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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 Educational Fund,

Plaintiffs,

v.

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

Defendant,

and

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

Intervenor-Defendants.

PLAINTIFFS' OPPOSITION TO INTERVENOR-DEFENDANTS' EMERGENCY MOTION TO STAY ORDER

Court File No: 62-CV-20-3149

Assigned Judge: Hon. Sara Grewing

Plaintiffs Robert LaRose, Teresa Maples, Mary Sansom, Gary Severson, and Minnesota Alliance for Retired Americans Educational Fund submit this memorandum of law in opposition to the emergency motion to stay order filed by Intervenor-Defendants Republican Party of Minnesota, Republican National Committee, and National Republican Congressional Committee (the "Republican Committees").

Yesterday, the U.S. Supreme Court denied a stay application filed by Intervenor-Defendant Republican National Committee, explaining that it "lack[s] a cognizable interest in the State's ability to 'enforce its duly enacted' laws" where "state election officials support [a] challenged decree, and no state official has expressed opposition." *Republican Nat'l Comm. v. Common Cause*

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R.I., No. 20A28, 2020 WL 4680151, at *1 (U.S. Aug. 13, 2020) (quoting *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018)). That is precisely the situation here. As the Republican Committees concede in their motion, this Court has already entered an order (the "Order") and stipulation and partial consent decree (the "Consent Decree"), one agreed to by Plaintiffs and Defendant Steve Simon (the "Secretary"), who serves as Minnesota's chief elections officer. *See* Intervenor-Defendants' Memorandum in Support of Their Emergency Motion to Stay Order ("Mot."), Dkt. No. 102, at 1. The Court did so after carefully considering Plaintiffs' claims and resolving the legal issues that the Republican Committees now claim justify the extraordinary remedy of an emergency stay. Simply stated, the Republican Committees failed to satisfy their heavy burden even before the Supreme Court's order in *Common Cause Rhode Island*. In response to the Consent Decree, which provides all Minnesotans—including some of its most vulnerable citizens—safe and meaningful opportunities to cast ballots in the midst of an unprecedented public health crisis, the Republican Committees seek to undo this Court's and the parties' efforts to ensure access to this fundamental right. But they have not justified such a dramatic intrusion into the ordinary judicial process. Far from demonstrating any likelihood of success on appeal—indeed, the Republican Committees do not even assert such a likelihood, let alone support it—they instead identify several "substantial issues" they believe merit a stay. But these issues, of dubious import and limited merit, fall well short of the standard needed to justify extraordinary relief. And the Republican Committees provide no persuasive argument to counter the Court's conclusions that Plaintiffs and the public would suffer injury if the Consent Decree were not entered. Instead, the only potential harm that the Republican Committees identify—the risk of voter confusion—actually militates *against* granting their motion, because the Consent Decree has already been publicized and is consistent with voters' experiences during the August 11 primary election.

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For these reasons and those that follow, Plaintiffs urge this Court to deny the Republican Committees' motion. *See Common Cause R.I.*, 2020 WL 4680151, at *1; *DSCC v. Simon*, No. 62-CV-20-585, slip op. at 13 (Minn. Dist. Ct. Aug. 11, 2020) (denying similar stay motion filed by Intervenor-Defendants Republican Party of Minnesota and Republican National Committee).

FACTS

On May 13, 2020—six months before the November general election—Plaintiffs filed a complaint against the Secretary, challenging two provisions of the Minnesota Election Law: Minnesota Statutes sections 203B.07, subdivision 3, and 203B.121, subdivision 2(b)(5), which require nearly all mail voters to obtain a witness signature (the "Witness Requirement"); and Minnesota Statutes sections 203B.08, subdivision 3, and 204B.45, subdivision 2, which require the rejection of mail ballots received after 8 p.m. on election day (the "Election Day Receipt Deadline"). *See* Dkt. No. 2. On June 16, Plaintiffs and the Secretary signed and submitted a consent decree, stipulating that, for the August primary election, the Secretary would not enforce either of the challenged provisions and would issue guidance and instructions to local officials and voters on how to comply with the effects of the decree. *See* Dkt. No. 22. The Court later entered judgment in accordance with the decree, *see* Dkt. No. 23, and absentee voting began on June 26.

