

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

James Carson & Eric Lucero,

Civil No. 0:20-cv-02030-NEB-TNL

Plaintiffs,

v.

Steve Simon, in his official capacity as
Secretary of State of Minnesota,

Defendant.

**DEFENDANT’S MEMORANDUM OF
LAW IN OPPOSITION TO
PLAINTIFFS’ MOTION FOR A
PRELIMINARY INJUNCTION**

INTRODUCTION

This case involves a dilatory challenge to a consent decree, entered in Minnesota state court, that modifies an election rule to ensure that voters are not disenfranchised by pandemic conditions this November. The consent decree was executed by the Secretary of the State and the plaintiffs in *LaRose v. Simon*, No. 62-CV-20-3149, Minn. 2d Judicial Cir., County of Ramsey. It changes the rule that absentee ballots must be received by election day (the election day receipt rule). For 2020 only, it establishes a postmark rule, under which ballots are timely if they are postmarked by election day and received within seven days of the election. On August 3, 2020, the state district court judge, the Honorable Sara Grewing, approved and entered judgment on the consent decree and issued an accompanying order explaining why it is fair, reasonable, and in the public interest.

The Republican Party of Minnesota and the Republican National Committee appealed the entry of the consent decree directly to the Minnesota Supreme Court. But,

after the U.S. Supreme Court rejected a challenge to a similar consent decree in Rhode Island, they dropped their appeal and waived their right to challenge the consent decree in any other judicial forum.

Now, seven weeks after the consent decree was entered and nearly two weeks after voting began in Minnesota, Plaintiffs seek to enjoin the consent decree in this forum. They claim that it violates the Electors Clause of Article II and federal elections statutes for a state court judge to order a change to a state election rule, under the state constitution, by entering judgment on a consent decree. Their motion and complaint peddle a bogus scare tactic with no legal support: that Minnesota risks losing its electoral college votes if the consent decree remains in force.

This Court should deny their motion and dismiss this case for at least five reasons. First, Plaintiffs lack standing. Second, this Court should abstain from hearing this case under the *Pennzoil* doctrine. Third, the Court should refrain from issuing an injunction under the Supreme Court's *Purcell* principle. Fourth, Plaintiffs' claims are severely flawed and based on gross misinterpretations of the consent decree. They clearly fail on the merits. Fifth, undoing the consent decree would cause substantial harms and is against the public interest, as it would create confusion and likely disenfranchise voters relying on the ballot instructions they have already received about the postmark rule.

BACKGROUND

I. MINNESOTA'S RESPONSE TO THE COVID-19 PANDEMIC

Covid-19 is an infectious disease caused by a newly discovered coronavirus that spreads rapidly through respiratory transmission. Asymptomatic individuals may carry

and spread the virus, and there is currently no known vaccine or effective treatment, making response efforts complex and daunting.¹ To date, Covid-19 has killed over 200,000 people in the United States.² It has killed over 2,000 in Minnesota.³

In response to the Covid-19 pandemic, Minnesota Governor Tim Walz declared a state of peacetime emergency on March 13. (Emergency Exec. Order 20-01.) Since that time, Minnesota has engaged in a comprehensive plan to combat Covid-19 that has included a series of emergency executive orders intended to slow the spread of the disease, ramp up the capacity of the health care system, and provide an increased economic safety net. On March 25, 2020, Governor Walz directed Minnesotans to stay home, except as necessary for certain exempted activities. (Emergency Exec. Order 20-20.) On April 8 and April 30, the Governor extended the stay-at-home order, with gradually lessening restrictions. (Emergency Exec. Orders 20-33, 20-48.) On May 13, Governor Walz issued Emergency Executive Order 20-56, which ended the “Stay-at-Home” regime and began the “Stay Safe” orders, which continued reopening Minnesota’s public life. (Emergency Exec. Order 20-56.) The order prohibited gatherings of more than ten people, required public accommodations, including restaurants and bars, to stay

¹ See CDC, *Coronavirus (Covid-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

² See CDC, *Covid Data Tracker*, https://covid.cdc.gov/covid-data-tracker/#cases_totalcases.

³ See Minnesota Department of Health, *Situation Update for Covid-19*, <https://www.health.state.mn.us/diseases/coronavirus/situation.html>.

closed, required workers to work from home if possible, and mandated social distancing protocols in workplaces that do open. (*Id.*)

On June 5, Governor Walz signed executive order 20-74, which remains in effect. (Emergency Exec. Order 20-74.) It continues to encourage Minnesotans to stay home when possible and limit social gatherings. (*Id.*) It also allows businesses and other organizations to operate under certain occupancy restrictions and requires them to comply with guidance regarding face coverings, sanitation, and social distancing measures. (*Id.*) On July 13, the Governor extended the peacetime emergency through August 12. (Emergency Exec. Order 20-78.) On July 22, the Governor issued an order requiring Minnesotans to wear a face covering in certain indoor settings to prevent the spread of Covid-19. (Emergency Exec. Order 20-81.) Most recently, on September 11, the Governor extended the peacetime emergency for another 30 days. (Emergency Exec. Order 20-89.)

II. MINNESOTA’S ABSENTEE VOTING SYSTEM

A. No-Excuse Absentee Voting and Early Voting

Early and absentee voting begins 46 days before the date of the election, which was September 18, 2020, for the November 3 general election. Minn. Stat. § 203B.081, subd. 1. Minnesota is among the states that provide “no-excuse absentee voting,” meaning that any eligible voter may vote by absentee ballot. Minn. Stat. § 203B.02, subd. 1. A voter may apply for an absentee ballot at any time at least one day before the election. Minn. Stat. § 203B.04. Local election officials—county auditors and municipal clerks—are responsible for making absentee ballot application forms available to voters,

Minn. Stat. §§ 203B.04-.06, and are required to “furnish them to any person on request,” Minn. Stat. § 203B.04, subd. 1(a); *see* Minn. Stat. § 203B.06, subd. 1. Local election officials are also responsible for transmitting absentee ballots to those who request them. Minn. Stat. § 203B.06, subd. 3(b); Minn. Stat. § 203B.07, subd. 1.

B. Minnesota’s Election Day Receipt Rule

Minnesota law requires that absentee ballots must be received by the proper local election officials either by 3:00 p.m. (if hand-delivered) or 8:00 p.m. (if delivered by mail) on election day. Minn. Stat. § 203B.08 subd. 3; Minn. R. 8210.2200 subp. 1. Ballots received after these times are marked late and not sent to the ballot board for counting. While many states have a similar election day receipt rule, nineteen states have laws that accept postmarked ballots as timely when they arrive after election day.⁴

III. PROCEDURAL HISTORY

A. *LaRose v. Simon*

On May 13, 2020, a group of plaintiffs, including Minnesota Alliance for Retired Americans Educational Fund, a nonprofit with over 80,000 members in Minnesota, filed suit against Secretary Simon in Ramsey County. They sought to enjoin the enforcement of two Minnesota election laws: Minnesota’s election day receipt rule and Minnesota’s requirement that a witness certify an absentee voter’s ballot. *LaRose v. Simon*, No. 62-

⁴ For a complete list of these states and statutory cites, see National Conference of State Legislatures, Receipt and Postmark Deadlines for Absentee Ballots, <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-11-receipt-and-postmark-deadlines-for-absentee-ballots.aspx>.

CV-20-3149, Minn. 2d Judicial Cir., County of Ramsey. The plaintiffs challenged these laws generally and as they are applied for elections held during the Covid-19 pandemic.

After arms-length negotiations, on June 16, the plaintiffs and the Secretary entered into a consent decree for the August 11 primary. *See* Marisam Decl., Ex. A. This consent decree provided that the witness requirement would not be enforceable for the primary election. Most relevantly, it modified the election day receipt rule by establishing a postmark rule, under which ballots postmarked by the day of the primary would be timely. *Id.* Judge Grewing signed the consent decree on June 17. *Id.*

Local election officials implemented the changes required by the consent decree, and the primary election was held with no significant problems, despite record-level turnout. *See* Tim Harlow, *More than 100,000 voters cast ballots in primary in Minneapolis*, Star Trib. (Aug. 12, 2020).

After plaintiffs filed a motion for a temporary injunction as to the November 3 general election, the parties again negotiated a consent decree. On July 17, the plaintiffs and the Secretary filed a stipulation and partial consent decree and asked the court to enter the decree for the November 3, 2020 general election. Marisam Decl., Ex. B. Similar to the consent decree in effect for the primary election, this consent decree provides that the witness requirement is suspended for the November election and that ballots postmarked by election day, and received within seven days, are timely.

Specifically, as to the election day receipt rule, the consent decree establishes:

For the November General Election Defendant shall not enforce the Election Day Receipt Deadline for mail-in ballots, as set out in Minn. Stat. §§ 203B.08 subd. 3, 204B.45, and 204B.46 and Minn. R. 8210.2200 subp. 1, and 8210.3000, that

ballots be received by 8:00 p.m. on Election Day if delivered by mail. Instead, the deadline set forth in paragraph VI.D below shall govern.

...

Defendant shall issue guidance instructing all relevant local election officials to count all mail-in ballots in the November General Election that are otherwise validly cast and postmarked on or before Election Day but received by 8 p.m. within 5 business days of Election Day (i.e., seven calendar days, or one week). For the purposes of this Stipulation and Partial Consent Decree, postmark shall refer to any type of imprint applied by the United States Postal Service to indicate the location and date the Postal Service accepts custody of a piece of mail, including bar codes, circular stamps, or other tracking marks. Where a ballot does not bear a postmark date, the election official reviewing the ballot should presume that it was mailed on or before Election Day unless the preponderance of the evidence demonstrates it was mailed after Election Day.

Id. at 9-10.

The consent decree contained undisputed stipulated facts justifying these changes. It was stipulated that, due to the pandemic, “increases in absentee balloting are already being observed for the August 11, 2020 Primary Election and will continue in the November General Election, and coupled with corresponding shortages of elections personnel and mail delays, appear likely to impact the November General Election and threaten to slow down the process of mailing and returning absentee ballots.” *Id.* at 3. It was also stipulated that: “Mail deliveries could be delayed by a day or more under cost-cutting efforts being imposed by the new postmaster general,” due to Covid-19. *Id.* at 4.

Under Minnesota law, a consent decree is the product of a negotiated agreement between the parties that acquires the status of a judgment through approval of the court. *Hentschel v. Smith*, 153 N.W.2d 199, 206 (Minn. 1967) (quoting *Hafner v. Hafner*, 54 N.W.2d 854, 858 (Minn. 1952)). While a judge does not ascertain the full rights of the parties in deciding whether to approve a consent decree, the judge assesses the decree’s

fairness. *Id.*; see also *Mr. Steak, Inc. v. Sandquist Steaks, Inc.*, 245 N.W.2d 837, 838 (1976) (noting that courts determine whether a consent decree is “fair and in the public interest”).

In *LaRose*, the district court heard argument on the consent decree on July 31. By that time, the Republican Party of Minnesota, the Republican National Committee, and the National Republican Congressional Committee had moved to intervene to oppose entry of the consent decree and were allowed to participate in the arguments. On August 3, the court signed the consent decree and entered an accompanying order. Marisam Decl., Ex. C. The order laid out the court’s reasons for why the consent decree was fair, reasonable, and in the public interest, and why the Secretary was reasonable to conclude that the plaintiffs were likely to succeed on the merits of their motion. *Id.* The court specifically found that the requirements of the Minnesota Constitution will be carried out by the implementation of the decree. Marisam Decl., Ex. B at 6.

On August 10, the Republican Party of Minnesota, the Republican National Committee, and the National Republican Congressional Committee appealed the decision and sought accelerated review directly at the Minnesota Supreme Court. On August 12, the Minnesota Supreme granted the petition for accelerated review and set a briefing schedule. See *LaRose v. Simon*, A20-1040, Minn. Sup. Ct. (Aug. 12, 2020 PFR Grant).

The next day, on August 13, the U.S. Supreme Court issued an order rejecting a challenge to a similar consent decree in Rhode Island, as discussed further below. See *Republican National Committee v. Common Cause of Rhode Island*, Sup. Ct. Docket 20A28, 591 U.S. (Aug. 13, 2020 order in pending case); Marisam Decl., Ex. E. Perhaps

sensing that their challenge to the *LaRose* consent decree was futile, the Republican Party of Minnesota, the Republican National Committee, and the National Republican Congressional Committee voluntarily dismissed their challenge to the consent decree and waived their right to challenge it in any other forum. Marisam Decl., Ex. D. The Minnesota Supreme Court dismissed the appeal on August 18. *Id.*

On August 28, the Secretary of State's Office, pursuant to the consent decree, sent absentee ballot instructions to local election officials. In large letters, these instructions inform voters: "Your returned ballot must be postmarked on or before Election day (November 3, 2020) & received by your Absentee Voting Office within 7 days of the election . . . to be counted." Maeda Decl., Ex. A. Voters began receiving ballots with these instructions on September 18, when absentee and early voting began in Minnesota. Maeda Decl., ¶ 3. The Secretary's Office also posted information about the postmark rule on its website.⁵ To date, more than 1 million Minnesota voters have requested absentee ballots. Maeda Decl., ¶ 4.

B. *Carson v. Simon*

More than a month after the Republican Party waived its rights to challenge the consent decree, two members of the Republican Party brought this challenge to the consent decree. Plaintiffs bring two claims. First, they claim that, under the Electors Clause in Article II of the U.S. Constitution, a state court judge cannot order changes to a state election law, pursuant to the state constitution, when those changes are submitted to

⁵ See Office of the Minnesota Secretary of State, Vote Early by Mail, <https://www.sos.state.mn.us/elections-voting/other-ways-to-vote/vote-early-by-mail/>.

the court through a consent decree. They ask this Court to be the first ever to adopt such a strained reading of the clause. Second, they claim that the consent decree should be construed as setting a different date for the November 3 general election, in violation of federal statutory law.

On September 24, they moved for a preliminary injunction seeking to undo the consent decree approved in state court.

LEGAL STANDARD

Plaintiffs must clear multiple hurdles in this case before the Court addresses the standard of review for their preliminary injunction. Notably, plaintiffs must demonstrate standing at all stages of litigation, and a plaintiff without standing cannot seek injunctive relief. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–60 (1992). Plaintiffs must also show that an injunction would not violate abstention doctrine designed to ensure that federal courts do not interfere with a state court’s judgment. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987). In addition, in a lawsuit seeking changes to election rules, courts may decline to issue an injunction if it is close to the election and the injunction will interfere with the orderly administration of the election. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006).

Even if these plaintiffs clear those hurdles, injunctive relief is an extraordinary remedy, and the burden rests with the movant to establish its propriety. *See Watkins, Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir.2003). A district court considers four factors when evaluating whether an injunction is warranted: (1) the threat of irreparable harm to the movant, (2) the balance between this harm and the injury that the injunction will inflict

on other parties, (3) the probability that the movant will succeed on the merits and (4) the public interest. *See Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981). The probability of success on the merits is the predominant factor, but the failure to demonstrate irreparable harm is also an independently sufficient ground to deny injunctive relief. *Watkins, Inc.*, 346 F.3d at 844.

ARGUMENT

This Court should deny the injunction and dismiss this case for five reasons. First, Plaintiffs lack prudential and Article III standing. Second, this Court should abstain from hearing this case under the *Pennzoil* doctrine, which precludes federal courts from interfering with state court judgments.

Third, under the *Purcell* principle, Plaintiffs waited too long to challenge the consent decree. The consent decree has been in force since August 3. Voting began on September 18, and voters have relied on the changes in the consent decree. To enjoin the consent decree now and alter the election rule would interfere with the orderly administration of this election, which the Supreme Court has counseled against. *Purcell*, 549 U.S. at 8.

Fourth, Plaintiffs' claims are not likely to succeed. Their position that a state court judge cannot order changes to a state election law, pursuant to the state constitution, when those changes are submitted to the court through a consent decree, is ludicrous. Their claim that the consent decree changes the election day is based on a gross misconstruction of the decree's terms.

Finally, *Dataphase*'s balance of harms weighs heavily against Plaintiffs, given the strong interests in settling election rules well before election day, and ensuring that Minnesotans do not have to risk their health to exercise their right to vote. Plaintiffs' sensationalistic claim that Minnesota will lose its electoral college votes has no basis in law or fact.

I. PLAINTIFFS LACK STANDING.

Article III of the U.S. Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. A "genuine case or controversy" exists only where a plaintiff has "standing" to sue. *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019). Standing is a jurisdictional requirement that "cannot be waived or forfeited," *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019), and must be demonstrated by plaintiffs seeking a preliminary injunction, *see, e.g., Jones v. Jegley*, 947 F.3d 1100, 1103-05 (8th Cir. 2020). To establish Article III standing, a plaintiff must present an injury that is "concrete and particularized" and "actual" or "imminent," that is "fairly traceable to the challenged action of the defendant," and that can be prevented or redressed by "a favorable decision." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009).

In addition to the jurisdictional limitations, the doctrine of standing also imposes prudential limitations that require a plaintiff to "assert his own legal rights and interests," rather than resting "his claim to relief on the legal rights or interests of third parties." *Kowalski v. Tesmer*, 543 U.S. 125, 128 (2004) ("The doctrine of standing . . . involves both constitutional limitations on federal-court jurisdiction and prudential limitations on

its exercise.”). Here, Plaintiffs’ motion must be denied because they cannot establish either prudential or Article III standing.

A. Plaintiffs Lack Prudential Standing.

“Prudential standing is ascertained according to the zone-of-interests tests, that is ‘whether the zone of interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.’” *Cent. S. D. Coop. Grazing Dist. v. Sec’y of U.S. Dept. of Agric.*, 266 F.3d 889, 895 (8th Cir. 2001) (quoting *Bennett v. Spear*, 520 U.S. 154, 165 (1997)). “By imposing prudential limitations on standing, the judiciary seeks to avoid deciding questions of broad social import where no individual rights would be vindicated and to limit access to the federal courts to litigants best suited to assert a particular claim.” *Oti Kaga, Inc. v. S.D. Hous. Dev. Auth.*, 342 F.3d 871, 880 (8th Cir. 2003). A claimed injury may run afoul of prudential standing “because its effects are indistinct from those felt by persons generally, thus depriving the plaintiff of a unique stake in the controversy.” *Id.* A plaintiff may also run afoul of prudential standing limits “because the claim rests on the legal rights of third-parties.” *Id.*; see also *Virginia v. Am. Booksellers Ass’n, Inc.*, 484 U.S. 383, 392 (1988) (“Even if an injury in fact is demonstrated, the usual rule is that a party may assert only a violation of its own rights.”).

Plaintiffs lack prudential standing because their claims assert injuries to third parties, rather than injuries to themselves. Plaintiffs are two individuals. Both have been nominated by the Republican Party to be electors for Minnesota, and one is a member of the Minnesota House of Representatives. Compl. ¶¶ 7-8. But Plaintiffs’ claims assert

injuries that are not personal to them. Instead, they are alleged injuries to the Minnesota State Legislature and Congress.

In Count I, for example, Plaintiffs allege that the Secretary violated Article II of the Constitution by extending the receipt deadline because Article II “vests authority *solely in the state legislature* to modify the manner and time of elections.” *Id.* ¶ 79 (emphasis added). Similarly, in Count II, Plaintiffs allege that the Secretary violated Article II because “Article II authorizes *only Congress* to set the date for presidential elections.” *Id.* ¶ 85 (emphasis added). Plaintiffs argue that the consent decree “usurps the power of Congress” and “also usurps the power of the Minnesota Legislature to set the manner of conducting elections.” *Id.* ¶¶ 61-62.

Because usurpation of congressional or legislative power is an injury to those legislative bodies, not to Plaintiffs themselves, Plaintiffs cannot demonstrate that they are within the zone of interest intended to be protected by Article II. *See Ben Oehrleins & Sons & Daughter, Inc. v. Hennepin Cnty.*, 115 F.3d 1372, 1381-82 (8th Cir. 1997) (plaintiffs lacked prudential standing where plaintiffs were seeking to assert the constitutional rights of third parties and were not within the zone of interests intended to be protected by the Commerce Clause).

A federal district court found a lack of prudential standing based on nearly identical facts to those alleged by Plaintiffs here. In *Corman v. Torres*, 287 F. Supp. 3d 558 (M.D. Pa. 2018), plaintiffs were several Pennsylvania state senators and legislators who sought to enjoin an election from being conducted using the Pennsylvania Supreme Court’s redistricting map, which it had issued after finding a prior version of the map

unconstitutional. *Id.* at 561-62. Plaintiffs brought suit under the Elections Clause in Article I, which “vests authority to prescribe ‘[t]he Times, Places and Manner of holding Elections for Senators and Representatives . . . in each State by the Legislature thereof[.]’” *Id.* at 573 (quoting U.S. Const. art. I, § 4, cl. 1). Plaintiffs argued that, by issuing a redistricting map, the Pennsylvania Supreme Court had violated the Elections Clause and usurped the authority of the state legislature to dictate the times, places, and manner of elections for senators and representatives. *Id.* But the Court found that Plaintiffs lacked prudential standing to bring this claim because plaintiffs “are neither the Pennsylvania General Assembly nor a group to which Pennsylvania has delegated the Commonwealth’s lawmaking power.” *Id.*

As in *Corman*, Plaintiffs’ grievance is based on the Secretary allegedly usurping the power of Congress and the Legislature to make certain rules regarding elections. But Plaintiffs represent neither entity and cannot rely on alleged injuries to those entities to establish standing. Compare *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1953 (2019) (finding Virginia House of delegates lacked standing to challenge usurpation of authority over redistricting maps because “the Virginia constitutional provision the House cites allocates redistricting authority to the ‘General Assembly,’ of which the House constitutes only a part” and “a single House of a bicameral legislature lacks capacity to assert interests belonging to the legislature as a whole”), with *Ariz. State Legislature v. Ariz. Independent Redistrict Comm’n*, 576 U.S. 787, 799-802 (recognizing that the Arizona house and senate acting together had standing to challenge a referendum that gave redistricting authority exclusively to an independent commission, thereby

allegedly usurping the legislature's authority under the U.S. Constitution over congressional redistricting).

