MACDL Weighs in on the Most Consequential Pardon Case in 125 Years

JaneAnne Murray

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One hundred and fifty years ago, the Minnesota electorate voted to modify the Governor's then plenary pardon power to require that it be exercised "in conjunction with" a Board of Pardons, composed of the Governor, the Attorney General and the Chief Justice of the Minnesota Supreme Court. Today, pardon applicant Amreya Shefa awaits the outcome of a case before the Supreme Court of Minnesota that will decide what these apparently collegial and modest words "in conjunction with" mean. Do they mandate, as the Minnesota legislature decided in 1897, one year after the constitutional amendment, that the governor's pardon power be subject to a unanimous vote from the three-member Board of Pardons, or do they require something less stringent – at the very least no more than a majority vote of the three Pardon Board members?

The issue has profound ramifications for Ms. Shefa, whose pardon application garnered a 2-1 vote and who believes that she faces almost certain death if not granted a pardon that will save her from deportation. But it also impacts the thousands of pardon and commutation applicants in this state for whom the Governor's clemency power is the only meaningful opportunity for relief from disproportionately long sentences or who suffer life-limiting collateral consequences because of their prior conviction.

Background

In December 2013, Amreya Shefa had been raped and abused by her husband one time too much. She stabbed him 30 times, causing his death. She was charged with murder, and after a bench trial, a judge in Hennepin County convicted her of manslaughter. While acknowledging that Ms. Shefa was the victim of abuse, the court reasoned that Ms. Shefa had "exceeded the degree of force required to defend herself." Ms. Shefa was sentenced to seven years in prison. She served her sentence in full. Upon completion of her sentence and because of her manslaughter conviction, Ms. Shefa was held by immigration authorities to be deported to her home country where she feared her husband's family – which had vowed a blood revenge – would kill her.

The Binger Center for New Americans at the University of Minnesota Law School (the "BCNA") assumed Ms. Shefa's representation in immigration court. Seeing few paths to Ms. Shefa's freedom, the BCNA led for clemency for Ms. Shefa on the grounds that hers, if ever one existed, was a case of "unfortunate guilt" that should be mitigated through a pardon. A pardon would save her from deportation.

On June 12, 2020, the Amnion Board of Pardons voted to grant a pardon to Ms. Shefa. However, the Governor of Minnesota has not signed the pardon, and Ms. Shefa remains in detention.

References

1. JaneAnne Murray is a member of the MACDL board, and director of the Clemency Project at the University of Minnesota Law School. In connection with the drafting of the MACDL amicus, MACDL acknowledges the invaluable research and analysis of Scott Dewey, J.D., Ph.D., a historian at the Law School's library, Ingrid Hofeldt, a J.D. Candidate at the Law School, and Margaret Colgate Love, Executive Director of the Collateral Consequences Resource Center.


3. The Federalist No. 74 (Alexander Hamilton).
The Founders Constitution 17-18 (P. Kurland)

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Although the pardon power was later moved to its own dedicated section (Art. V. § 7), this was done for clarity purposes and had no legal

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It cannot be supposed that the framers of the Constitution intended to repeal it in this case, by a covert means.\footnote{Historical and Political Origins of the Corporate Board of Directors.}

When did ownership separate from the management of a corporation? As a familiar principle of law, known to those who followed it, the majority rule by quorum is the default rule of majority rule. A board establishment by law or statute of the state follows:

When a board of directors of a corporation, noted:\footnote{Sargent v. Webster, 68 J. Econ. Hist. 645, 652 (Sept. 2008).}


The majority rule is the majority rule by quorum as a general default: When there is no other express provision, a majority of the whole number of an aggregate body who may act together constitute a quorum; and every decision of a majority of the whole number of an aggregate body, as by a board of directors or trustees, where the charter and by-laws are silent, a majority, at least, must be present to constitute a quorum; and then a majority of the quorum must be present, and then a majority of the directors or trustees, if it be not otherwise provided by law, shall be a quorum; and every decision of a majority of the directors or trustees, if it be not otherwise provided by law, shall be valid as a corporate act; but in the former a majority of the directors or trustees, if it be not otherwise provided by law, shall be a quorum; and every decision of a majority of the directors or trustees, if it be not otherwise provided by law, shall be valid as a corporate act; but in the former a majority of the directors or trustees, if it be not otherwise provided by law, shall be a quorum; and every decision of a majority of the directors or trustees, if it be not otherwise provided by law, shall be valid as a corporate act.

In the same vein, the Rhode Island Supreme Court reiterated:\footnote{American corporation statutes [have] provided, … that [the]: XX Commentaries on American Law 134-135 (1886) (emphasis added).}

"Corporations are subject to the emphatically republican principle (supposing that charter to be silent), that the whole body or persons, if it be not otherwise provided by law, shall constitute a majority, in cases within the charter powers, bind the corporat\emph{ion}, noted:\footnote{18 Commentaries on American Law 134-135 (1886) (emphasis added).}

"The power of the court to consider and act upon a case when there is no other express provision, a majority of the whole number of the corporation, shall be a quorum; and every decision of a majority of the corporation, if it be not otherwise provided by law, shall be valid as a corporate act; but in the former a majority of the corporation, if it be not otherwise provided by law, shall be a quorum; and every decision of a majority of the corporation, if it be not otherwise provided by law, shall be valid as a corporate act; but in the former a majority of the corporation, if it be not otherwise provided by law, shall be a quorum; and every decision of a majority of the corporation, if it be not otherwise provided by law, shall be valid as a corporate act; but in the former a majority of the corporation, if it be not otherwise provided by law, shall be a quorum; and every decision of a majority of the corporation, if it be not otherwise provided by law, shall be valid as a corporate act."

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Conclusion

In restoring the pardon power to the governor in eight of the nine states that had "gatekeeper" boards, the voters of those states reestablished what have been called "gatekeeper" boards: boards that condition the governor's power to pardon on the approval of a separate board. The Minnesota legislature in 1896; and implicitly in the ninth, a governor could never be held hostage by the constitutional language, it resulted in giving Minnesota's governing bodies the power to approve a pardon before it could be granted by the governor. In none of them, however, could one member of the board other than the governor (if on a majority board), or a board majority, stop a pardon from being issued.

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