreed to be "the only interest the legislature specifically articulated by enacting section 609.165"—is a legitimate interest due to its promotion of public safety and high-quality citizenry,[174] the dissent argues that the means chosen to carry out this legitimate interest are a poor fit with this legitimate interest.[175] To support this, the dissent states the "broad consensus that re-enfranchisement is critical for rehabilitation, in part, because voting is the ultimate act of civic engagement."[176] If the goal is to rehabilitate felons, the legislature is going about it in the wrong way by choosing disenfranchisement over re-enfranchisement. This, the dissent argues, undermines their stated goal, a far cry from meeting heightened rational basis scrutiny "tight fit" requirement.[177] As such, the dissent reaches its conclusion that section 609.165 is unconstitutional by virtue of its failing to meet the equal protection guarantee contained in the Minnesota Constitution.[178]

4. Amendments to Section 201.014: The Minnesota State Legislature Takes Up the Court's Invitation

As of 2022, Minnesota Statutes, section 201.014, contained within the "Minnesota Election Law," reiterated that individuals who were convicted of treason or any felony whose civil rights had not been restored

173. *Id.* at 565–66 (citing Fletcher Props v. City of Minneapolis, 947 N.W.2d 1, 19 n.12 (Minn. 2020)).
174. *Id.* at 566; *see also* MINN. STAT. § 609.01 (2022) (establishing "the rehabilitation of those convicted" as an enumerated purpose of the Minnesota Criminal Code).
175. *Schroeder*, 985 N.W.2d at 566 (Hudson, J., dissenting).
176. *Id.* (citing, inter alia, Mark Haase, *Civil Death in Modern Times: Reconsidering Felony Disenfranchisement in Minnesota*, 99 MINN. L. REV. 1913, 1927 (2015)).
177. *See id.* at 567. The dissent presents further evidence that disenfranchisement is a poor means of rehabilitating felons by citing the American Parole and Probation Association, which found that re-enfranchising felons reduces recidivism rates and increases public safety, along with assisting felons reacclimate to the community. *Id.*
178. *Id.*

were not eligible to vote.[179] However, about one month prior to the Minnesota Supreme Court publishing *Schroeder*, the state legislature set in motion an amendment to the statute to unambiguously provide franchise rights to felons released on parole, probation, or supervised release.

On January 4, 2023, a bill was introduced to the Minnesota House of Representatives, proposing that the following subdivision be added to section 201.014: "An individual who is ineligible to vote because of a felony conviction has the civil right to vote restored during any period when the individual is not incarcerated for the offense."[180] The bill passed in the Minnesota House of Representatives by a vote of 71 to 59,[181] and the Minnesota Senate on a 35 to 30 vote.[182] On March 3, 2023, Governor Tim Walz signed the bill into law, and as of July 1, 2023, the new law's effective date, Minnesota Statutes, section 201.014, subdivision 2a, provides automatic restoration of voting rights immediately upon leaving incarceration as opposed to having to wait until completion of any parole or probation terms.[183]

Approximately nine months later, a Minnesota District Court dismissed the Minnesota Voters Alliance's challenge to the new law, citing the state supreme court's deference to the Minnesota legislature in *Schroeder* and the legislature's subsequent action as foreclosing the Voters Alliance's arguments.[184]

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179. MINN. STAT. ANN. § 201.014, subdiv. 2(1) (2025); *see also* MINN. STAT. § 200.01 (2025) (stating that chapter 201 of the Minnesota statutes "shall be known as the Minnesota Election Law").

180. H.R. 28, 2023 Leg., 93 Sess. (Minn. 2023)

181. Caroline Sullivan, *Minnesota House Passes Bill Improving Voting Access to People with Past Felony Convictions*, DEMOCRACY DOCKET (Feb. 22, 2023), https://www.democracydocket.com/news-alerts/minnesota-house-passes-bill-improving-voting-access-to-people-with-past-felony-convictions/.