B. Plaintiffs Cannot Demonstrate Article III Standing Because They Have No Cognizable Interest.

Plaintiffs also lack Article III standing because they have no legally cognizable interest. To demonstrate standing, Plaintiffs must show “an invasion of a legally protected interest which is [both] concrete and particularized [] and [] actual or imminent, not conjectural or hypothetical.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573–74 (1992). Plaintiffs’ asserted bases for standing all fail. First, standing cannot be based on Plaintiffs’ generalized interest in the enforcement of Minnesota’s election laws. Second, Plaintiffs’ status as voters is insufficient to identify a particularized and concrete injury. Third, Plaintiffs cannot sue based on their status as electors nominated by the Republican Party.

First, Plaintiffs’ asserted interest in the enforcement of Minnesota’s election laws is not a basis for standing. The United States Supreme Court has repeatedly held that “a ‘generalized grievance,’ no matter how sincere, is insufficient to confer standing.” *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013). “A litigant raising only a generally available grievance about government—claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangible benefits him than it does the public at large—does not state an Article III case or controversy.” *Id.*

The United States Supreme Court recently rejected an almost identical challenge to a consent decree on the basis that the challengers' general interest in enforcement of duly enacted election laws was not a cognizable interest for standing. *Republican National Committee v. Common Cause of Rhode Island*, Sup. Ct. Docket 20A28, 591 U.S. (Aug. 13, 2020 order in pending case) (Marisam Decl., Ex. E).

In July 2020, a federal district court in Rhode Island approved a consent decree between the Rhode Island Secretary of State and a group of plaintiffs that enjoined enforcement of Rhode Island's requirement that a witness certify an absentee voter's ballot. *See Common Cause of Rhode Island v. Gorbea*, 20-cv-318, 2020 WL 4365608 (D.R.I.) (July 30, 2020). The Rhode Island Republican Party and the Republican National Committee ("Republicans") moved to stay enforcement of the consent decree at the First Circuit Court of Appeals. The appellate court denied the stay, holding that the Republicans were not likely to succeed on the merits and had not shown an irreparable injury. *Common Cause Rhode Island v. Gorbea*, -- F.3d --, No. 20-1753, 2020 WL 4579367 (1st Cir. Aug. 7, 2020). The Republicans then applied to the United States Supreme Court for an emergency stay. *Republican National Committee v. Common Cause Rhode Island*, Sup. Ct. Docket 20A28, Aug. 10, 2020 Application.

The Supreme Court denied the emergency stay request, finding that the Republicans lacked a cognizable interest, as necessary to support standing. The Court explained:

[H]ere the state election officials support the challenged decree, and no state official has expressed opposition. Under these circumstances, the applicants lack a cognizable interest in the State's ability to enforce its duly

enacted laws. The status quo is one in which the challenged requirement has not been in effect, given the rules used in Rhode Island’s last election, and many Rhode Island voters may well hold that belief.

Id. Aug. 13, 2020 Slip Order (citation and quotation omitted).

The exact same reasoning applies to this case. Here, just like the Rhode Island state election officials, the Secretary supports the challenged consent decree, and no state official has expressed opposition. Additionally, the status quo for the last election in Minnesota—the August 11 primary—is one in which the election day receipt rule from Minn. Stat. § 203B.08, subd. 3, was not enforced. Instead, the August 11 primary used a postmark rule pursuant to the June 17 consent decree governing relief for the primary election in *LaRose*, just like the one in the consent decree Plaintiffs seek to challenge here. *See* Marisam Decl., Ex. B. Furthermore, like Rhode Island voters, many Minnesota voters “may well hold th[e] belief” that an election day receipt deadline will not apply to the November 3 general election, particularly because they have received ballots with instructions about the postmark rule. *See* Maeda Decl. There is no way to distinguish the Supreme Court’s holding in a way that would allow Plaintiffs to establish standing in this case.

Second, to the extent Plaintiffs are suing in their capacity as voters, their asserted injuries are too generalized to support standing. *See Lujan*, 504 U.S. at 573-74. Plaintiffs vaguely suggest that they, as Minnesota voters, are injured by “vote dilution.” (Dkt. 13 at 14-15.) Plaintiffs essentially argue that their votes will have less impact because more Minnesotans will be able to cast valid ballots in the November 3 election with the extension of the deadline for receiving and counting ballots. This exact same generalized

theory of standing was recently rejected by a district court in Nevada. There, plaintiffs also challenged changes to voting rules, due to the COVID-19 pandemic. However, the court held that claims by voters of a substantial risk of vote dilution “amount to general grievances that cannot support a finding of particularized injury as to [p]laintiffs.” *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2748301, at *4 (D. Nev. May 27, 2020).

The fundamental problem with this type of injury is that it does not differentiate Plaintiffs from anyone else in the public at large. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573–74 (1992); *see also Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 485, (1982) (“The proposition that all constitutional provisions are enforceable by any citizen simply because citizens are the ultimate beneficiaries of those provisions has no boundaries.”). This theory is “precisely the kind of undifferentiated, generalized grievance about the conduct of government” that fails to confer Article III standing. *Lance v. Coffman*, 549 U.S. 437, 442 (2007); *see also Allen v. Wright*, 468 U.S. 737, 754 (1984) (“[A]n asserted right to have the Government act in accordance with the law is not sufficient, standing alone, to confer jurisdiction on a federal court.”). Plaintiffs have nowhere indicated how their interests in the integrity of elections and their interest in voting differs from the general interests of Minnesota voters. Without any sort of particularized injury on their voting rights by the consent decree, Plaintiffs cannot establish standing.

Finally, to the extent Plaintiffs are suing in their capacity as members and representatives of the Republican Party of Minnesota, including as electors for the party,

they cannot establish standing. As an initial matter, the Republican Party of Minnesota has expressly waived its right to challenge the consent decree in any judicial forum. *See Marisam Decl., Ex. D.* This waiver was an express condition of the stipulation to dismiss the Republican Party of Minnesota’s appeal challenging the consent decree in state court: “Appellants waive the right to challenge in any other judicial forum the August 3, 2020 Orders and the August 3, 2020 Stipulations and Partial Consent Decrees that formed the basis for the above-captioned consolidated appeals.” *Id.* The Minnesota Supreme Court then entered an order dismissing these appeals pursuant to the joint stipulation. *Id.* Plaintiffs cannot claim standing as members and representatives of a group that has expressly waived any right to challenge the decree.

Even if Plaintiffs could claim standing on behalf of the Republican Party, this would not allow them to escape the Supreme Court’s ruling in *Republican National Committee v. Common Cause Rhode Island*. Whether viewed as individuals interested in enforcement of Minnesota’s election laws, individual voters, or representatives of the Republican Party of Minnesota, Plaintiffs lack a cognizable interest that would provide them with standing to attack the consent decree here.

II. THIS COURT MUST ABSTAIN UNDER *PENNZOIL*.

This Court must abstain under *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987). In *Pennzoil*, after Texaco lost in state court, it filed a federal lawsuit seeking to enjoin enforcement of the state court judgment, alleging that the state’s process for compelling compliance with the judgment violated the U.S. Constitution. *Id.* at 13. The U.S. Supreme Court, citing “the importance to the States of enforcing the orders and

judgments of their courts,” held that the federal district court could not entertain the suit. *Id.* at 13. “[F]ederal injunctions” may not be used to “interfere with the execution of state judgments,” particularly where the federal lawsuit “challenge[s] the very process by which [the state court] judgments were obtained” and the federal constitutional claim could have been raised in the state court action. *Id.* at 14-16. The purpose of *Pennzoil* is to preserve the State's interest in protecting “the authority of the judicial system, so that its orders and judgments are not rendered nugatory.” *Id.* at 14 n.12; *see also Sprint Commc’ns, Inc. v. Jacobs*, 134 S. Ct. 584, 588 (2013) (*Pennzoil* applies where a federal challenge “implicate[s] a State’s interest in enforcing the orders and judgments of its courts”).

Pennzoil forbids the relief Plaintiffs seek here. Under Minnesota law, a consent decree is a court judgment. *Hentschel v. Smith*, 153 N.W.2d 199, 206 (Minn. 1967). Plaintiffs ask this Court to render the state court’s judgment “nugatory,” and they do so by challenging the process by which the judgment was entered. This is precisely the type of claim for the *Pennzoil* doctrine was created to avoid.

Pennzoil applies even though Plaintiffs were not formally parties in the state court action. *Pennzoil* is a form of *Younger* abstention, and numerous courts, including the Eighth Circuit Court of Appeals, have held that *Younger* bars claims of federal plaintiffs whose interests are inextricably intertwined with, or essentially derivative of, parties to a state court action. *Cedar Rapids Cellular Tel., L.P. v. Miller*, 280 F.3d 874, 881 (8th Cir. 2002); *accord Spargo v. N.Y. State Comm’n on Judicial Conduct*, 351 F.3d 65, 82-84 (2d Cir. 2003); *D.L. v. Unified Sch. Dist. No. 497*, 392 F.3d 1223, 1230-31 (10th Cir. 2004).

Plaintiffs' interests are clearly intertwined with and essentially derivative of the interests of the Republican Party of Minnesota, which challenged the consent decree in state court. Plaintiffs claim that they are members of the party and that they are two of the party's nominees to serve as electors in this presidential election. Compl. ¶¶ 7-8, 73 (ECF No. 1). Indeed, they are suing based on harms to them as the Republican Party's electors. *Id.* They cannot credibly claim that their interests are distinct from the Republican Party's on these issues.

The proper forum for any federal constitutional challenge to the state court judgment was in the state court itself, or in the U.S. Supreme Court on direct review. The Republican Party had the opportunity to raise these exact issues with the Minnesota Supreme Court and appeal to the U.S. Supreme Court, if they disagreed with their ruling on federal constitutional questions. Instead, it dropped its appeal and waived its right to challenge the consent decree. Marisam Decl., Ex. D. Federal court is closed to the party on these issues, and is closed to Plaintiffs, whose interests are essentially derivative of the Republican Party's interests.

III. PLAINTIFFS CANNOT GET THE RELIEF THEY SEEK UNDER THE *PURCELL* PRINCIPLE.

Plaintiffs filed this lawsuit on September 22, four days after voting began for the general election in Minnesota and seven weeks after entry of the consent decree they challenge. Voters have already received ballots with instructions notifying them of the postmark rule. At this late date, Plaintiffs cannot get the injunctive relief they seek under the *Purcell* principle, which counsels courts to abstain from entering injunctions that change election rules at the last minute. *Purcell*, 549 U.S. at 7.

Last-minute changes deprive election officials of the time they need to implement changes and notify voters. Orderly election administration requires knowing the rules for the election well in advance of voting. Ideally, any changes to those rules should come with plenty of lead time, so election officials can implement the changes and notify voters. The Supreme Court highlighted these concerns in *Purcell*, where it announced a presumption against last-minute interventions in the electoral process: “Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” *Id.* at 7.

The *Purcell* principle is a sufficient basis to deny injunctive relief. *See id.* at 5. In the *Purcell* case itself, the Supreme Court vacated a lower court’s injunction because it changed an election rule too close to an election. The Ninth Circuit Court of Appeals had enjoined enforcement of an Arizona voter-identification law shortly before an election. The Supreme Court vacated the injunction because of “the imminence of the election,” while “express[ing] no opinion here on the correct disposition” of the case. *Id.* at 8.; *see also Short v. Brown*, 893 F.3d 671, 680 (9th Cir. 2018) (“[E]ven if the merits question were close, the district court did not abuse its discretion [by denying a preliminary injunction on *Purcell* grounds]”).

In this case, Plaintiffs seek an injunction to change an election rule that was in place in Minnesota for this year’s primary election and, since the state district court’s August 3 order and judgment, has been the announced rule for the November general

election. Plaintiffs waited until September 22, four days after voting began in Minnesota, to bring this lawsuit. Their delay is fatal under the *Purcell* principle.

The First Circuit recently made a similar point regarding a consent decree suspending enforcement of the absentee witness requirement in Rhode Island due to Covid-19. Because the election rule was also not enforced for the primary election due to Covid-19, the First Circuit stated that the status quo in the state was an election without the requirement and *Purcell* concerns cut in favor of denying a stay of the consent decree as to the general election. *Common Cause Rhode Island*, 2020 WL 4579367, at *4.

The U.S. Supreme Court denied an application for an emergency stay of the consent decree in large part based on this same reason: “The status quo is one in which the challenged requirement has not been in effect, given the rules used in Rhode Island’s last election, and many Rhode Island voters may well hold that belief.” *Republican National Committee*, Sup. Ct. Docket 20A28 (Aug. 13, 2020 order in pending case); Marisam Decl., Ex. E.

The same reasoning applies with even greater force here. The status quo is one in which there was a postmark rule for Minnesota’s last election, under the June 17 consent decree. Many Minnesota voters believe that this is the rule for the general election, because they have received instructions with their ballots telling them this is the rule.

Under *Purcell*, Plaintiffs cannot get the relief they want. This Court should deny the injunction.

IV. PLAINTIFFS ARTICLE II CLAIM FAILS ON THE MERITS.

The predominant factor for an injunction is the likelihood of success on the merits. *Watkins, Inc.*, 346 F.3d at 844. Plaintiffs' first claim, under the Electors Clause of Article II of the U.S. Constitution, fails for four reasons.

First, the U.S. Supreme Court has established that courts can order a change from an election day receipt rule to a postmark rule due to Covid-19. *See Republican Nat'l Comm. v. Dem. Nat'l Comm.*, 140 S. Ct. 1205 (2020) (per curiam). Second, there is no basis to support Plaintiffs' absurd claim that courts cannot order this relief when it is presented to them in the form of a consent decree. Third, Plaintiffs' Electors Clause claim has no grounding in the clause's text, purpose, or history. Fourth, the Minnesota Legislature has authorized the Secretary of State to make changes to election laws pursuant to court orders.

A. The Supreme Court Has Established that a Court Can Enter an Order Changing a State's Election Day Receipt Rule to a Postmark Rule.

Earlier this year, the U.S. Supreme Court ordered that Wisconsin change its election day receipt rule to a postmark rule for its primary election. *Republican Nat'l Comm. v. Dem. Nat'l Comm.*, 140 S. Ct. 1205 (2020) (per curiam). The consent decree and judgment issued by the state court judge in *LaRose* implemented virtually the identical relief for the Minnesota general election.

Wisconsin, like Minnesota, has a requirement that absentee ballots must be received by election day. Wisc. Stat. § 6.87(6). Before Wisconsin's April 7, 2020, primary, a federal district court in Wisconsin ordered that absentee ballots received six days after the election should be counted, regardless of when they are postmarked, based

on concerns related to the spread of Covid-19. 140 S. Ct. at 1206. The Seventh Circuit Court of Appeals rejected the Republican National Committee's attempt to stay the district court order. *Democratic National Committee v. Bostelmann*, No. 20-1538, 2020 WL 3619499 (7th Cir. Apr. 3, 2020). The Supreme Court stayed the district court's order to the extent it requires the State to count absentee ballots postmarked after election day. *Republican National Committee*, 140 S. Ct. at 1206. However, the Court ordered that all ballots postmarked by election day and received within six days are timely: "Therefore, subject to any further alterations that the State may make to state law, in order to be counted in this election a voter's absentee ballot must be either (i) postmarked by election day, April 7, 2020, and received by April 13, 2020, at 4:00 p.m., or (ii) hand-delivered as provided under state law by April 7, 2020, at 8:00 p.m." *Id.* at 1208. The Supreme Court's holding shows that such a change is a lawful and reasonable response to an election held during this pandemic.

The rationale for the change to the Wisconsin primary was that the pandemic had led to a surge in absentee ballot requests, creating a backlog and delay in how quickly voters would receive their ballots. *Id.* at 1209-1210 (Ginsburg, J., dissenting). The *LaRose* consent decree implements the same relief based on similar rationales. It was an undisputed stipulated finding at the state district court that a backlog of requests for ballots bogs down the process of transmitting ballots to voters. It was also an undisputed stipulated finding at the state district court that the Postal Service has announced cost-cutting efforts that will delay mail deliveries and the return of absentee ballots during the

pandemic. Marisam Decl., Ex. B at 3-4. These findings persuaded the state court judge that entering the consent decree and entering judgment on it was the appropriate action.

In short, it is clear that courts have the power to order exactly the relief ordered by the state court in *LaRose*.

B. The Secretary Has Authority to Enter into a Consent Decree and to Implement the Relief Ordered by the State Judge.

Because Plaintiffs cannot credibly argue that a court lacks the authority to order a change from an election day receipt rule to a postmark rule, they are left to argue that the Secretary lacks authority to present a judge with a consent decree implementing such relief. This position is absurd. It is contrary to constitutional principles, case law, and common sense.

The Secretary is a constitutional officer and chief elections officer for Minnesota. He is bound to support the Constitution and exercise his best judgment when implementing Minnesota's election laws. Minn. Const., art. V, sec. 6. When the *LaRose* lawsuit was filed challenging the constitutionality of election laws as applied during this pandemic, he had an obligation to exercise his best judgment to determine whether application of the laws would violate Minnesota's Constitution. The Secretary, though, did not unilaterally sign a settlement agreement to halt enforcement of the laws. He presented a consent decree in court that invited judicial review and approval. The district court found that the relief in the decrees was fair and equitable, and it was reasonable to conclude that the plaintiffs were likely to succeed on the merits of their claims. Marisam Decl., Ex. C. The Secretary is bound by the judicial power of the courts to implement the relief in the consent decree judgment.

In the litigation over the Rhode Island consent decree altering an election rule due to Covid-19, the First Circuit expressly rejected the kind of argument Plaintiffs advance now. The Rhode Island Republican Party and Republican National Committee argued that the Secretary of State lacked the authority to enter into a decree changing a state's election laws. The First Circuit held otherwise: "if state officials fairly conclude, as credibly happened here, that enforcement of a law is unconstitutional in certain circumstances, one can hardly fault them for so acknowledging." *Common Cause Rhode Island*, 2020 WL 4579367, at *4 "And it would be odd indeed to say that a plaintiff cannot get relief from an unconstitutional law merely because the state official charged with enforcing the law agrees that its application is unconstitutional." *Id.*

Here, Plaintiffs are asking this Court to make the same "odd" finding: that a constitutional officer of a state cannot conclude that a law he implements is constitutionally problematic if applied under certain conditions, such as a pandemic, and then ask a judge to approve a change to avoid those constitutional difficulties. This Court should reject that request.

C. Nothing in Article II Prevents a State from Finding that Its Election Laws Violate Its Constitution.

Plaintiffs wish to stretch Article II far beyond its text, its historical purpose, and existing precedent. Nothing in Article II restricts a state court judge from finding a state election law unconstitutional under the state constitution. And, nothing restricts a state's chief elections officer from submitting, for a state court judge's consideration, a consent decree finding that temporarily changing a state election law would implement the provisions of the state constitution.

The Electors Clause of Article II provides: “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.” Art. II, § 1, cl. 2.

While the clause grants authority to state legislatures, it does not mean that their state laws are free from scrutiny by state constitutional officers and judges. Nearly 130 years ago, the Supreme Court made this clear when it stated that “[w]hat is forbidden or required to be done by a State” in the Article II context “is forbidden or required of the legislative power under state constitutions as they exist.” *McPherson v. Blacker*, 146 U.S. 1, 25 (1892). The State’s “legislative power is the supreme authority except as limited by the constitution of the State.” *Id.*

A large body of Supreme Court case law makes the same point regarding the conceptually similar Elections Clause of Article I, which grants state legislature’s authority to set time, place, and manner rules for U.S. congressional elections: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” Art. I, § 4, cl. 1. While the Electors Clause of Article II addresses presidential elections, the Elections Clause of Article I addresses congressional elections. Both clauses grant authority to state legislatures to set relevant state election rules.

The Supreme Court has repeatedly held that nothing in the Elections Clause alters a state court’s authority to review state election laws and provide relief from them. In *Smiley v. Holm*, 285 U.S. 355 (1932), the Court held that the Elections Clause does not

“render[] inapplicable the conditions which attach to the making of state laws.” *Id.* at 365. It does not “endow the Legislature of the state with power to enact laws in any manner other than that in which the Constitution of the state has provided that laws shall be enacted.” *Id.* at 368.

More recently, the Supreme Court has explained: “Nothing in that [Elections] Clause instructs, nor has this Court ever held, that a state legislature may prescribe regulations on the time, place, and manner of holding federal elections in defiance of provisions of the State’s constitution.” *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2673 (2015).

In short, while the Electors and Elections clauses grant authority to state legislatures regarding federal elections, they do not make state election laws free from review by state courts and do not prevent those courts from ordering relief from those laws.

Historically, Plaintiffs reading of Article II also finds no support. Alexander Hamilton, writing in the Federalist Papers, emphasized that the primary purpose of the process established by Article II was to minimize the opportunity for “cabal, intrigue, and corruption” in the selection of the President. THE FEDERALIST NO. 68 (Alexander Hamilton). The Article II process ensured that electors could not be bribed because their identities would not be known in advance. Most importantly for Hamilton, separating the meetings of the electors by state made these individuals less susceptible to a mob mentality: “And as the electors, chosen in each state, are to assemble and vote in the state, in which they are chosen, this detached and divided situation will expose them

much less to heats and ferments, which might be communicated from them to the people, than if they were all to be convened at one time, in one place.” *Id.*

This basic purpose of Article II is not implicated in this case at all. By changing Minnesota’s election day receipt rule to a postmark rule for the 2020 election due to Covid-19, the consent decree does not increase the opportunity for corruption that the Electors Clause in Article II was designed to guard against.

Plaintiffs are unlikely to succeed on the merits of the claim because their claim wholly lacks support from the text, purpose, history, or case law regarding the clause.

D. Even If Article II Requires a Legislative Enactment, Minnesota Has Such a Statute.

Even if Article II requires a legislative enactment to authorize the Secretary to implement the relief in the consent decree, Minnesota has such a statute. Section 204B.47 provides: “When a provision of the Minnesota Election Law cannot be implemented as a result of an order of a state or federal court, the secretary of state shall adopt alternative election procedures to permit the administration of any election affected by the order.” Minn. Stat. § 204B.47.

The consent decree and accompanying order are a judge and order from a state court establishing that the election day receipt rule cannot be implemented. *See Hentschel v. Smith*, 153 N.W.2d 199, 206 (Minn. 1967) (consent decrees have the force of a court judgment). By implementing the relief in the consent decree, the Secretary is acting pursuant to this express legislative enactment.

