Filed in District Court
State of Minnesota
5/24/2021

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1264

Jennifer Schroeder, et al.,
Appellants,

vs.

Minnesota Secretary of State Steve Simon,
Respondent.

Filed May 24, 2021
Affirmed in part and dismissed in part
Johnson, Judge

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

Craig S. Coleman, Thomas K. Pryor, Kirsten L. Elfstrand, Faegre Drinker Biddle & Reath, L.L.P., Minneapolis, Minnesota; and

Teresa J. Nelson, David P. McKinney, American Civil Liberties Union of Minnesota, Minneapolis, Minnesota (for appellants)

Keith Ellison, Attorney General, Angela Behrens, Jason Marisam, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Tara Kalar, St. Paul, Minnesota (for *amicus curiae* ISAIAH)

Joseph Plumer, Plumer Law Office, Bemidji, Minnesota; and

Riley Plumer, Hobbs, Straus, Dean & Walker, L.L.P., Washington, D.C. (for *amicus curiae* Red Lake Band of Chippewa Indians)

Marc A. Al, Andrew J. Pieper, Riley A. Conlin, Emily C. Atmore, Stoel Rives, L.L.P., Minneapolis, Minnesota (for *amici curiae* League of Women Voters Minnesota, Common Cause Minnesota, The Minnesota Second Chance Coalition, and New Venture Fund o/b/o Voting Rights Lab)

Lyndsey M. Olson, St. Paul City Attorney, Anthony G. Edwards, Megan D. Hafner, Assistant City Attorneys, St. Paul, Minnesota; and

James R. Rowader, Jr., Minneapolis City Attorney, Minneapolis, Minnesota (for *amici curiae* City of St. Paul and City of Minneapolis)

Bradford Colbert, Kevin Gray, St. Paul, Minnesota (for *amicus curiae* Legal Assistance to Minnesota Prisoners)

Joshua Esmay, Minneapolis, Minnesota (for *amicus curiae* Legal Rights Center)

Emily Hunt Turner, Minneapolis, Minnesota (for *amicus curiae* All Square)

Mark R. Bradford, Maria P. Brekke, Bassford Remele, P.A., Minneapolis, Minnesota (for *amicus curiae* Minnesota Association of Black Lawyers)

John Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for *amicus curiae* Ramsey County Attorney's Office)

Henry Allen Blair, Greene Espel, P.L.L.P., Minneapolis, Minnesota (for *amicus curiae* Volunteers of America)

Katherine M. Swenson, Greene Espel, P.L.L.P., Minneapolis, Minnesota (for *amici curiae* the District of Columbia, California, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Rhode Island, Vermont, Virginia, and Washington)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Slieter, Judge.

SYLLABUS

Section 609.165 of the Minnesota Statutes is not unconstitutional on the ground that it violates the right-to-vote provisions in article VII, section 1, of the Minnesota Constitution; the equal-protection principle arising under article I, section 2, of the Minnesota Constitution; or the due-process clause in article I, section 7, of the Minnesota Constitution.

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OPINION

JOHNSON, Judge

The Minnesota Constitution provides that a person who has been convicted of a felony is not entitled to vote "unless restored to civil rights." A statute provides that a felon's civil rights are restored when the felon is discharged, which occurs automatically upon the expiration of the felon's sentence. The appellants in this appeal challenge the constitutionality of that statute on the ground that it violates three provisions of the state constitution. The district court rejected their arguments on cross-motions for summary judgment. We conclude that the statute does not violate any of the three constitutional provisions on which it is challenged. Therefore, we affirm.

FACTS

This action was commenced in October 2019 by four persons who have been convicted of felonies and were, at that time, living in their respective communities and completing their sentences on probation, parole, or supervised release. Jennifer Schroeder was convicted of a drug crime in 2013, was sentenced to confinement in a county jail for one year, and now is serving a 40-year term of probation, which will expire in 2053. Elizer Darris was convicted of second-degree murder in 2001, was imprisoned until 2016, and now is serving a term of supervised release that will expire in 2025. Christopher Jecevicus-Varner was convicted of a drug crime in 2014 and was serving a sentence of 20 years of probation. Tierre Caldwell was convicted of assault in 2010, served approximately six years in prison, and was released in 2016 and placed on probation.

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The plaintiffs sued Steve Simon, the Secretary of State, in his official capacity. In the first paragraph of their complaint, the plaintiffs stated that the purpose of their lawsuit is "to remedy the Defendant's unconstitutional deprivations of their fundamental constitutional right to participate in the democratic process." The plaintiffs pleaded three legal theories: that section 609.165 violates the right-to-vote provisions in article VII, section 1, of the Minnesota Constitution; that the statute violates the equal-protection principle arising from article I, section 2, of the Minnesota Constitution; and that the statute violates the due-process clause in article I, section 7, of the Minnesota Constitution. In their prayer for relief, the plaintiffs sought a declaration that the challenged statute is unconstitutional to the extent that it disentitles felons from voting while on probation, parole, or supervised release and a declaration that felons may regain their right to vote upon "being released or excused from incarceration."