Soon after, on July 2, Plaintiffs filed a motion for temporary injunction, asserting that these laws unlawfully burden the right to vote under the Minnesota and U.S. Constitutions, and that the Election Day Receipt Deadline further violates both Constitutions' due process guarantees. *See* Dkt. No. 51. As the Court has noted, this motion sought "essentially the same relief in the Primary Consent Decree for the general election." *See* Order, Dkt. No. 97, at 8. In support of their motion for temporary injunction, Plaintiffs filed multiple declarations and expert reports, including submissions from voters who had been and would be disenfranchised by the challenged provisions,

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an epidemiologist, and two elections experts. *See* Dkt. Nos. 53–61. The Secretary filed no opposition to Plaintiffs' motion, and the Republican Committees provided nothing to refute Plaintiffs' evidence.

On July 17, Plaintiffs and the Secretary filed the Consent Decree and asked the Court to enter the agreement as it pertains to the November general election. The Court heard this request and the other matters pending before it on July 31.

On August 3, this Court issued the Order. First, although the Court denied the Republican Committees' motion to intervene as a matter of right, *see* Order at 8–15, it nonetheless granted them permissive intervention, *see id.* at 15–16. The Court then addressed entry of the Consent Decree. It began by considering the proper legal standard to apply to its analysis: the state court approach, consisting of a limited consideration of the agreement's fairness, *see id.* at 17 (citing *Hentschel v. Smith*, 153 N.W.2d 199, 206 (Minn. 1967); *Hafner v. Hafner*, 54 N.W.2d 854, 858 (Minn. 1952)), or the federal courts' "far more thorough inquiry and fairness finding," which includes "whether the plaintiff has made an adequate showing of a likelihood of success on the merits of the claim." *Id.* (citing *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981); *Flinn v. FMC Corp.*, 528 F.2d 1169, 1172 (4th Cir. 1975)). Because "the Court would reach the same result" under the Minnesota or federal standard, it ultimately analyzed the Consent Decree under both. *Id*. at 18.

Applying the state court fairness inquiry, the Court concluded that the Republican Committees "offer no evidence that the [Consent Decree] is the product of fraud, neglect or the absence of consent," and thus that it was adequately fair. *Id.* at 18–19. Moving on to the more probing federal standard, the Court rejected the Republican Committees' arguments that it was bound either by the federal court's decision in *League of Women Voters v. Simon*, No. 20-1205

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(D. Minn. June 23, 2020), or by other state and federal authorities, or that concerns about the dangers of COVID-19 in November were unduly speculative. *See* Order at 19–23. Instead, the Court concluded that Plaintiffs were likely to succeed on their challenges to both the Witness Requirement and the Election Day Receipt Deadline, noting in particular that

> 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.

Id. at 24–25. The Court further concluded that Plaintiffs and the Secretary

> 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.

Id. at 25. Because "[u]nder either Minnesota or federal law, the [Consent Decree] is fair and appropriate," the Court granted the request to enter it. *Id.* at 25.

Subsequently, on August 10, the Republican Committees filed a notice of appeal, *see* Dkt. No. 100, and now seek an emergency stay. Like Plaintiffs, the Secretary also opposes the Republican Committees' request for a stay. *See* Defendant's Memorandum of Law in Opposition to Intervenor-Defendants' Motions for Stays.

ARGUMENT

The Republican Committees have not, and cannot, satisfy their heavy burden of showing that the extraordinary relief they seek—staying the Order pending appeal—is justified. The Minnesota Rules of Civil Procedure set the baseline rule: "an appeal from a judgment or order does not stay enforcement of the judgment or order" unless a party seeks and receives a stay. Minn. R. Civ. App. P. 108.01–02. Accordingly, "[a] stay is an 'intrusion into the ordinary processes of administration and judicial review,'" *Nken v. Holder*, 556 U.S. 418, 427, 433–34 (2009) (quoting

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Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958) (per curiam)), and the granting of a stay pending appeal is "extraordinary relief." *Winston-Salem/Forsyth Cty. Bd. of Educ. v. Scott*, 404 U.S. 1221, 1231 (1971). For that reason, a stay "is not a matter of right, even if irreparable injury might otherwise result to the appellant," *Nken*, 556 U.S. at 427 (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926)), and the party requesting a stay bears a "heavy burden." *Scott*, 404 U.S. at 1231. Given this burden, stay requests are more often than not denied. *See Brady v. Nat'l Football League*, 779 F. Supp. 2d 1043, 1046 (D. Minn. 2011).

