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Minnesota Supreme Court
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: American Civil Liberties Union of Minnesota's Comment Supporting Proposed Amendments to Minnesota General Rule of Practice 808

Dear Justices:

The Minnesota Supreme Court Advisory Committee on the General Rules of Practice for the District Courts has recommended that Jury Management Rule 808(b)(6) be amended to place jury service on the same footing as voter eligibility for those convicted of a felony who are living in the community on parole or probation ("felony supervision"). This change would make Rule 808(b)(6) consistent with the recently enacted Restore the Vote Act,[1] which established the automatic restoration of voting rights for individuals on felony supervision. For years, the American Civil Liberties Union of Minnesota (ACLU-MN) fought through lobbying and litigation for restoration of these voting rights. The ACLU-MN supports and agrees with the Committee's recommendation to amend Rule 808 because voting and jury service are inextricably linked as part of the historic fundamental right to participate in our democracy. ACLU-MN also supports this proposed change because Minnesota's current system of exclusion has a disparate impact on people of color, there is no evidence to suggest that the change would jeopardize the probity or objectivity of the jury, and the amendment would help facilitate successful reintegration and better public safety. Our argument follows.

ARGUMENT

I. The Judicial, Statutory, and Historical Link Between Voting and Jury Service Supports an Extension of "Restore the Vote" to Jury Service.

The widely recognized connection between voting and jury service—from the Founding Era to recent cases in Minnesota state courts and the Supreme Court of the United States—supports a natural extension of the restoration of voting rights to eligibility for jury service. Additionally, several other states already recognize this connection by placing very similar requirements on both voting and jury service—or even tying jury service directly to voting. The prevalent link between these two compels the conclusion that the right to serve on a jury should be placed on the same footing as the right to vote, such that it is restored during any period when an individual is not incarcerated.

[1] 2023 Minn. Sess. Law Serv. ch. 12 (West).

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A. Minnesota Courts View Voting and Jury Service as Closely Related.

Minnesota courts have demonstrated, in a variety of contexts, the understanding that voting and jury service go hand-in-hand because they are both part of the historic fundamental right to participate in democracy. For example, in a first-degree murder case, Minnesota Supreme Court Justice Alan Page noted that "[t]he jury is perhaps the most important instrument of justice. For jury service is the only avenue of direct participation in the administration of justice open to the ordinary citizen." *Hennepin Cnty. v. Perry*, 561 N.W.2d 889, 898 (Minn. 1997) (Page, J., concurring) (quoting U.S. COMM'N ON CIV. RTS., 1961 COMMISSION ON CIVIL RIGHTS REPORT: JUSTICE 89 (1961)). The Minnesota Supreme Court also discussed voting and jury service together when analyzing the consequences of removing a man from his home. *See Thiede v. Town of Scandia Valley*, 14 N.W.2d 400, 406 (Minn. 1944) ("[Legal residence] determines a man's right to vote in a community, to serve on juries, and to exercise the customary privileges of citizenship. These privileges are inherent in citizenship and are not forfeited by seeming loss of caste in applying for poor relief."). More recently, the Minnesota Court of Appeals recognized that many states prohibit juveniles from voting and serving on juries because, unlike adults, they often exhibit an underdeveloped sense of responsibility for their actions. *Matter of Welfare of C. S. N.*, 917 N.W.2d 427, 432 n.9 (Minn. Ct. App. 2018). Another Minnesota court, prior to passage of the Restore the Vote Act, considered equally the loss of voting rights and the loss of the right to jury service as the significant collateral consequences of a criminal conviction. *State v. Plzak*, No. 27-CR-15-11634, 2016 WL 3421952, at *3 (Minn. Dist. Ct. May 13, 2016) ("[Defendant] will have to live the rest of her life under the spectre of those convictions. She will be unable to vote or serve on jury duty for the term of her probation."). As these cases demonstrate, the proposed amendment to Rule 808(b)(6) would align with the Minnesota judiciary's longstanding view that voting and jury service are closely associated.

