

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Civil

<p>Amreya Rahmeto Shefa,</p> <p>Plaintiff,</p> <p>v.</p> <p>Minnesota Attorney General Keith Ellison, in his official capacity,</p> <p>Defendant.</p>	<p>Court File No.:</p> <p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p>
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INTRODUCTION

1. Plaintiff Amreya Shefa, a lawful permanent resident of Minnesota, seeks a pardon from the Governor of the State of Minnesota under the Minnesota Constitution. Shefa brings this civil action to remedy the Defendant's application of an unconstitutional statute that contravenes the Governor's pardon power outlined by the Minnesota Constitution, as applied in Shefa's case.

2. Minnesota's Constitution provides that the Governor has authority to grant reprieves and pardons from criminal convictions: "The governor in conjunction with the board of pardons has power to grant reprieves and pardons after conviction for an offense against the state except in cases of impeachment." Minn. Constitution, art. V, § 7. The Constitution further provides that the Board of Pardons includes the Governor (Tim Walz), the Attorney General (Keith Ellison), and the Chief Justice of the Minnesota Supreme Court (Lorie Gildea). *Id.*

3. When the Minnesota Constitution says that "The governor in conjunction with the board of pardons has power to grant reprieves and pardons," the subject of "has power to grant reprieves and pardons" is the Governor, Tim Walz. The phrase on its face grants Governor Walz Minnesota's pardon power. It also places upon that power a condition: to act in conjunction with

two other officials. That condition does not change the fact that it is the Governor who has the power to grant reprieves and pardons in Minnesota.¹

4. Despite the plain language of the Minnesota Constitution empowering Governor Walz to grant pardons “in conjunction with” the Board of Pardons, nearly 125 years ago the Minnesota legislature enacted Section 638.02, subd. 1, of the Minnesota code, which presently provides that “Every pardon or commutation of sentence shall be in writing and shall have no force or effect unless granted by a *unanimous vote* of the board duly convened.” In other words, Minn. Stat. 638.02, subd. 1, removes from Governor Walz the pardon power granted him by the Minnesota Constitution and empowers each member of the Board of Pardons the ability to block a pardon application over the Governor’s wishes. No legitimate or rational government interest is served by requiring unanimous support of the Board of Pardons to grant a pardon petition, particularly when the Governor—who holds the pardon power under the Minnesota Constitution—supports granting the pardon.

5. The Minnesota Constitution provides for three distinct branches of government with separate, distinct powers: “The powers of government shall be divided into three distinct departments: legislative, executive and judicial.” Minn. Constitution, art. III, § 1. And the Minnesota Constitution makes express that “[n]o person or persons belonging to or constituting” one of those three branches of government “shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.” *Id.*

¹ If the Constitution had intended to create a board of equals, it would have eliminated the reference to the Governor in art. V, § 7 to read: “The board of pardons has power to grant reprieves and pardons.” The Minnesota Constitution does not do so, instead vesting the power to grant reprieves and pardons with the Governor.

6. The system for granting pardons, as set forth in Section 638.02, subd. 1, of the Minnesota code and as applied by the Defendant, is an unconstitutional violation of the separation-of-powers doctrine embodied in the Minnesota Constitution. That statute must be invalidated to restore the proper function of the pardon process in Minnesota. The current system denies the Governor of Minnesota the power to grant a pardon, in conjunction with the Board of Pardons, as envisioned by the Minnesota Constitution, and impermissibly allows the Board of Pardons to encroach on the Governor's executive authority. Accordingly, Minnesota's statutory scheme for granting pardons cannot be squared with the Constitution's grant of the pardon power to the Governor.

7. Because Minnesota's process of adjudicating Shefa's pardon petition violates the express text of the Minnesota Constitution—and violates the separation-of-powers established between the executive, legislative, and judicial branches of the Minnesota government—Shefa seeks declaratory and injunctive relief as outlined below.