Minnesota courts will grant a stay pending appeal only when the interests of the parties and the public weigh in favor of granting such extraordinary relief. In determining whether such relief is appropriate, Minnesota courts "identify the relevant factors, weigh[] each factor, and then balance them, applying the court's sound discretion." *Webster v. Hennepin County*, 891 N.W.2d 290, 293 (Minn. 2017). Relevant factors might include whether the appeal raises substantial issues, whether injury to one or more parties will result absent a stay, whether a stay benefits the public interest and the effective administration of justice, and whether the appeal is likely to succeed on the merits. *Id.* at 292–93. Ultimately, the court "has broad discretion in deciding which of the various factors are relevant in each case." *Id.* at 293.

Here, the Court should consider (1) whether the Republican Committees have shown genuine substantial issues—on which they are likely to succeed—that undermine the Court's legal conclusions, (2) whether any harm to the Republican Committees is outweighed by the irreparable harms to Plaintiffs and other Minnesota voters that the Court has already identified, and (3) whether the public would be harmed by a stay. Each of these factors weighs strongly against the Republican Committees' motion.

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I. The Republican Committees fail to raise substantial issues.

The Republican Committees fail to identify substantial issues that are likely to result in a reversal of the Order on appeal. Courts in Minnesota have found that issues are substantial when they have sufficient merit. *See Kluger v. Gallett*, 178 N.W.2d 900, 901 (Minn. 1970) (noting that issue "without sufficient merit" is not "substantial issue"); *Swang v. Hauser*, 180 N.W.2d 187, 189 (Minn. 1970) (characterizing two issues on appeal as not "substantial issue[s]" because one lacked evidentiary support and other was legally foreclosed); *DSCC*, slip op. at 9 ("While *Webster* does not define 'substantial issues,' that phrase cannot mean making a less demanding showing to merit a stay, than [the standard] required to issue [a] temporary injunction."); *cf. Buffalo Bituminous, Inc. v. Maple Hill Estates, Inc.*, 250 N.W.2d 182, 182 (Minn. 1977) (per curiam) (suggesting that trial court's finding on issue that was supported by evidence was not "substantial issue" on appeal). This requirement is not unique to Minnesota. Federal courts also require a strong showing of a likelihood of success on the merits before staying proceedings pending appeal. *See, e.g., Brakebill v. Jaeger*, 905 F.3d 553, 557 (8th Cir. 2018) (stay applicant must make "a strong showing that he is likely to succeed on the merits" (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *Robinson v. Bank of Am., N.A.*, Civil No. 11-2284 (MJD/LIB), 2012 WL 2885587, at *1 (D. Minn. July 13, 2012) (similar).

Moreover, appellate courts review a district court's adoption or modification of a consent decree for an abuse of discretion. *See Hafner*, 54 N.W.2d at 860; *Hollenkamp v. Peters*, 410 N.W.2d 427, 431 (Minn. App. 1987); *see also, e.g., United States v. Se. Pa. Transp. Auth.*, 235 F.3d 817, 822 (3d Cir. 2000) ("We review a district court's decision to grant a motion for entry of a consent decree for abuse of discretion." (citing *United States v. Cannons Eng'g Corp.*, 899 F.2d

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79, 84 (1st Cir. 1990); *United States v. Montrose Chem. Corp. of Cal.*, 50 F.3d 741, 746 (9th Cir. 1995))).

Here, the Republican Committees simply list five issues that they deem substantial, without any accompanying analysis or justification. *See* Mot. at 4. They demonstrate neither that this Court abused its discretion nor that it rendered a clearly erroneous decision. Indeed, they advance no argument whatsoever in connection with these issues and do not even *attempt* to show a likelihood of success on the merits of these issues, and for good reason—none provides a sound basis for reversal by an appellate court.

"The proper standard of review for a consent decree that sets aside a statute enacted by the Legislature." *Id.* at 4. This first issue identified by the Republican Committees would not result in reversal. The Court analyzed the Consent Decree under *both* the state and federal standards. *See* Order at 17–25. Therefore, an appellate court's endorsement of one standard over the other would result in mere clarification and *not* reversal of the Order, given that the Court reached the same conclusion applying both standards. Accordingly, this issue is not a sound basis for a stay.

