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.	Court File No.: 62-CV-20-585 Case Type: Civil – Other/Misc.

ORDER & MEMORANDUM

This matter came before the undersigned on April 29, 2020 on: (1) the motion to dismiss of Defendant Steve Simon ("Secretary of State"); (2) the motion for a temporary injunction of Plaintiffs DSCC and DCCC ("Democratic Committees"); and (3) the motion to intervene of proposed Intervenor-Defendants Republican Party of Minnesota and Republican National Committee ("Republican Committees").

Attorneys Bruce Spiva, Lalitha Madduri and Samuel Clark appeared on behalf of the Democratic Committees. Solicitor General Liz Kramer and Assistant Attorneys General Jason Marisam and Cicely Miltich appeared on behalf of the 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 Secretary of State's motion to dismiss is **DENIED**.
2. The Republican Committees' motion to intervene is **GRANTED**.

3. The Democratic Committees' motion for a temporary injunction is **GRANTED**.

4. Until entry of a final judgment, or until otherwise ordered, the Secretary of State is hereby temporarily **ENJOINED** from taking any steps to demand compliance with or enforce the following provisions:

   a. The Secretary of State is temporarily **ENJOINED** from enforcing the prohibition under Minn. Stat. § 204C.15, subd. 1 that 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.

   b. The Secretary of State is temporarily **ENJOINED** from enforcing the prohibition under Minn. Stat. § 203B.08, subd. 1 that limits a person from assisting more than three voters in returning or mailing an absentee ballot.

   c. Within 7 days of the issuance of this Order, the Secretary of State shall provide written notice to all county attorneys and election officials in Minnesota 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.

   d. Within 7 days of the issuance of this Order, the Secretary of State shall arrange for the translation of the following quoted statement, which the Secretary of State shall make available online and at polling locations: "A voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance to vote, or to return or mail an absentee ballot, by a person of the voter's choice, other than the employer or agent of that employer or officer or agent of the voter's union. Any voter may choose any person, irrespective of blindness, disability, or inability to read or write, to assist them in returning or mailing their absentee ballot."

   e. Pursuant to Minn. R. Civ. P. 65.03, this temporary injunction shall take effect upon the posting of security in the amount of $100, or, if the parties so stipulate, on the filing of an undertaking by the Democratic Committees in lieu of security. The clerk must accept a cash bond or other security in this amount. The parties must confer in good faith on substituting an undertaking in lieu of security. Any party may move to adjust the amount of security.

5. The attached Memorandum shall be incorporated into this Order.

BY THE COURT:

Gilligan, Thomas(Judge)
Jul 28 2020 3:41 PM

Dated: July 28, 2020

THOMAS A. GILLIGAN, JR.
JUDGE OF DISTRICT COURT

MEMORANDUM

The Democratic Committees filed this lawsuit to challenge the constitutionality of certain Minnesota laws concerning voting and to contend that those same laws violate the Voting Rights Act ("VRA") of 1965 and are thus preempted and invalid. The two challenged laws, which the Democratic Committees characterize as "Voting Assistance Bans" and which the Republican Committees characterize as "Ballot Integrity Rules," limit the number of voters which an individual can assist to complete their in-person or absentee ballots or help return their absentee ballots to be counted. This court will use a neutral characterization – the "challenged laws."

The first challenged law is Minn. Stat. § 204C.15, subd. 1 which provides that a voter in need of assistance "because of inability to read English or physical inability to mark a ballot" may "obtain the assistance of any individual the voter chooses." Even so, that statute also provides that: "No person who assists another voter as provided in the preceding sentence shall mark the ballots of more than three voters at one election." *Id.* Anyone who helps more than three voters in the manner provided by Minn. Stat. § 204C.15 is subject to felony prosecution. Minn. Stat. § 203B.03(a)(7), (b). The second challenged law is Minn. Stat. § 203B.08, subd. 1 which allows voters to return absentee ballot envelopes using an agent of their choice, but no agent "may deliver or mail the return envelopes of…more than three voters in any election." *Id.* Anyone who helps more than three voters in the manner provided by Minn. Stat. § 203B.08 is subject to misdemeanor prosecution. Minn. Stat. § 645.241.

The DSCC is the national senatorial committee of the Democratic Party. Its mission in the 2020 election is to elect candidates of the Democratic Party, and specifically the Minnesota Democratic-Farmer-Labor Party ("DFL") candidate, to the United States Senate. The DCCC is the national congressional committee of the Democratic Party. Its mission in the 2020 election is to elect candidates of the Democratic Party, and specifically the DFL candidates, to the United States House

of Representatives. The Democratic Committees contend that the Secretary of State is Minnesota's chief elections officer who is responsible for the administration and implementation of election laws in the State. They also contend that the Secretary of State is responsible to adopt rules to ensure the accurate and timely return of absentee ballots, is empowered to authorize methods of ballot return, and furnish instructional materials to each county and train local election officials and judges on the State's election administration procedures. The Secretary of State opposes the relief requested by the Democratic Committees and has moved to dismiss all claims alleged against it.

