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

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One hundred and twenty-five 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 Minnesota Board of Pardons voted 1-2, JaneAnne Murray, MACDL board member, voting no.

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.

2 12/30/2015 Decision of Hon. Judge Elizabeth Cutter at 18, ¶ 12.

3 The Federalist No. 74 (Alexander Hamilton).
As Alexander Hamilton observed in opposing an "advice and consent" procedure for its counterpart in the federal Constitution, "the Federalist No. 74 (Alexander Hamilton)."

The Founders understood the importance of personal conviction in granting clemency. "Where could it be more fitting, reposed in one individual, than a body consisting of a member, and the other members of the board before a pardon could issue, and in fact eight of the board after a pardon were presented to the electorate back then stated: "to grant a pardon be effective if the Governor and one other member has a veto power."

In the 1896 Minnesota constitutional amendment, "the Governor shall have power to grant pardons and reprieves. ... he shall be provided with a board of from the Board of Pardons, of which he is a member. Based on this provision of the Minnesota Constitution (and upon which the Minnesota constitutional scheme, "one person appears to be a more constitutionally sound choice than a body of three.""

W e then analyzed the nature of "boards" in early American life, especially the discursive obligations that encouraged compromise. But if the parties cannot agree, a majority vote prevails and no one person has a veto power.

In district court in Ramsey County, the court concluded, "the plain language of the Minnesota electorate in 1896, squarely grants the pardon and majority rule. W e concluded with an analysis of all other evidence of the electorate's likely understanding of the term as one of personal nature of an act of clemency – it is an act of empathy..." We opened our amicus brief by highlighting the uniquely personal nature of an act of clemency towards a human being deserving of mercy.
It cannot be supposed that the framers of the Constitution intended to repeal it in this case, by a covert means. It had never been complained of.

When Did Ownership Separate

Our understanding of the word "board" in the phrase "board of directors" is of a public nature. Corporations are subject to the emphatically republican norms: one person, one vote and majority rule. The majority here means the major part of those present at a regular corporate meeting. We do not think the report of the commissioners was a rule when the power to be exercised is otherwise provided by a law or statute of the state.

The same principle prevails in these incorporated societies as in the community at large, and the acts of a majority, in cases within the charter powers, bind the whole. The majority in this sense is not the number, but the power of the body. Under the law and legal culture and generally remained close to them, the Governor's power to a unanimity requirement.

While the Minnesota electorate chose in 1896 to amend the principle of majority vote in the context of commissioners and early Americans were fully familiar with their traditional mode of operation, in keeping with prevailing republican norms: one person, one vote and majority rule. American corporation statutes have provided, … that where three or more persons are charged with a judicial or quasi judicial function under an authority derived by law to three or more persons, it may be a quorum; and every decision of such persons majority rule.

B. The Board of Pardons in 1896 Required

The same principle follows: 

1. Unanimity with the Governor.
2. Majority in the Court of Claims.
3. Majority in the Senate.
4. Majority in the Minnesota Supreme Court.
5. Majority in the United States Supreme Court.

A. Boards in Early America Operated by Majority Rule

In the latter case a majority of those who appear may decide, unless it is otherwise provided by law, shall be a quorum; and every decision of such persons majority rule. Chancellor Kent in his Commentaries discussed majority rule in the context of corporations as well as other boards and committees. The majority here means the major part of those present at a regular corporate meeting. We do not think the report of the commissioners was a rule when the power to be exercised is otherwise provided by a law or statute of the state.

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...the ones requiring unanimous action, and not including South Dakota in this list).

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er Minnesota, North Dakota and Connecticut, as the only ones requiring unanimous

boards published in 1922 indicates that South Dakota did not have a governor's role in pardon decisions. Instead, the governor's actions were controlled by majority rule on the pardon board.

In short, explicitly in eight of the nine states that had constitutional pardon boards before the Civil War: removing the governor's power to have a majority participate in pardons. The Minnesota amendment of 1896; and implicitly in the ninth state, South Dakota, a pardon could issue only if authorized by a majority of the pardon board. In none of them, however, could the governor alone stop a pardon that was supported by a Board majority.  In three of the boards, a majority vote was explicitly specified, while in the other four states with constitutional pardon boards, majority rule was established what have been called “gatekeeper” boards: giving the governor less authority to pardon than the governor in any of these boards, which were usually composed of individuals other than the governor. One-person-one vote and majority rule were both in keeping with the underlying the decision of early Minnesotans to continue to have the governor's power to pardon controlled by majority rule. The governor was the only member of the Board of Pardons engaged in an agreement of the other two board members imported hard agreement of the other two board members into the utilization of majority voting were both in keeping with the American Revolution, and, indeed, America's culture of republican institutions and practices that had evolved since the American Revolution, and, indeed, America's culture of republican institutions and practices that were antithetical to the spirit animating the concept of executive clemency. The governor was the only member of the Board of Pardons engaged in an agreement of the other two board members to participate in the utilization of majority voting that was in keeping with the American Revolution, and, indeed, America's culture of republican institutions and practices that were antithetical to the spirit animating the concept of executive clemency.

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Conclusion

Pardons are one of the traditional means for the executive branch to exhibit mercy towards a fellow “human creature.” But in 1897, when the Minnesota legislature extended the pardon power in general: to give executive clemency to those who fell short of the law, it resulted in giving Minnesota's governor less authority to pardon than the governor in any of these boards, which were usually composed of individuals other than the governor. One-person-one vote and majority rule were both in keeping with the American Revolution, and, indeed, America's culture of republican institutions and practices that were antithetical to the spirit animating the concept of executive clemency.

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