THE PARTIES

8. Plaintiff Amreya Rahmeto Shefa is a native and citizen of Ethiopia and also a lawful permanent resident of Minnesota. She currently seeks a pardon from Governor Walz and the Board of Pardons concerning her conviction for Manslaughter in the First Degree.

9. Defendant Keith Ellison is sued in his official capacity as the Minnesota Attorney General ("Attorney General"). The Attorney General has sworn under oath to uphold the Constitution of the State of Minnesota in carrying out his duties, which include serving as a member of the Board of Pardons.

10. The Attorney General is tasked with upholding the Minnesota Constitution as well as establishing and effectuating the legal policy for the State of Minnesota.

11. The Attorney General acts on behalf of the State of Minnesota in exercising his duties regarding pardon petitions and his involvement with the Board of Pardons.

PROPER JURISDICTION

12. This Complaint raises claims under the Minnesota Constitution and laws of the State of Minnesota. Thus, this Court has jurisdiction over all of Shefa's claims.

13. This Court is authorized to grant declaratory relief pursuant to the Declaratory Judgments Act. Minn. Stat. § 555.01. The Declaratory Judgments Act "is remedial, intended to settle and to afford relief from uncertainty with respect to rights, status, and other legal relations." *Holiday Acres No. 3 v. Midwest Fed. Savs. & Loan Ass'n of Minneapolis*, 271 N.W.2d 445, 447 n.2 (Minn. 1978); *see also* Minn. Stat. § 555.12 (stating that the Act "is to be liberally construed and administered").

14. District courts of Minnesota are courts of general jurisdiction. Minn. Stat. § 484.01; Minn. Const. art. VI, § 3. Under Minnesota Rule of Civil Procedure 65, district courts also have the authority to grant injunctive relief.

15. Venue in Hennepin County is proper under Minnesota Statute Section 542.03.

LEGAL BACKGROUND

16. The Minnesota Constitution was adopted on August 29, 1857.

17. The Minnesota Constitution provides that "The governor in conjunction with the board of pardons has power to grant reprieves and pardons after conviction for an offense against the state except in cases of impeachment." Minn. Constitution, art. V, § 7. When the Constitution says that "The governor in conjunction with the board of pardons has power to grant reprieves and pardons," the subject of "has power to grant reprieves and pardons" is the Governor. The phrase on its face grants the Governor that power.

18. Despite the plain language of the Minnesota Constitution, the power to grant clemency now rests with the Board of Pardons under Minn. Stat. § 638.02. The Board includes individuals from three different levels of government: the Governor, the Attorney General, and the Chief Justice of the Minnesota Supreme Court. *Id.* § 638.01.

19. Under § 638.02, subd. 1-2, the three members of the Board of Pardons must vote unanimously to grant a petitioner clemency. Among the different options for clemency are “an absolute or conditional pardon” to any person at any time, a commutation to those currently serving their sentence, or a pardon extraordinary to those who have completed their sentences.

20. The legislatively-created system for adjudicating pardon petitions—which requires the unanimous support of the Board of Pardons—violates the plain text of the Minnesota Constitution.

FACTUAL BACKGROUND

I. History of Pardons in Minnesota

21. Article V, including its language granting the pardon power to the Governor of Minnesota, was included in the original Minnesota Constitution adopted on August 29, 1857.

22. Currently, pardon extraordinaries are the only form of clemency utilized in Minnesota (as opposed to “ordinary” pardons, which can be granted at any time, or commutation, which applies to a sentence being served).² Unique to Minnesota, a “pardon extraordinary” restores all rights not otherwise regained upon an individual completing his or her sentence. It has the “effect of setting aside and nullifying the conviction and of purging the person of it, and the person shall never after that be required to disclose the conviction at any time or place other than in a

² Minnesota: Restoration of Rights, Pardon, Expungement & Sealing, RESTORATION OF RIGHTS PROJECT, <http://ccresourcecenter.org/state-restoration-profiles/minnesota-restoration-of-rights-pardon-expungement-sealing/> [hereinafter “Minnesota Process”].

judicial proceeding or as part of the licensing process for peace officers.” Minn. Stat. § 638.02, subd. 2. After a pardon extraordinary is granted, a copy of the pardon is filed with the district court in the county of conviction; and the court is “directed” to issue an order “setting aside” the conviction, and to include a copy of the pardon in the court file. Minn. Stat. § 638.02, subd. 3.