"Whether Plaintiffs carried their heavy burden to show that they were likely to succeed on the merits of their claims." Mot. at 4. This Court already concluded that Plaintiffs sufficiently demonstrated a likelihood of success on the merits, to such a degree that it "would have been empowered to grant the preliminary injunction" had Plaintiffs and the Secretary not reached the Consent Decree. Order at 24. The Republican Committees provide no argument or evidence in their motion to suggest that the Court erred in its analysis. Indeed, even before the Court reached its decision, neither the Secretary nor the Republican Committees submitted persuasive arguments or evidence to justify enforcement of the challenged laws. *See id.* at 24 ("The

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Secretary offers no rational basis for the enforcement of the witness requirement, and the [Republican] 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."). Absent persuasive evidence indicating an erroneous decision by the Court, this is not a substantial, meritorious issue justifying a stay. *See DSCC*, slip op. at 8.

"Whether the Secretary's judgment that Plaintiffs are likely to succeed on those claims was 'reasonable.'" Mot. at 4. Similarly, just as the Republican Committees point to nothing suggesting that the Court erroneously concluded that Plaintiffs were likely to succeed on the merits, so does the motion lack any argument or evidence indicating that the Secretary's own judgment in this regard was flawed.

"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." *Id.* at 4. The Republican Committees apparently attempt to develop, for the first time on appeal, an argument that the reasonable judgment of the State's chief elections official is an insufficient basis on which to enter into a consent decree regarding constitutional violations. Even if this argument had merit—it does not, *see, e.g.*, *L.K. v. Gregg*, 425 N.W.2d 813, 821 (Minn. 1988) (encouraging consent decrees to settle civil rights litigation against State)—the Republican Committees could not raise it for the first time on appeal. *See, e.g.*, *Vill. Lofts at St. Anthony Falls Ass'n v. Hous. Partners III-Lofts, LLC*, 937 N.W.2d 430, 436 (Minn. 2020) ("It is well settled that a party may not raise for the first time on appeal a matter not presented to the court below." (quoting *In re Welfare of K.T.*, 327 N.W.2d 13, 16–17 (Minn. 1982))). Moreover, to the extent that the Republican Committees are suggesting that the Secretary's judgment was somehow questionable *even though* the Court agreed that Plaintiffs are likely to succeed on their constitutional challenges

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to the Witness Requirement and the Election Day Receipt Deadline, they are in essence promoting some nebulous, hitherto-unseen standard for approval of consent decrees that is higher and more rigorous than the federal standard that the Court applied *at the Republican Committees' urging*. Absent any legal support for this novel approach, the Republican Committees have not raised a meritorious issue.

"Whether the timing of entry of the Consent Decree in the weeks leading up to the November general election is equitable." Mot. at 4. Finally, this purportedly substantial issue mischaracterizes both the timing of the Order and *Purcell v. Gonzalez*, 549 U.S. 1 (2006). *Purcell* concerned itself with *last-minute* election changes that threaten to sow widespread voter confusion that could result in disenfranchisement. *See id.* at 4–5. But here, the Court issued the Order *three months* before the November election—not mere "weeks" before, as the Republican Committees suggest. Mot. at 4. And even if they were correct on this point, *Purcell* would not counsel reversal. That decision urged courts to take careful account of considerations unique to the election context before intervening, such as whether the change is likely to broadly confuse voters, undermine confidence in the election, or create insurmountable administrative burdens on election officials. *See Purcell*, 549 U.S. at 4–5. At no point in their motion do the Republican Committees explain what could be confusing to voters about the Consent Decree or the Order. The agreement reached by Plaintiffs and the Secretary does not alter voter qualifications, move voters' polling locations, or do anything else that might confuse voters to their detriment; it simply eliminates the need for mail voters to secure a witness and extends the deadline for counting mail ballots. And there is no indication, from the Republican Committees, the Secretary, or anyone else, that the Consent Decree creates undue administrative burdens. On the contrary, at the July 31 hearing, counsel for the Secretary emphasized that the Consent Decree "represents the Secretary's best judgment" and