The Republican National Committee ("RNC") is the national committee of the Republican Party. It supports and assists Republican Party candidates for public office, nationally and in Minnesota and intends to do so in the 2020 election. The Republican Party of Minnesota ("RPM") supports and assists RPM candidates for federal, state and local political offices in Minnesota and intends to do so in the 2020 election. The Republican Committees seek to intervene in this lawsuit as of right or with the court's permission. They also oppose the relief requested by the Democratic Committees and support the Secretary of State's motion to dismiss. Both the Democratic Committees and the Secretary of State oppose the Republican Committees' motion to intervene.

The Complaint alleges that the challenged laws uniquely impact Minnesota's Hmong, Somali and other language-minority communities of citizens. Because of language barriers, Minnesota's language-minority speakers have a significant need for assistance in completing and submitting their ballots and exercising their right to vote. Similarly, the Complaint alleges that the challenged laws significantly burden disabled voters, because they make it harder for citizens with disabilities to vote in person or absentee. In light of what the Democratic Committees contend are the burdens which the challenged laws create, especially to language-minority, Native and disabled voters, the challenged laws reduce access to voting and political participation.

The Complaint also alleges that the challenged laws burden the protected political speech and associational rights of the Democratic Committees because the challenged laws affect their ability to engage in voter turnout ("GOTV") efforts, including campaigns and drives during which they, their members and their volunteers assist voters to complete and submit their absentee ballots. They also contend that the challenged laws affect their ability to fund and provide assistance to voters to complete their ballots during in-person early voting and on Election Day. They maintain that encouraging voters, including those who have language barriers, disability, advanced age, or lack of access to transportation, to participate in the democratic process through voting and helping voters complete and submit their ballots are forms of political speech and expressive conduct which are inherently tied to their missions. The challenged laws, according to the Democratic Committees, limit the reach of the voices communicating their message and the size of the audience they can reach, which limits their effectiveness. Finally, the Democratic Committees allege that the challenged laws limit the effectiveness of GOTV efforts by making it difficult to recruit volunteers and canvassers, and by making it difficult for voters to get access to services provided by the Democratic Committees, because of the limits on voting assistance and the threat of criminal prosecution for violating the challenged laws.

Count I of the Complaint alleges that both of the challenged laws violate and conflict with 52 U.S.C. § 10508 of the VRA and are therefore preempted and invalid. Section 208 of the VRA provides that, with limited exceptions: "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice." The challenged laws, according to the Democratic Committees, unlawfully limit the rights afforded to voters by Section 208 by prohibiting voters who need help from receiving assistance from a person of their choice, because they may not choose an individual (such as a language-minority speaking relative) who has already helped three voters.

Count II of the Complaint alleges a violation of the rights to vote which are guaranteed in MINN. CONST. art. I, § 2 and art. VII, § 1. Article I, section 2 provides in pertinent part: "No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Article VII, Section 1 provides in pertinent part: "Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct." The Democratic Committees claim that the right to vote is a fundamental right, so any potential infringement on the right to vote is examined under a strict scrutiny standard of review, under which they claim the challenged laws do not survive.

Count III of the Complaint alleges a violation of the free speech and associational rights found in MINN. CONST. art. I, § 3 and the First and Fourteenth Amendments to the United States Constitution. Article I, Section 3 of the Minnesota Constitution provides, in pertinent part: "all persons may freely speak, write and publish their sentiments on all subjects." The Democratic Committees maintain that these rights are coextensive with the First Amendment. According to the Complaint, laws governing election-related speech are subject to exacting scrutiny and restrictions on such speech are unconstitutional when they significantly inhibit election-related speech and are not warranted by justifiable state interests. The Democratic Committees contend that these rights are violated by the challenged laws because they impair their expressive acts in assisting voters to complete and submit ballots. They also contend that the rights of themselves, their members, volunteers and constituents to have conversations and interactions surrounding the completion and submission of ballots, and otherwise associate with each other and voters are forms of protected political speech and association. They claim that the burdens presented by the challenged laws are severe and not narrowly tailored to advance a compelling state interest.

For their requested relief, the Democratic Committees seek a declaration that the challenged laws violate and are preempted by Section 208 of the VRA and are unconstitutional and invalid because they violate the various articles of the Minnesota Constitution and amendments of the United States Constitution. Finally, they seek a temporary and permanent injunction of the challenged laws.

Shortly after they filed their Complaint, the Democratic Committees moved for a temporary injunction, claiming that: (1) they are likely to succeed on the merits of their three claims; (2) they will suffer irreparable harm if the temporary injunction is not granted and the balance of harms favors them; and (3) a temporary injunction is in the public interest, does not burden the court, and (4) the issuance of a temporary injunction would not affect the pre-existing relationship between the parties.

On March 23, 2020, the Secretary of State moved to dismiss the Complaint on the grounds of mootness, lack of standing and for failure to state a claim.

The Secretary of State also opposed the Democratic Committees motion for a temporary injunction. The Secretary of State contended that: (1) the Democratic Committees lack standing, so this court has no jurisdiction to address the requested injunctive relief; (2) their motion for an injunction on Minn. Stat. § 204C.15 fails because it is moot, because of the Consent Decree which this court issued in *Dai Thao v. Minn. Sec. of State*, 62-CV-20-1044 (Ramsey Cty. Dist. Ct. Apr. 21, 2020); (3) their motion for an injunction for Minn. Stat. § 204B.08 should be denied as premature or held in abeyance; and (4) they cannot show irreparable harm to support the issuance of a temporary injunction.