23. Historically, Minnesota has used pardon extraordinaries liberally, granting 483 petitions and denying only six between 1942 and 1979.³ Grants were not limited to petty crimes, but included even violent crimes like murder, robbery, and sexual abuse. Prior to the 1980s, the Board of Pardons was rather generous with clemency, granting eighty-seven percent of *all* types of applications during that time, including “ordinary” pardons and commutations (as well as pardon extraordinaries).⁴

24. The Board of Pardon’s generosity waned with the onset of new sentencing guidelines and national stories of clemency-gone-wrong. In the 1980s, Minnesota exchanged its parole board for a system of supervised release.⁵ In the old system, those convicted of a felony would first serve a sentence and then an additional period of parole. The parole board would evaluate each case upon the completion of the individual’s prison sentence, basing their recommendation on the individual’s need for supervision. However, because the parole board had a vast amount of discretion in parole decisions, the result was disparate sentences in similar cases. The new system aims for uniformity. It discards the parole board altogether and requires a person to serve two-thirds of his or her sentence in prison and the other one-third on supervised release.⁶

³ Andy Mannix & Briana Bierschbach, “Far from grace: How Minnesota radically changed the way it forgives criminals,” MINNPOST (July 30, 2015), <https://www.minnpost.com/politics-policy/2015/07/far-grace-how-minnesota-radically-changed-way-it-forgives-criminals/> (citing data from the Minn. Dept. Corrections Annual Legislative Reports).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

The new system carries with it a pretense of fairness through uniformity. But it also eliminated the parole board. Thus, without the regular review of each individual's case at the completion of their sentence, clemency became even more essential to the Minnesota criminal process.⁷

25. In 1992, Minnesota lawmakers passed more legislation concerning the process for petitioning for a pardon extraordinary. As a result, petitioners faced additional procedural and substantive requirements for clemency eligibility.⁸ First, the new legislation added the requirement that a petitioner must be crime-free for five years after completing a sentence for a nonviolent offense, and for ten years after completing a sentence for a violent offense.⁹ Second, the effect of a pardon changed, requiring that the pardon be added to an individual's criminal file instead of sealing the records of those who receive pardons.¹⁰ Third, legislators opened the Board of Pardon's hearings to the public and the media for greater transparency.¹¹ And fourth, they added the a requirement that an applicant must be found to be of "good character and reputation" to be eligible for a pardon extraordinary.¹² In addition to these changes, a more stringent vetting process, led by the Department of Corrections, was initiated to monitor eligibility. By "apply[ing] to apply,"¹³ the

⁷ *Id.*

⁸ Andy Mannix & Briana Bierschbach, "Far from grace: How Minnesota radically changed the way it forgives criminals," MINNPOST (July 30, 2015), <https://www.minnpost.com/politics-policy/2015/07/far-grace-how-minnesota-radically-changed-way-it-forgives-criminals/> (citing data from the Minn. Dept. Corrections Annual Legislative Reports).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Minn. Stat. § 624.712, subd. 5; Minn. Stat. § 638.02, subd. 2. "Violence" is broadly defined under the statute. *Id.* Still, the Board may set aside this waiting period by "expressly provid[ing] otherwise in writing by unanimous vote." *Id.* (But see Minn. R. 6600.0600, providing that application for pardon extraordinary is premature if filed less than 18 months after discharge from sentence.); Mannix & Bierschbach, *supra* note 9.

¹² Minn. Stat. § 638.02, subd. 2.

¹³ Mannix & Bierschbach, *supra* note 9 (quoting Margaret Colgate Love).

