

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

DSCC and DCCC,

Plaintiffs,

vs.

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

Defendant,

Republican Party of Minnesota and
Republican National Committee,

Intervenor-Defendants.

Court File No.: 62-CV-20-585

Case Type: Civil – Other/Misc.

ORDER & MEMORANDUM

This matter came before the undersigned on August 7, 2020 on the motion of Intervenor-Defendants Republican Party of Minnesota and the Republican National Committee (“Republican Committees”) in support of their emergency motion to stay the temporary injunction which this court ordered in its Order & Memorandum dated July 28, 2020.

Attorneys Bruce Spiva and Samuel Clark appeared on behalf of Plaintiffs DSCC and DCCC (“Democratic Committees”). Assistant Attorney General Cicely Miltich appeared on behalf of Defendant Secretary of State Steve Simon (“Secretary of State”). Attorneys John Gore and Benjamin Ellison appeared on behalf of the Republican Committees.

Having considered the facts, the arguments of counsel and the parties, and all of the files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. The Republican Committees' emergency motion to stay the temporary injunction is **DENIED.**
2. The attached Memorandum shall be incorporated into this Order.

BY THE COURT:

Dated: August 11, 2020

THOMAS A. GILLIGAN, JR.
JUDGE OF DISTRICT COURT

MEMORANDUM

This matter comes back before this court upon the Republican Committees' emergency motion to stay the Order & Memorandum (the "Order") issued by this court on July 28, 2020. The Order temporarily enjoined the Secretary of State from enforcing certain provisions of Minn. Stat. § 204C.15, subd. 1 and Minn. Stat. § 203B.08 (the "challenged laws"), pending the appeal of the Order to the Minnesota Court of Appeals. For the reasons below, this court denies the Republican Committees' emergency motion to stay.

In the Order, this court temporarily enjoined the Secretary of State from enforcing the prohibition under Minn. Stat. § 204C.15, subd. 1 which limits a person from assisting more than three voters who require assistance to vote by reason of blindness, disability, or inability to read or write, in marking their ballots. This court also temporarily enjoined the Secretary of State from enforcing the prohibition under Minn. Stat. § 203B.08, subd. 1 which limits a person from assisting more than three voters in returning or mailing an absentee ballot. This court also ordered the Secretary of State to provide written notice to all county attorneys and election officials in Minnesota that the challenged laws were unenforceable unless otherwise ordered by this court. Finally, this court ordered the Secretary of State to post certain information, consistent with the Order, on its website and at polling locations.

On July 31, 2020, the Democratic Committees posted the bond required by the Order. On August 3, 2020, the Republican Committees filed their Notice and Emergency Motion to Stay Temporary Injunction, a supporting Memorandum and Affidavits. On that same day, the Republican Committees also filed a Notice of Appeal.

The Republican Committees move for an emergency stay under both Minn. R. Civ. P. 62.02 and Minn. R. Civ. App. P. 108.02, subd. 1(c).

STANDARD OF REVIEW

Minn. R. Civ. App. P. 103.03(b) provides that: “[a]n appeal may be taken to the Court of Appeals ... from an order which grants, refuses, dissolves or refuses to dissolve, an injunction” “When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.” Minn. R. Civ. P. 62.02.

An “appellant may obtain a stay only when authorized and in the manner provided in Rules 107 and 108 [of the] Rules of Civil Appellate Procedure.” Minn. R. Civ. P. 62.03. Under Minn. R. Civ. App. P. 108.01, subd. 1, “an appeal from a judgment or order does not stay enforcement of the judgment or order in the trial court unless that court orders relief in accordance with Rule 108.02.”

Accordingly, under Minn. R. Civ. App. P. 108.02, subd. 1:

A party seeking any of the following relief must move first in the trial court: (a) a stay of enforcement of the judgment or order of a trial court pending appeal; (b) approval of the form and amount of security, if any, to be provided in connection with such a stay; or (c) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending pursuant to Minn. R. Civ. P. 62.02.