Around the time the Democratic Committees moved for the temporary injunction and the Secretary of State moved to dismiss, the Republican Committees filed a Notice of Intervention and moved for leave to file an opposition brief to the motion for a temporary injunction. The Republican Committees sought to intervene under Minn. R. Civ. P. 24.01 (intervention as of right) and Minn. R. Civ. P. 24.02 (permissive intervention). Both the Democratic Committees and the Secretary of State

objected to the Republican Committees' intervention and to their motion to file an opposition brief. The Republican Committees argued in their provisional opposition to the motion for a temporary injunction that the motion should be denied because: (1) the Democratic Committees could not demonstrate a likelihood of success on the merits – specifically, that they could not establish a free speech right to collect or mark the ballots of voters, the challenged laws do not present an unconstitutional burden on the right to vote; and that the challenged laws are not preempted by Section 208 of the VRA; and (2) the balance of equities do not favor the issuance of a temporary injunction.

In opposing intervention, the Democratic Committees contend that the Republican Committees are seeking to convert this matter into a partisan dispute, and have not demonstrated a valid and legitimate interest in this matter. They also argue that the Republican Committees have failed to demonstrate that their interests will be impaired because the disposition of the matter will not cause "voter fraud, ballot tampering, and undue influence in voting." Finally, they contend that the Secretary of State's defense of the challenged statutes is adequate to represent any of the Republican Committees' purported interests.

The Secretary of State claims that since neither the Republican Committees nor the Democratic Committees have standing here, it would be futile to allow the Republican Committees to intervene. The Secretary of State also contends that intervention should be denied because the defense of this matter by the Office of the Minnesota Attorney General is presumptively adequate.

On April 15, 2020, this court held a status conference in the case. The parties agreed to a unified motion hearing for all of the pending motions for dismissal, injunctive relief and intervention. The Secretary of State agreed to limit its motion and briefing on the motion to dismiss to the issues of justiciability which were briefed in its opposition to the motion for temporary injunction. Following the status conference, the court allowed the Republican Committees to provisionally participate in the

briefing and oral argument on the motion for temporary injunction while it simultaneously considered their motion to intervene. The various motions were comprehensively briefed by all sides and the court heard oral argument on April 29, 2020, after which, the court took all of the pending motions under advisement.

MOTION TO DISMISS STANDARD OF REVIEW

The Secretary of State has moved to dismiss most of the claims against it because it contends that the Democratic Committees lack standing to make them. Lack of standing deprives the court of subject matter jurisdiction. Minn. R. Civ. P. 12.02(a); *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011)("Standing is a jurisdictional doctrine, and the lack of standing bars consideration of the claim by the court."); *See also* Minn. R. Civ. P. 12.08(c)("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."). "For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Forslund v. State*, 924 N.W.2d 25, 32 (quoting *Warth v. Seldin*, 422 U.S. 490, 501 (1975)).

In addition, the Secretary of State argues that the Democratic Committees' claim which pertains to Minn. Stat. § 204C.15 should be dismissed because it is moot. It contends therefore, that this court has no jurisdiction to hear that claim because it is not justiciable. *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005). "A controversy is only justiciable when it involves definite and concrete assertions of right." *Id.* (citation omitted). Mootness is "a flexible doctrine, not a mechanical rule that is invoked automatically." *Id.* (citation omitted). Generally, a court should dismiss a case as moot if it is unable to grant effectual relief. *Id.* (citation omitted). Additionally, a case will not be considered moot if the case is functionally justiciable and is an important public issue of statewide significance

that should be decided immediately. *Id.* (cleaned up). Since this motion, if successful, would dispose of all the claims made by the Democratic Committees, the court will address it first.

THE SECRETARY OF STATE'S MOTION TO DISMISS IS DENIED

I. THE DEMOCRATIC COMMITTEES HAVE STANDING

The Secretary of State contends that the Complaint should be dismissed because neither of the Democratic Committees have pled sufficient facts to establish standing. According to the Secretary of State, whether the court examines only the four-corners of the Complaint, or considers the several Declarations which the Democratic Committees have submitted in support of its motion for injunctive relief, the result remains the same. It claims that the Democratic Committees cannot establish standing: (1) based on an impairment of their own organizational mission, or those of affiliates, to mobilize voter turnout and provide assistance to Minnesota voters as part of these efforts; (2) based on a violation of their own constitutional rights; (3) because they have not plead a viable diversion of resources theory; and (4) because they have not adequately pled associational standing.