In February 2020, the plaintiffs and the secretary filed cross-motions for summary judgment, which addressed all of the plaintiffs' claims. The plaintiffs submitted a lengthy report prepared by a professor of sociology, who compiled and analyzed statistics concerning the numbers of persons who have been convicted of a felony in Minnesota and are in prison or on probation, parole, or supervised release. The professor calculated the per-capita rates of disenfranchisement in the state at various times in its history. The professor noted that, in 2018, 0.21 percent of Minnesota's voting-age population was in prison because of a felony conviction and that 1.22 percent was on probation, parole, or supervised release because of a felony conviction. The professor also calculated disenfranchisement rates by race and determined that, at present, "about 4.5% of voting-

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age Black Minnesotans and 8.3% of American Indian Minnesotans are disenfranchised due to voting restrictions for persons on community supervision, relative to less than 1% of Asian and White Minnesotans."[1] The secretary does not dispute the professor's data or analysis, and the secretary did not submit any contrary data or evidence.

In August 2020, the district court filed a 14-page order and memorandum in which it granted the secretary's summary-judgment motion and denied the plaintiffs' summary-judgment motion. The plaintiffs filed a timely notice of appeal from the judgment.

ISSUES

I. Is section 609.165 of the Minnesota Statutes unconstitutional on the ground that it violates the right-to-vote provisions in article VII, section 1, of the Minnesota Constitution?

II. Is section 609.165 of the Minnesota Statutes unconstitutional on the ground that it violates the equal-protection principle arising under article I, section 2, of the Minnesota Constitution?

III. Is section 609.165 of the Minnesota Statutes unconstitutional on the ground that it violates the due-process clause in article I, section 7, of the Minnesota Constitution?

[1]The professor does not state that the disparities in disenfranchisement rates by race would be less if the district court had granted the relief requested. Our review of the data in the professor's report indicates that, if felons were prohibited from voting only while incarcerated, the disparities would increase, not decrease. But we need not consider that issue. The secretary does not make such an argument, and our analysis of the plaintiffs' claims leads to the conclusion that the challenged statute is not unconstitutional, which makes it unnecessary to consider the issue of remedy.

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ANALYSIS

Before we analyze the issues raised by the parties' arguments, we identify the laws that determine whether a person may vote if he or she has been convicted of a felony.

The Minnesota Constitution defines the right to vote in article VII, which is captioned "Elective Franchise." The first section of that article states:

> 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 place of voting by one otherwise qualified who has changed his residence within 30 days preceding the election shall be prescribed by law. *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.

Minn. Const. art. VII, § 1 (emphasis added).

There is no other provision in article VII concerning the restoration of civil rights of a person who has been convicted of treason or a felony. "But the Legislature has identified the circumstances under which the voting rights of felons . . . are restored." *Minnesota Voters Alliance v. Simon*, 885 N.W.2d 660, 662 (Minn. 2016). The relevant statute provides, in part:

> When 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* and to full citizenship, *with full right to vote* and hold office, the same as if such conviction had not taken place, and the order of discharge shall so provide.

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Minn. Stat. § 609.165, subd. 1 (2020) (emphasis added). The same statute specifies how and when a person who has been convicted of a felony is discharged: "The discharge may be: (1) by order of the court following stay of sentence or stay of execution of sentence; or (2) upon expiration of sentence." *Id.*, subd. 2.

Section 609.165 was enacted in 1963 as part of a comprehensive revision of the state's criminal code, which was recommended by a statutorily created commission. 1963 Minn. Laws ch. 753, art. 1, at 1198; *see also* Advisory Commission on Revision of the Criminal Code, *Proposed Minnesota Criminal Code* 5-10 (1962). The commission recommended a statute that is very similar to the present version of section 609.165. *Proposed Minnesota Criminal Code*, *supra*, at 42. In its final report, the commission explained the reasons for its recommendation:

> The recommended sections also revise the rather extensive present provisions relating to the restoration of civil rights. This may be discretionary with the Governor, but in practice it appears that the restoration of civil rights has been granted almost as a matter of course. Under the recommended provisions, these rights will be automatically restored when the defendant is discharged following satisfactory service of sentence, probation or parole. This is deemed desirable to promote the rehabilitation of the defendant and his return to his community as an effective participating citizen.

Proposed Minnesota Criminal Code, *supra*, at 42. In additional comments, the commission further explained:

> 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 and disqualification to active community participation resulting from the denial of his civil

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> rights. The present practice it is understood is for the Governor to restore civil rights almost automatically.

Proposed Minnesota Criminal Code, *supra*, at 60-61. Since 1963, section 609.165 has been amended in only minor ways, which are not relevant to this appeal.