V. PLAINTIFFS’ STATUTORY CLAIM FAILS ON THE MERITS BECAUSE THE CONSENT DECREE DOES NOT CHANGE THE DATE OF THE ELECTION.

Plaintiffs’ second claim fails because it is based on a gross misreading of the consent decree. In fact, the decree does not change the date of the election.

Plaintiffs rely on a single sentence in the decree: “Where a ballot does not bear a postmark date, the election official reviewing the ballot should presume that it was mailed on or before Election Day unless the preponderance of the evidence demonstrates it was mailed after Election Day.” Marisam Decl., Ex. B at 10.

Plaintiffs twist this language to claim that it violates federal statutory law by changing the date of the election. It does no such thing. It does not alter the rule that a ballot must be mailed by election day. It just establishes a presumption to ensure that voters are not disenfranchised when they timely submit their ballots but, for no fault of their own, the Postal Service inadvertently does not postmark their ballots.

When a ballot lacks a postmark, due to inadvertence or negligence by the Postal Service, it can lead to post-election litigation over whether to count the ballot. *See, e.g., Gallagher v. New York State Bd. of Elections*, No. 20 CIV. 5504, 2020 WL 4496849 (S.D.N.Y. Aug. 3, 2020). Unfortunately, this kind of post-election litigation about the validity of ballots cast for particular candidates “threatens to undermine voter confidence in the electoral process and potentially to undermine confidence in the judiciary as well.” Richard L. Hasen, *The Untimely Death of Bush v. Gore*, 60 Stan. L. Rev. 1, 5 (2007).

To avoid this post-election problem, the consent decree establishes a presumption that ballots without postmarks are timely, if they are received within seven days and there

is no evidence, such as other markings or dates, showing they were mailed after election day.

This presumption is based on the Postal Service’s own guidance. Even in ordinary times, before Covid-19, the Postal Service recommends that voters mail their ballots at least one week before their due date, to allow time for the ballots to be processed through the postal system and delivered to election officials. *See State And Local Election Mail—User’s Guide*, United States Postal Service, January 2020.⁶ In addition, the Office of Inspector General for the United States Postal Service has reported that states with absentee ballot request deadlines less than seven days before election day are at “high risk” of ballots “not being delivered, completed by voters, and returned to the election offices in time . . . due to the time required for election commissions to produce ballots and Postal Service delivery standards.” Office of Inspector General, U.S.P.S., Rpt. No. 20-235-R20, *Timeliness of Ballot Mail in the Milwaukee Processing & Distribution Center Service Area 6-7* (2020)⁷. These were undisputed stipulated facts that were part of the consent decree and record in *LaRose*. Marisam Decl, Ex. B at 4.

Recent reports have found that “postal districts across the country are missing by wide margins the agency’s own goals for on-time delivery, raising the possibility that scores of mailed ballots could miss deadlines for reaching local election offices if voters wait too long.” Anthony Izaguirre and Pia Deshpande, *Records: Mail delivery lags*

⁶ This guidance document is available at <https://about.usps.com/publications/pub632.pdf>.

⁷ This report is available at <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/20-235-R20.pdf>.

behind targets as election nears, Star Trib. (Sept. 24, 2020). In light of these reports, it is even more important that voters have protections to ensure they are not disenfranchised if, through no fault of their own, the Postal Service fails to postmark their ballot.

Most importantly, though, the presumption in the consent decree does not change the date of the election. It simply establishes an evidentiary presumption for determining whether a ballot was mailed on election day. Under the consent decree, election day remains November 3.

Because the consent decree has not changed any dates relevant to federal law, Plaintiffs cannot succeed on this claim.

VI. THE BALANCE OF HARMS AND THE PUBLIC INTEREST WEIGH HEAVILY AGAINST AN INJUNCTION.

Not only has Plaintiff failed to demonstrate any likelihood of success on the merits, but the remaining injunction factors, balance of harms and the public interest, also weigh heavily against an injunction that would undo the changes ordered by the consent decree for at least three reasons. First, the state's strong interest in minimizing voter confusion and ensuring orderly elections cuts against an injunction. Second, Plaintiffs' claimed harms of vote dilution are entirely without merit. Third, Plaintiffs' claim that Minnesota will lose its electoral college votes is a scare tactic without any legal grounding.

A. An Injunction Would Confuse Voters and Disrupt Election Administration.

The State has a strong interest in minimizing voter confusion and ensuring orderly elections. *See Carlson v. Simon*, 888 N.W.2d 467, 474 (Minn. 2016) (recognizing the

“State’s interest in the orderly administration of the election and electoral processes”); *Hippert v. Ritchie*, 813 N.W.2d 374, 381 (Minn. 2012) (recognizing the state interest in minimizing “voter confusion”). When possible, these interests weigh in favor of making changes well before voting begins. The Secretary acted in accordance with these interests when he submitted the consent decree for judicial approval on July 17, well before voting began for the general election. The consent decree was approved on August 3 and no stay was issued, meaning that it has been the law in Minnesota since that date.

Most importantly, election officials and voters have been notified about the change ordered under the consent decree. Ballots have been mailed to voters with instructions notifying them that their ballots will be timely if they are postmarked by election day. *See Maeda Decl.*

It is incredibly important that this presidential election, held during a once-in-a-century pandemic, goes as smoothly as possible. An order enjoining the postmark rule at this late date would cause confusion and would interfere with orderly election administration. The worst-case scenario would be that scores of ballots are not counted because voters, relying on their ballot instructions, mail their ballots on or shortly before election day. This disenfranchisement is a likely outcome if Plaintiffs prevail.

Plaintiffs come nowhere close to identifying an interest sufficient to outweigh the state interest in minimizing voter confusion, ensuring orderly election administration, and ensuring that conditions created by this once-in-a-century pandemic do not cause disenfranchisement.

B. Plaintiffs’ Vote Dilution Harm Is Not Cognizable.

Plaintiffs’ assertion of harms from “vote dilution” lacks any legal support. Vote dilution “refers to the idea that each vote must carry equal weight.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2501 (2019). It is most often asserted in cases where plaintiffs claim intentional vote dilution by a legislature to pack racial minorities into a single legislative district to invidiously minimize or cancel out their voting power. *See Abbott v. Perez*, 138 S. Ct. 2305, 2314 (2018).

Plaintiffs claim that the consent decree will lead to an increase in valid ballots counted, which means their votes will have less marginal impact. In other words, *increased participation in the election harms them*. Under this theory, any voter is harmed by any law that lets anyone other than themselves cast a ballot. This theory of vote dilution as a cognizable harm has never been accepted and should not be accepted now.

C. Plaintiffs’ Assertion that Minnesota Will Lose Its Electoral College Votes Is an Unsupported Scare Tactic.

Plaintiffs’ assertion that Minnesota may lose its electoral college votes because of the consent decree is a bogus scare tactic with no support.

December 8 is known as the “safe harbor” deadline for appointing people who make up the Electoral College. 3 U.S.C. § 5. If “any controversy or contest” remains after that date, then Congress will decide which electors, if any, may cast the state’s ballots for president. *Id.* The statute does not impose any affirmative duties on states or their governmental branches. Rather, it provides a safe harbor for states to select electors, “by judicial or other methods,” when the results are contested. *Id.* The purpose of the

statute is to encourage a state to settle any contests and have its results for a presidential contest fully determined by a set date. *See Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 77 (2000).

The Supreme Court discussed this safe harbor statute in *Bush v. Gore*, 531 U.S. 98 (2000) (per curiam). While the justices issued many separate opinions, there were two basic views on the effect of the statute. The consent decree is acceptable under both views.

One view, the controlling view, was that, while a state court could order changes to election laws during a presidential election, it could not order relief that would push the state's selection of electors past the safe harbor date, if the state legislature had intended to take advantage of the safe harbor. *See id.* at 110 (“That statute, in turn, requires that any controversy or contest that is designed to lead to a conclusive selection of electors be completed by December 12. That date is upon us, and there is no recount procedure in place under the State Supreme Court's order that comports with minimal constitutional standards.”); *Bush v. Gore*, 531 U.S. 98, 122 (2000) ((Rehnquist, J., concurring) (“Surely when the Florida Legislature empowered the courts of the State to grant ‘appropriate’ relief, it must have meant relief that would have become final by the cutoff date of 3 U. S. C. § 5.”).

A second view, adopted by four justices, was that the “3 U.S.C. § 5 issue is not serious.” *Bush v. Gore*, 531 U.S. 98, 130 (2000) (Souter, J., dissenting). The reason is that “no State is required to conform to § 5 if it cannot do that (for whatever reason); the sanction for failing to satisfy the conditions of § 5 is simply loss of what has been called

its ‘safe harbor.’ And even that determination is to be made, if made anywhere, in the Congress.” *Id.* Furthermore, by its very text, “Section 5, like Article II, assumes the involvement of the state judiciary in interpreting state election laws and resolving election disputes under those laws.” *Bush v. Gore*, 531 U.S. 98, 125 (2000) (Stevens, J., dissenting). Nothing in Article II or the statute frees state law from review by state courts. *Id.* at 124.

In short, under one view, state courts can order relief but just not delay the state’s official certification of results. Under the other view, state courts can order relief that delays the official certification beyond the safe harbor date. The consent decree is acceptable under either view because it does not change any of Minnesota’s deadlines for officially certifying the results of the election and will not cause Minnesota to fail to meet the federal statutory deadlines.

In Minnesota, county canvassing boards have ten days from election day to tally the results of a general election and officially certify the results. Minn. Stat. Ann. § 204C.33, subd. 1. The county reports are then transmitted to the State. The State Canvassing Board is responsible for meeting and declaring the official results. *Id.* at subd 3. The State Canvassing Board meets on the third Tuesday following a state general election. *Id.* After meeting, it has three days to complete the canvass and declare the results. *Id.* This state timeline is compliant with federal law, and Plaintiffs do not claim otherwise.

Nothing in the consent decree changes this timeline. The consent decree provides that ballots postmarked by election day and received within seven days are timely and

should be counted. County canvassing boards can comply with this decree and still meet their requirement to canvass county results within ten days of the election. Most importantly, the timing in the consent decree does not come close to affecting the State Canvassing Board's schedule for declaring the final and official results for Minnesota.

There is simply no merit to Plaintiffs' assertion that the consent decree puts Minnesota's electoral votes in jeopardy because it changes the time for the certification of results in Minnesota.

CONCLUSION

For these reasons, the Court should deny the injunction.

Dated: September 29, 2020

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Jason Marisam

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ATTORNEYS FOR DEFENDANT

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James Carson and Eric Lucero,

Civil File No. 20-cv-02030-NEB-TNL

Plaintiffs,

vs.

RULE 7.1(F) CERTIFICATE

Steve Simon, Secretary of State of
the State of Minnesota, in his official
capacity,

Defendant.

I, Jason Marisam, certify that the Memorandum titled *Defendant's Memorandum of Law in Opposition to Plaintiffs' Motion for a Preliminary Injunction* complies with Local Rule 7.1(f). I further certify that, in preparation of this document, I used Microsoft Word Version 2010, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count. Finally, I certify that the above referenced Memorandum contains 10,457 words.

Signature on Page 2

Dated: September 29, 2020

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

s/ Jason Marisam

JASON MARISAM
Assistant Attorney General
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ATTORNEY FOR DEFENDANT STEVE
SIMON, IN HIS OFFICIAL CAPACITY AS
MINNESOTA SECRETARY OF STATE

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

James Carson & Eric Lucero,

Civil No. 0:20-cv-02030-NEB-TNL

Plaintiffs,

v.

**DECLARATION OF JASON
MARISAM**

Steve Simon, in his official capacity as
Secretary of State of Minnesota,

Defendant.

I, Jason Marisam, hereby declare the following under penalty of perjury:

1. I am an assistant attorney general in the Office of the Minnesota Attorney General. I represent the Defendant in this matter.

2. Attached as Exhibit A is a true and correct copy of the stipulation and partial consent decree, signed by the district court on June 17, 2020, in *LaRose v. Simon*, No. 62-CV-20-3149, Minn. 2d Judicial Cir., County of Ramsey.

3. Attached as Exhibit B is a true and correct copy of the stipulation and partial consent decree, signed by the district court on August 3, 2020, in *LaRose v. Simon*, No. 62-CV-20-3149, Minn. 2d Judicial Cir., County of Ramsey.

4. Attached as Exhibit C is a true and correct copy of the Order, entered by the district court on August 3, 2020, in *LaRose v. Simon*, No. 62-CV-20-3149, Minn. 2d Judicial Cir., County of Ramsey.

5. Attached as Exhibit D are true and correct copies of the stipulation to dismiss appeals and dismissal order, filed and entered on August 18, 2020, in *LaRose v. Simon*,

A20-1040, Minn. Sup. Ct. (Aug. 18, 2020).

6. Attached as Exhibit E is a true and correct copy of the order, entered by the U.S. Supreme Court on August 13, 2020, in *Republican National Committee v. Common Cause of Rhode Island*, Sup. Ct. Docket 20A28, 591 U.S. __ (Aug. 13, 2020 order in pending case).

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: September 29, 2020

/s/ Jason Marisam

JASON MARISAM

EXHIBIT A
TO THE DECLARATION OF
JASON MARISAM

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil

Robert LaRose, Teresa Maples, Mary Sansom,
Gary Severson, and Minnesota Alliance for
Retired Americans,

Plaintiffs,

v.

Steve Simon, in his official capacity as Minnesota
Secretary of State,

Defendant.

**STIPULATION AND PARTIAL
CONSENT DECREE**

Court File No: 62-CV-20-3149

Plaintiffs Robert LaRose, Teresa Maples, Mary Sansom, Gary Severson, and Minnesota Alliance for Retired Americans, and Defendant Steve Simon (collectively, “the Parties”) stipulate to the following and request that this Court approve this Partial Consent Decree. This Stipulation and Partial Consent Decree is limited only to Plaintiffs’ claims as they pertain to the August 11, 2020 primary election (“August Primary”) and is premised upon the current public health crisis facing Minnesota caused by the ongoing spread of the novel coronavirus.

**I.
RECITALS**

WHEREAS on May 13, 2020, Plaintiffs filed a complaint against Defendant challenging the constitutionality and enforcement of Minnesota’s requirement that each mail-in ballot be witnessed by a registered Minnesota voter, a notary, or person otherwise authorized to administer oaths (“Witness Requirement”), Minn. Stat. §§ 203B.07, 204B.45, and 204B.46, and its requirement that ballots be received by 8:00 p.m. on Election Day if delivered by mail (the

“Election Day Receipt Deadline”), *id.* §§ 203B.08 subd. 3; 204B.45, and 204B.46, Minn. R. 8210.2200 subp. 1 and 8210.3000 (collectively, “Challenged Provisions”), in general and specifically during the ongoing public health crisis caused by the spread of the novel coronavirus;

WHEREAS among other relief requested, the Complaint seeks to enjoin enforcement of the Challenged Provisions during the August Primary due, in part, to the public health crisis caused by the spread of the novel coronavirus;

WHEREAS the coronavirus public health crisis is ongoing and Minnesota remains under “Stay Safe” Emergency Executive Order 20-74, which contemplates a phased reopening of Minnesota that continues to require social distancing and mandates that “[i]ndividuals engaging in activities outside of the home follow the requirements of [the Stay Safe Order and Minnesota Department of Health and Centers for Disease Control and Prevention (“CDC”)] Guidelines,” Exec. Order 20-74 ¶ 6(a), and states that individuals “at risk of severe illness from COVID-19 . . . [are] strongly urged to stay at home or in their place of residence,” *id.* ¶4;

WHEREAS Minnesota is anticipated to be required to maintain social distancing and abide by CDC Guidelines until the crisis subsides;

WHEREAS current projections indicate that the coronavirus crisis will continue into the summer and well into the August Primary election cycle;

WHEREAS federal guidelines state “[e]veryone should avoid close contact” by “stay[ing] home as much as possible” and “put[ting] distance between yourself and other people,” CDC, Coronavirus Disease 2019: How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last visited May 18, 2020), and “[e]ncourage voters to use voting methods that minimize direct contact,”

including absentee voting, CDC, Recommendations for Election Polling Locations: Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last visited May 18, 2020);

WHEREAS the absentee voting period for the August Primary election begins on June 26, 2020, 46 days prior to the date of the election, Minn. Stat. § 203B.081 subd.1; *id.* § 204B.35, and absentee instructions, ballots, and envelopes, including the certificate of eligibility, must be prepared in time to have a supply for every precinct available to cover absentee voting prior to that date;

WHEREAS available public data regarding transmission of COVID-19 supports Plaintiffs' concerns for their safety if they are required to interact with others to cast their ballot in the August Primary, and whereas anticipated increases in absentee balloting, coupled with corresponding shortages of elections personnel and mail delays, appear likely to impact the August Primary and threaten to slow down the process of mailing and returning absentee ballots;

WHEREAS, on April 28, 2020, the Wisconsin Department of Health Services reported that 52 people who voted in person or worked the polls for Wisconsin's April 7, 2020 primary election have tested positive for COVID-19 thus far;

WHEREAS courts in other states have enjoined those states from enforcing witness requirements, similar to Minnesota's witness requirement, for primary elections this spring. *See Thomas v. Andino*, -- F. Supp. 3d --, 2020 WL 2617329 (D.S.C. May 25, 2020); *League of Women Voters of Virginia v. Virginia State Board of Elections*, -- F. Supp. 3d --, 2020 WL 2158249 (W.D. Va. May 5, 2020);

WHEREAS, for the April 7, 2020 primary election in Wisconsin, the U.S. Supreme Court affirmed the implementation of a postmark rule, whereby ballots postmarked by Election Day could be counted as long as they were received within six days of Election Day. *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020);

WHEREAS the Parties agree that an expeditious resolution of this matter for the August Primary, in the manner contemplated by the terms of this Stipulation and Partial Consent Decree, will limit confusion and increase certainty surrounding the August Primary, including in the nine days remaining before the June 26, 2020 deadline for absentee ballot preparation, and is in the best interests of the health, safety, and constitutional rights of the citizens of Minnesota, and, therefore, in the public interest;

WHEREAS the Parties wish to avoid the burden and expense of litigation over an expedited preliminary injunction for the August Primary in agreeing to these terms, the Parties, acting by and through their counsel, have engaged in arms' length negotiations, and both Parties are represented by counsel knowledgeable in this area of the law;

WHEREAS it is the finding of this Court, made on the pleadings and upon agreement of the Parties, that: (i) the requirements of the Minnesota Constitution, Art. I, §§ 2, 7, and Art. VII, § 1, and U.S. Constitution, Amend. I and XIV, will be carried out by the implementation of this Partial Consent Decree, (ii) the terms of this Partial Consent Decree constitute a fair and equitable settlement of the issues raised with respect to the August Primary, (iii) this Partial Consent Decree is intended to and does resolve Plaintiffs' claims with respect to the August Primary; and (iv) this Partial Consent Decree is not intended to and does not resolve Plaintiffs' claims generally or specifically with respect to the general election scheduled for November 3, 2020 or any election thereafter;

NOW, THEREFORE, upon consent of the Parties, in consideration of the mutual promises and recitals contained in this Stipulation and Partial Consent Decree, including relinquishment of certain legal rights, the Parties agree as follows:

II. JURISDICTION

This Court has jurisdiction over the subject matter of this action pursuant to Minn. Const. Art. VI, § 3 and Minn. Stat. § 484.01 and has jurisdiction over the Parties herein. The Court shall retain jurisdiction of this Stipulation and Consent Decree for the duration of the term of this Partial Consent Decree for purposes of entering all orders, judgments, and decrees that may be necessary to implement and enforce compliance with the terms provided herein.

III. PARTIES

This Stipulation and Partial Consent Decree applies to and is binding upon the following parties:

- A. The State of Minnesota by Steve Simon, Secretary of State of Minnesota; and
- B. All Plaintiffs.

IV. SCOPE OF CONSENT DECREE

A. This Stipulation and Partial Consent Decree constitutes a partial settlement and resolution of Plaintiffs' claims against Defendant pending in this Lawsuit. Plaintiffs recognize that by signing this Stipulation and Partial Consent Decree, they are releasing any claims under the Minnesota or U.S. Constitutions that they might have against Defendant with respect to the Witness Requirement and Election Day Receipt Deadline in the August Primary. Plaintiffs' release of claims will become final upon the effective date of this Stipulation and Partial Consent Decree.

B. The Parties to this Stipulation and Partial Consent Decree acknowledge that this does not resolve or purport to resolve any claims pertaining to the constitutionality or enforcement of the Witness Requirement and Election Day Receipt Deadline during the November 3, 2020 general election or any election thereafter. Neither Party releases any claims or defenses with respect to the Witness Requirement and Election Day Receipt Deadline related to the November 3, 2020 general election or any election thereafter.

C. The Parties to this Stipulation and Partial Consent Decree further acknowledge that by signing this Stipulation and Partial Consent Decree, the Parties do not release or waive the following: (i) any rights, claims, or defenses that are based on any events that occur after they sign this Stipulation and Partial Consent Decree, (ii) any claims or defenses that are unrelated to the allegations filed by Plaintiffs in this Lawsuit, and (iii) any right to institute legal action for the purpose of enforcing this Stipulation and Partial Consent Decree or defenses thereto.

D. By entering this Stipulation and Partial Consent Decree, Plaintiffs are partially settling a disputed matter between themselves and Defendant. The Parties are entering this Stipulation and Partial Consent Decree for the purpose of resolving a disputed claim, avoiding the burdens and costs associated with the costs of a preliminary injunction motion and hearing, and ensuring both safety and certainty in advance of the August Primary. Nothing in this Stipulation and Partial Consent Decree constitutes an admission by any party of liability or wrongdoing. The Parties acknowledge that a court may seek to consider this Stipulation and Partial Consent Decree, including the violations alleged in Plaintiffs' Complaint, in a future proceeding distinct from this Lawsuit.

**V.
CONSENT DECREE OBJECTIVES**

In addition to partially settling the claims of the Parties, the objective of this Stipulation and Partial Consent Decree is to ensure that Minnesota voters can safely and constitutionally exercise the franchise in the August Primary.

**VI.
INJUNCTIVE RELIEF**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED FOR THE REASONS
STATED ABOVE THAT:**

A. For the August Primary Defendant shall not enforce the Witness Requirement, with respect to voting only, as set out in Minn. Stat. § 203B.07, subd. 3 (1) and (2), that each absentee ballot and designated mail ballot, Minn. Stat. § 204B.45 - .46, and Minn. R. 8210.3000, for voters previously registered in Minnesota be witnessed by a registered Minnesota voter, a notary, or person otherwise authorized to administer oaths.