Commissioner of Corrections would investigate each petition before the application is presented to the Board.¹⁴

26. Applying for a pardon is an extensive process. A petitioner must first request an application from the Commissioner of Corrections.¹⁵ Once the application is submitted, it is reviewed by the Commissioner for basic eligibility.¹⁶ Then, if it passes initial review, the investigation process begins. This process involves input from a multitude of actors, including the county attorney, the judge involved in the case, as well as any available victims. The Bureau of Criminal Apprehension and the FBI are involved to verify subsequent convictions, and all other disclosed information is cross-checked against prison, probation, court, and driving records.¹⁷ The Commissioner also posts a notice of a petitioner's application in the county where the petitioner was convicted, including the individual's crime and conviction date.¹⁸ And then finally, once the Department of Corrections determines that an application satisfies eligibility requirements, the Commissioner recommends the application to the Board.¹⁹ Aside from reporting the number of applications, the Commissioner is not obligated to provide any report regarding why any specific application is denied a recommendation.²⁰

¹⁴ Annual Reports: 2017 report, Pardon Board, MINN. DEPT. CORRECTIONS, https://mn.gov/doc/assets/2017%20Board%20of%20Pardons%20Report%20to%20Legislature_cm1089-335903.pdf.

¹⁵ Petitions are not readily available online.

¹⁶ It is unclear what this means because there are no statistics or reports.

¹⁷ Pardon Board: Application Process, MINN. DEPT. CORRECTIONS, <https://mn.gov/doc/about/pardon-board/application-process/>. Other records from military and foreign government authorities may also be requested based on the circumstances. *Id.*

¹⁸ *Id.*

¹⁹ Minn. Stat. § 638.07 (the commissioner of corrections is also the treasurer of the Board of Pardons); *see also* Pardon Board: Application Process, MINN. DEPT. CORRECTIONS, <https://mn.gov/doc/about/pardon-board/application-process/>.

²⁰ Minn. Stat. § 638.075 (the Board is required to submit an annual report to the legislature). *See* Annual Reports, MINN. DEPT. CORRECTIONS, <https://mn.gov/doc/about/pardon-board/annual-reports/>. Until 2012, the report included a statement explaining that applications are low because

27. After the new investigatory process began, the number of applications for pardons decreased significantly.²¹ The Legislative Report from 1993 stated that the decrease in 1992 was “primarily because the 1991 changes to the statute clarified the eligibility requirements and as a result [they were] able to advise potential applicants who [were] not eligible.”²² The reports up until 2012 continued to state that the “applications returned due to ineligibility remain[ed] relatively low” because the Commissioner’s staff makes “every effort” to determine whether the applicant is eligible.²³ But interestingly, the Commissioner is not required to make reports or provide explanations about why an individual’s application is accepted or denied—a step in the opposite direction of transparency.

28. If an application makes it past the Commissioner to the Board, the petitioner gets to appear at one of the Board’s biannual hearings.²⁴ At the hearings, which are open to the public, the board members openly ask the applicants questions.²⁵ Petitioners are encouraged to bring evidence of rehabilitation and the Board welcomes testimony from members of the community to speak about the applicant’s growth and reputation.²⁶ Then, the Board deliberates publicly—in the presence of the petitioner—about whether the petitioner deserves relief. If the Board’s vote is one of unanimous support, the petitioner is granted clemency. If not and an applicant is denied

of changes to the eligibility requirements. However, even that general statement disappears in the later reports.

²¹ Mannix & Bierschbach, *supra* note 9; Annual Reports: 1993 report, Pardon Board, MINN. DEPT. CORRECTIONS, https://mn.gov/doc/assets/BOP_Annual_Report_CY1993_tcm1089-271107.pdf.

²² Annual Reports: 1993 report, Pardon Board, MINN. DEPT. CORRECTIONS, https://mn.gov/doc/assets/BOP_Annual_Report_CY1993_tcm1089-271107.pdf.

²³ Annual Reports: 2012 report, Pardon Board, MINN. DEPT. CORRECTIONS, https://mn.gov/doc/assets/BOP_2012_report_tcm1089-271418.pdf.