The Democratic Committees contend that the motion to dismiss should be denied because they have pled three independent bases for standing because the challenged laws: (1) impede their organizational activities and mission; (2) restrict and deny their constitutional rights directly as an organization; and (3) restrict their members' and constituents' constitutional rights.[1]

"Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996)(citing *Sierra Club v. Morton*, 405 U.S. 727, 731-32 (1972)). Standing is essential to a Minnesota court's exercise of jurisdiction. *Annandale Advocate v. City of Annandale*, 435 N.W.2d 24, 27 (Minn. 1989). If a plaintiff lacks standing to bring a suit, the attempt to seek court relief fails. *Id.* "The goal

[1] The Republican Committees did not take a position on the motion to dismiss.

of the standing requirement is to ensure that the issues before the courts will be 'vigorously and adequately presented.'" *Id.* (cleaned up). *See also Webb Golden Valley, LLC v. State*, 865 N.W.2d 689, 693 (Minn. 2015). "A party has standing when (1) the party has suffered an injury-in-fact, or (2) the party is the beneficiary of a legislative enactment granting standing." *Id.* (citation omitted).

Here, the Democratic Committees must establish an injury-in-fact to have standing because the challenged laws do not include an explicit or implicit legislative grant of standing and they do not argue otherwise. *See Lickteig v. Kolar*, 782 N.W.2d 810, 814 (Minn. 2010)("Generally, a statute does not give rise to a civil cause of action unless the language of the statute is explicit or it can be determined by clear implication."). "An injury-in-fact is a concrete and particularized invasion of a legally protected interest." *Webb*, 865 N.W.2d at 693 (cleaned up). An injury-in-fact must not only be concrete, but must also be "'actual or imminent, not conjectural or hypothetical.'" *Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. Ct. App. 2005)(quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). "The injury must be more than mere dissatisfaction with [the State's] interpretation of a statute." *Webb*, 865 N.W.2d at 693 (citing *In re Complaint Against Sandy Pappas Senate Comm.*, 488 N.W.2d 795, 797 (Minn. 1992)). "A party questioning a statute must show that it is at some disadvantage, has an injury, or an imminent problem." *All. for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 913 (Minn. Ct. App. 2003)(cleaned up).

A party claiming to have standing "must have a direct interest in the statute that is different from the interest of citizens in general." *Id.* (citation omitted). Put another way, when citizens bring lawsuits in the public interest challenging governmental conduct, they must show harm distinct from harm to the public. *See Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 146 (Minn. Ct. App. 1999).

Ordinarily, a party must assert its own legal rights. *In re Welfare of R.L.K.*, 269 N.W.2d 367, 372 (Minn. 1978) (citing *Singleton v. Wulff*, 428 U.S. 106, 113-14 (1976)). But courts recognize an

exception to this general rule "when the litigant has suffered an injury in fact, the litigant has a close relationship with the third party, and the third party is somehow hindered from asserting his or her own rights." *Welter v. Welter*, No. A04-710, 2004 WL 2163149, at *3 (Minn. Ct. App. Sept. 28, 2004) (citing *Campbell v. Louisiana*, 523 U.S. 392, 397 (1998)); *accord Schable v. Boyle*, No. C8-01-2271, 2002 WL 31056699, at *4 (Minn. Ct. App. Sept. 17, 2002).

Similarly, organizations can establish standing on two grounds: (1) associational standing or (2) direct organizational standing. Associational standing derives from the standing of an organization's members; it requires that: (1) the organization's members have standing as individuals, (2) the interests that the organization seeks to protect are germane to its purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members. *Philip Morris,* 551 N.W.2d at 497-98 (stating that Minnesota's "approach [to associational standing] is derived from the seminal case" of *Hunt v. Wash. State Apple Advertis. Comm'n*, 432 U.S. 333 (1977)); *Hunt*, 432 U.S. at 342-43 (discussing three-part test).

Direct organizational standing focuses on the entity rather than its members or constituents; it requires that the organization satisfy the injury-in-fact standing test applicable to individuals. *See Rukavina v. Pawlenty*, 684 N.W.2d 525, 533 (Minn. Ct. App. 2004) ("Minnesota courts recognize impediments to an organization's activities and mission as an injury sufficient for standing"). At the pleading stage, a plaintiff need only allege an injury resulting from the defendant's challenged conduct. *Forslund*, 924 N.W.2d at 33 ("Whether appellants can prove that the challenged statutes impinge their children's right to an adequate education (and whether such impingement states a viable claim) is more appropriately addressed in connection with the merits"). The Minnesota Supreme Court has adopted a liberal standard for organizational standing. *All. for Metro. Stability*, 671 N.W.2d at 913 (citing *Snyder Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 221 N.W.2d 162, 166 (Minn. 1974)).

II. THE DEMOCRATIC COMMITTEES HAVE ADEQUATELY PLED DIRECT ORGANIZATIONAL STANDING

The Democratic Committees maintain that their Complaint adequately pleads direct organizational standing. With regard to DSCC, Paragraph 8 of the Complaint alleges the following related to its direct organizational standing:

> Plaintiff DSCC is the national senatorial committee of the Democratic Party as defined by 52 U.S.C. § 30101(14). Its mission is to elect candidates of the Democratic Party to the U.S. Senate, including from Minnesota. DSCC works to accomplish its mission by, among other things, assisting state parties throughout the country, including in Minnesota. In 2018, DSCC made contributions and expenditures in the millions of dollars to persuade and mobilize voters to support Senate candidates who affiliate with the Democratic Party. In 2020, there will be a Senate election in Minnesota, and DSCC will work to elect the Minnesota Democratic-Farmer-Labor Party ("DFL") candidate. As a result, DSCC intends to make substantial contributions and expenditures to support the DFL candidate for U.S. Senate in Minnesota in 2020. To that end, the [challenged laws] directly harm DSCC by frustrating its mission of, and efforts in, educating, mobilizing, assisting, and turning out voters by prohibiting the acts of individuals and organizations that want to assist voters in completing and submitting their ballot. DSCC is aware of the [challenged laws] and will have to expend and divert additional funds and resources in voter mobilization efforts in Minnesota at the expense of its other efforts in Minnesota and in other states, to combat the effects of the [challenged laws] in the 2020 general election for U.S. Senate in Minnesota. DSCC and its members, volunteers, and constituents will also be prevented from fully exercising their speech and associational rights to engage in these voter assistance efforts as long as [the challenged laws] remain in effect.