In general, a duly enacted statute is presumed to be constitutional. *Fletcher Props., Inc. v. City of Minneapolis*, 947 N.W.2d 1, 9 (Minn. 2020). Accordingly, an appellate court should "exercise [its] power to declare a statute unconstitutional with extreme caution and only when absolutely necessary." *Id.* (quotation omitted). We apply a *de novo* standard of review to a district court's determination of the constitutionality of a statute. *Id.* In addition, we apply a *de novo* standard of review to a district court's grant of summary judgment. *Id.*

I. Right to Vote

We begin by considering appellants' argument that section 609.165 of the Minnesota Statutes violates their constitutional right to vote in violation of article VII, section 1, of the Minnesota Constitution. Appellants[2] pleaded this theory as an

[2]While the appeal was pending in this court, respondent informed the court that Caldwell and Jecevicus-Varner had been discharged and had regained the right to vote. Accordingly, respondent argues that their claims are moot. Appellants have not disputed respondent's factual representations and have not argued in writing that Caldwell's and Jecevicus-Varner's claims are not moot. At oral argument, appellants' counsel urged the court to invoke the exception to the mootness doctrine for claims that are capable of repetition yet likely to evade review. Appellants' counsel also acknowledged that the claims of Caldwell and Jecevicus-Varner do not present any legal issues that are not already presented by the claims of Schroeder and Darris. Because there is no apparent benefit to invoking an exception to the mootness doctrine, we conclude that the claims of Caldwell and Jecevicus-Varner are moot, and we dismiss the appeal with respect to each of them. *See Housing & Redevelopment Auth. ex rel. City of Richfield v. Walser Auto Sales, Inc.*, 641 N.W.2d 885, 888 (Minn. 2002); *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999);

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independent, free-standing claim and presented it to the district court in that manner. The district court did not separately discuss the right-to-vote claim but nonetheless interpreted article VII, section 1, in the course of its analysis of appellants' other arguments. In this court, appellants renew the arguments that they presented to the district court. At oral argument, appellants' counsel argued that article VII, section 1, should be interpreted to mean that a felon's civil rights are restored whenever he or she is released from prison or jail (or, presumably, sentenced to probation without any incarceration in jail or prison). Appellants' counsel further explained that, given such an interpretation of article VII, section 1, a statute that does not restore civil rights until a later date, when a felon is discharged, is inconsistent with article VII, section 1.

The premise of appellants' argument—that they were "restored to civil rights" when they were released from jail (in Schroeder's case) or from prison (in Darris's case)—is not reflected in the text of article VII, section 1. There is no language in that section—or any other section of article VII—that reasonably could be understood to mean that a felon's civil rights are restored by his or her release from incarceration or by being placed on probation without any incarceration. Appellants' argument effectively would require this court to add words to article VII, section 1, which we are unwilling to do. *Cf. 328 Barry Ave., LLC v. Nolan Props. Grp., LLC*, 871 N.W.2d 745, 750 (Minn. 2015) (applying statutory-interpretation canon that courts "cannot add words to an unambiguous statute under the guise of statutory interpretation").

In re Inspection of Minnesota Auto Specialties, Inc., 346 N.W.2d 657, 658 (Minn. 1984). The appeal nonetheless remains justiciable with respect to Schroeder and Darris.

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Appellants' argument also is inconsistent with the meaning of the phrase "unless restored to civil rights," as that phrase is used in article VII, section 1. Appellants have not identified any law in the history of Minnesota that restored a felon's civil rights automatically upon release from incarceration. To the contrary, it appears that, in the territorial era and for more than a century thereafter, the civil rights of felons were restored only by executive or legislative action, not merely by a felon's release from confinement. The phrase "unless restored to civil rights" first appeared in the voting laws governing the Territory of Minnesota, which provided that the persons "permitted to vote at any election" did not include "any person convicted of treason, felony, or bribery, *unless restored to civil rights*." Minn. Rev. Stat. (Terr.) ch. 5, § 2, at 45 (1851) (emphasis added). It appears that no other provision in the territorial statutes provided for the restoration of civil rights. *See* Minn. Rev. Stat. (Terr.) ch. 1-137. Such a provision likely was unnecessary because it was understood that civil rights are restored by other means. In the debates of the 1857 constitutional convention,[3] some delegates considered a draft that would have denied the right to vote to persons convicted of treason or a felony with an exception that expressly referred to a means of restoration: "*Provided*, That the Governor or the Legislature may restore any such person to civil rights." *The Debates & Proceedings of the Constitutional Convention for the Territory of Minnesota* 540 (St. Paul, G.W. Moore ed. 1858) (emphasis in original). One delegate commented, "A pardon always restores a person to his legal

[3]For historical background concerning the 1857 constitutional convention, see *State v. Lessley*, 779 N.W.2d 825, 838-39 (Minn. 2010); Mary Jane Morrison, *The Minnesota State Constitution: A Reference Guide* (2002); and William Anderson, *Constitution of Minnesota*, 5 Minn. L. Rev. 407, 422 (1921).