Commentators to the Minnesota Rules of Civil Procedure have noted the following with regard to staying an injunction pending appeal:

The court must protect the rights of the adverse party and usually does by providing security in form of a bond...This rule properly allocates to the trial court the determination whether a stay should be granted. A trial judge has presided over all the proceedings and understands the nature of the controversy much better than would an appellate court considering the matter for the first time and is in a better position to specify the conditions protecting the rights of the appellee until the appellate court has an opportunity to rule on the merits of the controversy.

In some situations, permitting an injunctive order to stand during the pendency of an appeal permits a party to prevail as a practical matter and renders the appeal meaningless or nearly so. In other situations, staying the effect of an injunctive order during the pendency of an appeal has the same effect as the injunctive relief provided. Whether an injunctive order should be enforced or should be stayed can be a very difficult question better fitted to the exercise of discretion by the trial court. The trial

judge may be better able to ascertain whether the appellant seeks the appeal primarily as a device to gain time and delay proceedings or whether a stay of enforcement has merit.

2A D. Herr & R. Haydock, *Minn. Prac.: Civ. R. 62.02 Annot.* (6th ed. & Supp.). In effect, the trial court must strike a balance on the prospective effect of leaving the injunctive relief in place against the consequence of staying the injunctive relief during the delay created by an appeal. *See DRJ, Inc. v. City of St. Paul*, 741 N.W.2d 141, 144 (Minn. Ct. App. 2007) (“[w]hen determining whether or not to grant a stay pending appeal, the trial court...must balance the appealing party's interest in preserving the status quo, so that effective relief will be available if the appeal succeeds, against the interests of the public or the prevailing party in enforcing the decision and ensuring that they remain ‘secure in victory’ while the appeal is pending.”).

A trial court has broad discretion in deciding which factors are relevant in each case. “Among the factors that may be relevant are: whether the appeal raises substantial issues; injury to one or more parties absent a stay; and the public interest, which includes the effective administration of justice.” *Webster v. Henn. Cty.*, 891 N.W.2d 290, 293 (Minn. 2017) (citing *State v. N. Pacific Railway Co.*, 22 N.W.2d 569, 574-75 (Minn. 1946)).

THE REPUBLICAN COMMITTEES’ EMERGENCY MOTION TO STAY IS DENIED

The Republican Committees contend that this court’s conclusion that the Democratic Committees are likely to succeed on the merits of their preemption and unconstitutional burden claims raises substantial issues on appeal, such as whether: (1) the burden and standard of review used by the court was appropriate; (2) the subgroup analysis used by the court under the *Anderson/Burdick* framework was proper and supported by the record; (3) the existence of other laws which protect the integrity of the election process impact the enforceability of the challenged laws; (4) marking and collecting ballots is protected speech or association; (5) Section 208 of the Voting Rights Act (“VRA”) preempts the challenged laws; and (6) the issuance of a temporary injunction less than two months

prior to the beginning of the absentee-voting period for the 2020 general election is untimely and inequitable.

The Republican Committees also argue that they would be irreparably harmed by the temporary injunction by depriving them of the opportunity to seek timely appellate review. They also claim that the “enhancement” of the Democratic Committees’ electoral prospects and the success of their preferred candidates would come at the expense of the Republican Committees’ own electoral prospects and the success of their preferred candidates. They maintain that the temporary injunction harms “the Republican Committees, their voters, their members, and their supported candidates because it forces them to suffer this harm to their electoral prospects or to divert resources to offset it.” They also contend that they do not have experience or the infrastructure to take advantage of assisting disabled or language-minority voters in marking ballots or in collecting absentee ballots. They maintain that the temporary injunction will put them at a competitive disadvantage in the upcoming election. When compared to any harm to the Democratic Committees, the Republican Committees contend, as they did previously, that the Democratic Committees will suffer no substantial injury because they waited too long to bring this issue to court.