Complaint, ¶ 8. Paragraph 9 of the Complaint makes very similar direct organizational standing allegations related to DCCC:

> Plaintiff DCCC is the national congressional committee of the Democratic Party as defined by 52 U.S.C. § 30101(14). DCCC's mission is to elect Democratic candidates to the U.S. House of Representatives from across the United States, including from Minnesota's eight congressional districts. DCCC works to accomplish its mission by, among other things, assisting state parties throughout the country, including in Minnesota. In 2018, DCCC made contributions and expenditures in the millions of dollars to persuade and mobilize voters to support Democratic congressional candidates, including in Minnesota. For 2020, DCCC has identified at least two congressional districts in Minnesota as targeted races, in which it will expend significant resources to support the DFL candidates. Overall, in 2020, DCCC expects to make contributions and expenditures in the millions of dollars to persuade and mobilize voters to support Democratic candidates in congressional elections around the country, including in Minnesota. To that end, the [challenged laws] directly harm DCCC by frustrating its mission of, and efforts in, educating, mobilizing, assisting, and

> turning out voters in Minnesota by prohibiting the acts of individuals and organizations that want to assist voters in completing and submitting their ballot. DCCC is aware of the [challenged laws] and will have to expend and divert additional funds and resources in voter mobilization efforts in Minnesota at the expense of its other efforts in Minnesota and in other states, to combat the effects of the [challenged laws] in the 2020 general election for U.S. House of Representatives in Minnesota. DCCC and its members, volunteers, and constituents will also be prevented from fully exercising their speech and associational rights to engage in these voter assistance efforts as long as [the challenged laws] remain in effect.

Complaint, ¶ 9. The Democratic Committees also allege that they:

- [F]und and engage in voter turnout efforts, including campaigns and drives during which they, their members, and their volunteers assist voters to complete and submit their absentee ballots…[and] fund and provide assistance to voters to complete their ballots during in-person early voting and on election day.

- [E]ngage in protected political speech and association when they interact with Minnesota voters to persuade them to cast their ballots, help voters to complete their ballots, and assist voters to submit absentee ballots. Encouraging voters to participate in the democratic process through voting and assisting voters in completing and submitting their ballots are forms of political speech and expressive conduct inherently tied to [their] missions.

See Complaint, ¶¶ 36, 38. Finally, the Democratic Committees allege that the challenged laws and the limitations they allegedly provide to assist voters to complete and submit their ballots:

- [B]urden [the Democratic Committees'] speech and associational rights by limiting the reach of the voices communicating [their] messages and thus the size of the audience that can be reached, thereby limiting the effectiveness of those messages.

- [R]estrict expressive conduct that would otherwise be conducted by [the Democratic Committees'] members, volunteers, and canvassers during GOTV campaigns and drives for voting and make it less likely that these activities will result in increased voting.

- By limiting the effectiveness of their GOTV efforts, the [challenged laws] make it difficult for [the Democratic Committees] to recruit volunteers and canvassers who do not view such organizing activities as an effective means to increase political participation due to the limit on how many voters individuals may assist to vote. And the threat of criminal penalties for violating the [challenged laws] deters volunteers and canvassers from engaging in [the Democratic Committees'] overall GOTV activities for fear of prosecution.

- [B]urden voters who engage in protected political speech and association when they choose to entrust members of GOTV organizations, like [the Democratic Committees], with assisting to complete and submit their ballots.

See Complaint, ¶¶ 39-41. The Democratic Committees urge this court to follow *Crawford v. Marion County Election Board*, 472 F.3d 949, 951 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008), among other authorities, which recognize that parties and party committees have direct organizational standing when they divert resources in reaction to laws that discourage or prevent their supporters from voting. *See also Ohio Org. Collaborative v. Husted*, 189 F. Supp. 3d 708, 726 (S.D. Ohio 2016), *rev'd sub nom. on other grounds*, *Ohio Democratic Party v. Husted*, 834 F.3d 620 (6th Cir. 2016)(injury-in-fact shown where political party alleged "the challenged provisions will make it more difficult for its members to vote, which hinders [the Party's] mission of electing its candidates, and…the challenged provisions will force [the Party] to divert resources from ensuring their members and constituents vote to counteracting the negative effects of the challenged provisions"). They also claim that their interest and injuries are specific and unique, rather than general and common to members of the public, and therefore distinguishable from cases which hold that the latter category cannot create standing. *See St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 588 (Minn. 1977).