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"is crafted based on his office's expertise on how to administer elections." Exhibit 1, Transcript of Combined Hearing (July 31, 2020), at 58.[1]

Instead, what *would* be confusing for Minnesota voters—and what might well erode confidence in the election—is if this Court stayed the Order just one week after it found that the laws at issue likely imposed unjustified burdens on the right to vote and that entry of the Consent Decree is needed at this time to "afford[the Secretary] sufficient time to provide instruction and certainty to voters and local election officials before absentee voting begins on September 18." Order at 18; *see also Purcell*, 450 U.S. at 4–5 ("Court orders affecting elections, *especially conflicting orders*, can themselves result in voter confusion and consequent incentive to remain away from the polls." (emphasis added)); *DSCC*, slip op. at 12 ("Of greater importance is the unnecessary confusion to local election officials caused by the issuance of a second directive."). This is especially true given that the media has already reported on the Order and the Consent Decree's effect on the November election,[2] which undermines the Republican Committees' claim that a stay would avoid the risk of voter confusion. *See* Mot. at 2. Moreover, the Consent Decree reflects changes that were already implemented for the August primary election held earlier this

[1] Additionally, courts have regularly granted relief to protect voting rights in the weeks and months before an election, as the Court did here. *See, e.g.*, *Ga. State Conference NAACP v. Georgia*, No. 1:17-cv-1397-TCB, 2017 WL 9435558, at *6 (N.D. Ga. May 4, 2017) (enjoining voter registration requirements and extending voter registration deadline approximately six weeks before election); *Sanchez v. Cegavske*, 214 F. Supp. 3d 961, 977 (D. Nev. 2016) (granting preliminary relief and ordering counties to open additional in-person voter registration and early voting locations approximately four weeks before election); *Fla. Democratic Party v. Detzner*, No. 4:16cv607-MW/CAS, 2016 WL 6090943, at *9–10 (N.D. Fla. Oct. 16, 2016) (requiring cure period for ballots with signature mismatches approximately three weeks before election).

[2] *See, e.g.*, *What You Need to Know for Minnesota's Primary Election on Tuesday*, Fox 9 (Aug. 6, 2020), https://www.fox21online.com/2020/08/06/what-you-need-to-know-for-minnesotas-primary-election-on-tuesday ("The same Ramsey County judge has approved a second consent decree that allows ballots in the Nov. 3 general election to count if they're postmarked by Election Day and received within seven days.").

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week, *compare* Dkt. No. 70 (second consent decree) *with* Dkt. No. 22 (first consent decree)—an election with robust turnout.[3] Consequently, imposing a stay would represent a *departure* from what countless Minnesota voters now believe to be the practice for the November election as a result of both media reportage and their experiences in the August primary. *See Common Cause R.I.*, 2020 WL 4680151, at *1 ("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."). Granting the Republican Committees' motion would therefore create—and certainly not prevent—the sort of voter confusion of which *Purcell* warned.

In short, rather than provide legal and factual support for the extraordinary relief they seek, "[t]he Republican Committees' motion to stay effectively asks this court to reconsider the decision it reached just over a week ago," after the Court "comprehensively evaluated the arguments made by the" parties and "determined that [Plaintiffs] demonstrated a substantial likelihood of success on the merits." *DSCC*, slip op. at 8. The Republican Committees "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." *Id*. Accordingly, they "have not met their burden to establish that there are 'substantial issues' which would merit a stay." *Id.* at 9.

II. A stay will irreparably injure Plaintiffs and Minnesota voters and is not in the public interest.

In the Order, this Court concluded that "[i]t 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

[3] *See, e.g.*, *Minneapolis on Track to Have Highest Primary Voter Turnout in Over 50 Years*, WCCO (Aug. 12, 2020), https://minnesota.cbslocal.com/2020/08/12/minneapolis-on-track-to-have-highest-primary-voter-turnout-in-over-50-years/; David Griswold, *Projections Show Strong Turnout in Minneapolis*, KARE (Aug. 11, 2020), https://www.kare11.com/article/news/politics/elections/projections-show-strong-turnout-in-minneapolis/89-a2816310-63fc-433f-9c59-d3ed1e691e08.