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civil rights." *Id.* The delegates in attendance agreed to retain the proviso, *id.* at 541, although it was not retained in the version that eventually was ratified, *see* Minn. Const. art. VII, § 1 (1857). Nonetheless, the debates demonstrate that delegates generally understood that there were means by which a felon could be restored to civil rights, such as a pardon by the governor or an act of the legislature.

Subsequent events confirmed the delegates' understanding. Ten years after the constitutional convention, a law was enacted to allow felons to be restored to civil rights without a pardon. Specifically, a person who had completed a prison sentence without any disciplinary violations could obtain a certificate of good behavior from the warden and, "upon the presentation thereof to the governor he shall be entitled to a restoration of the rights of citizenship, which may have been forfeited by his conviction." 1867 Minn. Laws ch. 14, § 82, at 19. In 1887, a law was enacted to allow felons to be restored to civil rights even if they had a disciplinary record in prison; it provided that, upon a prisoner's release from prison, "The governor may . . . in his discretion restore such person to citizenship." 1887 Minn. Laws ch. 208, § 16, at 334. In 1907, a law was enacted to provide that felons who had been sentenced to jail or to a fine could be "restored to all their civil rights and to full citizenship with full right to vote and hold office," so long as the felon waited one year, applied to a district court, produced three character witnesses, and proved "his or her good character during the time since such conviction." 1907 Minn. Laws ch. 34, § 1, at 40; *see also* 1913 Minn. Laws ch. 187, § 1, at 238 (requiring only two character witnesses and proof only of "general good character"). In 1911, a law was enacted to provide for indeterminate sentences, "subject to release on parole and to final discharge by the board

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of parole." 1911 Minn. Laws ch. 298, § 1, at 413. That law also provided that, whenever the parole board granted an "absolute release," the board was required to "certify the fact and the grounds therefor to the governor, who may in his discretion restore the prisoner released to citizenship." 1911 Minn. Laws ch. 298, § 7, at 415. In 1919, a law was enacted to provide that felons who were sentenced to prison "may be restored by the governor, in his discretion, to civil rights, upon certification to him by the judge, officer or board having jurisdiction, custody or supervision of such person at the time such jurisdiction, custody or supervision is terminated." 1919 Minn. Laws ch. 290, § 1, at 299. It appears that these laws remained in force and effect until 1963, when the legislature enacted section 609.165 in conjunction with the comprehensive revision of the state's criminal code. *See* 1963 Minn. Laws ch. 753, art 1, at 1198.

In light of this history, it is apparent that, when the constitution was ratified in 1857, it was understood that the restoration of a felon's civil rights would occur in ways specified by the executive or legislative branches. Contrary to appellants' argument, there is no reason to believe that the framers of the constitution understood the phrase "unless restored to civil rights" to mean that a felon automatically would be restored to civil rights upon being released from jail or prison. Appellants have not identified any law from the territorial era or the early years of statehood under which felons' civil rights were restored automatically upon release from incarceration.[4]

[4]We note that, in the early 1970s, a special commission recommended that article VII be amended in five ways, including the removal of the provision prohibiting felons from voting. Minn. Constitutional Study Commission, *Final Report* 24 (1973). The commission stated that such an amendment would "allow greater flexibility to the

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Appellants also contend that this court should analyze the constitutionality of section 609.165 with respect to article VII, section 1, by weighing the burdens placed on a felon's right to vote against the state's interests in the policy reflected in the statute. They cite *Kahn v. Griffin*, 701 N.W.2d 815 (Minn. 2005), in support of that argument. The *Kahn* opinion was not concerned with the disenfranchisement provisions in article VII, section 1, or with section 609.165. *See Kahn*, 701 N.W.2d at 829-31. Rather, the *Kahn* opinion was concerned with the rights of all qualified voters and the question whether those rights were infringed by the timing of municipal elections in the City of Minneapolis. *See id.* at 829. Accordingly, the *Kahn* opinion is not relevant to our analysis. Appellants also cite *Minnesota Voters Alliance v. Ritchie*, 890 F. Supp. 2d 1106 (D. Minn. 2012), for the same purpose. But the court in that case considered a different argument: that article VII, section 1, of the Minnesota Constitution is in conflict with the United States Constitution. *See id.* at 1115. The constitutional analysis in that case cannot apply to appellants' argument that section 609.165 is in conflict with article VII, section 1, of the Minnesota Constitution. It

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Legislature in determining proper restrictions on the franchise rights of" felons and other disqualified persons and would allow the legislature to "provide such safeguards or qualifications as were felt necessary." *Id.* But the legislature and the governor did not seek to implement that recommendation; they proposed other amendments to article VII but proposed to retain the 1857 language that prohibits felons from voting "unless restored to civil rights." 1974 Minn. Laws ch. 409, art. 7, § 1, at 799-800. At the 1974 general election, the voters ratified the amendments that were proposed by the legislature and the governor. Minn. Const. art. VII, § 1 (1974) There can be no doubt that the framers of the 1974 amendments to article VII (the legislature, the governor, and the voters) understood that the restoration of a felon's civil rights would occur automatically at the discharge of a felon's sentence because that means of restoration was then clearly stated in section 609.165.

appears that appellants are asking this court to reconsider the wisdom of article VII, section 1, itself. That we may not do.