The Secretary of State contends that the Democratic Committees' standing cannot depend solely on their mission and ideals, or anticipated harm to their electoral prospects. *See U.S. Student Ass'n Found. v. Land*, 585 F. Supp. 2d 925, 934 (E.D. Mich. 2008); *Texas Democratic Party v. Benkiser*, 459 F.3d 582, 586 (5th Cir. 2006). It also claims that the Democratic Committees' alleged interests are too general to create standing. It also contends that the Democratic Committees are seeking to base their standing on the activities of other organizations, because they do not actually provide assistance to Minnesota voters. *See Minnesota Voters All. v. Ritchie*, 890 F. Supp. 2d 1106, 1115 (D. Minn. 2012), *aff'd*, 720 F.3d 1039 (8th Cir. 2013). Accordingly, the Secretary of State argues that the Democratic Committees have not pled enough "concrete" harm to their own activities to show standing.

As to the Democratic Committees' contention that its diversion of resources provides it with direct organizational standing, the Secretary of State counters that they have stretched that theory too far and that their contention is contradicted by their Declarations. Although the Secretary of State acknowledges that diversion of resources could establish standing, it argues that this theory does not support standing here because the Democratic Committees are challenging old, established laws, rather than reacting to the enactment of new laws. It distinguishes *Crawford* and similar cases, where the allegations related to retooling strategies and diverting resources in response to newly enacted voting legislation. *See Crawford*, 472 F.3d at 951; *Democratic Nat'l Comm. v. Reagan*, 329 F. Supp. 3d 824, 841 (D. Ariz. 2018)(subsequent citation omitted). In summary, the Secretary of State contends that the challenged laws, in essence, have been in effect since 1894 in Minn. Stat. § 204C.15 and 1997 in Minn. Stat. § 203B.08, and there are no claims that the Democratic Committees have made or could make, that they retooled their voter mobilization efforts or diversion of resources in reaction to those laws.

The Democratic Committees have made a sufficient showing of a concrete and demonstrable injury to each organizations' non-abstract interests. As the court recently recognized in *Pavek v. Simon*, 2020 WL 3183249 (D. Minn. June 15, 2020) in making its determination that the DSCC and DCCC had direct organizational standing to challenge another Minnesota voting law:

> Each organization's mission is to elect DFL candidates to office in either the U.S. House of Representatives or U.S. Senate, including from Minnesota. Electing DFL candidates is not merely an ideological interest. Indeed, losing an election is more than simply a setback to the organization's abstract social interests, because political victory accedes power to the winning party, enabling it to better direct the machinery of government towards the party's interests. Plaintiffs' undisputed evidence shows that the Ballot Order statute—and the primacy effect it gives to the poorest performing major political party's candidates—grants first-listed candidates on Minnesota ballots a "clear and discernable" advantage in the form of a higher vote share. For the majority of the past 36 years, the undisputed evidence demonstrates that DFL opponents have received—when listed first on the ballot—anywhere from 1.3% to 5.5% more of the vote solely because of their first-listed position. And because DFL candidates will be listed last on Minnesota's 2020 General Election ballot, DFL candidates will be required to obtain more votes than they would otherwise need to overcome the first-

> listed advantage granted to their opponents, which is a particularly disadvantageous position to be in given the uncontroverted expectation that several elections will be competitive this fall. Indeed, the Secretary expressly concedes that the Ballot Order statute gives an advantage to parties that are not in power and acknowledges that even a .5% boost in vote share from a statute would constitute a statutorily-conferred benefit for the first-listed party.

Pavek, 2020 WL 3183249, at *11 (cleaned up).[2] The Democratic Committees here have pled similar, concrete and non-abstract interests. They have alleged that the challenged laws "directly harm [the Democratic Committees] by frustrating its mission of, and efforts in, educating, mobilizing, assisting, and turning out voters in Minnesota by prohibiting the acts of individuals and organizations that want to assist voters in completing and submitting their ballot. They have also alleged that [the Democratic Committees] and its members, volunteers, and constituents will also be prevented from fully exercising their speech and associational rights to engage in these voter assistance efforts as long as the [challenged laws] remain in effect." Complaint, ¶ 8. Like *Pavek*, this is enough to allege injury sufficient to create direct organizational standing.

As for diversion of resources, the Secretary of State makes a causation argument. In essence, it contends that there could be no causal connection between the injury claimed by the Democratic Committees and the old laws. Yet the Democratic Committees have clearly alleged in the Complaint that the injury (diversion of resources) is fairly traceable to the challenged laws, no matter how old they are. While the Secretary of State has identified several cases in which the diversion of resources theory was applied in response to a reaction to a new law or a new interpretation to an old law, aside from one decision, those are simply the facts of the case, rather than the basis for the court's decision. The sole outlier is *Make the Rd. N.Y. v. Cuccinelli*, which distinguishes between circumstances when a plaintiff engages in new action in response to a defendant's conduct (supporting organizational standing) and circumstances when the plaintiff was already engaging in the action (precluding

[2] The law challenged in *Pavek* in 2020 was enacted in 1981. *Pavek*, 2020 WL 3183249, at *3.