B. The United States Supreme Court Repeatedly Recognizes the Link Between Voting and Jury Service in the Nation's Political Structure.

Decisions from the United States Supreme Court similarly support the understanding that voting and jury service are linked as part of the fundamental right to participate in democracy. The Court has weighed-in on the nature of jury service multiple times, among other things highlighting the democratic role of juries "to prevent oppression by the Government," *Duncan v. Louisiana*, 391 U.S. 145, 155 (1968); "to maintain a link between contemporary community values and the penal system," *Witherspoon v. Illinois*, 391 U.S. 510, 519 n.15 (1968); and to "afford[] ordinary citizens a valuable opportunity to participate in a process of government," *Powers v. Ohio*, 499 U.S. 400, 407 (1991). The Court has explained that jury trials ensure the people's control in the judiciary, "just as suffrage ensures the people's ultimate control in the legislative and executive branches." *Blakely v. Washington*, 542 U.S. 296, 306 (2004). As recently as 2019, the Court stated that "[o]ther than voting, serving on a jury is the most substantial opportunity that most citizens have to participate in the democratic process." *Flowers v. Mississippi*, 139 S. Ct. 2228, 2238 (2019).

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Additionally, the Court has placed jury service alongside voting when discussing the parallel harm caused by racial discrimination in each. *See Carter v. Jury Comm'n*, 396 U.S. 320, 330 (1970) ("Whether jury service be deemed a right, a privilege or a duty, the State may no more extend it to some of its citizens and deny it to others on racial grounds than it may invidiously discriminate in the offering and withholding of the elective franchise.").

C. Several Other States Place Eligibility for Jury Service on the Same Footing as Voter Eligibility for Those Convicted of a Felony.

Numerous states have matching or substantially similar voting and jury-service requirements for people with felony convictions, including Arizona, Idaho, Indiana, North Dakota, Virginia, and Wisconsin.[2] In fact, two states explicitly tie jury service qualifications to voting, making it even clearer that voting and jury service go hand-in-hand. In Indiana, a prospective juror is disqualified if "[t]he person has had the right to vote revoked by reason of a felony conviction and the right has not been restored." IND. CODE ANN. § 33-28-5-18(b)(5). In North Dakota, a potential juror is disqualified if the person "[h]as lost the right to vote because of imprisonment in the penitentiary . . . or conviction of a criminal offense which by special provision of law disqualified the prospective juror for such service." N.D. CENT. CODE. ANN. § 27-09.1-08(2)(e) (West 2009).[1] If the statutory language were not clear enough, the Supreme Court of North Dakota has explicitly stated that jury service in that state is automatically restored as soon as one's right to vote is restored, except for a few offenses, and that this occurs immediately upon release from incarceration. *See City of Mandan v. Baer*, 578 N.W.2d 559, 563 (N.D. 1998) ("The disqualification [of a prospective juror] is in effect only during the period of actual incarceration. N.D.C.C. § 12.1-33-03.").

D. The Framers Emphasized the Importance of Jury Service as a Means of Self-Government Alongside Voting.

If all that was not enough, there's more. The connection between jury service and voting extends as far back as the Founding Era of the United States. The Framers analogized jurors to voters on the ground that a jury is an essential democratic institution and prerequisite to self-government.[3] In fact, Thomas Jefferson viewed jury service as a more crucial aspect of self-government than voting for legislators. He stated that the "execution of the laws is more important than the making of them" and therefore, "[w]ere I called upon to decide whether the people had best be omitted in the Legislative or Judiciary department, I would say it is better to leave them

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[2] *See 50-State Comparison: Loss & Restoration of Civil/Firearms Rights*, COLLATERAL CONSEQUENCES RES. CTR., https://ccresourcecenter.org/state-restoration-profiles/chart-1-loss-and-restoration-of-civil-rights-and-firearms-privileges (last updated Dec. 2021); *see also* ARIZ. REV. STAT. ANN. §§ 13-904(A)(3) (2024); IDAHO CONST. art. VI, § 3; IND. CODE ANN. § 33-28-5-18(b)(5); N.D. CENT. CODE ANN. § 27-09.1-08(2)(e) (West 2009); VA. CONST. art. II, § 1, art. V, § 12; VA. CODE ANN. § 8.01-338(2) (West 1998); WIS. STAT. ANN. §§ 304.078, 756.02 (West 2023).