Thus, section 609.165 of the Minnesota Statutes is not unconstitutional on the ground that it violates the right-to-vote provisions in article VII, section 1, of the Minnesota Constitution.

II. Right to Equal Protection

Appellants also argue that section 609.165 violates the equal-protection principle arising from article I, section 2, of the Minnesota Constitution.

In Minnesota, a constitutional right to equal protection arises from a provision in the first article of the state constitution, entitled "Bill of Rights," which states, "No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Minn. Const. art. I, § 2. "The equal protection guarantee in the Minnesota Constitution places limits on the circumstances under and extent to which the Legislature can treat similarly situated people differently." *Fletcher*, 947 N.W.2d at 20.

Courts may analyze an equal-protection claim in various ways. Under a rational-basis review, "a law . . . 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." *Id.* at 19. But, in Minnesota, "a higher standard of evidence" may apply—*i.e.*, a heightened form of rational-basis review—if "a statutory classification demonstrably and adversely affects one race differently than other races, even if the lawmakers' purpose in enacting the law was not to affect any race differently." *Id.* (citing *State v. Russell*, 477

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N.W.2d 886, 890 (Minn. 1991)). The most exacting form of review—known as strict scrutiny—applies if "a statutory classification impacts fundamental rights or creates a suspect class," in which event the statute "is subject to less deference and heightened scrutiny by the courts." *Id.* at 20.

Appellants make three alternative arguments in support of their equal-protection claim. First, they argue that this court should apply strict scrutiny to their equal-protection claim because their right to vote is a fundamental right. Second, they argue in the alternative that, if a rational-basis standard applies, the heightened form of rational-basis review should apply and, furthermore, the statute cannot satisfy that heightened standard. Third, they argue, again in the alternative, that if the ordinary rational-basis standard applies, the statute cannot satisfy that standard of review. In his responsive brief, respondent raises an additional issue: whether appellants have satisfied the threshold requirement that they are similarly situated in all relevant respects to other persons who are treated differently.

A.

Before addressing the parties' arguments, we note that we must consider appellants' equal-protection argument, which is based on article I, section 2, of the state constitution, in light of the right-to-vote provisions in article VII, section 1, of the state constitution. As the district court observed, it is article VII, section 1, of the state constitution—*not* section 609.165 of the state statutes—that disenfranchises an otherwise qualified person from voting if the person has been convicted of a felony, "unless" such a person has been "restored to civil rights." The district court also observed that the challenged statute is

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beneficial to appellants inasmuch as it provides them with a means by which they may automatically be re-enfranchised. We agree with the district court's observations.

A person may challenge the constitutionality of a statute by asserting multiple constitutional rights, each of which, if valid, would lead to the same outcome. For example, in *Cruz-Guzman v. State*, 916 N.W.2d 1 (Minn. 2018), the plaintiff asserted a right to equal protection based on article I, section 2, in conjunction with a right to an education based on article XIII, section 1. *Id.* at 10-12. But in this case, multiple constitutional provisions point toward different outcomes. We have interpreted article VII, section 1, to mean that a person who has been convicted of a felony does *not* have a constitutional right to vote if he or she has not been restored to civil rights. *See supra* part I. As a consequence, appellants' equal-protection argument based on article I, section 2, is in conflict with their right-to-vote argument based on article VII, section 1. *Cf. Richardson v. Ramirez*, 418 U.S. 24, 41-55, 92 S. Ct. 2655, 2665-71 (1974) (considering claim arising under Equal Protection Clause in section 1 of Fourteenth Amendment in light of language in section 2 recognizing state felon-disenfranchisement laws).

The present situation is similar to another part of the *Cruz-Guzman* opinion, in which the supreme court considered the state's counter-argument that judicial review was precluded by the speech-or-debate clause in article IV, section 10, of the Minnesota Constitution. 916 N.W.2d at 12-13. The *Cruz-Guzman* court reasoned, "We interpret constitutional provisions in light of each other in order to avoid conflicting interpretations." *Id.* at 13 (quotation omitted). The supreme court continued by reasoning, "We decline to interpret one provision in the constitution—the Speech or Debate Clause—to immunize

the Legislature from meeting its obligation under *more specific* constitutional provisions—the Education, Equal Protection, and Due Process Clauses." *Id.* (emphasis added). If we were to find merit in appellants' equal-protection argument in this case, we would need to consider whether to resolve the case according to the equal-protection principle in article I, section 2, or the right-to-vote provision in article VII, section 1. We likely would do so by reasoning that the right-to-vote provision in article VII, section 1, is "more specific" than the equal-protection principle arising from article I, section 2, and, thus, that article VII, section 1, must govern. *See id.* at 13; *cf. Connexus Energy v. Commissioner of Revenue*, 868 N.W.2d 234, 242 (Minn. 2015) (applying statutory-interpretation canon that specific provision prevails over general provision). But we need not consider that issue because, for the reasons stated below, appellants' equal-protection claim does not succeed under the analysis prescribed by the equal-protection caselaw.