organizational standing). 419 F. Supp. 3d 647, 657 (S.D.N.Y. 2019). While perhaps in most challenges to the constitutionality of voting laws, litigants are challenging newly enacted laws, or targeting conduct based on new interpretations of old laws, it does not follow that a party making decisions about the use of its GOTV or voter assistance resources cannot be injured by the unconstitutionality of old laws. *See, e.g.*, *Pavek*, 2020 WL 3183249, at *3 (challenged law nearly 40 years old). This is particularly true for Minn. Stat. § 204C.15, which was enacted a century ago, but was only recently used to prosecute a Hmong candidate for the Saint Paul City Council who helped an older Hmong voter fill out a ballot. *See* Complaint, ¶ 50. Aging populations, changing economic circumstances, the introduction of new immigrant populations, and access to information and technology may cause an organization to focus on old laws in a new way and divert resources to solve a problem which it did not previously need to address. The diversion of resources theory cannot be interpreted as narrowly as the Secretary of State advocates.

Similarly, the Secretary of State is critical of the fact that the Democratic Committees have not yet diverted their resources. As the Eleventh Circuit articulated in *Arcia v. Fla. Sec'y of State*: "our precedent provides that organizations can establish standing to challenge election laws by showing that *they will have to divert personnel and time* to *educating potential voters on compliance with the laws* and *assisting voters* who might be left off the registration rolls on Election Day." 772 F.3d 1335, 1341 (11th Cir. 2014)(emphasis added)(citation omitted). This interpretation of the diversion of resources theory makes sense, because "the fact that the added cost has not been estimated and may be slight does not affect standing, which requires only a minimal showing of injury." *Crawford*, 472 F.3d at 951 (citing *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 180-84 (2000)and others).

Last, the *Pavek* court also addressed the diversion of resources in addressing whether the DSCC and DCCC established direct organizational standing:

> Each has indicated that it intends to commit resources to support DFL candidates in Minnesota, and that the Ballot Order statute (and accompanying primacy effect) requires them to divert resources into Minnesota that would normally be spent in other states around the country. Doing so means that each organization has fewer resources to support other DFL candidates in states around the country. While the organizations have not provided detailed quantification of their diverted resources, even if the diversion is "slight," standing is still satisfied. Moreover, so long as the economic effect on an organization is real, the organization does not lose standing simply because the proximate cause of that economic injury is the organization's noneconomic interest in encouraging a particular policy preference or outcome. And at this stage in the litigation—notably, prior to summary judgment and trial—precise measurements of the diverted amount of resources are not necessary to show an injury.

Pavek, 2020 WL 3183249, at *11 (cleaned up). Here, the Democratic Committees allege that they intend to commit resources to support DFL candidates in Minnesota and the challenged laws require them to "expend and divert additional funds and resources in voter mobilization efforts in Minnesota at the expense of other efforts in Minnesota and in other states, to combat the effects of the [challenged laws] in the 2020 general election…" Complaint, ¶ 8.

The Democratic Committees have thus established direct organizational standing because they have adequately pled a concrete and demonstrable injury to each organizations' non-abstract interests. They have also established direct organizational standing under a diversion of resources theory.

III. THE DEMOCRATIC COMMITTEES HAVE ADEQUATELY PLED ASSOCIATIONAL STANDING

The Secretary of State also argues that the Democratic Committees cannot base their claim of standing on the impact that the challenged laws have on speech and associations of its members or state party and campaign organizations. In other words, the speech and association rights at issue, according to the Secretary of State, relate to individuals engaged in voter assistance efforts and those individuals who might be deterred by the threat of criminal prosecution, not the Democratic Committees themselves.

Despite the Secretary of State's arguments to the contrary, Minnesota law recognizes that organizations can assert associational standing on behalf of their members and constituents. *State by*

Humphrey v. Philip Morris Inc., 551 N.W.2d 490, 497-98 (Minn. 1996). This is particularly true in the voting rights context. As the court in *Democratic Nat'l Committee v. Bostelmann*, recently observed that: "courts have held that political parties have standing to assert the rights of its members who may face burdens to vote in upcoming elections." 2020 WL 1320819, at *3 (citations omitted). Here, the Democratic Committees claim that the challenged laws place undue burdens on their: (1) "members, volunteers, and canvassers during GOTV campaigns and drives for voting and make it less likely that these activities will result in increased voting"; (2) ability "to recruit volunteers and canvassers who do not view such organizing activities as an effective means to increase political participation due to the limit on how many voters individuals may assist to vote"; and (3) volunteers and canvassers who are deterred by the threat of criminal penalties for "engaging in [the Democratic Committees'] overall GOTV activities for fear of prosecution." Complaint, ¶ 40. The Democratic Committees have adequately pled standing based on the effect that the challenged laws would have on their speech and associational rights, as well as the speech and associational rights of their members, constituents, canvassers and volunteers.

The Secretary of State also questions the Democratic Committees' failure to name its "supporters," "volunteers," and "constituents" and contends that since they have "not identified a member who is suffering an immediate or threatened injury," it lacks standing. *See St. Paul Police Fed'n v. City of St. Paul*, 2006 WL 2348481, at *2 (Minn. Ct. App. Aug. 15, 2006). *But see Sandusky Cty. Democratic Party v. Blackwell*, 387 F.3d 565, 574 (6th Cir. 2004)(associational standing despite the fact that political party had not identified specific voters who would have to cast provisional ballots because such voters could not be easily identified in advance); *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1163 (11th Cir. 2008)(NAACP had associational standing to challenge voter registration system despite not identifying a member who was disenfranchised because the affected members could not readily be identified in advance).