[3] Letters From the Federal Farmer (IV), reprinted in 2 THE COMPLETE ANTI-FEDERALIST 245, 249–50 (Herbert V. Storing ed., Univ. Chicago Press 1981) ("The trial by jury in the judicial department, and the collection of the people by their representatives in the legislature, are those fortunate inventions which have procured for them, in this country, their true proportion of influence, and the wisest and most fit means of protecting themselves in the community.").

out of the Legislative."[4] Additionally, John Adams declared that the "common people" should have just as much control in "every judgment of a court of judicature" as in the popular branch of the legislature.[5] Alexis de Tocqueville succinctly summarized the connection between these rights in America's democracy, noting that, "[t]he system of the jury, as it is understood in America, appears to me to be as direct and as extreme a consequence of the sovereignty of the people as universal suffrage."[6]

The inclusion of jury service alongside voting in cases from Minnesota courts and the Supreme Court of the United States, the Framers' view of jury service as a fundamental prerequisite to self-government, and the link between both rights in the statutes of other states all support the proposal that the restoration of jury service should track the restoration of voting as provided in the Restore the Vote Act.

II. Felony Disenfranchisement Has a Disparate Impact on People of Color.

The jury service rule also reflects our democratic values in other ways, such as equal protection under the law. Jury Management Rule 808(b)(6) currently contributes to the troubling race and class disparities that cannot be reconciled with Minnesota's present-day values of equal citizenship and equal dignity. Minnesota denies the ability to serve on a jury to roughly 1.3% of the state's voting age population.[7] An estimated 84% of these individuals live in the community. Although Minnesota ranks sixth in the nation for community supervision rates, this scheme still disproportionately affects people of color.[8]

According to the most recent statistics available, Black Minnesotans make up about 7% of the State's population but comprise 19% of the citizens on probation and 26% of the citizens on supervised release.[9] Native Americans make up roughly 1.4% of the State's population but comprise 6% of the people on probation and 10% of the people on supervised release.[10] In total, over 55,000 Minnesotans are on felony supervision. These numbers alone paint a clear picture that Minnesota's current rule creates a serious disparate impact and dilutes the ability of people of color to fully participate in the democratic system.

Under the proposed change to Rule 808(b)(6), the right to serve on a jury would be automatically restored upon release from incarceration, and jury disenfranchisement rates would shrink to fractions of what they are under the current law. The Native American rate would drop to 2%, the Black rate would fall to 1.5%, and both the white and Asian/Pacific Islander rates would fall to 0.1%. By adopting this change, Minnesota would expand its citizens' role in the democratic process and thereby strengthen its democracy.

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[4] Letter from Thomas Jefferson to Abbe Arnoux (July 19, 1789) *in* 15 THE PAPERS OF THOMAS JEFFERSON 282–83 (Julian P. Boyd ed., Princeton Univ. Press 1959).
[5] Diary of John Adams (Feb. 1771) *in* 2 THE ADAMS PAPERS, DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS 2–6 (L.H. Butterfield ed., Harvard Univ. Press 1961).
[6] 1 A. DE TOCQUEVILLE, DEMOCRACY IN AMERICA 313 (Henry Reeve ed. & trans., Pa. State Univ. 2002) (1835).
[7] CHRISTOPHER UGGEN ET AL., THE SENT'G PROJECT, LOCKED OUT 2022: ESTIMATES OF PEOPLE DENIED VOTING RIGHTS (2022).
[8] DANIELLE KAEBLE, U.S. DEP'T OF JUST., PROBATION AND PAROLE IN THE UNITED STATES, 2020 (2021), https://bjs.ojp.gov/content/pub/pdf/ppus20.pdf.
[9] MINNESOTA DEP'T OF CORR., MINNESOTA STATEWIDE PROBATION & SUPERVISED RELEASE OUTCOMES (2021).
[10] *Id.*