Finally, the Republican Committees maintain that the public interest weighs in favor of a stay. They contend that failing to grant a stay will frustrate the will of the people, because the challenged laws were enacted by their chosen representatives. They also claim that the public would be substantially affected by last minute changes to election-administration rules, such as those at issue here, within weeks of the election. The Republican Committees maintain that failing to grant a stay of the temporary injunction would lead to “voter confusion” and an erosion of “confidence” in Minnesota’s elections.

The Democratic Committees oppose the stay. They agree on the framework for consideration of the Republican Committees’ motion under *Webster*, but maintain that the Republican Committees

cannot carry the heavy burden required to stay the temporary injunction that this court put in place just over a week ago. *Webster*, 891 N.W.2d at 293. The Democratic Committees argue that because the Republican Committees have not established that they are likely to succeed on the merits of the appellate issues they have identified, those identified issues are not “substantial.” For example, the Democratic Committees contend that the Republican Committees have not shown that they are likely to succeed in showing the court erred in: (1) using and applying strict scrutiny to find that the challenged laws imposed a severe burden on the fundamental right to vote; (2) finding that the challenged laws are unconstitutional burdens on free speech and association; or (3) rejecting nonbinding authority offered by the Republican Committees in making its determination that the challenged laws are preempted by Section 208 of the VRA. According to the Democratic Committees, the Republican Committees must demonstrate that they would prevail on all three of the bases on which this court issued the temporary injunction to justify a stay.

The Democratic Committees also maintain that the Republican Committees have not demonstrated substantial injury which would tip the balance of harms in their favor. The Democratic Committees contend that a stay would re-impose the very harm which the temporary injunction remedied. *Brady v. Nat’l Football League*, 779 F. Supp. 2d 1043, 1050 (D. Minn. 2011). They also contend that the Republican Committees’ harm is one of their own making, because both parties are now free to assist disabled or language-minority voters mark their ballots or help voters collect or mail absentee ballots. The Democratic Committees argue that the Republican Committees’ contention that they are harmed when more voters can successfully access the franchise does not demonstrate a legitimate or cognizable injury. Last, the Democratic Committees contend that public interest does not favor a stay because the temporary injunction was issued three months before the 2020 general election and will not lead to voter confusion.

While the Secretary of State opposed the motion for a temporary injunction, it does not support the motion to stay. It opposes the motion for a stay because it has already complied with the court's directive to notify local election officials within seven days of the issuance of its Order "that the challenged laws at issue in Minn. Stat. § 204C.15, subd. 1 and Minn. Stat. § 203B.08, subd. 1 are unenforceable unless otherwise ordered by this court." The Secretary of State contends that if the stay were entered, it would be required to send local election officials another notice which would reverse course from the notice which it just provided. It argues that: "[s]uch a seesaw approach could cause confusion among local election officials, voters, and those who provide assistance to voters, some of whom may already have relied on the Secretary's earlier notice under the temporary injunction." See *Ohio State Conference of N.A.A.C.P. v. Husted*, 769 F.3d 385, 388-89 (6th Cir. 2014) (denying motion to stay enforcement of temporary injunction even where state officials had not officially communicated the injunction's effect); *Hippert v. Ritchie*, 813 N.W.2d 374, 381 (Minn. 2012) (recognizing the state's interest in minimizing "voter confusion").

I. THE REPUBLICAN COMMITTEES HAVE FAILED TO PRESENT SUBSTANTIAL ISSUES THAT MERIT A STAY

The Republican Committees' motion to stay effectively asks this court to reconsider the decision it reached just over one week ago. In its consideration of whether to issue a temporary injunction to prevent enforcement of the challenged laws, this court comprehensively evaluated the arguments made by the Democratic Committees, the Republican Committees, and the Secretary of State. In the end, it determined that the Democratic Committees demonstrated a substantial likelihood of success on the merits of all three of their claims to the challenged laws. It has already considered, and rejected, all the arguments that the Republican Committees offer as "substantial issues" which would merit a stay. They have offered no new legal arguments, nor have they offered any new binding or persuasive authority, which would compel this court to reach a different result.