B.

As stated above, respondent argues that appellants have not satisfied a threshold requirement applicable to all equal-protection claims. Under Minnesota law, it is necessary to consider a "threshold question" before analyzing an equal-protection claim: "whether the claimant is treated differently from others to whom the claimant is similarly situated *in all relevant respects*." *State v. Holloway*, 916 N.W.2d 338, 347 (Minn. 2018) (emphasis added) (quotation omitted). In other words, the first question 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 within a group of similarly situated persons." *Fletcher*, 947 N.W.2d

at 22. "When the claimant is not treated differently than all others to whom the claimant is similarly situated, there is no equal protection violation." *Id.*

Respondent contends that appellants are not similarly situated to persons who have been discharged upon reaching the expiration of their sentences. Specifically, respondent asserts that felons who still are serving a sentence "are subject to a host of legal restrictions that do not apply to those who have completed their sentences," such as conditions of release and the possibility of being reincarcerated. In reply, appellants contend that they are similar to persons who have been discharged because they are "living in the community" and have "all of the rights, freedoms, and responsibilities relevant to voting."

Respondent's argument is an accurate reflection of the state statutes governing probation, parole, and supervised release. A person who has been convicted of a felony and has been released from jail or prison but not yet reached the expiration of a sentence is subject to numerous restrictions on his or her freedom that do not apply to persons whose sentences have expired. For example, all persons on parole or supervised release are required to comply with nine standard conditions of release, including requirements about maintaining contact with a supervising agent, a prohibition on possessing firearms and other dangerous weapons, and a prohibition on leaving the state without the written permission of the supervising agent. *See* Minn. R. 2940.2000 (2019); *see also* Minn. Stat. § 244.05, subd. 3 (2020) (authorizing commissioner of corrections to make rules regarding terms and conditions of release). Such persons also may be subject to "special conditions," such as "limits regarding contact with specified persons" and a requirement that the person participate in non-residential or residential therapy or counseling programs. Minn. R.

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2940.2100 (2019). In addition, the commissioner has discretion to place a person on "intensive supervised release," which may entail conditions such as "unannounced searches of the inmate's person, vehicle, premises, computer, or other electronic devices capable of accessing the Internet . . . ; random drug testing; house arrest; daily curfews; frequent face-to-face contacts with an assigned intensive supervision agent; work, education, or treatment requirements; and electronic surveillance." Minn. Stat. § 244.05, subd. 6(b). Similar restrictions may be, and often are, imposed on persons on probation. *See* Minn. Stat. §§ 609.135, .14 (2020).

Furthermore, if a person on supervised release violates any of the conditions imposed on him or her, "the commissioner may . . . revoke the inmate's supervised release and reimprison the inmate for the appropriate period of time." Minn. Stat. § 244.05, subd. 3(2). Similarly, a person who has been placed on parole "remains in the legal custody and under the control of the commissioner, subject at any time to be returned to a facility of the Department of Corrections . . . and the parole rescinded by the commissioner." Minn. Stat. § 243.05, subd. 1(b) (2020). In light of these provisions, there is no assurance that a felon who has not yet been discharged will not be reincarcerated in the future. But a felon who *has* been discharged no longer faces the possibility of being reincarcerated for the same felony conviction.

Thus, appellants have not satisfied the threshold requirement that they are similarly situated in all relevant respects to persons who are treated differently. This is a sufficient and independent basis for the conclusion that section 609.165 does not violate the equal-

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protection principle arising from article I, section 2, of the Minnesota Constitution. *See Fletcher*, 947 N.W.2d at 22; *Holloway*, 916 N.W.2d at 347.

C.

As stated above, appellants argue that this court should apply strict scrutiny to their equal-protection claim because their right to vote is a fundamental right. Respondent contends that strict scrutiny does not apply because appellants' equal-protection claim does not implicate a fundamental right.

Strict scrutiny applies if "a statutory classification impacts fundamental rights." *Fletcher*, 947 N.W.2d at 20. Both the United States Supreme Court and the Minnesota Supreme Court have held that, as a general matter, the right to vote is a fundamental right. *See Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 670, 86 S. Ct. 1079, 1083 (1966); *Kahn*, 701 N.W.2d at 830; *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 730 (Minn. 2003); *Ulland v. Growe*, 262 N.W.2d 412, 415 (Minn. 1978); *State ex rel. South St. Paul v. Hetherington*, 61 N.W.2d 737, 741 (Minn. 1953).