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III. Jurors on Felony Supervision Will Not Jeopardize the Probity or Objectivity of the Jury.

People who oppose restoring the right to serve on a jury generally advance two arguments; neither of them are compelling. First, they assert that formerly incarcerated individuals lack the probity—the quality of having strong moral principles, honesty, and decency—to serve on a jury. Second, they assert that formerly incarcerated individuals are inherently biased against the government or against choosing to convict someone in general. Besides being offensive and pure conjecture, at the very least, these arguments fail to justify the per se exclusion of all persons on felony supervision from all cases.

Of these two arguments, the more prevalent one is the protection of the probity of the jury.[11] However, the exact way in which formerly incarcerated people supposedly threaten jury probity is unclear.[12] If the problem stems from certain characteristics—that are sometimes associated with people convicted of felonies, a "blanket exclusion is both under- and over-inclusive."[13] The argument fails to consider those individuals who lack strong moral principles but have not been convicted of a felony. Even less compelling is the notion that people convicted of felonies threaten the probity of the jury because of their "degraded status"—that is, regardless of whether or not an individual has integrity and moral character, having them on juries undermines the integrity of the institution.[14] This argument is arbitrary on its face, and Minnesota's recent Restore the Vote Act makes it even more arbitrary. If Minnesota subscribes to this theory, it must explain why perceptions of individuals on a jury are different from those in the electorate. Any state that precludes people convicted of felonies from jury service while allowing them to vote should closely examine the rationale for such a distinction; there is no legitimate, evidence-based rationale for doing so. The same reasons for allowing people on felony supervision to vote apply with equal force to jury service.

The second common argument against felony jury service—that persons convicted of serious crimes are inherently biased against the government—is similarly flawed. The argument assumes that people convicted of felonies "remain adversarial to the government and will sympathize unduly with any criminal defendant."[15] Of course, this in no way explains why such persons should be excluded from *civil* juries in cases where the government is not a party. Moreover, the criminal legal system already includes a method to address any such inherent biases; every candidate for jury service is subject to rigorous examination during voir dire. Besides, no presumptions exist that other definable groups of people are incapable of being objective in *all* trials, because of a generalized assumption about that group's characteristics. Instead, individualized analyses are performed during jury selection, specifically to address any concerns about the possibility of bias.[16] To the extent that voir dire and peremptory challenges result in exclusion of other "biased" people, the same process could be applied to people convicted of felonies, to solely exclude those who are actually biased.

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[11] Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 AM. U. L. REV. 65, 102 (2003).
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.* at 105.
[16] *Id.*

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A related but slightly separate argument is that a person who was incarcerated is "less willing, if not entirely unwilling, to subject another person to the horrors of punishment that they have endured and may engage in nullification."[17] But this argument, too, fails on its most basic level. In Maine—the only jurisdiction in the United States that allows people convicted of felonies to serve on juries without limitation— evidence shows that jurors with a felony conviction strive to live up to their perception of the "ideal juror".[18] The same study also demonstrates that serving on a jury can help formerly incarcerated people reintegrate into society by helping them build their self-esteem and view themselves as equal to other citizens.[19] Additionally, the evidence shows that such jurors enhance the quality of jury deliberations. Specifically, they raise more novel case facts and speak for a longer percentage of deliberation time than those without felony convictions.[20]

These arguments against restoration of jury service to those on felony supervision should be rejected as largely speculative and certainly not compelling, especially when weighed against the historic view of jury service as a fundamental democratic value closely associated with voting. And, as briefly discussed below, there is tremendous benefits of jury service to the jurors themselves and society as a whole.