182. *Id.*

183. *Ex-Felons on Parole and Probation Now Allowed to Vote in Minnesota*, PRISON LEGAL NEWS 29 (Oct. 15, 2023), https://www.prisonlegalnews.org/news/2023/oct/15/ex-felons-parole-and-probation-now-allowed-vote-minnesota/. During the 2023 session, the Democratic party had full control of the state government, holding the State House, Senate, and governorship. Trisha Ahmed, *People with Felony Convictions can Now Vote in Minnesota; Secretary of State Celebrates*, AP NEWS (June 1, 2023, 5:00 PM), https://apnews.com/article/voting-minnesota-elections-felony-incarcerated-5e24910b4508a2fd42b862316d5dd002.

184. *See* Minn. Voters All. v. Hunt, No. 02-CV-23-3416, 2023 Minn. Dist. LEXIS 5308, at *3–4, *11 (Minn. Dist. 2023).

V. ANALYSIS

In finding section 609.165 constitutional, the majority complied with unambiguous language in article VII, section 1, of the Minnesota Constitution, granting the state's legislative body tremendous deference in ascertaining the issue of felon voting rights. This principle is reflected in the state's legislative history,[185] as well as in the action taken after the holding in *Schroeder*.[186]

One noteworthy aspect of the case is the agreement from all justices that section 609.165 did not implicate a fundamental right. While the majority provided an extensive and strong discussion as to why felons in Minnesota are not fundamentally entitled to franchise rights, the dissent offers little to no pushback. It forefeited any discussions of potentially applying a strict scrutiny equal protection framework while focusing its opinion on why heightened rational basis should apply on the racial classifications generated by the statute, despite the fact that "a more stringent equal protection principle" is implemented "*when a statute restricts a fundamental right or* has a racially disparate impact."[187] This reiterates the concept that a fundamental right does not necessarily equate to an absolute right, an idea found not only within the history of felon disenfranchisement in Minnesota but also within other rights that the state and federal governments find fundamental.[188]

The ultimate point of disagreement between the three authored opinions in *Schroeder* stems from the equal protection analysis of section 609.165, both in the framework chosen and the question of the threshold "similarly situated" issue.

In terms of the threshold issue, the majority viewed the classifications created by section 609.165 narrowly, as between discharged re-enfranchised felons and non-discharged disenfranchised felons.[189] This received pushback from both the concurring and

185. *See supra* Section III.A.

186. *See supra* Section V. It is quite plausible that the Minnesota Legislature, who set amendments to section 201.014 in motion just prior to the supreme court publishing *Schroeder*, sensed how the court would rule and preemptively accepted their invitation to respond to the consequences of the disparate racial impact caused by felon disenfranchisement.

187. Schroeder v. Simon, 985 N.W.2d 529, 561 (Minn. 2023) (Hudson, J., dissenting) (emphasis added).

188. *See, e.g.*, MINN. STAT. § 624.713 (2025) (denying persons convicted of certain crimes, as well as persons committed to specifically enumerated treatment facilities or institutions, of their right to own firearms). *Compare id.*, *with* U.S. CONST. amend. II, § 1 ("the right of the people [of the United States and the Several States] to keep and bear Arms, shall not be infringed").

189. *See Schroeder*, 985 N.W.2d at 552.

dissenting opinions, although on different grounds. While the concurrence believed that the majority overstepped its bounds by reaching this conclusion without either party arguing it, the dissent confirms petitioners' broad view on the "comparator groups" formed by the statute,[190] and supports their position.

Ultimately, this narrow construction of the classifications created by section 609.165 is logical. Article VII, section 1, of the Minnesota Constitution unconditionally deprives several groups of the fundamental right to vote, including mentally incompetent or insane persons, persons under guardianship, and U.S. citizens who have resided in their precinct for less than 30 days.[191] It is only one group for whom revocation of such a right is conditional: persons convicted of a felony. Felons whose civil rights have been restored have franchise rights, unlike the other enumerated groups.