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health, safety, and constitutional rights of Minnesota's voters," a conclusion that supported its decision to enter the Consent Decree. Order at 25. Despite this finding, the Republican Committees now suggest that *they*, not Plaintiffs or the electorate, would be harmed if the Order were not stayed. *See* Mot. at 2. But the only reason they can provide is simply wrong. They argue that

> [b]y 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.

Mot. at 2 (second alteration in original) (quoting *Purcell*, 549 U.S. at 4–5). The problem with this reasoning is that, as discussed above, media coverage of the Consent Decree and the suspension of the Witness Requirement and the Election Day Receipt Deadline during the August 11 primary election have created the expectation that the challenged laws will similarly go unenforced during the November election. The "status quo pending appeal"—the maintenance of which, the Republican Committees contend, is "the most prudent course for all parties and the public," Mot. at 3—is not the *enforcement* of these laws, but rather their *suspension*. *See Common Cause R.I.*, 2020 WL 4680151, at *1. Accordingly, the only rationale the Republican Committees can muster to support their motion in terms of both their injury and the public interest militates *against* staying the Order. Even though the Republican Committees note that "[n]o voter may receive—much less return—an absentee ballot between now and September 18," Mot. at 3, a stay would nevertheless cause harm to both Plaintiffs and the public, by disrupting their expectations for the November general election, sowing precisely the sort of confusion that *Purcell* sought to combat, and, as this Court has already concluded, threatening "the health, safety, and constitutional rights of Minnesota's voters." Order at 25.

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Ultimately, "[a] stay is not a matter of right, even if irreparable injury might otherwise result." *Nken*, 556 U.S. at 427 (quoting *Virginian Ry. Co.*, 272 U.S. at 672). It is instead "an exercise of judicial discretion," *id.* (quoting *Virginian Ry. Co.*, 272 U.S. at 672), and this Court should weigh the injuries Plaintiffs and the public will face against the Republican Committees' injuries. *See Buchanan v. Evans*, 439 U.S. 1360, 1361 (1978) (Brennan, Circuit Justice) (in considering stay, court "should 'balance the equities' . . . and determine on which side the risk of irreparable injury weighs most heavily" (alteration in original) (quoting *Holtzman v. Schlesinger*, 414 U.S. 1304, 1308–09 (1973) (Marshall, Circuit Justice))); *DRJ, Inc. v. City of St. Paul*, 741 N.W.2d 141, 144 (Minn. App. 2007) (instructing trial courts to "balance the appealing party's interest in preserving the status quo . . . against the interests of the public or the prevailing party"). Here, the Republican Committees would not suffer irreparable injury absent a stay, since this Court has already concluded that they have no cognizable interest in this litigation, let alone interests that might be impaired or impended. *See* Order at 9–13; *see also Common Cause R.I.*, 2020 WL 4680151, at *1 (concluding that Intervenor-Defendant Republican National Committee "lack[s] a cognizable interest" in analogous case). Nor, their arguments notwithstanding, would the public be injured if their motion were denied. To the contrary, a stay would disrupt the status quo and sow confusion for Minnesota voters who believe the Consent Decree will be in effect for the November election—thus *effecting* the only harm that the Republican Committees identify in their motion. Therefore, neither the balance of harms nor the public interest supports a stay.

CONCLUSION

In seeking permissive intervention, the Republican Committees argued that "their intervention [would] not lead to delay or prejudice"—an assertion on which this Court relied. Order at 16. Now, they seek a stay, which indisputably "delay[s] proceedings in the suit." *Mendez*

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v. Puerto Rican Int'l Cos., Inc., 553 F.3d 709, 710 (3d Cir. 2009), and risks harm to both Plaintiffs and other Minnesota voters. The Republican Committees should not be permitted to delay and compromise the Consent Decree in flagrant disregard of the conditions on which they were granted intervention in this suit, especially where they have fallen so far short of the showing required for this extraordinary relief. Accordingly, Plaintiffs respectfully request that the Court deny the Republican Committees' emergency motion to stay the Order.

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Dated: August 14, 2020

Respectfully submitted,

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ACKNOWLEDGEMENT

The undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.211, Subd. 3, sanctions may be imposed if, after notice and a reasonable opportunity to respond, the Court determines that the undersigned has violated the provisions of Minn. Stat. § 549.211, Subd. 2.

/s/ *Sybil L. Dunlop*
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