

RUSSELL JOHN HATTON



Governor Tim Walz  
75 Rev. Dr. Martin Luther King Jr., Blvd., Suite 130  
St. Paul, MN 55155

March 31, 2020

RE: When institutions pass laws in response to moral panics and popular passions, with little thought, deliberation, and scrutiny, the rights of the most vulnerable and unpopular suffer.

Dear Governor Waltz:

**Do you know that it is costing Minnesota tax payers \$104,858,295.00 to keep people with the second lowest recidivism rate detained in the Moose Lake and St. Peter Minnesota Sex Offender Programs (MSOP) – not for what they’ve done, but for what they “might” do?**

You may be asking how we came up with this number Governor Walz.

We took the expense of \$393.00 a day that it is cost Minnesotans and the State to keep one man in the MSOP multiplied by 365 days a year which totals \$143,445.00. Now multiple that cost of \$148,190.00 with the current number of men in both MSOP sites – Moose Lake and St. Peter – 731 – for a total of **\$104,858,295.00**.

On March 21, 2020 we sent you a letter expressing our concerns with the current COVID-19 Epidemic. We are well aware of what is happening to others in less populated facilities such as nursing homes throughout America. And now it is in the prison system approximately 500 years from here.

It is no longer a question of “if” COVID-19 gets brought into MSOP, but **when**. “Essential staff, and those who should be considered non-essential staff (i.e. Clinical, Education, Recreation staff) are not only possibly unwitting carriers and transmitters of COVID-19.” Essential staff and those who must be considered non-essential staff – i.e. Clinical, Education, Recreation staff...can become possible unwitting carriers and transmitters of COVID-19. Men who required to go out for necessary medical procedures – Dialysis, Chemotherapy, etc., are also highly likely to become carriers and transmitters of COVID-19.

World Health Organizations experts have made the current projection of deaths, not infections, but deaths in the United States of America to reach 200,000 with even the best practices. In our March 21 letter OCEAN shared with you the “Joint Statement from Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of Those in Custody,” 31 of the nation’s Prosecutors have stated:

...little attention is being paid to the millions of people in the most overcrowded conditions that are ripe for the spread of this contagious and deadly virus: the people behind bars in America’s jails, prisons, and immigration detention centers.

The “Joint Statement from Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of Those in Custody,” also mentions the “...cash-based pretrial detention system, which keeps hundreds of thousands of people in jail prior to any determination of guilt...” We fall into this category of “pre-conviction” detainees

because we are being held for crimes we are presumed to commit. The Minnesota Sex Offender Programs in Moose Lake and St. Peter must be included in this discussion.

Clinicians no longer hold groups and modules here. However, this has not lowered their likelihood to spread COVID-19. The men are compelled to have one on one meetings with their clinicians, even sitting on the same couches to have these meetings. **Clinicians should stay home.** With COVID-19 spreading rapidly, all of the citizens in these facilities and the surrounding area are highly susceptible.

Again, we urge you Governor, there are at least 4 categories of men at these facilities that should be released immediately:

1. **ELDERLY MEN:** The oldest man we have at the facility is 89 years old. Alpha and Beta units [Moose Lake site] are mostly elderly men and they are also throughout the general population. Several of these men are suffering terminal illnesses. If these men get COVID-19 with the kind of medical services MSOP claims to provide, their chances of survival are minimal. These men should be transferred to anywhere they are more likely to find adequate health care.
2. **MEN IN CPS.** The 88 men that have reached CPS status and are considered to have worked to the highest stage of treatment before Provisional Discharge (PD). These men do not pose a threat to the community and should be released immediately.
3. **JUVENILE OFFENDERS:** These men only offended when they were still children. At least 5 have received Full Discharge in the last few years. Some of which were not even in treatment. The courts released them because they are naturally not dangerous. These individuals should be released immediately.
4. **MEN WITHOUT CONVICTIONS:** at least 12% of this population consists of men who have no criminal record at all. These men do not pose a threat to the community. They should be released immediately to lower the spread of COVID-19.