Because section 609.165 "provides a statutory mechanism to restore civil rights of persons convicted of a felony,"[192] it naturally follows that the classification generated by the statute is between felons who are restored to civil rights and those who are not. On the other hand, the concurring opinion is correct to point out that the majority has "relie[d] on an argument that was not raised by the parties to find the threshold similarly situated requirement . . . satisfied."[193] This is especially valid in light of the majority's reliance on the principle of party presentation at several points in its opinion.[194]

Additionally, the dissent attacked the majority opinion's framing of section 609.165 as a generous act by the legislature to go above and beyond their constitutional duty and grant franchise rights to felons whose sentences have been discharged. While the majority's viewpoint is empirically accurate, the opinion fails to explain how this fact leads to the conclusion that section 609.165 does not have a racially disparate impact. The majority goes as far as to acknowledge "the disparate racial

190. *See Schroeder*, 985 N.W.2d at 560 n.5 (Anderson, J., concurring). The dissent stated, "Both the majority and the concurrence disagree that we must compare, as [petitioners] do, the racial disparities between Minnesotans convicted of a felony and disenfranchised under section 609.165 and other voting-age Minnesotans." *Id.* at 564 (Hudson, J., dissenting) (emphasis added).

191. *See* MINN. CONST. art. VII, § 1.

192. *Schroeder*, 985 N.W.2d at 533.

193. *Id.* at 558 (Anderson, J., concurring).

194. *See, e.g.*, *id.* at 537 (majority opinion) ("[Petitioners] do not argue that the constitutional provision on felon voting is itself unconstitutional because it conflicts with other values—like equal protection—embedded in the Minnesota Constitution. That question is left for another day."); *id.* at 552 (dismissing intermediate scrutiny as a possible standard of review in the majority's equal protection analysis because "no one argues that [it] applies").

impacts, flowing from the disenfranchisement of persons convicted of a felony."[195] By passing the blame of these disparate racial impacts onto the Minnesota Constitution, as opposed to section 609.165, the majority hides behind the principle of party presentation, a further inconsistency in its logic.

Furthermore, in rejecting the heightened rational basis standard of equal protection review, the majority misinterpreted the raw data entered into the record by petitioners and provided a long-winded and incoherent explanation as to why the petitioners failed their burden of proving adverse racial effects of section 609.165.[196]

While the dissent is able to call out the inconsistencies of the majority's reasoning in applying traditional rational basis review, and is better able to interpret the data, its overall solution is unworkable. By its own admission, the dissent notes petitioners' decision not to "challenge the disproportionate arrest, incarceration, and conviction of persons of color."[197] In addition, the dissent argues that any disenfranchisement of convicted felons undermines the goal of rehabilitation, which the legislature provides as its motivation for enacting section 609.165.[198] Thus, despite conceding the broad power granted to the legislature on the issue of felon voting rights, the dissent essentially sets forth an argument that any action taken by the legislature to disenfranchise felons in any capacity will not pass heightened rational basis review, and is thus unconstitutional, effectively depriving the legislature of their unambiguous power.[199] To sure up this logical consistency, the dissent could have addressed a potential challenge to article VII, section 1.

Ultimately, this story unfolds in an "all's well that ends well" manner, with the Minnesota Legislature taking action that is seemingly consistent with the political makeup of the state. The majority opinion, in attempting to strike a balance between its virtually explicit belief that the legislature needed to act and respecting the longstanding deference to the legislature to set the policy on felon voting rights, was able to walk the tightrope and uphold section 609.165 while also seemingly contributing to induce the change it practically begged for. While the majority made logical mistakes in its opinion, which were called out by

195. *Id.* at 557.

196. *See id.* at 553–55.

197. *Id.* at 565 (Hudson, J., dissenting).

198. *See id.* at 565–67.

199. Allowing all felons franchise rights would place Minnesota in rare company, as only two other states adhere to such a rule. *See Restoration of Voting Rights for Felons*, *supra* note 62 ("In . . . Maine and Vermont, felons never lose their right to vote, even while they are incarcerated.").

the concurring and dissenting opinions, the legislative resolution in the form of the 2023 amendments to section 201.014 demonstrates that the majority's decision was proper.

VI. CONCLUSION

In *Schroeder v. Simon*, the Supreme Court of Minnesota deferred to the state legislature to settle the issue of felon voting disenfranchisement in the state. In doing so, the court was able to keep with longstanding Minnesota precedent granting such a power to the state's legislative body, which allowed for public policy that is appropriate for Minnesotans, while also heeding to unambiguous language in the Minnesota Constitution. While the reasoning set forth in the majority opinion was far from flawless, the outcome of *Schroeder* was proper, and the case will undoubtedly remain influential by granting such immense authority to the Minnesota Legislature on the issue of felon voting rights.