B. For the August Primary Defendant shall not enforce the Election Day Receipt Deadline for mail-in ballots, as set out in Minn. Stat. §§ 203B.08 subd. 3, 204B.45, and 204B.46 and Minn. R. 8210.2200 subp. 1, and 8210.3000, that ballots be received by 8:00 p.m. on Election Day if delivered by mail. Instead, the deadline set forth in paragraph VI.D below shall govern.

C. Defendant shall issue guidance instructing all relevant local election officials to count all absentee and designated mail ballots in the August Primary that are otherwise validly cast by voters registered in Minnesota prior to casting their absentee and designated mail ballot but missing a witness signature.

D. Defendant shall issue guidance instructing all relevant local election officials to count all mail-in ballots in the August Primary that are otherwise validly cast and postmarked on or before Election Day but received by close of business at least one day prior to the beginning

of the county canvass (i.e., within 2 days of Election Day for the August Primary). For the purposes of this Stipulation and Partial Consent Decree, postmark shall refer to any type of imprint applied by the United States Postal Service to indicate the location and date the Postal Service accepts custody of a piece of mail, including bar codes, circular stamps, or other tracking marks. Where a ballot does not bear a postmark date, the election official reviewing the ballot should presume that it was mailed on or before Election Day unless the preponderance of the evidence demonstrates it was mailed after Election Day.

E. Defendant shall issue instructions to include with all absentee ballots and designated mail ballots—or issue guidance instructing all relevant local election officials to modify, amend, or print the instructions accompanying each absentee ballot and designated mail ballot—to inform voters that any absentee ballot or designated mail ballot cast by a previously registered voter in the August Primary without a witness signature will not be rejected on that basis and that the witness signature line and associated language for witnesses to certify a previously registered voter's ballot, Minn. Stat. §§ 203B.07, subd. 3 (1) and (2), 204B.45, and 204B.46, and Minn. R. 8210.2200, subp.1 and Minn. R. 8210.3000 and be removed from the certification of eligibility altogether for absentee ballot and designated mail ballot materials sent to previously registered voters.

F. Defendant shall issue instructions to include with all absentee and designated mail ballots—or issue guidance instructing all relevant local election officials to modify, amend, or print instructions accompanying each absentee and designated mail ballot—to inform voters that any absentee or designated mail ballot cast in the August Primary and postmarked on or before Election Day and received within 2 days will be counted.

G. Defendant shall take additional reasonable steps to inform the public that the Witness Requirement for voting will not be enforced for the August Primary and issue guidance instructing all relevant city and county election officials to do the same.

H. Defendant shall take additional reasonable steps to inform the public that the Election Day Receipt Deadline will not be enforced for the August Primary and that any absentee or designated mail ballot cast in the August Primary and postmarked on or before Election Day and received within 2 days by close of business will be counted.

I. Plaintiffs will not file a motion for preliminary injunction for the August Primary election.

J. In accordance with the terms of this Stipulation and Partial Consent Decree, the Parties shall each bear their own fees, expenses, and costs incurred as of the date of this Order with respect to Plaintiffs' claims raised as to the August Primary against Defendant.

VII. ENFORCEMENT AND RESERVATION OF REMEDIES

The Parties to this Stipulation and Partial Consent Decree may request relief from this Court if issues arise concerning the interpretation of this Stipulation and Partial Consent Decree that cannot be resolved through the process described below. This Court specifically retains continuing jurisdiction over the subject matter hereof and the Parties hereto for the purposes of interpreting, enforcing, or modifying the terms of this Stipulation and Partial Consent Decree, or for granting any other relief not inconsistent with the terms of this Partial Consent Decree, until this Partial Consent Decree is terminated. The Parties may apply to this Court for any orders or other relief necessary to construe or effectuate this Stipulation and Partial Consent Decree or seek informal conferences for direction as may be appropriate. The Parties shall attempt to meet and confer regarding any dispute prior to seeking relief from the Court.

If either Party believes that the other has not complied with the requirements of this Stipulation and Partial Consent Decree, it shall notify the other Party of its noncompliance by emailing the Party's counsel. Notice shall be given at least one business day prior to initiating any action or filing any motion with the Court.

The Parties specifically reserve their right to seek recovery of their litigation costs and expenses arising from any violation of this Stipulation and Partial Consent Decree that requires either Party to file a motion with this Court for enforcement of this Stipulation and Partial Consent Decree.

VIII. GENERAL TERMS

A. Voluntary Agreement. The Parties acknowledge that no person has exerted undue pressure on them to sign this Stipulation and Partial Consent Decree. Each Party is voluntarily choosing to enter into this Stipulation and Partial Consent Decree because of the benefits that are provided under the agreement. The Parties acknowledge that they have read and understand the terms of this Stipulation and Partial Consent Decree; they have been represented by legal counsel or had the opportunity to obtain legal counsel; and they are voluntarily entering into this Stipulation and Partial Consent Decree to resolve the dispute among them.

B. Severability. The provisions of this Stipulation and Partial Consent Decree shall be severable, and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Stipulation and Partial Consent Decree shall remain in full force and effect.

C. Agreement. This Stipulation and Partial Consent Decree is binding. The Parties acknowledge that they have been advised that (i) the other Party has no duty to protect their interest or provide them with information about their legal rights, (ii) signing this Stipulation and

Partial Consent Decree may adversely affect their legal rights, and (iii) they should consult an attorney before signing this Stipulation and Partial Consent Decree if they are uncertain of their rights.

D. Entire Agreement. This Stipulation and Consent Decree constitutes the entire agreement between the Parties relating to the constitutionality and enforcement of the Witness Requirement and Election Day Receipt Deadline as they pertain to the August Primary. No Party has relied upon any statements, promises, or representations that are not stated in this document. No changes to this Stipulation and Partial Consent Decree are valid unless they are in writing, identified as an amendment to this Stipulation and Partial Consent Decree, and signed by all Parties. There are no inducements or representations leading to the execution of this Stipulation and Partial Consent Decree except as herein explicitly contained.

E. Warranty. The persons signing this Stipulation and Partial Consent Decree warrant that they have full authority to enter this Stipulation and Partial Consent Decree on behalf of the Party each represents, and that this Stipulation and Partial Consent Decree is valid and enforceable as to that Party.

F. Counterparts. This Stipulation and Partial Consent Decree may be executed in multiple counterparts, which shall be construed together as if one instrument. Any Party shall be entitled to rely on an electronic or facsimile copy of a signature as if it were an original.

G. Effective Date. This Stipulation and Partial Consent Decree is effective upon the date it is entered by the Court. Defendant agrees to continue to initiate and implement all activities necessary to comply with the provisions of this Stipulation and Partial Consent Decree pending entry by the Court.

IX. TERMINATION

This Stipulation and Partial Consent Decree shall remain in effect through the certification of ballots for the August Primary. The Court shall retain jurisdiction to enforce the terms of the Partial Consent Decree for the duration of this Partial Consent Decree. This Court's jurisdiction over this Stipulation and Partial Consent Decree shall automatically terminate after the certification of all ballots for the August Primary.

THE PARTIES ENTER INTO AND APPROVE THIS STIPULATION AND PARTIAL CONSENT DECREE AND SUBMIT IT TO THE COURT SO THAT IT MAY BE APPROVED AND ENTERED. THE PARTIES HAVE CAUSED THIS STIPULATION AND CONSENT DECREE TO BE SIGNED ON THE DATES OPPOSITE THEIR SIGNATURES.

Dated: June 16, 2020

SECRETARY OF STATE OF MINNESOTA

By: Steve Simon

Steve Simon
Secretary of State

GREENE ESPEL PLLP

Dated: June 16, 2020

By: /s/Sybil L. Dunlop

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*Motions for admission pro hac vice pending

Attorneys for Plaintiffs

IT IS SO DECREED AND ORDERED. JUDGMENT SHALL BE ENTERED IN ACCORDANCE WITH THE FOREGOING CONSENT DECREE.

Dated: June 17, 2020



Grewing, Sara (Judge)
Jun 17 2020 9:32 AM

The Honorable Judge Sara Grewing
Judge of District Court

EXHIBIT B
TO THE DECLARATION OF
JASON MARISAM

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil

Robert LaRose, Teresa Maples, Mary Sansom,
Gary Severson, and Minnesota Alliance for Retired
Americans,

Plaintiffs,

v.

Steve Simon, in his official capacity as Minnesota
Secretary of State,

Defendant.

**STIPULATION AND PARTIAL
CONSENT DECREE**

Court File No: 62-CV-20-3149

Plaintiffs Robert LaRose, Teresa Maples, Mary Sansom, Gary Severson, and Minnesota Alliance for Retired Americans, and Defendant Steve Simon (collectively, “the Parties”) stipulate to the following and request that this Court approve this Partial Consent Decree. This Stipulation and Partial Consent Decree is limited only to Plaintiffs’ claims as they pertain to the November 3, 2020 general election (“November General Election”) and is premised upon the current public health crisis facing Minnesota caused by the ongoing spread of the novel coronavirus.

**I.
RECITALS**

WHEREAS on May 13, 2020, Plaintiffs filed a complaint against Defendant challenging the constitutionality and enforcement of Minnesota’s requirement that each mail-in ballot be witnessed by a registered Minnesota voter, a notary, or person otherwise authorized to administer oaths (“Witness Requirement”), Minn. Stat. §§ 203B.07, 204B.45, and 204B.46, and its requirement that ballots be received by 8:00 p.m. on Election Day if delivered by mail (the

“Election Day Receipt Deadline”), *id.* §§ 203B.08 subd. 3; 204B.45, and 204B.46, Minn. R. 8210.2200 subp. 1 and 8210.3000 (collectively, “Challenged Provisions”), in general and specifically during the ongoing public health crisis caused by the spread of the novel coronavirus;

WHEREAS among other relief requested, the Complaint seeks to enjoin enforcement of the Challenged Provisions during the November General Election due, in part, to the public health crisis caused by the spread of the novel coronavirus;

WHEREAS the coronavirus public health crisis is ongoing and Minnesota remains under “Stay Safe” Emergency Executive Order 20-74, which contemplates a phased reopening of Minnesota that continues to require social distancing and mandates that “[i]ndividuals engaging in activities outside of the home follow the requirements of [the Stay Safe Order and Minnesota Department of Health and Centers for Disease Control and Prevention (“CDC”)] Guidelines,” Exec. Order 20-74 ¶ 6(a), and states that individuals “at risk of severe illness from COVID-19 . . . [are] strongly urged to stay at home or in their place of residence,” *id.* ¶4;

WHEREAS Minnesota remains under a peacetime emergency, declared by the governor, because the “COVID-19 pandemic continues to present an unprecedented and rapidly evolving challenge to our State,” Emergency Executive Order 20-78;

WHEREAS Minnesota is currently witnessing an increase in positive COVID-19 cases, Minnesota has had over 42,000 confirmed COVID-19 cases, with over 4,300 hospitalizations and over 1,500 fatalities, and current projections indicate that the coronavirus crisis will continue into the fall and well into the November General Election cycle;

WHEREAS cases continue to spread and climb across the country, and the director of the National Institute of Allergy and Infectious Diseases recently warned that the country is still “knee-deep” in the first wave of the pandemic;

WHEREAS federal guidelines state “[e]veryone should avoid close contact” by “keeping distance from others,” CDC, Coronavirus Disease 2019: How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last visited July 13, 2020), and advise that jurisdictions “offer alternative voting methods that minimize direct contact,” including “alternatives to in-person voting” such as absentee voting, CDC, Recommendations for Election Polling Locations: Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last visited July 13, 2020);

WHEREAS Minnesota is anticipated to be required to maintain social distancing and abide by CDC Guidelines until the crisis subsides;

WHEREAS the absentee voting period for the November General Election begins on September 18, 2020, 46 days prior to the date of the election, Minn. Stat. § 203B.081 subd.1; *id.* § 204B.35, and absentee instructions, ballots, and envelopes, including the certificate of eligibility, must be prepared in time to have a supply for every precinct available to cover absentee voting prior to that date;

WHEREAS available public data regarding transmission of COVID-19 supports Plaintiffs’ concerns for their safety if they are required to interact with others to cast their ballot in the November General Election;

WHEREAS anticipated increases in absentee balloting are already being observed for the August 11, 2020 Primary Election and will continue in the November General Election, and coupled with corresponding shortages of elections personnel and mail delays, appear likely to impact the November General Election and threaten to slow down the process of mailing and returning absentee ballots;

WHEREAS the delivery standards for the Postal Service, even in ordinary times contemplate, at a minimum, at least a week for ballots to be processed through the postal system and delivered to election officials, “State And Local Election Mail—User’s Guide,” United States Postal Service, January 2020, available at <https://about.usps.com/publications/pub632.pdf> (last visited, July 13, 2020);

WHEREAS the Office of Inspector General for the United States Postal Service has reported that states with absentee ballot request deadlines less than seven days before Election Day, including Minnesota, are at “high risk” of ballots “not being delivered, completed by voters, and returned to the election offices in time . . . due to the time required for election commissions to produce ballots and Postal Service delivery standards.” Office of Inspector General, U.S.P.S., Rpt. No. 20-235-R20, Timeliness of Ballot Mail in the Milwaukee Processing & Distribution Center Service Area 6-7 (2020), available at <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/20-235-R20.pdf> (last visited, July 13, 2020);

WHEREAS it was recently reported: “Mail deliveries could be delayed by a day or more under cost-cutting efforts being imposed by the new postmaster general. The plan eliminates overtime for hundreds of thousands of postal workers and says employees must adopt a ‘different mindset’ to ensure the Postal Service’s survival during the coronavirus pandemic.” Matthew Daly, *Mail delays likely as new postal boss pushes cost-cutting*, Mpls. Star Tribune (July 15, 2020);

WHEREAS on April 28, 2020, the Wisconsin Department of Health Services reported that 52 people who voted in person or worked the polls for Wisconsin’s April 7, 2020 primary election have tested positive for COVID-19 thus far;

WHEREAS courts in other states have enjoined those states from enforcing witness requirements, similar to Minnesota’s witness requirement, for primary elections this spring. *See Thomas v. Andino*, -- F. Supp. 3d --, 2020 WL 2617329 (D.S.C. May 25, 2020); *League of Women Voters of Va. v. Va. State Bd. of Elections*, -- F. Supp. 3d --, 2020 WL 2158249, at *8 (W.D. Va. May 5, 2020) (“In our current era of social distancing—where not just Virginians, but all Americans, have been instructed to maintain a minimum of six feet from those outside their household—the burden [of the witness requirement] is substantial for a substantial and discrete class of Virginia’s electorate. During this pandemic, the witness requirement has become both too restrictive and not restrictive enough to effectively prevent voter fraud.”);

WHEREAS for the April 7, 2020 primary election in Wisconsin, the U.S. Supreme Court affirmed the implementation of a postmark rule, whereby ballots postmarked by Election Day could be counted as long as they were received within six days of Election Day, *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020), and other courts have also enjoined Election Day Receipt Deadlines during the current public health crisis, *see Driscoll v. Stapleton*, No. DV 20-408, slip op. at 11 (Mont. Dist. Ct. May 22, 2020); *see also Republican Nat’l Comm.*, 140 S.Ct. at 1210 (Ginsburg, J., dissenting) (noting that, in Wisconsin, the “surge in absentee-ballot requests has overwhelmed election officials, who face a huge backlog in sending ballots”);

WHEREAS multiple courts have found that the pandemic requires or justifies changes to other aspects of states’ election laws, *see, e.g., People Not Politicians Oregon v. Clarno*, 20-cv-1053, 2020 WL 3960440 (D. Or. July 13, 2020); *Cooper v. Raffensperger*, -- F. Supp. 3d --, 20-cv-1312, 2020 WL 3892454 (N.D. Ga. July 9, 2020); *Reclaim Idaho v. Little*, 20-cv-268, 2020 WL 3892454 (D. Idaho June 26, 2020); *Libertarian Party of Ill. v. Pritzker*, 20-cv-2112, 2020 WL

1951687 (N.D. Ill. Apr. 23, 2020); *Paher v. Cegavske*, -- F. Supp. 3d --, 20-cv-243, 2020 WL 2089813 (D. Nev. Apr. 30, 2020);

WHEREAS the Parties agree that an expeditious resolution of this matter for the November General Election, in the manner contemplated by the terms of this Stipulation and Partial Consent Decree, will limit confusion and increase certainty surrounding the November General Election, including in the days remaining before the September 18, 2020 deadline for absentee ballot preparation, and is in the best interests of the health, safety, and constitutional rights of the citizens of Minnesota, and, therefore, in the public interest;

WHEREAS the Parties wish to avoid the burden and expense of litigation over an expedited preliminary injunction for the November General Election;

WHEREAS the Parties, in agreeing to these terms, acting by and through their counsel, have engaged in arms' length negotiations, and both Parties are represented by counsel knowledgeable in this area of the law;

WHEREAS, on June 17, 2020, this Court signed and approved a stipulation and partial consent decree implementing substantially similar relief for the August 11, 2020 primary election;

WHEREAS voters have been informed about the rule changes for the primary election, voting has begun with those rules in place, and it would minimize confusion to have consistent rules regarding how elections are conducted during this pandemic;

WHEREAS it is the finding of this Court, made on the pleadings and upon agreement of the Parties, that: (i) the requirements of the Minnesota Constitution, Art. I, §§ 2, 7, and Art. VII, § 1, and U.S. Constitution, Amend. I and XIV, will be carried out by the implementation of this Partial Consent Decree, (ii) the terms of this Partial Consent Decree constitute a fair and equitable settlement of the issues raised with respect to the November General Election, (iii) this Partial

Consent Decree is intended to and does resolve Plaintiffs' claims with respect to the November General Election; and (iv) this Partial Consent Decree is not intended to and does resolve Plaintiffs' claims generally or with respect to any election held after the November General Election;

NOW, THEREFORE, upon consent of the Parties, in consideration of the mutual promises and recitals contained in this Stipulation and Partial Consent Decree, including relinquishment of certain legal rights, the Parties agree as follows:

II. JURISDICTION

This Court has jurisdiction over the subject matter of this action pursuant to Minn. Const. Art. VI, § 3 and Minn. Stat. § 484.01 and has jurisdiction over the Parties herein. The Court shall retain jurisdiction of this Stipulation and Consent Decree for the duration of the term of this Partial Consent Decree for purposes of entering all orders, judgments, and decrees that may be necessary to implement and enforce compliance with the terms provided herein.

III. PARTIES

This Stipulation and Partial Consent Decree applies to and is binding upon the following parties:

- A. The State of Minnesota by Steve Simon, Secretary of State of Minnesota; and
- B. All Plaintiffs.

IV. SCOPE OF CONSENT DECREE

A. This Stipulation and Partial Consent Decree constitutes a partial settlement and resolution of Plaintiffs' claims against Defendant pending in this Lawsuit. Plaintiffs recognize that by signing this Stipulation and Partial Consent Decree, they are releasing any claims under the Minnesota or U.S. Constitutions that they might have against Defendant with respect to the

Witness Requirement and Election Day Receipt Deadline in the November General Election. Plaintiffs' release of claims will become final upon the effective date of this Stipulation and Partial Consent Decree.

B. The Parties to this Stipulation and Partial Consent Decree acknowledge that this does not resolve or purport to resolve any claims pertaining to the constitutionality or enforcement of the Witness Requirement and Election Day Receipt Deadline for elections held after the November General Election. Neither Party releases any claims or defenses with respect to the Witness Requirement and Election Day Receipt Deadline related to elections occurring after the November General Election.

C. The Parties to this Stipulation and Partial Consent Decree further acknowledge that by signing this Stipulation and Partial Consent Decree, the Parties do not release or waive the following: (i) any rights, claims, or defenses that are based on any events that occur after they sign this Stipulation and Partial Consent Decree, (ii) any claims or defenses that are unrelated to the allegations filed by Plaintiffs in this Lawsuit, and (iii) any right to institute legal action for the purpose of enforcing this Stipulation and Partial Consent Decree or defenses thereto.

D. By entering this Stipulation and Partial Consent Decree, Plaintiffs are partially settling a disputed matter between themselves and Defendant. The Parties are entering this Stipulation and Partial Consent Decree for the purpose of resolving a disputed claim, avoiding the burdens and costs associated with the costs of a preliminary injunction motion and hearing, and ensuring both safety and certainty in advance of the November General Election. Nothing in this Stipulation and Partial Consent Decree constitutes an admission by any party of liability or wrongdoing. The Parties acknowledge that a court may seek to consider this Stipulation and Partial

Consent Decree, including the violations alleged in Plaintiffs' Complaint, in a future proceeding distinct from this Lawsuit.

**V.
CONSENT DECREE OBJECTIVES**

In addition to partially settling the claims of the Parties, the objective of this Stipulation and Partial Consent Decree is to ensure that Minnesota voters can safely and constitutionally exercise the franchise in the November General Election, and to ensure that election officials have sufficient time to implement changes for the November General Election and educate voters about these changes before voting begins.

**VI.
INJUNCTIVE RELIEF**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED FOR THE REASONS
STATED ABOVE THAT:**

A. For the November General Election Defendant shall not enforce the Witness Requirement, with respect to voting only, as set out in Minn. Stat. § 203B.07, subd. 3 (1) and (2), that each absentee ballot and designated mail ballot for voters previously registered in Minnesota be witnessed by a registered Minnesota voter, a notary, or person otherwise authorized to administer oaths, Minn. Stat. § 204B.45 - .46, and Minn. R. 8210.3000.

B. For the November General Election Defendant shall not enforce the Election Day Receipt Deadline for mail-in ballots, as set out in Minn. Stat. §§ 203B.08 subd. 3, 204B.45, and 204B.46 and Minn. R. 8210.2200 subp. 1, and 8210.3000, that ballots be received by 8:00 p.m. on Election Day if delivered by mail. Instead, the deadline set forth in paragraph VI.D below shall govern.

C. Defendant shall issue guidance instructing all relevant local election officials to count all absentee and designated mail ballots in the November General Election, as long as they are otherwise validly cast by voters who registered in Minnesota before casting their absentee or designated mail ballot. No witness signature will be required on those ballots.

