

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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

Case Type: Civil Other/Misc.  
Case No. 62-cv-20-3149  
Judge Sara Grewing

Plaintiffs,

v.

**INTERVENOR-DEFENDANTS’  
MEMORANDUM IN SUPPORT OF  
THEIR EMERGENCY MOTION TO  
STAY ORDER**

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

Defendant,

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

Intervenor-Defendants.

Intervenor-Defendants the Republican Party of Minnesota, the Republican National Committee, and the Republican Congressional Committee (the “Republican Committees”) are appealing on an expedited basis the Court’s entry of the Order and Stipulation And Partial Consent Decree (together, the “Order”). The Republican Committees respectfully seek a stay of the Order in order to preserve their appellate rights. Accordingly, as required by Minnesota Rule of Civil Appellate Procedure 108.02, the Republican Committees first move for a stay in this Court. *See* Minn. R. Civ. App. P. 108.02, subd. 1(c); *see also* Minn. R. Civ. P. 62.02. Because time is of the essence in light of the September 18, 2020 commencement of the absentee voting period, the Republican Committees ask the Court to enter this stay on an emergency basis.

The Republican Committees appreciate that the Court already has decided to enter the Order. Nonetheless, the Court should still enter a brief stay pending expedited appeal. Such a stay

will “preserv[e] the status quo” and ensure that “effective relief will be available if the appeal succeeds.” *DRJ, Inc. v. City of St. Paul*, 741 N.W.2d 141, 144 (Minn. Ct. App. 2007). Indeed, but for the Order, Minnesota law applies the Election Day Receipt Deadline and the Witness Requirement to absentee ballots cast in the November general election and prevents the Secretary of State from informing voters of the existence of a different deadline or requirement. *See* Minn. Stat. § 203B.08, subd. 3; Minn. Stat. § 203B.07, subd. 3. A stay would preserve that status quo. *See DRJ, Inc.*, 741 N.W.2d at 144.

Moreover, a stay would guarantee that the Republican Committees receive “effective relief . . . if the appeal succeeds.” *Id.* In particular, a stay would temporarily prohibit the Secretary of State from issuing instructions required by the Order, or otherwise informing 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 . . . will be counted,” Partial Consent Decree § VI(F), or that absentee ballots cast “by a previously registered voter in the November general election without a witness signature will not be rejected on that basis,” *id.* § VI(E). By prohibiting the Secretary from making any such statements now, a stay would ensure that, if the Republican Committees prevail on appeal, the Election Day Receipt Deadline and the Witness Requirement can be reinstated without complication for the November general election. And a stay would avoid the risk of “voter confusion” or erosion of public confidence “in the integrity of [the State’s] electoral processes” that could result if the Secretary informs the public of the relief approved in the Order but the Election Day Receipt Deadline and the Witness Requirement are restored on appeal. *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006).

On the other side of the scale, the prevailing parties have no “interest[] . . . in enforcing the decision and ensuring that they remain secure in victory while the appeal is pending.” *DRJ, Inc.*,

741 N.W.2d at 144. The Republican Committees have asked for a decision on their appeal no later than September 9, or nine days before the September 18, 2020 commencement of the absentee voting period. *See* Motion to Expedite Appeal, *LaRose v. Simon*, No. A20-1040 (Minn. Ct. App. Aug. 10, 2020). For purposes of comparison, this Court similarly entered the Primary Consent Decree eliminating the Election Day Receipt Deadline and the Witness Requirement for the primary election on June 17, nine days before the commencement of the absentee voting period for the primary.

Even on the evidence and arguments Plaintiffs presented, a modest stay of the Order pending expedited appeal will not harm any voters. No voter may receive—much less return—an absentee ballot between now and September 18. As a matter of logic, the Election Day Receipt Deadline affects only voters who wait to mail their ballot until the last days of Minnesota’s generous 46-day absentee voting period. Indeed, even Plaintiffs’ evidence shows that any absentee ballot placed in the mail before late October will be received on or before Election Day. In other words, even assuming that the Order is ultimately upheld on appeal, staying the Order for a few weeks will not undercut the relief provided by the Order.

For all of these reasons, there is no need to “enforce[e] the decision” now and immediately permit the Secretary to begin informing voters regarding the relief approved in the Order. *DRJ, Inc.*, 741 N.W.2d at 144. Allowing the Order to take effect now could lead to voter confusion if the Republican Committees’ appeal is successful. But if the Republican Committees’ appeal is unsuccessful, no voters will be harmed by subsequently implementing the extended deadline and elimination of the Witness Requirement contemplated by the Order. On balance, maintaining the status quo pending appeal is the most prudent course for all parties and the public.

Finally, other “relevant factors” support entry of a stay. *Webster v. Hennepin County*, 891

N.W.2d 290, 293 (Minn. 2017). The Order “raises substantial issues,” *id.*, including:

- The proper standard of review for a consent decree that sets aside a statute enacted by the Legislature, *see* Order at 17–18;
- Whether Plaintiffs carried their heavy burden to show that they were likely to succeed on the merits of their claims, *see id.* at 18–25;
- Whether the Secretary’s judgment that Plaintiffs are likely to succeed on those claims was “reasonable,” *id.* at 24–25;
- Whether even a “reasonable” judgment by the Secretary on that question is sufficient to support invalidation of the Legislature’s enactments as approved in the Order, *see id.*; and
- Whether the timing of entry of the Consent Decree in the weeks leading up to the November general election is equitable, *compare id. with Purcell*, 549 U.S. at 4–5.

As explained, the Republican Committees also face the “injury” of potential harm to their appellate rights “absent a stay,” and the “public interest” favors a stay pending the expedited appeal that will avoid voter confusion or erosion of confidence in the integrity of the State’s elections. *Webster*, 891 N.W.2d at 293.

#### CONCLUSION

The Court should grant a stay pending appeal.

DATED: August 10, 2020

Respectfully submitted,

/s/ Benjamin L. Ellison

Benjamin L. Ellison (#392777)

JONES DAY

90 South Seventh Street, Suite 4950

Minneapolis, MN 55402

Phone: (612) 217-8800

Fax: (844) 345-3178

bellison@jonesday.com

John M. Gore\*

E. Stewart Crosland\*

JONES DAY

51 Louisiana Avenue, N.W.

Washington, D.C. 20001

Phone: (202) 879-3939

Fax: (202) 626-1700

jmgore@jonesday.com

scrosland@jonesday.com

*Counsel for Intervenor-Defendants the  
Republican Party of Minnesota, the  
Republican National Committee, and the  
National Republican Congressional  
Committee*

\*Admitted *pro hac vice*

**ACKNOWLEDGEMENT**

The undersigned acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

DATED: August 10, 2020

/s/Benjamin L. Ellison

Benjamin L. Ellison (#392777)