IV. Allowing Individuals on Felony Supervision to Serve on Juries Would Promote Successful Reintegration into Society and Thereby Improve Public Safety.

Social bond theory argues that attachment to pro-social values, people, and institutions prevents citizens from committing crimes.[21] The "belief" component of social bond theory argues that the more a person embraces the moral validity of laws, the more likely that person is to follow them. If restoring a right does indeed make the democratic system feel fairer and more inclusive, one can thus infer a connection between disenfranchisement and both cooperation with government and respect for law.

Additional research suggests that the opportunity to participate in the democratic system immediately after release from incarceration reduces one's perceived status as an outsider.[22] Studies show that an individual's self-perceptions are central to their desistance from criminal activity. Scholars suggest that criminal desistance is not a termination event but is instead a process that divides into two phases: primary desistance and secondary desistance.[23]

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[17] *Id.*
[18] James M. Binnall, *Summonsing Criminal Desistance: Convicted Felons' Perspectives on Jury Service*, 43 L. & SOC. INQUIRY 4, 12 (2017).
[19] *Id.* at 32.
[20] *Id.* at 15.
[21] Travis C. Pratt et al., *Key Idea: Hirshi's Social Bond/Social Control Theory*, in KEY IDEAS IN CRIMINOLOGY AND CRIMINAL JUSTICE 55–69 (1969).
[22] Johanna B. Folk et al., *Connectedness to the Criminal Community and the Community at Large Predicts 1-Year Post-Release Outcomes Among Felony Offenders*, 46 EUR J. SOC. PSYCH. 341–55 (2015).
[23] Shadd Maruna et al., *Pygmalion in the Reintegration Process: Desistance from Crime through the Looking Glass* 10 PSYCH., CRIME & L. 271–274 (2006).

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Primary desistance refers to a "crime-free gap in the course of a criminal career," while secondary desistance is the longer-term cessation of criminal activity coupled with a pro-social change in a former offender's self-conception.[24] The key distinction between a mere break in criminality and a law-abiding life may be "measurable changes at the level of personal identity or the 'me' of the individual."[25]

In the first empirical study of civic participation as a possible promoter of criminal desistance, sociology Professor Christoper Uggen interviewed thirty-three prisoners, parolees, and probationers in Minnesota.[26] His team found that subjects "link successful adult role transition to desistance from crime" and that former offenders' civic-role commitments contribute to the development and maintenance of a law-abiding identity. When former offenders think of themselves as citizens and have a desire to fulfill civic roles, this results in a gradual shift that aligns their actions with the expectations of the citizen role.[27] Accordingly, Professor Uggen and his team found that "civic reintegration and establishing an identity as a law-abiding citizen are central to the process of desistance from crime."[28]

The inclusion, therefore, of probationers or parolees on juries, along with other pro-social changes, will likely result in long-term criminal desistance or successful reintegration. Thus, participation in the jury process would likely impact the views and attitudes of convicted felons and thereby promote improved public safety.

CONCLUSION

The Advisory Committee's recommended change to Jury Management Rule 808(b)(6) should be adopted because there is a historical, judicial, and statutory link between jury service and voting. The change would also decrease the disparate impact experienced by people of color who have been convicted of a felony. Finally, the proposed change to the rule would help stimulate more successful reintegration after incarceration.

Respectfully submitted,

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[24] *Id.*
[25] *Id.*
[26] Christopher Uggen et al., *"Less than the Average Citizen": Stigma, Role Transition, and the Civic Reintegration of Convicted Felons*, in AFTER CRIME AND PUNISHMENT: PATHWAYS TO OFFENDER REINTEGRATION 258-90 (Shadd Maruna et al. eds., 2004).
[27] *Id.* at 287.
[28] *Id.*