D. Defendant shall issue guidance instructing all relevant local election officials to count all mail-in ballots in the November General Election that are otherwise validly cast and postmarked on or before Election Day but received by 8 p.m. within 5 business days of Election Day (i.e., seven calendar days, or one week). For the purposes of this Stipulation and Partial Consent Decree, postmark shall refer to any type of imprint applied by the United States Postal Service to indicate the location and date the Postal Service accepts custody of a piece of mail, including bar codes, circular stamps, or other tracking marks. Where a ballot does not bear a postmark date, the election official reviewing the ballot should presume that it was mailed on or before Election Day unless the preponderance of the evidence demonstrates it was mailed after Election Day.

E. Defendant shall issue instructions to include with all absentee ballots and designated mail ballots—or issue guidance instructing all relevant local election officials to modify, amend, or print the instructions accompanying each absentee ballot and designated mail ballot—to inform voters that any absentee ballot or designated mail ballot cast by a previously registered voter in the November General Election without a witness signature will not be rejected on that basis and that the witness signature line and associated language for witnesses to certify a previously registered voter's ballot, Minn. Stat. §§ 203B.07, subd. 3 (1) and (2), 204B.45, 204B.46; Minn. R. 8210.2200, subp.1; Minn. R. 8210.3000, be removed from the certification of

eligibility altogether for absentee ballot and designated mail ballot materials sent to previously registered voters.

F. Defendant shall issue instructions to include with all absentee and designated mail ballots—or issue guidance instructing all relevant local election officials to modify, amend, or print instructions accompanying each absentee and designated mail ballot—to inform voters that any absentee or designated mail ballot cast in the November General Election and postmarked on or before Election Day and received by 8 p.m. within 5 business days of Election Day (i.e., seven calendar days, or one week) will be counted.

G. Defendant shall take additional reasonable steps to inform the public that the Witness Requirement for voting will not be enforced for the November General Election and issue guidance instructing all relevant city and county election officials to do the same.

H. Defendant shall take additional reasonable steps to inform the public that the Election Day Receipt Deadline will not be enforced for the November General Election and that any absentee or designated mail ballot cast in the November General Election and postmarked on or before Election Day and received by 8 p.m. within 5 business days of Election Day (i.e., seven calendar days, or one week) will be counted.

I. Plaintiffs will withdraw their Motion for Temporary Injunction for the November General Election, filed on July 2, 2020, and will not file any further motions for injunctive relief for the November General Election based on the claims raised in their Complaint of May 13, 2020.

J. In accordance with the terms of this Stipulation and Partial Consent Decree, the Parties shall each bear their own fees, expenses, and costs incurred as of the date of this Order with respect to Plaintiffs' claims raised as to the November General Election against Defendant.

VII. ENFORCEMENT AND RESERVATION OF REMEDIES

The Parties to this Stipulation and Partial Consent Decree may request relief from this Court if issues arise concerning the interpretation of this Stipulation and Partial Consent Decree that cannot be resolved through the process described below. This Court specifically retains continuing jurisdiction over the subject matter hereof and the Parties hereto for the purposes of interpreting, enforcing, or modifying the terms of this Stipulation and Partial Consent Decree, or for granting any other relief not inconsistent with the terms of this Partial Consent Decree, until this Partial Consent Decree is terminated. The Parties may apply to this Court for any orders or other relief necessary to construe or effectuate this Stipulation and Partial Consent Decree or seek informal conferences for direction as may be appropriate. The Parties shall attempt to meet and confer regarding any dispute prior to seeking relief from the Court.

If either Party believes that the other has not complied with the requirements of this Stipulation and Partial Consent Decree, it shall notify the other Party of its noncompliance by emailing the Party's counsel. Notice shall be given at least one business day prior to initiating any action or filing any motion with the Court.

The Parties specifically reserve their right to seek recovery of their litigation costs and expenses arising from any violation of this Stipulation and Partial Consent Decree that requires either Party to file a motion with this Court for enforcement of this Stipulation and Partial Consent Decree.

VIII. GENERAL TERMS

A. Voluntary Agreement. The Parties acknowledge that no person has exerted undue pressure on them to sign this Stipulation and Partial Consent Decree. Each Party is voluntarily

choosing to enter into this Stipulation and Partial Consent Decree because of the benefits that are provided under the agreement. The Parties acknowledge that they have read and understand the terms of this Stipulation and Partial Consent Decree; they have been represented by legal counsel or had the opportunity to obtain legal counsel; and they are voluntarily entering into this Stipulation and Partial Consent Decree to resolve the dispute among them.

B. Severability. The provisions of this Stipulation and Partial Consent Decree shall be severable, and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Stipulation and Partial Consent Decree shall remain in full force and effect.

C. Agreement. This Stipulation and Partial Consent Decree is binding. The Parties acknowledge that they have been advised that (i) the other Party has no duty to protect their interest or provide them with information about their legal rights, (ii) signing this Stipulation and Partial Consent Decree may adversely affect their legal rights, and (iii) they should consult an attorney before signing this Stipulation and Partial Consent Decree if they are uncertain of their rights.

D. Entire Agreement. This Stipulation and Consent Decree constitutes the entire agreement between the Parties relating to the constitutionality and enforcement of the Witness Requirement and Election Day Receipt Deadline as they pertain to the November General Election. No Party has relied upon any statements, promises, or representations that are not stated in this document. No changes to this Stipulation and Partial Consent Decree are valid unless they are in writing, identified as an amendment to this Stipulation and Partial Consent Decree, and signed by all Parties. There are no inducements or representations leading to the execution of this Stipulation and Partial Consent Decree except as herein explicitly contained.

E. Warranty. The persons signing this Stipulation and Partial Consent Decree warrant that they have full authority to enter this Stipulation and Partial Consent Decree on behalf of the Party each represents, and that this Stipulation and Partial Consent Decree is valid and enforceable as to that Party.

F. Counterparts. This Stipulation and Partial Consent Decree may be executed in multiple counterparts, which shall be construed together as if one instrument. Any Party shall be entitled to rely on an electronic or facsimile copy of a signature as if it were an original.

G. Effective Date. This Stipulation and Partial Consent Decree is effective upon the date it is entered by the Court. Defendant agrees to continue to initiate and implement all activities necessary to comply with the provisions of this Stipulation and Partial Consent Decree pending entry by the Court.

IX. TERMINATION

This Stipulation and Partial Consent Decree shall remain in effect through the certification of ballots for the November General Election. The Court shall retain jurisdiction to enforce the terms of the Partial Consent Decree for the duration of this Partial Consent Decree. This Court's jurisdiction over this Stipulation and Partial Consent Decree shall automatically terminate after the certification of all ballots for the November General Election.

THE PARTIES ENTER INTO AND APPROVE THIS STIPULATION AND PARTIAL CONSENT DECREE AND SUBMIT IT TO THE COURT SO THAT IT MAY BE APPROVED AND ENTERED. THE PARTIES HAVE CAUSED THIS STIPULATION AND CONSENT DECREE TO BE SIGNED ON THE DATES OPPOSITE THEIR SIGNATURES.

SECRETARY OF STATE OF MINNESOTADated: July 17, 2020By: Steve Simon
Steve Simon
Secretary of State**GREENE ESPEL PLLP**Dated: July 17, 2020By: /s/ Sybil L. Dunlop
Sybil L. Dunlop (Reg. No. 390186)
Samuel J. Clark (Reg. No. 388955)
222 South Ninth Street, Suite 2200
Minneapolis, MN 55402
Phone: (612) 373-0830
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*Admitted pro hac vice

Attorneys for Plaintiffs

**IT IS SO DECREED AND ORDERED. JUDGMENT SHALL BE ENTERED IN
ACCORDANCE WITH THE FOREGOING CONSENT DECREE.**

Dated: August 3, 2020



Grewing, Sara (Judge)
Aug 3 2020 3:05 PM

The Honorable Judge Sara Grewing
Judge of District Court

EXHIBIT C
TO THE DECLARATION OF
JASON MARISAM

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Robert LaRose, Teresa Maples,
Mary Samson, Gary Severson,
Minnesota Alliance for Retired Americans Educational Fund
,

62-CV-20-3149

Plaintiffs,

ORDER

vs.

Minnesota Secretary of State, Steve Simon, in his official capacity,
Defendant.

The above named matter came before this Court on July 31, 2020 on Proposed Intervenor the Republican Party of Minnesota, the Republican National Committee, and the National Republican Congressional Committee's motion to intervene, and Plaintiffs' and Defendant's requests that the Court enter the Proposed General Election Consent Decree.

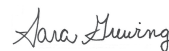
Based on the pleadings, arguments and submissions of counsel, the Court makes the following:

Order

1. The motion of the Republican Party of Minnesota, the Republican National Committee, and the National Republican Congressional Committee's ("the Committees") to intervene as a matter of right is **denied**.
2. The motion of the Committees to intervene on a permissive basis is **granted**.
3. The request by the Committees to vacate the primary election consent decree is **denied**.
4. The request by the Plaintiffs and the Defendant to enter the General Election Consent Decree is **granted**.
5. The attached memorandum is incorporated herein.

Dated: August 3, 2020

BY THE COURT:


Grewing, Sara (Judge)
Aug 3 2020 3:05 PM

Sara Grewing
Judge of District Court

Plaintiffs Robert LaRose, Teresa Maples, Mary Samson, Gary Severson, and Minnesota Alliance for Retired Americans Educational Fund, have sued Secretary of State Steve Simon alleging that Minnesota's witness requirement for absentee ballots as well as the postmark rule for receipt of absentee ballots are unconstitutional burdens on the right to vote as applied during the COVID-19 pandemic.

BACKGROUND

1. The COVID-19 pandemic

A novel coronavirus has killed more than 154,471 Americans and continues to spread throughout the country. Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/us-cases-deaths.html>. As of this writing, more than 56,560 Minnesotans have been infected with COVID-19 and 1,616 have died. Minnesota Dept. of Health <https://www.health.state.mn.us/diseases/coronavirus/situation.html> (last visited August 3, 2020).

The virus spreads through interpersonal contact and through respiratory droplets spread by a carrier of the virus. *See* Troisi Expert Decl. ¶¶ 10, 17–19. COVID-19 is highly contagious, and these numbers likely underrepresent the virus's spread. *Id.*

Americans will need to take extensive precautions to protect themselves from COVID-19, including by social distancing, until a vaccine is developed and made available for mass distribution, which will not be until 2021 at the earliest. Troisi Expert Decl. ¶¶ 22–26; Ex. 4, at 4. In the meantime, the CDC estimates 92 to 95 percent of Americans remain susceptible to the virus. Ex. 5; *see also* Troisi Expert Decl. ¶¶ 12–13. The CDC Director predicts that this fall—right when Americans start heading to the polls to vote in the general election—is likely to see another wave of infections “even more difficult than the one we just went through.” Ex. 6, at 1; *see also* Troisi

Expert Decl. ¶¶ 22, 28.

2. Minnesota's response

Governor Tim Walz anticipates that Minnesota might be one of the last states to reach a peak of infections, and the first peak is expected to come at the same time other states begin to see a second wave of illnesses this fall. Ex. 7, at 3. In the meantime, 34 states—including Minnesota—are currently experiencing an increase in cases as states begin to reopen from shelter-in-place orders. Troisi Expert Decl. ¶¶ 9, 21–22.

On March 13, 2020, Governor Tim Walz declared a peacetime state of emergency in response to the public health threat posed by COVID-19, “to protect all Minnesotans by slowing the spread of COVID-19” in Executive Order 51 20-01. On March 25, Governor Walz directed all Minnesotans to remain in their homes subject to some limited exceptions, pursuant to Executive Order 20-20. Governor Walz extended that order's restrictions on April 13 in Executive Order 20-35, on May 13 in Executive Order 20-53, on June 12 in Executive Order 20-75, and again on July 13 in Executive Order 20-78. The current peacetime state of emergency is set to expire on August 12, 2020.

In addition, the Minnesota Department of Health (“MDH”) has issued guidance urging all Minnesotans to “[s]tay home as much as possible, stay at least 6 feet from other people.” Moran Decl., Ex. 15. The MDH further recommends against large public gatherings, especially indoor gatherings, because when groups of people gather in places like churches, schools, or other public buildings, transmission can be “particularly effective.” *Id.*, Ex. 17.

According to the 2014-2018 American Community Survey, between 26 and 28.4% of households in Minnesota consist of an individual living alone. Maples Decl. ¶¶ 10–11. Nearly 40% of those living alone are age 65 or older. *Id.* Another 175,000 households consist of a single

parent with children under the age of 18. *Id.* In total, over 36% of individuals in Minnesota live in a household without another person who may be able to serve as a witness for a mail absentee ballot. *Id.*

Two of the named Plaintiffs here, Teresa Maples and Mary Samson live alone and are immunocompromised with mobility issues. Maples ¶ 10; Samson ¶ 6. Plaintiffs assert that these voters and others like them must not only find someone to witness their ballot, but they must leave their home or invite someone into it to obtain the witness's signature, risking exposure to the virus and diminishing the safety benefits of voting by mail. *See* Troisi Expert Decl. ¶¶ 10, 17–20, 29–31.

4. Minnesota's absentee ballot requirements

Under Minnesota law, any eligible voter may vote by absentee ballot. *See* Minn. Stat. § 203B.02, subd. 1. A voter may apply for an absentee ballot at any time at least one day before the election. Minn. Stat. § 203B.04. When the county auditor or municipal clerk receives an absentee ballot application, the registrar mails the applicant a sealed envelope containing the unmarked ballot, instructions for completing the ballot, and an envelope for resealing the marked ballot. Minn. Stat. § 203B.07, subd. 1–3.

The resealing envelope has “[a] certificate of eligibility to vote by absentee ballot printed on the back” on which the voter must include personal identification information, such as the last four digits of their social security number, or their driver's license number, or state identification number. This certificate “must also contain a statement to be signed and sworn by the voter indicating that the voter meets all the requirements established by law for voting by absentee ballot.” *Id.* at subd. 3.

After a voter marks her ballot, she must (1) seal the ballot in its envelope, (2) sign the eligibility certificate on the back, and (3) have a witness sign the eligibility certificate. *Id.* at subd 3. The witness must be “registered to vote in Minnesota [or be] a notary public or other individual authorized to administer oaths.” *Id.* By signing the eligibility certificate, the witness attests that the ballot was shown to him “unmarked,” that “the voter marked the ballot in [his] presence without showing how they were marked,” or if unable to physically mark the ballot, “that the voter directed another individual to mark them.” *Id.*

When absentee ballots are counted, two or more election officers form a “ballot board” to examine each absentee ballot envelope. As relevant here, a ballot will be deemed accepted if a majority of the ballot board is satisfied that: (1) the voter’s name and address match her application; (2) the signed envelope matches the identification number on the application; (3) the envelope includes a “certificate [that] has been completed,” including a witness signature; and (4) the voter has not voted twice in that election. Minn. Stat. § 203B.121, subds. 2(b)(1–6).

A ballot must be rejected if any of these criteria – including lacking a witness signature – are not satisfied. Minn. Stat. § 203B.121, subd. 2(c)(1). Moreover, a ballot must be received on Election Day by 8:00 pm in order to be counted. §§ 203B.08 subd. 3; 204B.45; 204B.46, Minn. R. 8210.2200, subp. 1 & 8210.3000.

5. Post Office Concerns in Minnesota and Nationwide

Based on data from other states, as well as Minnesota’s historically high voter turnout rate, experts anticipate that as many as 1.5 million Minnesotans may cast their ballots via mail in November 2020. Mayer Aff ¶ 66. More than 500,000 ballots have been requested so far for Minnesota’s August 11 primary, compared with 54,000 requests made by this time in 2018. *See*, Kim Hyatt, *COVID-19 Sparks 'Tidal Wave' of Mail-In Ballots Across Minnesota*, Minneap. Star-

Trib. (August 2, 2020), <https://www.startribune.com/covid-19-sparks-tidal-wave-of-mail-in-ballots-across-minnesota/571982202/>.

Other states across the country have seen the increase in absentee balloting due to COVID-19 stretch the capacity of their election officials and the U.S. Postal Service. See Michelle Ye Hee Lee and Jacob Bogage, *Postal Service Backlog Sparks Worries that Ballot Delivery Could be Delayed in November*, Wash. Post, (July 30, 2020), https://www.washingtonpost.com/politics/postal-service-backlog-sparks-worries-that-ballot-delivery-could-be-delayed-in-november/2020/07/30/cb19f1f4-d1d0-11ea-8d32-1ebf4e9d8e0d_story.html. In states that held primary elections between April and June, the number and percentage of votes cast by mail increased dramatically. Mayer Aff. at ¶ 25. In Wisconsin's April 7, 2020 primary, over 60% of ballots were cast by mail, compared to 5.5% in 2018 (Wisconsin Elections Commission 2020). In Kentucky's June 24, 2020 presidential primary, 80% of voters cast a mail ballot (Gardner, Lee, and Viebeck 2020), compared to 1.5% in 2018. In Nebraska, 84.2% voted by mail in the May 12, 2020 primary, compared to 24% in 2018 (Nebraska Secretary of State 2020). And in Georgia, 57% voted by mail in the June 9, 2020 primary, compared to 5.6% in 2018. *Id.*

In both Ohio and Wisconsin, the increase in mail volume stretched the capacity of the U.S. Postal Service. Mayer Aff. at ¶ 32. In Ohio, voters expressed frustration with delays in obtaining and submitting their absentee ballots. *Id.* Five days before the April 28 postmark deadline, the Ohio Secretary of State Frank LaRose wrote the Ohio congressional delegation, informing them that problems with mail delivery were affecting absentee voting:

As Ohioans rush to submit their vote-by-mail requests, and our boards work overtime to fulfill them, we are finding that the delivery of the mail is taking far longer than what is published by the United States Postal Service (USPS) as expected delivery times. Instead of first-class mail taking 1-3 days for delivery, we have heard wide reports of it taking as

long as 7-9 days. As you can imagine, these delays mean it is very possible that many Ohioans who have requested a ballot may not receive it in time.

Id.

In addition, the Deputy Assistant Inspector General for the United States Postal Service has noted that Minnesota's voters are at "high risk" of their ballots not being delivered to voters before an election. Pl Ex. 2.

Procedural History

On May 13, 2020, Plaintiffs Robert LaRose, Teresa Maples, Mary Samson, Gary Severson, and the Minnesota Alliance for Retired Americans Educational Fund sued Minnesota Secretary of State Steve Simon seeking to enjoin both the enforcement of Minnesota's witness requirement for absentee ballots, as well as the requirement that all absentee ballots be received by 8:00 pm on Election Day.

On June 16, 2020, the Plaintiffs and the Defendant entered into a consent decree in which the Defendant agreed, for the August 11 primary, that he would not enforce the witness requirement for absentee ballots. Primary Consent Dec. at 7. The Defendant further agreed to accept any otherwise validly cast ballot so long as it was postmarked and received at least one day prior to the county canvas (*i.e.* within two days of the Election Day for the August Primary.) *Id.*

On June 18, the Republican Party of Minnesota, the Republican National Committee, and the National Republican Congressional Committee ("the Committees") filed their motion to intervene and request for an expedited hearing to be heard on the merits of their opposition to the primary consent decree. The Court denied the Committees request for an expedited hearing since they were not parties to the litigation, but allowed the Committees to provisionally participate in briefing and argument on July 31, 2020.

On July 2, Plaintiffs filed their motion for a temporary injunction seeking essentially the same relief in the Primary Consent Decree for the general election. On July 17, Plaintiffs and the Defendant filed a stipulation and partial consent decree and asked the Court to enter the agreement as it pertains to the November 2020 general election. The parties sought immediate entry of their consent decree, which the court denied, given the pending intervention motion. The Court then heard all pending matters for argument on July 31, 2020.

ANALYSIS

The Republican Committees' Motions to Intervene

The Proposed Intervenors moved to intervene as a matter of right under Minn. R. Civ. P. 24.01, or in the alternative for permissive intervention under Minn. R. Civ. P. 24.02

A. The Republican Committees are not entitled to intervene as a matter of right

Rule 24.01 provides:

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Specifically, a party seeking intervention of right must demonstrate: (1) the application for intervention was timely; (2) an interest relating to the property or transaction which is the subject of the action; (3) circumstances demonstrating that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest; and (4) the party is not adequately represented by the existing parties. *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W. 2d 197, 207 (Minn. 1986) (citing Minn. R. Civ. P. 24.01). Would-be intervenors must satisfy all of these factors. *Luthen v. Luthen*, 596 N.W.2d 278, 280–81 (Minn. App. 1999).

1. The Republican Committees' attempted intervention was timely

The Republican Committees contend that they acted with diligence in filing their motion. They contend that they sought intervention less than two days after the Plaintiffs and the Defendant filed their proposed consent decree eliminating the witness and Election Day receipt requirements for the Primary Election. The Committees assert that discovery has not begun, no scheduling order has been entered by the Court, and “no rights have yet been adjudicated between the original parties and no new issues have been introduced which will prejudice either of the original parties.” *Engelrup v. Potter*, 224 N.W.2d 484, 489 (Minn. 1974) (allowing intervention 10 months after action commenced, though not in an elections case); *Lamb-Weston/RDO v. Cnty. of Hubbard*, No. C5-97-187, C5-98-183, 1998 WL 321023, at *2 (Minn. Tax Ct. June 15, 1998) (motion for intervention timely where “discovery had just begun”).

Plaintiffs strongly urge the Court to find that the Committees were not timely in their motion to intervene that came five weeks after the filing of the summons and complaint. Plaintiffs assert that the need for expediency is obvious, and their month-long delay in attempting to intervene is untimely.

Because the notice to intervene was filed at the earliest stage of this litigation, before discovery began and the Court heard the motions for injunctive relief, the court finds that the Republican Committees made a timely application.

2. The Republican Committees have not demonstrated a sufficient enough interest in the enforcement of the absentee ballot statute to justify intervention

The second factor directs this Court to evaluate whether the Republican Committees have an interest relating to the property or transaction which is the subject of this action. *Schumacher*, 392 N.W. 2d at 197. In order to intervene as a matter of right, Proposed Intervenors must claim “an interest relating to the property or transaction which is the subject of the action.” *Miller v.*

Astleford Equip. Co., 332 N.W.2d 653, 654 (Minn. 1983). They “must show an interest in the litigation and that [they] will either gain or lose by the judgment between the original parties.” *Veranth v. Moravitz*, 284 N.W. 849, 851 (Minn. 1939). Interests that are “speculative” are insufficient; they must be “direct, substantial and legally protectable.” *Standard Heating & Air Conditioning Co. v. City of Minneapolis*, 137 F.3d 567, 571 (8th Cir. 1998). Similarly, “[a]n undifferentiated generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right.” *Dalton v. Barrett*, No. 2:17-CV-04057, 2019 WL 3069856, at *4 (W.D. Mo. July 12, 2019).