The district court reasoned that appellants do not have a fundamental right to vote because they have been expressly disentitled by article VII, section 1, of the Minnesota Constitution. The district court's reasoning is consistent with that of the United States Supreme Court, which has held that a state law that disqualifies felons from voting does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *See Richardson*, 418 U.S. at 53-54, 92 S. Ct. at 2670. The *Richardson* Court reached that conclusion in part by referring to another provision in the Fourteenth Amendment, which expresses approval of state felon-disenfranchisement laws. *Id.* at

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53-54, 92 S. Ct. at 2670-71. The Court also referred to the fact that, at the time of the adoption of the Fourteenth Amendment, many state constitutions prohibited felons from voting or authorized state legislatures to enact such prohibitions. *Id.* at 48, 92 S. Ct. at 2668.

There is no caselaw on the question whether, as a matter of Minnesota law, a person who has been convicted of a felony has a fundamental right to vote. But there is caselaw describing the method of determining whether a right is a fundamental right. The supreme court has stated, "A fundamental right is one that is 'objectively, deeply rooted in this Nation's history and tradition.'" *Holloway*, 916 N.W.2d at 345 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720-21, 117 S. Ct. 2258, 2268 (1997)). In addition, the supreme court has stated that "fundamental rights are those which have their origin in the express terms of the Constitution or which are necessarily to be implied from those terms." *Skeen v. State*, 505 N.W.2d 299, 313 (Minn. 1993) (quotation and alteration omitted). An individual seeking to apply strict scrutiny to a statute bears the burden of establishing that the statute implicates a fundamental right. *Holloway*, 916 N.W.2d at 345.

Under either of the criteria described above, appellants cannot establish that section 609.165 implicates a fundamental right. There is no deeply rooted history or tradition in Minnesota by which a person who has been convicted of a felony has been assured of a right to vote. *See id.* This is evident from the text of article VII, section 1, of the state constitution, which was adopted in 1857 and was retained in 1974 despite a recommendation that it be eliminated. *See* Minn. Constitutional Study Commission, *Final Report* 24 (1973). In addition, there is no such fundamental right "in the express terms of

the Constitution" or in a right "necessarily to be implied from those terms." *See Skeen*, 505 N.W.2d at 313. To the contrary, the express terms of article VII, section 1, of the state constitution provide that a person who has been convicted of a felony does *not* have a right to vote.

Thus, the district court properly ruled that appellants' equal-protection claim does not implicate a fundamental right. Accordingly, strict scrutiny does not apply.

D.

As stated above, appellants argue in the alternative that, if strict scrutiny does not apply, a heightened form of rational-basis review applies. Respondent contends that heightened rational-basis review does not apply because section 609.165 does not cause racial disparities.

In *Russell*, the supreme court articulated a rational-basis test for some equal-protection claims based on the Minnesota Constitution. 477 N.W.2d at 888. The *Russell* court explained that, under a heightened form of rational-basis review, Minnesota courts are "unwilling to hypothesize a rational basis to justify a classification, as the more deferential federal standard requires" and instead "require[] a reasonable connection between the actual, and not just the theoretical, effect of the challenged classification and the statutory goals." *Id.* at 889. The *Russell* court further explained that the heightened rational-basis test was "particularly appropriate" in that case because "the challenged classification appears to impose a substantially disproportionate burden on the very class of persons whose history inspired the principles of equal protection." *Id.* The supreme court recently stated that the heightened rational-basis test articulated in *Russell* applies if

"a statutory classification demonstrably and adversely affects one race differently than other races." *Fletcher*, 947 N.W.2d at 19.

In this case, the prerequisites identified in *Fletcher* for application of the heightened rational-basis test are not satisfied. The only statutory classification in section 609.165 is the distinction between felons who have been discharged and felons who have not been discharged. That statutory classification does not "adversely affect[] one race differently than other races." *See id.* As respondent asserts, "Section 609.165 automatically restores voting rights to all people with felony convictions when they complete their sentences, regardless of race." There is no evidence in this case that the statute's racially neutral criterion has been applied differently based on race. In every racial category, all persons who are discharged are re-enfranchised upon discharge by operation of section 609.165, subdivision 2.

Thus, the district court properly ruled that the heightened rational-basis test does not apply. Accordingly, ordinary rational-basis review applies.

E.

As stated above, appellants contend in the alternative that, even if the ordinary form of rational-basis review applies, the statute does not have a rational basis.

A state statute has a rational basis for purposes of a constitutional challenge if it is "a rational means of achieving a legislative body's legitimate policy goal." *Fletcher*, 947 N.W.2d at 19. Respondent asserts that the general purpose of the statute is to effectuate the policy reflected in the constitution, which disqualifies felons from voting "unless restored to civil rights." Minn. Const. art. VII, § 1. Respondent further asserts that the

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legislature chose to accomplish that goal by automatically re-enfranchising felons upon the expiration of sentence, a point in the criminal-justice process at which "debts to society have been satisfied and there is no further criminal sanction for the conviction" and the person "is no longer under correctional supervision and the state has a clear interest in fully rehabilitating the person into the community."