While *Webster* does not define “substantial issues,” that phrase cannot mean making a less demanding showing to merit a stay, than *Dahlberg* required to issue the temporary injunction in the first place. Compare *Webster*, 891 N.W.2d at 293 with *Dahlberg Bros, Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321 (Minn. 1965). In any event, the Republican Committees have not met their burden to establish that there are “substantial issues” which would merit a stay of the temporary injunction.

II. THE BALANCE OF HARMS DOES NOT WEIGH IN FAVOR OF A STAY OF THE TEMPORARY INJUNCTION

The second consideration for this court under *Webster* is the relative injuries to the parties absent a stay. *Webster*, 891 N.W.2d at 293. This court already assessed and balanced the harms to the parties, including those originally advanced by the Republican Committees, in deciding to issue a temporary injunction. The Republican Committees and the Secretary of State have, however, offered additional evidence of harm for this court to assess in its consideration of whether to stay the temporary injunction.

The Republican Committees have submitted the Declarations of Christopher Carr, the Political Director of the Republican National Committee (“RNC”) and Rebecca Alery, the Executive Director of the Republican Party of Minnesota (“RPM”). They broadly contend that: “[a]ny change in Minnesota’s election laws that benefits the DFL and its supported candidates, or improves their electoral prospects, necessarily harms the electoral prospects of [the Republican Committees] and [their] supported candidates.” The Republican Committees maintain that the temporary injunction alters the structure of the competitive environment in which they, their members, voters, and supported candidates participate in Minnesota elections. Although they acknowledge that like the Democratic Committees, the Republican Committees do not fund or support activities to assist voters in marking ballots or collecting absentee ballots in Minnesota, they observe that unlike the Democratic Committees, they have never supported such activities and lack the experience and infrastructure to deploy and support those efforts in Minnesota. Thus, the Republican Committees contend that the

temporary injunction places them, their members, voters, and supported candidates at a competitive disadvantage. They claim they must “either suffer this competitive disadvantage from the Temporary Injunction, or divert resources from existing activities to studying and developing the infrastructure and organization to itself engage in ballot-marking assistance and ballot harvesting activities that the [Democratic Committees] plan to engage in.”

In essence, the Republican Committees contend that the evaluation of harms between them and the Democratic Committees is a zero-sum game. Whatever advantages one party necessarily harms the other. According to the Republican Committees, because the temporary injunction allows the Democratic Committees to assist “its” voters, it will disadvantage the Republican Committees, their members, voters, and supported candidates. As the court understands this argument, it is not necessarily that the opportunity of the Republican Committees to influence voters to vote for their supported candidates is being affected by the temporary injunction. Instead, it is the threat that voters might have greater access to vote for a candidate supported by the Democratic Committees that is the issue. In other words, because of the temporary injunction, more voters might have an opportunity to cast their vote for a candidate from the opposing party which presents the harm. More voters having the opportunity to vote for their preferred candidate does not, however, present a convincing basis for harm.

The temporary injunction enjoined the Secretary of State from enforcing the challenged laws, in part, because the Democratic Committees demonstrated a substantial likelihood of success on their claims that the challenged laws were preempted by Section 208 of the VRA and presented an unconstitutional burden on the right to vote. While the court’s focus in issuing the temporary injunction was upon the classification of voters who would be most affected by the enforcement of the challenged laws – language-minority, Native, and disabled voters – the temporary injunction increases ballot access for all voters no matter their preferred party or candidate. It also allows any

party to engage in voter outreach which presumably would be geared toward increasing votes for their supported candidates. The Democratic Committees and the Republican Committees have the same opportunities to reach and assist voters while the challenged laws are temporarily enjoined.