The Republican Committees assert the following factors as the basis for their intervention:

- 1) The Committees’ support of free and fair elections for all Minnesotans;
 - 2) The preservation of existing state laws; and
 - 3) The interest in ensuring that the Committees are not subject to a broader range of competitive tactics than state law would otherwise allow. *See* PO MTI 11, 12
- a. The support of free and fair elections for all Minnesotans and the preservation of existing law are interests too generalized to support intervention**

Supporting free and fair elections is a laudable goal, and one that all Minnesotans should share. The Republican Committees’ assertion of this goal as a particularized right to support intervention is misplaced. Generalized interests are insufficient to support intervention under Rule 24. *See Chiglo v. City of Preston*, 104 F.3d 185, 187 (8th Cir. 1997) (intervention improper where proposed intervenors asserted “a generalized interest in the public benefits” of enforcing an ordinance).

Similarly, an interest in preserving the statutory status quo is a goal that could be shared by millions of Minnesotans. A general ideological interest in enforcing the current law is insufficient to support intervention, particularly when the statutes at issue do not involve the

regulation of a party's conduct. *See Coal. to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 782 (6th Cir. 2007).

b. The preservation of a competitive environment is not sufficient as a matter of law to support intervention as a matter of right in a case involving the witness and Election Day receipt deadline requirements

The Republican Committees rely primarily on *Shays v. Fed. Election Comm'n*, in support of their argument that protecting the competitive electoral environment is sufficient to justify intervention. 414 F.3d 76, 85 (D.C. Cir. 2005). In *Shays*, the United States Court of Appeals for the District of Columbia recognized that candidates for public office had standing to challenge Federal Election Commission's regulations under the Bipartisan Campaign Finance Reform Act of 2002. *Id.* at 83. The court reasoned that, as candidates for office, the proposed plaintiffs were among those who benefit from BCRA's restrictions on practices Congress believed to be corrupting. *Id.* Moreover, the court surmised that no one would suffer more directly than candidates if political rivals were to get elected using illegal financing. *Id.*

The Court finds the Committees' reliance on *Shays* is somewhat misplaced. This case involves a determination of who is allowed to vote safely, not the regulation of political parties' expenditure of resources. The Committees did not address *how* they would allocate their resources differently, for example, if Ms. Maples or Ms. Samson voted without the signature of a witness or had their ballots postmarked on Election Day. When pressed at the hearing, the Committees did not claim that a change to the absentee voting requirements would directly harm their electoral prospects, cause them to spend more money, or burden the campaign activity, as was at issue in *Shays*. *Id.*

c. The Republican Committees are not the "mirror image" of the Plaintiffs

The Committees also allege that their intervention is justified as a matter of right because they are the “mirror image” of the Plaintiffs. The Committees rely on *Democratic Nat’l Comm. v. Bostelmann*, in which the U.S. District Court for the Western District of Wisconsin granted intervention to the Republican National Committee and Republican Party of Wisconsin in a case brought by the Democratic National Committee and Democratic Party of Wisconsin. No. 20-cv-249, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020).

The Plaintiffs in *Democratic National Committee* are different than the parties at issue here. Clearly, if the Plaintiffs in this case were the opposing committees for President or the Democratic National Committee in general, there would be no doubt that the Committees would be entitled to intervention as a matter of right, as “mirror image” parties. That is not the case here – organizational Plaintiffs are a 501(c)(4) nonprofit made up of mostly retirees from public and private sector unions. There is nothing in the record to suggest that the Committees’ interest “mirrors” that of the Plaintiffs or their members.

3. The Republican Committees have not demonstrated an interest that would be impaired or impeded by the non-enforcement of the witness requirements

The third factor directs this Court to consider the circumstances revealing that the disposition of the action may as a practical matter impair or impede the party’s ability to protect that interest. *Schumacher*, 392 N.W.2d 197 at 207. This factor should be viewed from a practical standpoint rather than one based on strict legal criteria. *Id.*

The Committees argue that if the Plaintiffs’ action succeeds, then the witness requirements and the Election Day receipt deadline, and their safeguards against voter fraud, ballot tampering, and undue influence in voting will be upended in the run-up to a general election. The Committees argue that Plaintiffs’ lawsuit and the parties’ proposed consent decree aims to “short circuit the democratic process” by enjoining in their entirety two state laws that “embody[] the will of the

people” and reflect the Legislature’s appropriate effort to uphold the integrity of Minnesota’s elections. *See* Committees’ Br. (citing *Voting for Am., v. Steen*, 732 F.3d 382 (5th Cir. 2013)).

The Court remains concerned that the Committees have not demonstrated *how* the waiver of the witness requirement or the Election Day receipt deadline would undermine electoral integrity. There is nothing of note in the record that suggests that waiving the witness requirement or counting otherwise valid ballots postmarked by Election Day would result in fraud. Certainly, there are safeguards in place to prevent such fraud, which is punishable as a felony in Minnesota.

Moreover, the Committees’ interest in Minnesota holding “free and fair elections” is indistinguishable from the interest of any Minnesota voter. The relief sought by the Plaintiffs and contemplated in part by the consent decree are non-partisan: a suspension of the witness requirement and the Election Day receipt deadline during the pendency of the COVID-19 epidemic. The benefits of the relief sought will accrue equivalently to all voters, whether they cast their votes for Democrats, Republicans, Independents, or the Green Party—no voters would be obligated to endanger themselves and their community to exercise their right to vote, and those who cast their ballots on Election Day would be counted. The Committees present no evidence that the outcome of this litigation will specifically disadvantage their candidates or the voters they represent.

4. The Secretary of State does not adequately represent the Committees’ interest

The final factor for consideration by this Court relates to the adequacy of the representation of the Republican Committees’ interest by the Defendant. *Schumacher*, 392 N.W.2d 197 at 207. The inquiry here is whether the Secretary of State and its representation by the Office of the Minnesota Attorney General would sufficiently represent the interests of the Republican Committees.

The Committees argue that they have a minimal burden of showing that the existing parties may not adequately represent their interests. *Faribo Farms v. County of Dodge*, 464 N.W.2d 568, 570 (Minn. App. 1990). The Committees argue that two decisions made recently by the Secretary to abandon any defense of the witness requirements without notice to the public or the Committees are enough to justify a finding that the Secretary's representation is insufficient. Further, the Committees argue that, as discussed below, there are courts across the country that have found the witness requirement constitutional.

As the Committees have plainly stated, they should not be forced to rely on "doubtful friends" to represent their interests. Broadly, the Committees maintain that courts express skepticism over government entities serving as adequate advocates for private parties, "often conclud[ing] that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003).

The Defendant contends that courts presume that the defense of a statute from a state official is adequate as a matter of law "because in such cases the government is presumed to represent the interests of all its citizens." *N.D. ex rel. Stenehjem v. United States*, 787 F.3d 918, 921 (8th Cir. 2015). The Secretary maintains that he is providing an adequate defense to the challenged laws and argues that this Court need look no further than his aggressive defense of the ballot request statute in this case and his opposition to Plaintiffs' motion for injunctive relief.

Plaintiffs advance a similar argument, and argue that the Committees bear a heavier burden on this factor because the Secretary has a constitutional and statutory mandate to support the Committees' interests. *Swinton v. SquareTrade, Inc.*, 960 F.3d 1001, 1005 (8th Cir. 2020); *see also Oakland Bulk & Oversized Terminal, LLC v. City of Oakland*, 960 F.3d 603, 620 (9th Cir. 2020) ("To establish inadequate representation, Intervenor needed to make a "very compelling

showing” because: (1) a governmental entity (Oakland) was already acting on behalf of their interests in this action; and (2) Intervenor and Oakland share the same ultimate objective of upholding the Ordinance and Resolution.”).

This Court is persuaded by the authority advanced by Plaintiffs which raises the bar for demonstrating inadequacy when one of the parties is an arm or agency of the government and the case concerns a matter of sovereign interest. *Stenehjem*, 787 F.3d 918 at 921. The Court is further persuaded, however, that the Committees have sufficiently demonstrated that inadequacy because the Secretary has twice conceded the witness requirement in *LaRose* as well as in United States District Court. *See League of Women Voters v. Simon*, No. 20-1205, Tr.1–13 (D. Minn. Jun. 23, 2020). For these reasons, the Court finds that the Committees’ interests are not sufficiently represented by the Secretary of State.

The Committees’ have failed to demonstrate factors two and three under Minn. R. Civ. P. 24.01 and *Schumacher*. Because the Committee must satisfy all four factors to succeed, their motion to intervene as a matter of right is denied. *Luthen*, 596 N.W.2d 278, at 281.

B. The Republican Committees are entitled to permissive intervention

Under Rule 24.02, a court may grant intervention “upon timely application . . . when an applicant’s claim or defense and the main action have a common question of law or fact.” Minn. R. Civ. P. 24.02. Moreover, in exercising its discretion under Rule 24.02, “the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” *Id.*

As discussed above, the Committees’ application to intervene is timely under both 24.01 and 24.02. *See, e.g., State ex rel. Lucero v. CSL Plasma, Inc.*, No. 27-CV-19-3629, 2020 WL 807356, at *10 (Minn. Dist. Ct. Feb. 12, 2020).

Second, it is undisputed that the Committees will raise defenses that share many common questions with the claims and defenses of the parties. Plaintiffs allege that the disputed statutes surrounding absentee balloting are unconstitutional. The Committees contend that these state election laws are valid and enforceable.

Third, the Committees argue that allowing their intervention will not lead to delay or prejudice. This case is in the earliest of stages, and Committees' participation will add no additional delay.

In considering the Committees' motion for permissive intervention, this Court is mindful of the arguments advanced by the Plaintiffs and the Defendant that the Court should evaluate whether granting permissive intervention would prompt other similarly situated non-parties to seek intervention. *Ohio Valley Environmental Coalition v. McCarthy*, 313 F.R.D. 10, 30 (S.D. W. Va. 2015). Certainly the risk of opening the door to a parade of would-be intervenors is significant, particularly when considering the general election is 92 days away. A strict adherence to the timeliness requirement of 24.02 should address the parties' very valid concerns.

In making its narrow ruling that permissive, though not mandatory, intervention is appropriate, this Court is mindful of the fact that public trust in government remains at an all-time low. *See i.e.* Matt Stevens, *Falling Trust in Government Makes It Harder to Solve Problems, Americans Say*, N.Y. Times, July 22, 2019 <https://www.nytimes.com/2019/07/22/us/politics/pew-trust-distrust-survey.html>. The once-in-a-century global pandemic and the attendant societal unease likely only exacerbates that anxiety and distrust. The Court is concerned that the denial of a seat at the litigation table to the Committees would only erode public confidence in the electoral process in this unique global moment. The Committees' motion for permissive intervention is granted.

The Plaintiffs' and Defendant's Motion to Approve the Consent Decree

At the outset, the Plaintiffs and Defendants disagree with the Committees on the legal standard under which this Court should review the proposed General Election Consent decree.¹ It is undisputed that a consent decree is the product of a negotiated agreement. *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. App. 2003); *see also Elsen v. State Farmers Mut. Ins.*, N.W.2d 652, 655 (Minn. 1945) (describing a consent decree as a “mere agreement of the parties under sanction of the court” to be interpreted as an agreement). While this Court may assess the fairness of such an agreement before approving it, “the court does not, in a consent decree, judicially determine the rights of the parties.” *Hentschel v. Smith*, 153 N.W.2d 199, 206 (Minn. 1967) (quoting *Hafner v. Hafner*, 54 N.W.2d 854, 858 (Minn. 1952)). Plaintiffs and Defendant argue that a trial court’s power to set aside a consent decree is limited to three instances: fraud, mistake, or the absence of real consent. *Hafner*, 54 N.W.2d at 857.

The Committees argue that the judicial review of a consent decree requires a far more thorough inquiry and fairness finding as articulated by the federal court, namely whether the plaintiff has made an adequate showing of a likelihood of success on the merits of the claim. *See Flinn v. FMC Corp.*, 528 F.2d 1169, 1172 (4th Cir. 1975). Courts can gauge “the fairness of a proposed compromise” only by “weighing the plaintiff’s likelihood of success on the merits against the amount and form of the relief offered.” *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981).²

¹ The Committees did not address the primary election consent decree at argument, nor did they petition any higher court for relief via writ following the Court’s entry of the primary election consent decree. Therefore, it is the Court’s position that primary election consent decree remains in place as entered, and that similar analysis regarding fairness applies to both agreements.

² As discussed above, this Court allowed the Committees to participate in the argument regarding the entry of the consent decree in the interest of judicial economy, despite not yet having determined at argument that they would be granted leave to intervene under Rule 24.02.

This Court is required and bound to follow Minnesota law interpreting the Minnesota Statutes. Because the Court would reach the same result under the federal standards, this Court will analyze the proposed entry of the consent decree under both Minnesota and federal law.

1. The entry of the proposed consent decree is appropriate under Minnesota law

Plaintiffs and Defendant assert that the Committees are relying on non-controlling federal law, and Plaintiffs assert that the court need look no further than *Hafner's* permissive language that a court “may look to see that a settlement is fair.” 54 N.W.2d at 858. It follows, Plaintiffs assert, that this Court should have no problem entering the Consent Decree, which is fair, preservative of the rights of the citizens of the State of Minnesota, and the agreement of the parties as the result of arms-length settlement negotiations.

It is undisputed that the proposed consent decree is non-partisan and waives the Witness Requirement and Election Day receipt deadline only with regard to the November 2020 election. The Plaintiffs and Defendant came to this agreement due to the fact that COVID-19 related illnesses and deaths in Minnesota continue to rise and have no real possibility of abatement by November. General Election Consent Decree at 2-3. If entered by this Court, Minnesotans will not have to risk their health and safety to comply with the Witness Requirement in order to vote absentee in the general election. The Consent Decree further affords Defendant sufficient time to provide instruction and certainty to voters and local election officials before absentee voting begins on September 18.

Perhaps most notably, the proposed Consent Decree reflects a limited compromise of Plaintiffs' claims, as it does not provide relief to Plaintiffs regarding their claim pertaining to universal mailing of absentee ballots.

The Committees offer no evidence that the Proposed General Election Consent Decree is the product of fraud, neglect or the absence of consent. As such, under Minnesota state law, the proposed consent decree should be entered.

2. The entry of the proposed consent decree is fair and appropriate under the federal standard because the Plaintiffs are likely to succeed on the merits of their claim

a. The U.S. District Court decision

Most significant to this Court, the Committees argue that this Court should decline to enter the proposed consent decree because the United States District Court for the District of Minnesota declined to enter a nearly identical consent decree for the August primary. *League of Women Voters v. Simon*, No. 20-1205, Tr. 1–13 (D. Minn. Jun. 23, 2020). As discussed at argument, this Court is deeply concerned about two courts in Minnesota reaching opposite conclusions, especially on something so essential to a functioning government as the right to vote.

Unlike the claims advanced in the U.S. District Court case, this case relies both on claims raised under the Minnesota Constitution and the U.S. Constitution. Compl. at 16. It is undisputed that Minnesota courts can find greater protections of individual rights than the U.S. Constitution. *Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005) (noting “it is now axiomatic that we can and will interpret our state constitution to afford greater protections of individual civil and political rights than does the federal constitution”). Moreover, this Court, unlike the U.S. District Court, is bound by *Erlandson v. Kiffmeyer*, in which the Minnesota Supreme Court found that election officials were required to mail replacement ballots to all voters who requested them following the death of Senator Paul Wellstone. 659 N.W.2d 724, 726 (Minn. 2003).

In writing for the Court, Chief Justice Blatz found as follows:

The purpose of the absentee ballot is to enfranchise those voters who cannot vote in person. To prohibit mailing of replacement absentee ballots to absentee voters who continue to be unable to vote or pick up a ballot in person disenfranchises the very people the absentee voter

laws are intended to benefit. In the total absence of any rational explanation, allowing some absentee voters to revote with replacement ballots but denying that opportunity to the very group for which absentee voting is designed by prohibiting the mailing of replacement absentee ballots is a denial of equal protection that requires remedial action.

Erlandson, 659 N.W.2d at 734.

As such, this Court is not bound by the same overbreadth reasoning that drew the federal court to the opposite conclusion.

b. Other federal and state Authority

i. The witness requirement

The Committees next assert that the proposed entry of the Consent Decree should be denied based on the authority from courts across the country that have upheld the witness requirements. The Committees cite one U.S. Supreme Court order and three cases from other jurisdictions that do not reflect the unique procedural posture of this case. *See Merrill v. People First of Ala.*, No. 19A1063, Order (S. Ct. July 2, 2020) (“Merrill Order”) (Justice Thomas granting a stay without analysis of an 11th Circuit ruling allowing curbside voting and exemptions from some absentee requirements in three counties in Alabama); *Democratic Nat’l Comm. v. Bostelmann*, No. 20-1538, 2020 WL 3619499 (7th Cir. Apr. 3, 2020) (finding that a Wisconsin U.S. District Court exceeded the limitations of appropriate injunctive relief); *Miller v. Thurston*, No. 20-2095, 2020 WL 3240600 (8th Cir. June 15, 2020) (addressing the “wet signature” requirement for Alabama witnesses); *Clark v. Edwards*, -- F. Supp. 3d --, 2020 WL 3415376 (M.D. La. June 22, 2020) (dismissed on standing).³

³ The Committees also offer *Nielsen v. DeSantis* in support of its argument that other courts have found the witness requirement constitutional, but this case. Dealt primarily with ballot deadline issues and ballot access for blind voters. No. 4:20-cv-236 (N.D. Fla. June 24, 2020)

The Plaintiffs in turn offer three cases from other districts that *do* more closely reflect the unique procedural posture of this case, namely *Thomas v. Andino*, - F. Supp. 3d. -, 2020 WL 2617329 (D.S.C. May 25, 2020) (enjoining the South Carolina State Election Commission from enforcing the witness requirement); *League of Women Voters of Va. v. Va. State Bd. of Elections*, - F. Supp. 3d --, 2020 WL 2158249 (W.D. Va. May 5, 2020) (approving a consent decree between the parties that would enjoin the enforcement of Virginia's witness requirement); *Common Cause Rhode Island et al v. Nellie M. Gorbea et al.* 2020 WL 4365608 (D. R.I. July 30, 2020) (approving a consent decree between the parties that would enjoin the enforcement of Rhode Island's witness requirement).

As such, this Court is not persuaded by the Committees' argument that the vast weight of authority rests in the Committee's favor on the witness requirement question: indeed, the three district court cases that address the very same question in other states are conclusions in favor of the Plaintiffs. Moreover, it is reasonable for the Secretary to conclude that the Plaintiffs would be likely to prevail in the instant case.

ii. The Election Day receipt deadline

The Committees next point the Court to the Pennsylvania Supreme Court, which has rejected requests to postpone the Election Day receipt deadline for mail-in and absentee ballots submitted in Pennsylvania's June primary. *See, e.g., Dis. Rights Pa. v. Boockvar*, No. 83 MM 2020 (May 15, 2020) (per curiam); *Dis. Rights Pa. v. Boockvar*, No. 83 MM 2020 (May 15, 2020) (Wecht, J., concurring).

Again, given that dozens of courts around the country are wrestling with this issue, there is sufficient enough inapposite authority to render the Secretary's decision to enter the consent decree reasonable. *See, e.g. Democratic Nat'l Comm. v. Bostelmann*, No. 20-CV-249-WMC, 2020 WL

1638374, at *18 (W.D. Wis. Apr. 2, 2020) (extending deadline for the receipt of absentee ballots for the primary election in Wisconsin after the Wisconsin Election Commission agreed to the extension).

c. The alleged speculation regarding what COVID-19 will be in November

The Committees next argue that the consent decree rests on mere speculation that COVID-19 will render voting unsafe in November. The Committees argue that the record is devoid of evidence that COVID-19 will be worse in November, or that guidance will develop that will make in-person voting unconstitutionally unsafe. Further, the Committees argue that following basic social distancing practices will render the witness requirement safe for the Plaintiffs, or alternatively, that the Plaintiffs could secure a Zoom account and somehow have a witness approve their ballot while still complying with social distancing.

This Court is not convinced that the Plaintiffs must demonstrate that in-person voting is unconstitutionally unsafe. Rather, Plaintiffs need only show that Minnesotans' right to vote absentee is burdened by the challenged laws. *Kahn v. Griffin*, 701 N.W.2d 815, 832-33 (Minn. 2005); *see also Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 734 (Minn. 2003) ("The purpose of the absentee ballot is to enfranchise those voters who cannot vote in person.").

Moreover, as to the question of voter safety, and with deep respect to Committees' counsel, his clients can't have it both ways. As the Defendant noted at argument, the President's own tweets suggest a recognition that voter safety will be compromised in November. The day before this hearing, the President of the United States tweeted "Delay the Election until people can properly, securely and safely vote???" *See* Donald J. Trump (@realDonaldTrump) Twitter (July 30, 2020, 8:46 a.m.).

Counsel said that he had not seen the President's tweets from the previous day but offered, essentially, that if the President had had the opportunity to fully state his point, he would have acknowledged that Minnesota's voter safety standards are so unique as not implicate the President's safety concerns.