²⁴ Pardon Board: Board Meetings, MINN. DEPT. CORRECTIONS, <https://mn.gov/doc/about/pardon-board/board-meetings/>.

²⁵ *Id.*

²⁶ *Id.*

clemency, reapplication is possible only with the consent of two of the three members of the Board.²⁷

29. In this new system, the Board grants approximately one-third of applications for pardon extraordinaries (as opposed to the eighty-seven percent grant of *all* applications, including commutations and “ordinary” pardons, before 1980). Over three years from 2015 to 2017, the Board granted only 46 of 225 pardon extraordinaries (20%). Over that span, the Pardon Board granted zero commutations or “ordinary” pardons. Judge Kevin Burke believes that the low number of granted applications signals a long-unacknowledged compassion problem in Minnesota.²⁸ And while Chief Justice Gildea is proud of the way that the Board evaluates cases on their merits, she has endorsed examining the system to “see if it can be improved.”²⁹

II. Shefa’s Conviction and Sentence

30. Shefa is a native and citizen of Ethiopia.

31. Shefa married a Minnesota resident, Habibi Tesema, in 2006, while she was still living in Ethiopia. After the couple had two children, Tesema brought Shefa and their children to live with him in Richfield, Minnesota.

32. After bringing Shefa to Minnesota, Tesema raped her frequently, allowed his friends to rape her too, beat her daily, and used her for forced labor. Shefa was trafficked and abused by Tesema for nearly a year-and-a-half after she came to the United States.

²⁷ Minn. Stat. § 638.06.

²⁸ Rubén Rosario, “Does Minnesota ‘Have a Compassion Problem’ When Issuing Pardons?”, TWIN CITIES PIONEER PRESS (Dec. 9, 2018), <https://www.twincities.com/2018/12/09/rosario-too-few-pardons-in-minnesota-even-less-than-alabama-time-for-change/>.

²⁹ Tom Hauser, “In-Depth: Some Call for Changes to Minnesota’s Pardon Process, KSTP.com (Dec. 13, 2018), <https://kstp.com/politics/some-call-changes-minnesota-pardon-process/5178631/>.

33. In the early hours of December 2, 2013, Tesema raped Shefa yet again and slashed her hand with a knife. Shefa—in fear for her life—responded and stabbed and killed Tesema. Shefa immediately called 911 and cooperated with law enforcement throughout the investigation that followed.

34. Shefa was later convicted of first degree manslaughter for killing Tesema “in the heat of passion.” *See* Minn. Stat. § 609.20(1). During her trial, the criminal court noted Shefa’s harrowing account was “corroborated by the physical evidence” and demonstrated that she was abused by Tesema “on an on-going basis,” including in December 2013.

35. Because Minnesota law includes a duty to retreat before perfecting a claim of self-defense, the criminal court held Shefa had “exceed[ed] the degree of force required to defend herself” against Tesema’s assault and found her guilty of first degree manslaughter.

36. Shefa was committed to the commissioner of corrections for a period of 86 months—57 1/3 months to be spent “in custody” and 28 2/3 months “on supervised release.”

37. Shefa served five years in prison at Shakopee Correctional facility without incident and with good behavior. Upon her pending release, she was charged as removable from the United States and taken into ICE custody, where she remains to this day.

III. Shefa’s Pardon Application

38. Shefa filed her first pardon application in June 2018. That application was “screened” and “excluded” from the hearing agenda after it was “deemed undeserving by the secretary for further review by the board.”

39. Shefa filed a second pardon application in December 2018, which was also summarily denied. The basis of that denial was the misguided conclusion that Shefa’s prior, screened application had been “denied on the merits,” and that, because Shefa’s application had

been denied on the merits in June 2018, she could only seek permission to reapply (not actually reapply) during the December 2018 cycle.

40. In an April 2019 letter to the Board of Pardons Shefa challenged the conclusion that her June 2018 application had been denied on the merits as a narrow and improper reading of the Minnesota pardon statute and regulations.