The legislature's policy choice as to how and when a felon should regain the right to vote was a rational choice. We assume that the legislature in 1963 generally agreed with the reasons stated by the commission recommending a comprehensive revision of the state's criminal code. The commission expressed the view that automatically restoring civil rights upon the expiration of a sentence would be "desirable to promote the rehabilitation of the defendant and his return to his community as an effective participating citizen" and to "remov[e] the stigma and disqualification to active community participation resulting from the denial of his civil rights." *Proposed Minnesota Criminal Code*, *supra*, at 42, 61. The expiration of a criminal sentence is a rational time to restore a person's right to vote, in part because it is the time past which the person no longer may be reincarcerated for a felony conviction. *See supra* part I.B. The commission also recommended the automatic restoration of civil rights as an alternative to the then-existing process that required felons to apply to the governor, who tended to approve the applications as a matter of course. *Proposed Minnesota Criminal Code*, *supra*, at 42. The automatic restoration of civil rights is rational because it is administratively efficient in that it avoids time-consuming, case-specific determinations of rehabilitation. *See Fletcher*, 947 N.W.2d at 28-29. Furthermore, the justifications stated by respondent have been validated by courts

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in other jurisdictions in cases involving equal-protection challenges to similar state statutes. *See Jones v. Governor of Florida,* 975 F.3d 1016, 1034-35 (11th Cir. 2020) (holding that Florida statute restoring felons to civil rights after completion of sentence satisfies rational-basis test); *Harvey v. Brewer*, 605 F.3d 1067, 1078-80 (9th Cir. 2010) (holding that Arizona statute restoring civil rights upon completion of sentence satisfies rational-basis test); *Owens v. Barnes*, 711 F.2d 25, 27-28 (3d Cir. 1983) (holding that Pennsylvania statute disenfranchising incarcerated felons but not felons on release does not violate Equal Protection Clause); *Madison v. State*, 163 P.3d 757, 771-72 (Wash. 2007) (holding that Washington statute restoring civil rights upon completion of sentence satisfies rational-basis test).

Thus, the district court did not err by concluding that section 609.165 has a rational basis. Therefore, section 609.165 of the Minnesota Statutes is not unconstitutional on the ground that it violates the equal-protection principle arising from article I, section 2, of the Minnesota Constitution.

III. Right to Substantive Due Process

Appellants also argue that section 609.165 violates the due-process clause in article I, section 7, of the Minnesota Constitution.

"[N]o person shall . . . be deprived of life, liberty or property without due process of law." Minn. Const. art. I, § 7. The due-process clause gives rise to substantive protections as well as procedural protections. *See State v. Hill*, 871 N.W.2d 900, 906 & n.5 (Minn. 2015). Under the doctrine of substantive due process, a statute is not unconstitutional if "the objective of the law is permissible, the means chosen to achieve

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that objective are reasonable, and the legislative body did not act arbitrarily or capriciously in enacting the law." *Fletcher*, 947 N.W.2d at 10. The party challenging the constitutionality of a statute bears the burden of proving that the statute violates the doctrine of substantive due process. *Id.* at 11.

Section 609.165 satisfies each part of this three-part test. First, the objective of the law is permissible because it is "within the power of the governmental decision maker to enact and serves a public purpose." *See id.* at 10. There is no dispute that the legislature was authorized to enact a statute to provide for the restoration of felons' civil rights.

Second, the means chosen to achieve the legislature's objective are reasonable because the legislature "could rationally believe that the mechanism it chose would help achieve the legislative goal or mitigate the harm the legislation seeks to address." *See id.* As stated above, the legislature sought to provide a simplified means of restoring civil rights and reasonably chose to do so no later than the expiration of a criminal sentence, which marks the completion of a felon's punishment. The legislature chose to restore civil rights automatically at discharge instead of requiring felons to apply for restoration. *See Proposed Minnesota Criminal Code*, *supra*, at 42.

Third, the legislature did not act arbitrarily or capriciously in enacting the law because it "emerged from a reasoned, deliberative process, rather than as a result of legislative chance, whim, or impulse." *See id.* As described above, the legislature adopted the recommendation of a statutorily authorized commission, which had been charged with revising the state's criminal code, and the reasons for the commission's recommendation were well explained in the commission's report. *See supra* part II.E.

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Thus, the district court did not err by concluding that section 609.165 is not unconstitutional on the ground that it violates the due-process clause in article I, section 7, of the Minnesota Constitution.

DECISION

Subdivisions 1 and 2 of section 609.165 of the Minnesota Statutes are not unconstitutional on the ground that they violate the right-to-vote provisions in article VII, section 1, of the Minnesota Constitution; the equal-protection principle arising under article I, section 2, of the Minnesota Constitution; or the due-process clause in article I, section 7, of the Minnesota Constitution.

Affirmed in part and dismissed in part.