The President's own admissions, as well as the prediction of experts that COVID-19 will likely surge in the fall as the election coincides with the return of cold and flu season, lead the Court to conclude that the safety concerns for the ballot box are not so speculative as to render the Secretary's decision to resolve the Plaintiff's complaints unreasonable. *See* Kristine A. Moore et al., *Part 1: The Future of the COVID-9 Pandemic: Lessons Learned from Pandemic Influenza*, in *COVID-19: The Cidrap Viewpoint* (Ctr. for Infectious Disease Research and Policy, 2020), https://www.cidrap.umn.edu/sites/default/files/public/downloads/cidrap-covid19-viewpoint-part1_0.pdf; Glen Howatt, *COVID-19 Cases Could Surge in Fall, Last Two Years, University of Minnesota Report Says* Minneap. Star-Trib. (May 3, 2020), <https://www.startribune.com/covid-19-cases-could-surge-in-fall-last-2-years-u-report-predicts/570130602/>. Indeed, many schools throughout Minnesota will begin the school year remotely over COVID concerns. *See* Erin Adler, *St. Paul Schools Likely to Begin Year With Distance Learning*, Minneap. Star-Trib. (July 30, 2020), <https://www.startribune.com/st-paul-schools-likely-to-begin-year-with-distance-learning/571962822/>. The fact that school districts across the state have determined that hundreds of thousands of Minnesota children will not return to the classroom in September makes the impact of COVID in November far from speculative.

d. The Plaintiffs' claims that the absentee ballot statutes and the Election Day receipt deadline present an unconstitutional burden

The Committees next argue that the Plaintiffs have failed to demonstrate their likelihood of success on either of their constitutional or Equal Protection claims. The Committee argues that

enforcement of the witness requirement and Election Day receipt deadlines are not the sort of state election laws that raise constitutional questions. *See Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (recognizing that state election laws “will invariably impose some burden upon individual voters”). “[T]o maintain fair, honest, and orderly elections, states may impose regulations that in some measure burden the right to vote.” *Kahn v. Griffin*, 701 N.W.2d 815, 832 (Minn. 2005) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)).

At a minimum, it is reasonable for the Secretary to conclude that the Plaintiffs are likely to succeed on their claim that the witness requirement violates the Equal Protection Clause of the Minnesota and U.S. Constitutions. By requiring voters who live alone to place their lives and health in danger in order to exercise their fundamental right to vote, it is reasonable to conclude that the Witness Requirement impermissibly and irrationally denies the fundamental right to vote to those individuals while there is still ongoing community transmission of COVID-19. As in *Erlandson*, this Court need not resolve whether strict scrutiny or rational basis review is the proper standard here, because in the circumstances of this case the witness requirement would likely not survive even the lowest level of scrutiny. 659 N.W.2d at 734. The Secretary offers no rational basis for the enforcement of the witness requirement, and the Committees’ vague references to fraud prevention, without more, are insufficient to suggest a legitimate state interest for enforcing the Witness Requirement during a global pandemic.

Moreover, had the parties not reached a consent decree to suspend the witness requirements for the general election, this Court would have been empowered to grant the preliminary injunction, or *sua sponte*, find that the requirement, as applied in the current pandemic, unconstitutionally limits voting access, and simply order precisely what the consent decree achieves. *See, e.g., Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (holding that the

constitutionality of election laws depends upon a court's balancing of the character and magnitude of any law burdening the right to vote against the relevant government interest served by the law); *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

Similarly, it is reasonable for the Secretary to conclude that the Plaintiffs are likely to succeed on their Election Day receipt deadline motion. In this unusual global crisis, it is more than reasonable to conclude that a ballot placed with the United States Postal Service quite possibly might not be delivered until on Election Day. It is reasonable for the Secretary to conclude that a ballot posted on or before Election Day should be counted.

e. The balancing of the equities

The Committees finally argue that this Court should reject the General Election Consent Decree because waiving the witness requirement is not in the public interest. Certainly, the Plaintiffs and the Secretary of State have sufficiently demonstrated that the consent decree is in the best interests of the people that they represent. It is reasonable for the Secretary to conclude that this waiver of the witness requirement and Election Day deadline is in the best interests of the health, safety, and constitutional rights of Minnesota's voters, and, therefore, in the public interest.

Under either Minnesota or federal law, the proposed General Election Consent Decree is fair and appropriate. The Motion to enter the Consent Decree is granted.

EXHIBIT D
TO THE DECLARATION OF
JASON MARISAM

FILED

August 18, 2020

**OFFICE OF
APPELLATE COURTS**

No. A20-1040

No. A20-1041

**STATE OF MINNESOTA
IN SUPREME COURT**

Robert LaRose, Teresa Maples, Mary Sansom, Gary Severson, and
Minnesota Alliance for Retired Americans Educational Fund,

Respondents,

v.

Steve Simon, in his official capacity as Minnesota Secretary of State,

Respondent,

Republican Party of Minnesota, Republican National Committee, and
National Republican Congressional Committee,

Appellants.

National Association for the Advancement of Colored People
Minnesota-Dakotas Area State Conference; Susan Bergquist; Eleanor Wagner,

Respondents,

v.

Steve Simon, in his official capacity as Minnesota Secretary of State,

Respondent,

Donald J. Trump for President, Inc.; Republican Party of Minnesota;
Republican National Committee; and National Republican Congressional Committee,

Appellants.

STIPULATION TO DISMISS APPEALS

Pursuant to Minn. R. Civ. App. P. 142.01, the parties to the above-captioned consolidated appeals, through their undersigned counsel, hereby stipulate to the voluntary dismissal of each respective appeal. Appellants waive the right to challenge in any other judicial forum the August 3, 2020 Orders and the August 3, 2020 Stipulations and Partial Consent Decrees that formed the basis for the above-captioned consolidated appeals. The parties respectfully request that the Court approve the dismissal of these appeals and order the same, with all parties to bear their own costs and attorney fees.

Dated: August 18, 2020

Respectfully submitted,

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1041*

FILED

August 18, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN SUPREME COURT

A20-1040
A20-1041

Robert LaRose, et al.,

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Respondent,

Republican Party of Minnesota, et al.,

Appellants.

and

National Association for the Advancement of
Colored People Minnesota-Dakotas Area State
Conference, et al.,

Respondents,

vs.

Steve Simon, in his official capacity as
Minnesota Secretary of State,

Respondent,

Donald J. Trump for President, Inc., et al.,

Appellants.

ORDER

The parties have filed a joint stipulation agreeing to the dismissal of these appeals, under Minn. R. Civ. App. P. 142.01.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that *LaRose v. Simon*, No. A20-1040 and *NAACP-Minnesota-Dakotas v. Simon*, No. A20-1041 are each dismissed pursuant to Minn. R. Civ. App. P. 142.01.

Dated: August 18, 2020

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lorie S. Gildea".

Lorie S. Gildea
Chief Justice

THISSEN, J., took no part in the consideration or decision of this case.

EXHIBIT E
TO THE DECLARATION OF
JASON MARISAM

(ORDER LIST: 591 U.S.)

THURSDAY, AUGUST 13, 2020

ORDER IN PENDING CASE

20A28 REPUBLICAN NAT. COMM., ET AL. V. COMMON CAUSE RI, ET AL.

The application for stay presented to Justice Breyer and by him referred to the Court is denied. Unlike *Merrill v. People First of Alabama*, 591 U. S. ____ (2020), and other similar cases where a State defends its own law, here the state election officials support the challenged decree, and no state official has expressed opposition. Under these circumstances, the applicants lack a cognizable interest in the State's ability to "enforce its duly enacted" laws. *Abbott v. Perez*, 585 U. S. ____, ____ n. 17 (2018). The status quo is one in which the challenged requirement has not been in effect, given the rules used in Rhode Island's last election, and many Rhode Island voters may well hold that belief.

Justice Thomas, Justice Alito, and Justice Gorsuch would grant the application.

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

James Carson & Eric Lucero,

Civil No. 0:20-cv-02030-NEB-TNL

Plaintiffs,

v.

DECLARATION OF DAVID MAEDA

Steve Simon, in his official capacity as
Secretary of State of Minnesota,

Defendant.

I, David Maeda, hereby declare the following under penalty of perjury:

1. I am Director of Elections for the Office of the Minnesota Secretary of State.
2. Attached as Exhibit A is a true and correct copy of an email, with attachments, that the Office sent to county election administrators on August 28, 2020. The attachments include the instructions prepared by the Office for absentee ballots for the November 3, 2020 general election.
3. Voting for the November 3, 2020 general election began on September 18. Voters began receiving their absentee ballots and ballot instructions on September 18.
4. To date, more than 1 million Minnesota voters have requested absentee ballots for the November 3, 2020 general election.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: September 29, 2020

/s/ David Maeda

DAVID MAEDA

Director of Elections

Office of Minnesota Secretary of State, Steve
Simon

**EXHIBIT A
TO THE DECLARATION OF
DAVID MAEDA**

From: Hegg, Stella (OSS)
To: Department, Elections (OSS)
Subject: Updated State General Election AB-MB Voter Instructions, Ballot Packet Inserts & Suggestions for Envelopes
Date: Friday, August 28, 2020 4:29:39 PM
Attachments: [Reg Voter Signature Envelope Sticker-Stamp Suggestion Sheet.docx](#)
[Return Envelopes Sticker-Stamp Suggestion Sheet.docx](#)
[AB Insert for Non-Registered Voters - 2020STG.docx](#)
[AB-MB Insert for Registered Voters - 2020STG.docx](#)
[AB Instructions_Reg_ThirdEnv-2020STG.pub](#)
[AB Instructions_NR_ThirdEnv-2020STG.pdf](#)
[AB Instructions_NR_ThirdEnv-2020STG.pub](#)
[AB Instructions_Reg_ThirdEnv-2020STG.pdf](#)
[MB Instructions-2020STG.pub](#)
[AB Instructions_UOCAVA_ThirdEnv-2020STG.pdf](#)
[AB Instructions_UOCAVA_ThirdEnv-2020STG.pub](#)
[MB Instructions-2020STG.pdf](#)

**Office of the Minnesota Secretary of State
Elections Division**

August 28, 2020

Dear County Election Administrators:

Please share this information with your municipalities that coordinate absentee voting and with your printing vendors.

Attached you will find publisher, word and/or .pdf versions of:

1. Registered Voter Signature Envelope Suggestions
2. Return Envelope Suggestions
3. Insert for AB NR Voter Ballot Packets
4. Insert for AB-MB Registered Voter Ballot Packets
5. Mail Ballot Packet Voter Instructions
6. UOCAVA "Paper" Ballot Packet Voter Instructions
7. Registered Absentee Ballot Packet Voter Instructions
8. Non-registered Absentee Ballot Packet Voter Instructions

These updated items were reviewed and proofed as best as possible. If there is something that was missed, please make the changes that you deem appropriate. We have sent "editable" versions of the documents to you for that purpose, if needed.

If you find something of "*major importance*," please contact me, right away, and I will fix the documents and resend, if needed.

These documents will be placed on the administration webpages early next week. We wanted to send them to you, today, so you can begin your work to prepare the many thousands of ballot packets as soon as possible.

As always, thank you for your patience and understanding as we update, and sometimes re-update ☺, materials on a constant basis. We can "see" the magnitude of work that is ahead for all of you (the numbers in SVRS are historic, truly historic) for the rest of this year. We are in "awe" of each

and every one of you! We're in this together and we are here to support you!

Best,

Stella Mary Hegg, MPA

Senior State Program Administrator

Office of Minnesota Secretary of State, Steve Simon

180 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd.,
St. Paul, MN 55155

Phone: 651-556-0646

E-mail: stella.hegg@state.mn.us

Website: <https://www.sos.state.mn.us/>

The “Witness” section of 2020 State **General** AB & MB registered voter signature envelopes

You have several options to alter the witness portion of the envelope for a registered voter, or inform a registered voter that the witness is not required, as the consent decree does not require a sticker/stamp to be placed over the signature envelope’s “witness” section.

If 2020 state general “registered” AB-MB ballot packets have already been prepared and it is difficult to place stickers/stamp on the “registered” AB-MB signature envelopes, rest assured, it is not required. *However, if you do not choose to place the sticker on the envelope over the witness signature area, you must either include with each ballot the insert that OSS has provided explaining that the witness signature is not required for the 2020 General Election or draw an “X” through the witness signature area on the envelope, or both.*

If a sticker/stamp is not placed on the “registered” AB-MB signature envelope, make sure that the ballot board members are well-trained and overly-reminded that missing witness information and signature is not a reason to reject a registered voter’s AB or MB returned, voted ballot.

Here are our suggestions:

Signature Envelope

Voter must complete this section

Voter name

Voter MN address

MN

ID number
(MN driver's license #,
MN ID card #,
or last four digits of SSN)

☐ I do not have a MN-issued driver's license, MN-issued ID card, or a Social Security Number.

I certify that on Election Day I will meet all the legal requirements to vote.

Voter Signature

X

Signature Envelope-Registered

Witness must complete this section

please print clearly

A witness is not required for registered absentee voters for the 2020 Minnesota State General.


Notary, must ink stamp

Put the Ballot Envelope in here, then seal flap

For Official Use Only ☐ Accepted ☐ Rejected (reason:)

Signature Envelope-Registered (horizontal version)

- A sticker or stamp that is 4 x 4" should cover the Witness section.
- It should state:
A witness is not required for registered absentee voters for the 2020 Minnesota State General.

Put the Ballot Envelope in here, then seal flap 

Signature Envelope

Voter must complete this section please print clearly

Voter name

Voter MN address MN

ID number (MN driver's license #, MN ID card #, or last four digits of SSN)

☐ I do not have a MN-issued driver's license, MN-issued ID card, or a Social Security Number.

I certify that on Election Day I will meet all the legal requirements to vote.

Voter Signature X

Witness must complete this section


A witness is not required for registered absentee voters for the 2020 Minnesota State General.

For Official Use Only
☐ Accepted ☐ Rejected (reason):

Signature Envelope—Registered

Signature Envelope-Registered

- A sticker or stamp that is 4 x 4" should cover the Witness section.
- It should state:
A witness is not required for registered absentee voters for the 2020 Minnesota State General.

Put the Ballot Envelope in here, then seal flap 

Signature Envelope

Voter must complete this section. please print clearly

Voter name

Voter MN address MN

ID number
(MN driver's license #, MN ID card #, or last four digits of SSN)

☐ I do not have a MN-issued driver's license, MN-issued ID card, or a Social Security Number.

I certify that on Election Day I will meet all the legal requirements to vote. I also certify that:

Agent name

delivered the absentee ballots to me and that the ballots were unmarked and the envelope sealed when they were delivered to me.

Voter Signature

A witness is not required for registered absentee voters for the 2020 Minnesota State General.

For Official Use Only

☐ Accepted ☐ Rejected (reason)

Signature Envelope-Registered Agent Delivery

Signature Envelope-Registered-Agent Delivery

- A sticker or stamp that is 4 x 4" should cover the Witness section.
- It should state:
A witness is not required for registered absentee voters for the 2020 Minnesota State General.

Signature Envelope

Voter must complete this section

Voter name

Voter MN address MN

I certify that on Election Day I will meet all the legal requirements to vote.

Voter Signature

Witness must complete this section

A witness is not required for registered absentee voters for the 2020 Minnesota State General.

If notary, must affix stamp

please print clearly

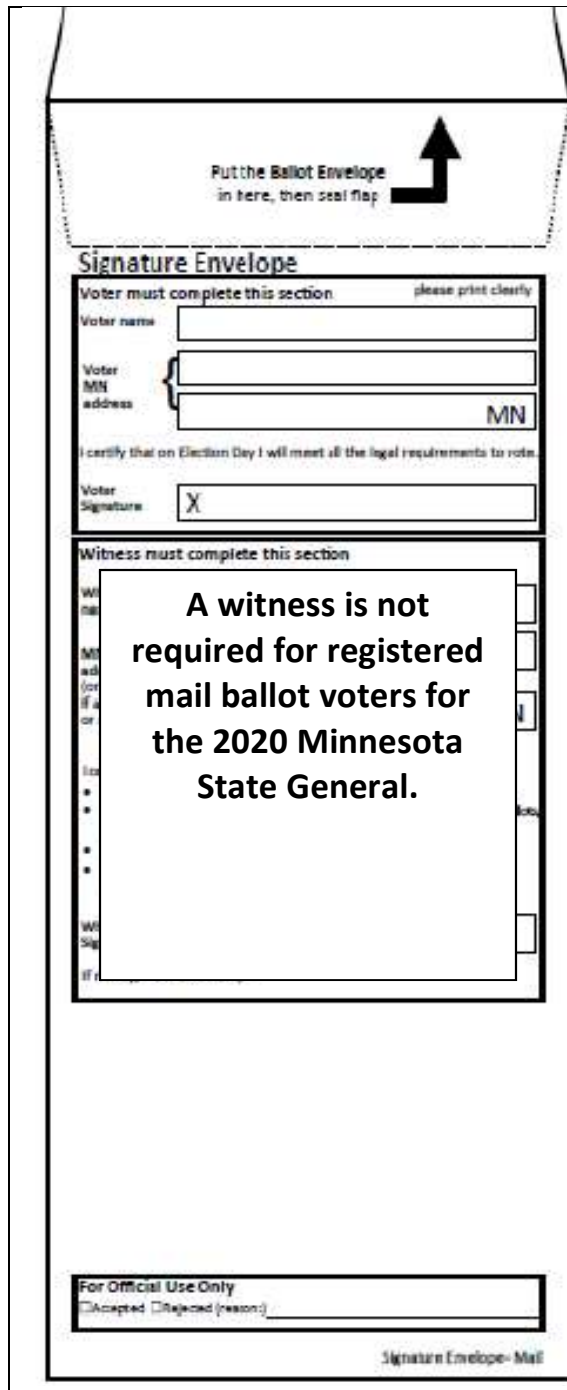
Put the Ballot Envelope in here, then seal flap


Signature Envelope- Mail

For Official Use Only ☐ Accepted ☐ Rejected (reason:)

Signature Envelope-Mail Ballot (horizontal version)

- A sticker or stamp that is 4 x 4" should cover the Witness section.
- It should state:
A witness is not required for registered mail ballot voters for the 2020 Minnesota State General.



Put the Ballot Envelope in here, then seal flap 

Signature Envelope

Voter must complete this section please print clearly

Voter name

Voter MN address MN

I certify that on Election Day I will meet all the legal requirements to vote.

Voter Signature X

Witness must complete this section

A witness is not required for registered mail ballot voters for the 2020 Minnesota State General.

For Official Use Only
☐ Accepted ☐ Rejected (reason:)

Signature Envelope-Mail

Signature Envelope-Mail Ballot (horizontal version)

- A sticker or stamp that is 4 x 4" should cover the Witness section.
- It should state:
A witness is not required for registered mail ballot voters for the 2020 Minnesota State General.

The 2020 State **General** AB & MB **Return** Envelopes

If you are able to order new return envelopes just for this general election, we have provided the language that we suggest below for the printers.

If you do not wish to order new envelopes, you may place a sticker over the Return Envelope instructions with the language that we suggest below.

The diagram shows a large rectangular envelope with a horizontal fold line across the middle. The top corners are folded down towards the center. In the center of the envelope, there is a rectangular box containing the following text:

Have you...

- ☐ Sealed your ballot in the tan ballot envelope?
- ☐ Put the ballot envelope in the white signature envelope?
- ☐ Filled out the white signature envelope completely and signed it?
- ☐ A witness is **NOT** required for 2020 state general ballots of registered voters
- ☐ Put the white signature envelope into this envelope?

Return your ballot so it is post marked on or before Election Day, November 3, 2020. It must be received in the Absentee Voting Office within 7 days of the election to be counted.

Contact your Absentee Voting Office if you have questions.

Return Envelope-Registered

- A sticker that is 5 x 2" should cover the checklist, if you choose to use a sticker.
- The checklist should state:

Have you...

- ☐ Sealed your ballot in the tan ballot envelope?
- ☐ Put the ballot envelope in the white signature envelope?
- ☐ Filled out the white signature envelope completely and signed it?
- ☐ A witness is **NOT** required for 2020 state general ballots of registered voters
- ☐ Put the white signature envelope into this envelope?

Return your ballot so it is post marked on or before Election Day, November 3, 2020. It must be received in your Absentee Voting Office within 7 days of the election to be counted.

Contact your Absentee Voting Office if you have questions.

Have you...

- ☐ Sealed your ballot in the tan ballot envelope?
- ☐ Put the ballot envelope and your voter registration application in the white signature envelope?
- ☐ Filled out the white signature envelope completely and signed it?
- ☐ Asked your witness to complete their section and sign their name? A witness is required for non-registered voters for the 2020 state general election.
- ☐ Put the white signature envelope into this envelope?

**Return your ballot so it is post marked on or before Election Day, November 3, 2020. It must be received in the Absentee Voting Office within 7 days of the election to be counted.
Contact your Absentee Voting Office if you have questions.**

Return Envelope-Non-Registered

- A sticker that is 5 x 2" should cover the checklist, if you choose to use a sticker.
- It should state:

Have you...

- ☐ Sealed your ballot in the tan ballot envelope?
- ☐ Put the ballot envelope and your voter registration application in the white signature envelope?
- ☐ Filled out the white signature envelope completely and signed it?
- ☐ Asked your witness to complete their section and sign their name? A witness is required for non-registered voters for the 2020 state general election.
- ☐ Put the white signature envelope into this envelope?

**Return your ballot so it is post marked on or before Election Day, November 3, 2020. It must be received in the Absentee Voting Office within 7 days of the election to be counted.
Contact your Absentee Voting Office if you have questions.**

The diagram shows a large rectangular envelope with a dashed line indicating a horizontal fold across the middle. The top corners are folded inward, creating triangular flaps. A rectangular box is positioned in the lower center of the envelope, containing a checklist and return instructions.

Have you...

- ☐ Sealed your ballot in the tan ballot envelope?
- ☐ Put the ballot envelope in the white signature envelope?
- ☐ Filled out the white signature envelope completely and signed it?
- ☐ Put the white signature envelope into this envelope?

Return your ballot so it is post marked on or before Election Day, November 3, 2020. It must be received in the Absentee Voting Office within 7 days of the election to be counted.
Contact your Absentee Voting Office if you have questions.

Return Envelope-Mailed Out, Paper UOCAVA Ballot Packets

- A sticker that is 5 x 2" should cover the checklist, if you choose to use a sticker.
- It should state:

Have you...

- ☐ Sealed your ballot in the tan ballot envelope?
- ☐ Put the ballot envelope in the white signature envelope?
- ☐ Filled out the white signature envelope completely and signed it?
- ☐ Put the white signature envelope into this envelope?

Return your ballot so it is post marked on or before Election Day, November 3, 2020. It must be received in the Absentee Voting Office within 7 days of the election to be counted.
Contact your Absentee Voting Office if you have questions.

For the 2020 Minnesota State General Election being held November 3, 2020!!

Non-Registered Minnesota Voters

Because you are a non-registered voter in the State of Minnesota when this ballot packet was sent to you, you are required to have a witness. If you have questions about your registration status, please contact your county elections office.