We are urging you, Governor Walz, to listen to the professionals and immediately discharge those that do not pose a risk to the public, as we have identified above.

**In your televised ad, you expressed to Minnesotans that this is not a time to react with fear and panic. And yet this is what exactly occurred when Minnesota Legislature created the SDP/SPP law.**

“In 2017, the Fair Punishment Project (FPP) wrote an Amicus Brief. In it, the FPP stated that the Minnesota civil commitment statute is a “punitive scheme” responding excessively to moral panic. The FPP believes the statute is not a narrowly tailored way to a compelling government interest.” Four criminology scholars—Tusty ten Bensel and Robert D. Lytle,<sup>1</sup> Christina N. Mancini,<sup>2</sup> and Lisa L. Sample,<sup>3</sup> joined FPP in filing the brief. Each of these scholars believes that the Court has relied on faulty statistics about recidivism as a basis to uphold unduly restrictive limitations on physical liberty.<sup>4</sup> When institutions pass laws in response to moral panics and popular passions, with little thought, deliberation, and scrutiny, the rights of the most vulnerable and unpopular suffer. *Ibid.*

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<sup>1</sup> University of Arkansas at Little Rock

<sup>2</sup> Virginia Commonwealth University

<sup>3</sup> University of Nebraska at Omaha

<sup>4</sup> No. 16-1394 In The Supreme Court Of The United States Kevin Scott Karsjens, Et Al., Petitioners, V. Emily Johnson Piper, Et Al., Respondents. On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit Amicus Brief For Criminology Scholars And The Fair Punishment Project Ronald Sullivan\* Fair Punishment Project Harvard Law School Cambridge, Ma 02138 (617) 496-2054 Rsullivan@Law.Harvard.Edu \*Counsel Of Record Dated: June 22, 2017.

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Moral panics have recurred in the history of our country. They have led to some of the greatest infringements on fundamental rights and enormous national embarrassments. Most famously, just weeks after Pearl Harbor, public opinion demanded the removal of all Japanese Americans from the west coast, with columnists across the country arguing that “the rigors of war demand proper detention of Japanese and their immediate removal from the most acute danger spots.”<sup>5</sup> Japanese internment followed.

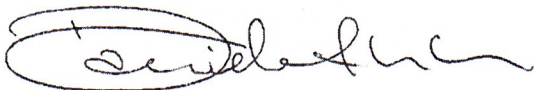
Fear of Soviet aggression led to McCarthyism and the Red Scare.<sup>6</sup> Fear over same-sex marriage led to the passage of thirteen referenda barring same-sex marriage in 2004.<sup>7</sup> These laws have led to infringements on the right to physical liberty, the right to free speech and association, and the right to marry.

Legislation passed in a response to a moral panic is divorced from data and evidence and is instead tied to emotion that often over-inflates a danger or risk. Japanese Americans, for example, were not running around the United States threatening to overthrow the government. The ordinary reasons for applying deference to legislation and officials’ motivations do not exist.

The expansion of sex offender laws derives from a moral panic that is untethered to empirical evidence about sex offenders. In most places, these laws were passed without meaningful legislative discussion or study.

COVID-19 will spread quickly when it enters MSOP. Please do not allow us to be the “forgotten” as the prosecutor’s letter warns against.

Sincerely, concerned Minnesotans



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<sup>5</sup> Peter Irons, *A People’s History of the Supreme Court: The Men and Women Whose Cases and Decision Have Shaped Our Constitution*, 349-51 (1999).

<sup>6</sup> *Dennis v. United States*, 341 U.S. 494 (1951).

<sup>7</sup> Michael Klarman, *From the Closet to the Altar: Courts, Backlash, and the Struggle for Same-Sex Marriage*, 106 (1st ed. 2012).

Encl. Amicus Brief For Criminology Scholars and The Fair Punishment Project

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