The Republican Committees maintain that the difference here is that the Democratic Committees are prepared to benefit from the temporary injunction and they are not. The Republican Committees contend that this distinction is enough to demonstrate they will be more harmed by the temporary injunction than the Democratic Committees would be harmed by the stay. While the temporary injunction may present an opportunity that one party may be better equipped to take advantage of, that is not a demonstration of harm that tips the balance in favor of a stay. In fact, the Republican Committees admit they can avoid any competitive disadvantage from the temporary injunction by diverting its resources and efforts from existing activities to “studying and developing the infrastructure and organization to itself engage in ballot-marking assistance and ballot harvesting activities that the [Democratic Committees] plan to engage in.” This purported harm is therefore remediable. The balance of harms between the Democratic Committees and the Republican Committees does not favor the issuance of a stay of the temporary injunction.

The Secretary of State has also introduced evidence of harm because it already provided the directive to local election officials as mandated by this court’s Order. It argues that the issuance of a second directive that would countermand the first would present confusion to local election officials and voters, particularly in the midst of absentee and in person voting in the primary election which will take place on August 11, 2020. The Republican Committees counter that the Secretary of State acted prematurely and has created a problem of its own making. They contend that the Secretary of State should have waited until after the Democratic Committees posted their bond to issue its directive, rather than send one on July 30, 2020.

The Secretary of State had seven days from July 28, 2020 to issue the directive to local officials which this court ordered. That it acted quickly to send the directive is unsurprising, given that the primary election was just days away. The Secretary of State was not required to wait and see whether the minimal bond would be posted by the Democratic Committees before it did so. It did not, therefore, create a problem of its own making.

Of greater importance is the unnecessary confusion to local election officials caused by the issuance of a second directive. To the extent that political parties, voters, or those assisting them, have already relied on the temporary injunction or the directive provided to local election officials, in the run up to the primary election, a stay would also create broader confusion. *See Pursell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (“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.”). The Secretary of State’s prompt directive to local election officials weighs against issuing a stay of the temporary injunction.

III. THE PUBLIC INTEREST WEIGHS IN FAVOR OF ENABLING AS MANY QUALIFIED VOTERS TO VOTE AS POSSIBLE

The next consideration under *Webster* that this court may assess is the impact on the public interest. *Webster*, 891 N.W.2d at 293. This court already assessed public interest in its consideration of whether to issue the temporary injunction. The Republican Committees have advanced no argument on the public interest that would cause this court to change its prior conclusion. Though the Republican Committees have suggested the challenged laws reflect the “will of the people” which would be thwarted by the temporary injunction, the people of Minnesota have no interest in enforcing voting laws which are unconstitutional. *See Pavak v. Simon*, 2020 WL 3183249, * 28 (D. Minn. June 15, 2020)(cleaned up)(citations omitted).

This court continues to agree with the reasoning of the Sixth Circuit in *Obama for America v. Husted*, which bears reiteration here:

While states have a strong interest in their ability to enforce state election law requirements, the public has a strong interest in exercising the fundamental political right to vote. That interest is best served by favoring enfranchisement and ensuring that qualified voters' exercise of their right to vote is successful. The public interest therefore favors permitting as many qualified voters to vote as possible.

697 F.3d 423, 436 (6th Cir. 2012). The public interest does not favor the issuance of a stay of the temporary injunction.

Although this court is mindful that it issued the temporary injunction less than two months before absentee voting begins for the 2020 general election and just over three months before Election Day, the temporary injunction did not create a right which did not previously exist. Disabled and language-minority voters had the right to assistance in marking ballots and Minnesotans had the ability to provide that assistance, both before and after the temporary injunction. All voters had the right to be assisted in collecting and mailing their ballots and Minnesotans had the ability to provide that assistance, both before and after the temporary injunction. The temporary injunction simply increases the possibility of receiving the right to assistance. This court has considered, in addition to the harms attendant upon issuance or non-issuance of a temporary injunction or a stay, considerations specific to this election case. *See Purcell*, 549 U.S. at 4. On balance, any disruption to the status quo before the 2020 general election was outweighed by the public interest in voters receiving needed assistance and all parties' interest in engaging in activities protected by the Minnesota and United States Constitutions.

CONCLUSION

The Republican Committees' emergency motion to stay the temporary injunction issued by this court on July 28, 2020 is therefore denied.

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