Your returned ballot must be postmarked
on or before Election Day (November 3, 2020)
& received by your Absentee Voting Office within 7 days
of the election.... to be counted.

If you do not want to use the U.S. post office or private delivery service to return your voted ballot, please contact your Absentee Voting Office (listed on return envelope) and inquire as to “drop off” locations.

“Drop Off” locations, dates & hours may vary.

For the 2020 Minnesota State General Election being held November 3, 2020!!

Registered Minnesota Voters

Because you are a registered voter in the State of Minnesota when this ballot packet was sent to you, you are NOT required to have a witness for the 2020 Minnesota State General Elections returned ballots.

Your returned ballot must be postmarked

on or before Election Day (November 3, 2020)

& received by your Absentee Voting Office within 7 days of the election.... to be counted.

If you do not want to use the U.S. post office or private delivery service to return your voted ballot, please contact your Absentee Voting Office (listed on return envelope) and inquire as to “drop off” locations.

“Drop Off” locations, dates & hours may vary.

Instructions for the 2020 Minnesota State General Election

How to vote by absentee ballot

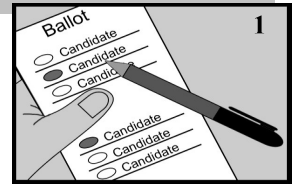
for REGISTERED 2020 state general election voters (November 3, 2020)

- You will need:**
- Ballot*
 - Tan ballot envelope*
 - White signature envelope*
 - Larger white return envelope*
 - Pen with black or blue ink
 - Your ID number
Minnesota driver's license number, Minnesota ID card number, or the last four digits of your Social Security number.
See below if you do not have any of these numbers.
- *If any of these items are missing, please contact your local election official.

1 Vote!

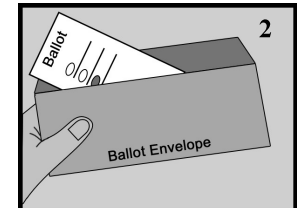
- Follow the instructions on the ballot.
- Do not write your name or ID number anywhere on the ballot.
- Do not vote for more candidates than allowed. *If you do, your votes for that office will not count.*

See the other side if you make a mistake on your ballot.



2 Seal your ballot in the tan ballot envelope

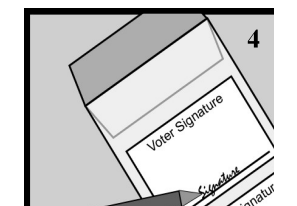
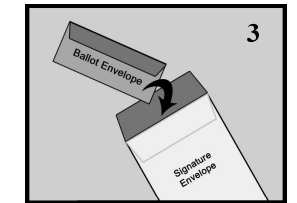
- Do not write on this envelope.



3 Put the tan ballot envelope into the white signature envelope

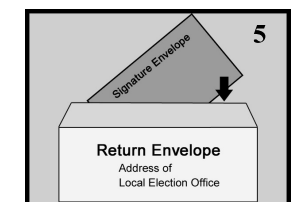
4 Fill out the white signature envelope completely

- If there is no label, print your name and Minnesota address.
- Print your Minnesota driver's license number, Minnesota ID card number, or the last four digits of your Social Security number.
Be sure to use one of same numbers that you provided on your absentee ballot application.
If you do not have any of these numbers, check the box.
- Read and sign the oath.
- **NOTE: A witness is not needed for the absentee ballots of registered voters in the Nov. 3, 2020, State General Election**
- Seal the envelope.



5 Put the signature envelope into the larger white return envelope to protect your private information from view

- Seal the envelope.



6 Return your ballot Postmarked by Election Day (Nov. 3) to the address on the return envelope. Ballots may not be delivered to your polling place.

You have three options:

- Send it so it is postmarked by Election Day, using U.S. mail or a package delivery service, and is returned to the absentee voting office within 7 days of the election.
See Insert for Important Details regarding Returning your Voted Ballot
- The U.S. Post Office recommends allowing for six (6) business days for mail delivery within the U.S.
- Deliver it in person before election day or by 3:00 p.m. on Election Day, or
- Ask someone to deliver it by 3:00 p.m. on Election Day.

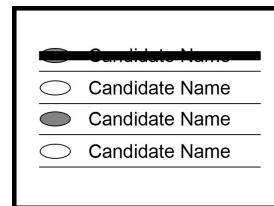
See the other side for special instructions if you have a disability.

To check the status of your absentee ballot, visit www.mnvotes.org



Correcting a mistake

- If time allows, ask for a new ballot from your election office. Contact your election office at [e-mail] or [phone number], or
- Completely cross out the name of the candidate you accidentally marked and then mark your ballot for the candidate you prefer (do not initial your corrections).

**If you have a disability:**

If you have a disability or cannot mark your ballot, anyone may assist you by marking your ballot at your direction, assembling the materials, and filling out the forms for you.

When signing the envelope, Minnesota law says you may:

- Sign the return envelope yourself, or
- Make your mark, or
- Ask someone to sign for you in your presence. Have the person sign their own name as well.
- If you have adopted the use of a signature stamp for all purposes of signature, you may use your signature stamp or ask someone to use your signature stamp in your presence.

Minnesota Statutes, section 645.44, subdivision 14

Please note: Voting is not covered by power of attorney. A person with power of attorney may only sign for you in your presence, as outlined above.

Confidentiality Notice: If your ballot envelope is accepted, your name and address is available to the public upon that acceptance, when used for elections, political and law enforcement purposes. Otherwise, the data you supply on your signature envelope is restricted to election officials until 8:00 p.m. on Election Day. After that time, your envelope and the data on it, other than your identification number, are public information. Your ID number is required to ensure that the ballot is returned by the same voter who applied for it. You may refuse to provide it, but doing so may lead your absentee ballot to be rejected and will prevent you from checking on the status of your absentee ballot online.

Instructions for the 2020 Minnesota State General Election

How to vote by absentee ballot for NON-REGISTERED voters in November 3rd state election

You will need:

- Ballot*
- Tan ballot envelope*
- Voter registration application*
- White signature envelope*
- Larger white return envelope*
- Pen with black ink
- Minnesota driver's license with your address or other authorized proof of where you live.
See other side for a list of options
- *If any of these items are missing, please contact your local election official.
- Your ID number
Minnesota driver's license number,
Minnesota ID card number,
or the last four digits of your Social Security number.
See below if you do not have any of these numbers.
- **Witness** (You must have a witness for this ballot)
Anyone registered to vote in Minnesota,
including your spouse or relative,
or a notary public,
or a person with the authority to administer oaths

You are required to have a witness because you are not an active, registered MN voter.

If you have questions about your registration status, please contact your county elections office

Important: You must submit the voter registration application with your ballot (in the white signature envelope) for your vote to be counted.

1 Fill out the voter registration application and sign it

- Show your **witness** (you must have a witness) your driver's license or other authorized proof of where you live. *See the other side for a list of options.*

2 Vote!

- Show your **witness** your blank ballot, then mark your votes in private.
- Follow the instructions on the ballot.
- Do not write your name or ID number anywhere on the ballot.
- Do not vote for more candidates than allowed. *If you do, your votes for that office will not count. See the other side if you make a mistake on your ballot.*

3 Seal your ballot in the tan ballot envelope

- Do not write on this envelope.

4 Put the tan ballot envelope and the voter registration application in the white signature envelope

5 Fill out the white signature envelope completely

- If there is no label, print your name and Minnesota address.
- Print your Minnesota driver's license number, Minnesota ID card number, or the last four digits of your Social Security number.
Be sure to use one of the same numbers that you provided on your absentee ballot application.
If you do not have any of these numbers, check the box.
- Read and sign the oath.
- Ask your **witness** to print their name and Minnesota street address, including city (not a P.O. Box), indicate which proof you showed them, and sign their name.
If your witness is an official or notary, they must print their title instead of an address.
Notaries must also affix their stamp.
- Seal the envelope.

6 Put the signature envelope into the larger white return envelope to protect your private information from view

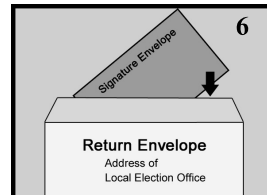
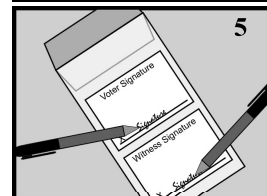
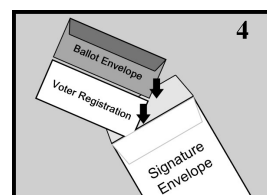
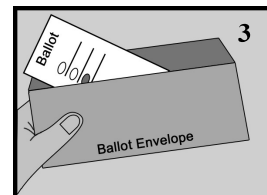
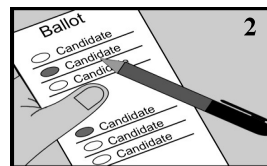
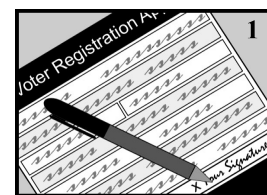
- Seal the envelope.

7 Return your ballot by Election Day (Nov. 3) to the address on the return envelope

Ballots may not be delivered to your polling place.

You have three options:

- Send it so it is postmarked on or before Election Day, using U.S. mail or a package delivery service. Your ballot must be returned within 7 days of the election
(SEE INSERT FOR IMPORTANT DETAILS ABOUT THIS),
- The U.S. Post Office recommends allowing for six (6) business days for your ballot to be delivered.
- Deliver it in person before election day or by 3:00 p.m. on Election Day, or
- Ask someone to deliver it by 3:00 p.m. on Election Day.



See other side for special instructions if you have a disability

Options for proof of where you live

A valid Minnesota driver's license, Minnesota ID card, or permit with your current address

or

A photo ID that does not have your current address along with a document that has your current address

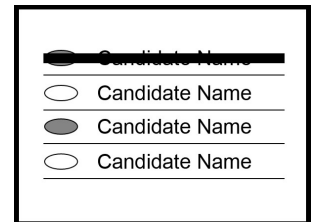
- **Eligible photo IDs:** Minnesota or another state's driver's license, learner's permit, or ID card; U.S. passport; U.S. military or veteran ID card; Minnesota high school/college/university ID card; or tribal ID card with your signature, from a tribe recognized by the Bureau of Indian Affairs (BIA).
- **Eligible documents with your current address:** an original bill, including account statements and start-of-service notifications, dated within 30 days before or with a due date 30 days before or after the election; a current student fee statement; or a residential lease if valid through election day. Eligible bills are: gas, electric, solid waste, water, sewer, phone, cell phone, television, Internet provider, credit card, or banking services; or bills for rent or mortgage payments.

or one of the following:

- A yellow receipt for a valid Minnesota driver's license, Minnesota ID card, or permit with your current address
- Vouching: the signature of a registered voter who lives in your precinct and personally knows that you live in the precinct. If your witness is registered to vote in this precinct, your witness may vouch for you.
This person must complete and sign the voucher form on the back of the voter registration application.
- A tribal ID card with your name, address, signature, and picture, from a tribe recognized by the BIA
- A "Notice of Late Registration" if you received one from the county auditor or city clerk
- If you have moved within your precinct or changed your name, a current registration in the precinct
- Vouching for residents of certain residential facilities: the signature of an employee of your residential facility, including nursing homes, group homes, battered women's shelters, homeless shelters, etc.
If you are not sure if the residential facility where you live is eligible, call your local election official.
The employee must complete and sign the voucher form on the back of the voter registration application.

Correcting a mistake

- If time allows, ask for a new ballot from your election office. Contact your election office at [e-mail] or [phone number], or
- Completely cross out the name of the candidate you accidentally marked and then mark your ballot for the candidate you prefer (do not initial your corrections).



If you have a disability:

If you have a disability or cannot mark your ballot, your witness may assist you by marking your ballot at your direction, assembling the materials, and filling out the forms for you.

When signing the envelope, Minnesota law says you may:

- Sign the return envelope yourself, or
- Make your mark, or
- Ask your witness to sign for you in your presence. (Have the witness sign their own name as well.)
- If you have adopted the use of a signature stamp for all purposes of signature, you may use your signature stamp or ask your witness to use your signature stamp in your presence.

Minnesota Statutes, section 645.44, subdivision 14

Please note: Voting is not covered by power of attorney. A person with power of attorney may only sign for you in your presence, as outlined above.

Confidentiality Notice: If your ballot envelope is accepted, your name and address is available to the public upon that acceptance, when used for elections, political and law enforcement purposes. Otherwise, the data you supply on your signature envelope is restricted to election officials until 8:00 p.m. on Election Day. After that time, your envelope and the data on it, other than your identification number, are public information. Your ID number is required to ensure that the ballot is returned by the same voter who applied for it. You may refuse to provide it, but doing so may lead your absentee ballot to be rejected and will prevent you from checking on the status of your absentee ballot online.

Instructions for the 2020 State General Elections Only

How to vote by mail ballot—2020 state general election being held November 3, 2020

- You will need:**
- Ballot*
 - Tan ballot envelope*
 - White signature envelope*
 - Pen with black or blue ink

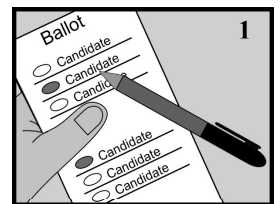
*If any of these items are missing, please contact your local election official.

1 Vote!

- Follow the instructions on the ballot.
- Do not write your name or ID number anywhere on the ballot.
- Do not vote for more candidates than allowed.

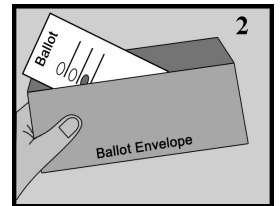
If you do, your votes for that office will not count.

See the other side if you make a mistake on your ballot.

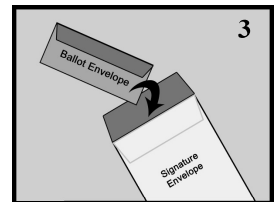


2 Seal your ballot in the tan ballot envelope

- Do not write on this envelope.

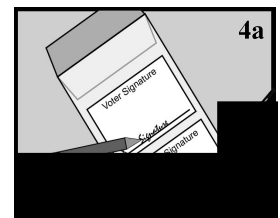


3 Put the tan ballot envelope into the white signature envelope



4 Fill out the white signature envelope completely

- If there is no label, print your name and Minnesota address.
- Read and sign the oath of the voter.
- **NOTE: A witness is not required for registered mail ballot voters for the 2020 state general election**
- Seal the signature envelope.



Put the signature envelope into the larger white return envelope to protect your private information from view and seal the envelope.

5 Return your ballot

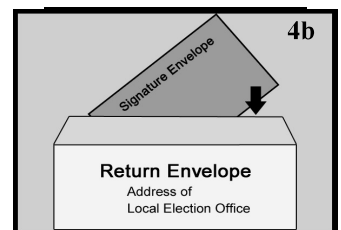
Postmarked by Election Day (Nov. 3) to the address on the return envelope

You have three options:

- Send it postmarked on or before Election Day, using U.S. mail or a package delivery service (SEE INSERT FOR IMPORTANT DETAILS ABOUT THIS),
The U.S. Post Office recommends to allow six (6) business days for delivery.
- Deliver it in person to your mail ballot office by 8:00 p.m. on Election Day, or
- Ask someone to deliver it to your mail ballot office by 8:00 p.m. on Election Day.

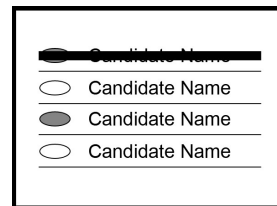
If you have questions, please call your mail ballot office at: (...) ...-.... .

See other side for special instructions if you have a disability



Correcting a mistake

- If time allows, ask for a new ballot from your mail ballot office at [e-mail] or [phone number], or
- Completely cross out the name of the candidate you accidentally marked and then mark your ballot for the candidate you prefer (do not initial your corrections).

**If you have a disability:**

If you have a disability or cannot mark your ballot, anyone may assist you by marking your ballot at your direction, assembling the materials and filling out the forms for you.

When signing the envelope, Minnesota law says you may:

- Sign the return envelope yourself, or
- Make your mark, or
- Ask someone to sign for you in your presence. Have the person sign their own name as well.
- If you have adopted the use of a signature stamp for all purposes of signature, you may use your signature stamp or ask someone to use your signature stamp in your presence.

Minnesota Statutes, section 645.44, subdivision 14

Please note: Voting is not covered by power of attorney. A person with power of attorney may only sign for you in your presence, as outlined above.

Track your Mail Ballot

You may “track your ballot” at www.mnvotes.org. You will need your name, residential address, and either your MN driver’s license/ID number or the last four digits of your social security number. If you are not able to use the online “track your ballot,” please contact your mail ballot office and they will assist you. [Mail ballot office name and phone number]

Confidentiality Notice: The data you supply on your signature envelope are public information when used for elections, political or law enforcement purposes as part of a public information list.

Instructions for the 2020 Minnesota General Elections

How to vote by absentee ballot

for military and overseas voters for the 2020 state general election (November 3, 2020)

You will need:

- Ballot*
 - Tan ballot envelope*
 - White signature envelope*
 - Larger white return envelope*
- *If any of these items are missing, please contact your local election official.
- Pen with black or blue ink
 - Your ID number
Minnesota driver's license number,
Minnesota ID card number, U.S. passport number,
or the last four digits of your Social Security number.
See below if you do not have any of these numbers.

1 Vote!

- Mark your votes in private.
- Follow the instructions on the ballot.
- Do not write your name or ID number anywhere on the ballot.
- Do not vote for more candidates than allowed. *If you do, your votes for that office will not count.*

See the other side if you make a mistake on your ballot.

2 Seal your ballot in the tan ballot envelope

- Do not write on this envelope.

3 Put the tan ballot envelope into the white signature envelope

4 Fill out the white signature envelope completely

- If there is no label, print your name and Minnesota address (present or last).
- Print your e-mail address and phone number (optional).
- Print your Minnesota driver's license number, Minnesota ID card number, passport number or the last four digits of your Social Security number.

Be sure to use one of the same numbers that you provided on your absentee ballot application.

If you do not have access to any of these documents, leave this space blank.

- Read and sign the oath.
- Seal the envelope.

5 Put the signature envelope into the larger white return envelope to protect your private information from view and seal the envelope.

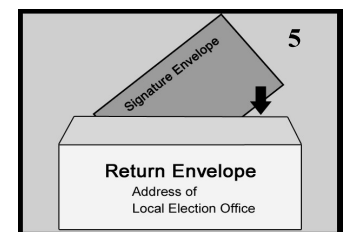
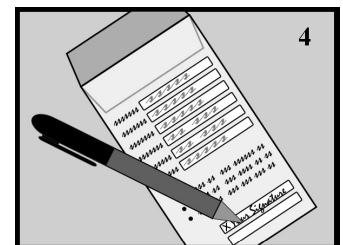
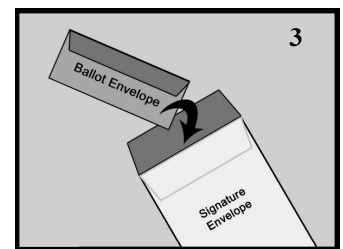
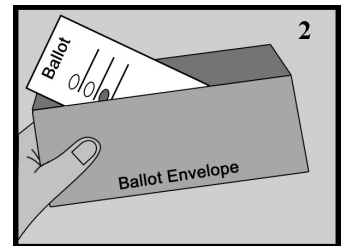
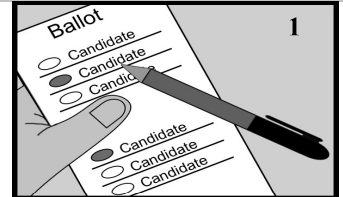
6 Return your ballot by Election Day (Nov. 3) to the address on the return en-

- Send it postmarked on or before Election Day, using mail, a package delivery service, or the diplomatic pouch at a U.S. embassy or consulate. **SEE IMPORTANT NOTE ON OTHER SIDE**
- Postage is not required if the postal permit is on the envelope and it is sent using the U.S. mail, U.S. military mail, or the diplomatic pouch. Postage may be required if you use a foreign mail service or a package delivery service.

See the other side for special instructions if you have a disability.

To check the status of your absentee ballot, visit <http://www.mnvotes.org>.

If you have any questions, contact your county elections office at [insert e-mail address] or [insert telephone number].



IMPORTANT NOTE: Your returned ballot must be postmarked on or before Election Day (November 3, 2020) and received by your county elections office within 7 days of the election.

Foreign Countries & Mail Delivery to the U.S.:

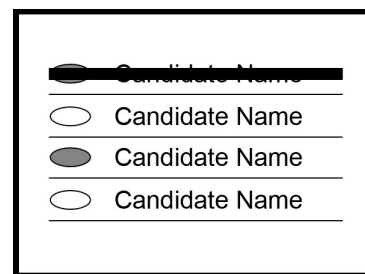
Check with a foreign country's postal officials regarding delivery of your voted ballot to the United States; to ensure it is returned within the 46-day absentee voting period.

Mail Delivery within the U.S.:

Once the voted ballot is returned to the United States, the U.S. Post Office recommends allowing for six (6) business days for delivery of your voted ballot to the county elections office.

Correcting a mistake

- If time allows, ask for a new ballot from your election office. Contact your election office at [e-mail] or [phone number], or
- Completely cross out the name of the candidate you accidentally marked and then mark your ballot for the candidate you prefer (do not initial your corrections).



If you have a disability:

If you have a disability or cannot mark your ballot, another person may assist you by marking your ballot at your direction, assembling the materials, and filling in the forms for you.

When signing the envelope, Minnesota law says you may:

- Sign the return envelope yourself, or
- Make your mark, or
- Ask another person to sign for you in your presence. (Have this person sign their own name as well.)
- If you have adopted the use of a signature stamp for all purposes of signature, you may use your signature stamp or ask another person to use your signature stamp in your presence.

Minnesota Statutes, section 645.44, subdivision 14

Confidentiality Notice: If your ballot envelope is accepted, your name and address is available to the public upon that acceptance, when used for elections, political and law enforcement purposes. Otherwise, the data you supply on your signature envelope is restricted to election officials until 8:00 p.m. on Election Day. After that time, your envelope and the data on it, other than your identification number, are public information. Your ID number is required to ensure that the ballot is returned by the same voter who applied for it. You may refuse to provide it, but doing so may lead your absentee ballot to be rejected and will prevent you from checking on the status of your absentee ballot online.