41. Shefa was permitted to present the issue during the Board of Pardons June 2019 hearing. During that hearing, the Attorney General and Governor Walz agreed that Shefa's June 2018 application had not been denied on the merits and permitted Shefa's application to move forward during that hearing.

42. Shefa then supported her pardon application with testimony about her abuse at the hands of her late husband and the circumstances of his death. After receiving testimony from Shefa and members of the community, Governor Walz "continued" the proceedings to provide time for additional commentary and testimony.

43. Before Shefa's pardon proceeding concluded, however, Chief Justice Gildea went on record and indicated she planned to deny Shefa's pardon application and suggested that, as a result, there was no need to continue Shefa's hearing to a later date. Forming the very crux of this complaint, Chief Justice Gildea exposed her intention to wield her power to unilaterally deny a pardon request despite apparent support from the Attorney General and Governor Walz.

44. In December 2019, Shefa requested a continuance of her pardon proceeding to the June 2020 hearing, which was granted. Accordingly, the merits of Shefa's pardon application will once again be before Governor Walz and the Board of Pardons in June 2020, although Chief Justice Gildea has established her intention to single-handedly block that application in violation of the Minnesota Governor's power to grant pardons "in conjunction with" the Board of Pardons.

CLAIMS FOR RELIEF

Claim I: Violation of Minnesota Constitution's Separation of Powers Doctrine

45. Shefa incorporates Paragraphs 1-44 of this Complaint as if fully stated herein.

46. The Minnesota Constitution vests the power to grant reprieves and pardons to the Governor, in conjunction with—not requiring the approval of—the Board of Pardons.

47. The Minnesota Constitution also provides for separation-of-powers between the executive, legislative, and judicial branches, and expressly provides that no person or persons belonging to one branch “shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.” Minn. Constitution, art. III, § 1.

48. Yet Section 638.02, subd. 1, of the Minnesota code provides that a pardon “shall have no force or effect unless granted by a unanimous votes of the board duly convened,” Minn. Stat. 638.02(1), and thus gives the Board of Pardons—which includes the Chief Justice of the Minnesota Supreme Court and the Attorney General—the ability to block the Governor’s power of granting reprieves and pardons, which the Constitution expressly vests with the Governor and the executive branch. Section 638.02, subd. 1, thus violates the separation-of-powers guaranteed by the Minnesota Constitution.

49. Shefa has standing to bring this as-applied challenge because Chief Justice Gildea has established her intention to foreclose Shefa’s pardon application despite the wishes and constitutional power of the Governor, and thus the unconstitutional application of Minn. Stat. 638.02(1) in Shefa’s case—allowing one member of the Board of Pardons to veto a pardon application—is imminent.

PRAYER FOR RELIEF

WHEREFORE, Shefa respectfully requests that the Court enter an Order for declaratory and injunctive relief as follows:

- a. Declaring that the State's statutory scheme requiring the unanimous support of the Board of Pardons in order to grant a petitioner clemency violates the Minnesota Constitution.
- b. Declaring that the power of clemency resides in the Governor of Minnesota, to be exercised "in conjunction with" the Board of Pardons.
- c. Declaring that Minnesota Statute Section 638.02, subd. 1-2, shall not be read to limit the Governor's ability to grant a pardon in conjunction with the Board of Pardons absent unanimous consent of the Board of Pardons.
- d. Enjoining the Attorney General to immediately and permanently take steps to ensure that all pardon petitions are assessed under the framework set out by the Minnesota Constitution, which empowers the Governor to grant clemency "in conjunction with" the Board of Pardons.
- e. Enjoining the Attorney General to immediately, and on an ongoing basis, provide to counsel for the Plaintiff a report detailing the Attorney General's efforts to comply with the Court's Order.
- f. Awarding attorneys' fees and costs to Plaintiff for this action;
- g. Granting such other relief as the Court may find necessary or appropriate.

Dated: May 7, 2020

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