The Democratic Committees have alleged that the challenged laws apply to all persons in Minnesota and therefore, all of their members, volunteers, and constituents are prevented from fully exercising their speech and associational rights to engage in voter assistance activities, just as all of their members and voters in Minnesota are prohibited from receiving their assistance with ballots. They have alleged that thousands Hmong-American, Somali-American, Native and disabled voters will be affected by the challenged laws in the 2020 general election. These voters or the members, volunteers or canvassers who would help them or help get out the vote, cannot be readily identified in advance. Under the circumstances of this case, the Democratic Committees have adequately pled a basis for associational standing on behalf of its members and constituents.

The Secretary of State's motion to dismiss the claims of the Democratic Committees for lack of standing is denied.

IV. THE DEMOCRATIC COMMITTEES' CHALLENGE TO MINN. STAT. § 204C.15 IS NOT MOOT

The Secretary of State also contends that the Democratic Committees' claims related to whether Minn. Stat. § 204C.15 is preempted by the VRA should be dismissed as moot. In fact, it concedes that there is agreement between the Secretary of State and the Democratic Committees that Minn. Stat. § 204C.15 *is preempted by the VRA*. The Secretary of State agrees that it is bound under the Consent Decree issued by this court in *Thao*, which ordered that the Secretary of State is permanently enjoined as follows:

> a. [The Secretary of State] agrees that the at-issue restrictions, as set forth in Minn. Stat. § 204C.15, subd. 1, are preempted by the Voting Rights Act and that any enforcement of the at-issue restrictions by election officials in Minnesota would violate the Supremacy Clause of the United States Constitution;
>
> b. Within 30 days of the Court entering judgement on this Consent Decree, [the Secretary of State] shall provide notice, in a form agreed upon by the parties and attached hereto as Exhibit A, to all county attorneys and election officials in Minnesota, that the at-issue restrictions from Minn. Stat. § 204C.15, subd. 1, are unenforceable;

c. Within 30 days of the Court entering judgment on this Consent Decree, [the Secretary of State] shall revise all election judge training materials that the [Secretary of State's] Office prepares and in-person trainings that [it] conducts to eliminate any reference to the at-issue restrictions, including in powerpoints, tests, videos, etc. The changes shall be made before trainings occur for the November 2020 election;

d. Within 30 days of the Court entering judgment on this Consent [D]ecree, [the Secretary of State] shall arrange for the translation of the following quoted statement which [it] will include in the foreign-language signs to be posted at poll sites: "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the employer or agent of that employer or officer or agent of the voter's union;"

e. Within 3 days of the Court entering judgment on this Consent Decree, [the Secretary of State] will submit a request to the Minnesota Attorney General's Office for an opinion on the issue of whether the at-issue restrictions are preempted by Section 208 of the Voting Rights Act. The Attorney General's Office will issue and opinion, concluding that the at-issue restrictions are preempted by Section 208 of the Voting Rights Act, based on the same reasoning and case law in this Order. The Attorney General's Office will issue the opinion in time for its inclusion as an attachment to the notice sent pursuant to paragraph 18(b) of this [D]ecree.

This Consent Decree was issued by this court on April 21, 2020.

The Secretary of State maintains that there is no live controversy and that the Democratic Committees are seeking an advisory opinion from the court to set a precedent. It argues that the Democratic Committees expressed concerns about fear of criminal prosecution under that provision are misguided, because organizations cannot violate the provision and because the Secretary of State does not enforce the provision or prosecute violations of it. Finally, the Secretary of State maintains that the Democratic Committees cannot enjoin county prosecutors from enforcing the provision or from prosecuting violations of it, and so there is no further remedy available to the Democratic Committees.

The Democratic Committees argue that the Consent Decree does not render its claims under Minn. Stat. § 204C.15 moot, because this court can still provide effectual relief by issuing a declaratory judgment that Minn. Stat. § 204C.15 is preempted by the VRA and is unconstitutional, and by

permanently enjoining its enforcement. They also contend that Consent Decree does not represent a judicial determination, but is simply an agreement of the parties to that case. Last, the Democratic Committees contend that they, their employees and volunteers could be prosecuted for violating Minn. Stat. § 204C.15.

Even if the Consent Decree does render the claims of the Democratic Committees which pertain to Minn. Stat. § 204C.15 moot, they maintain that an exception to the mootness doctrine allows this court to decide the issue nonetheless. They argue that this case is functionally justiciable and presents an important question of statewide significance which should be decided immediately.

Justiciability is an issue of law. *Dean v. City of Winona*, 868 N.W.2d 1, 4 (Minn. 2015)(citation omitted). "[A] court only has jurisdiction to issue a declaratory judgment if there is a justiciable controversy." *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005). Here the question raised on justiciability is whether the Democratic Committees' challenge to Minn. Stat. § 204C.15 is moot. The mootness doctrine is not a mechanical rule that is automatically invoked whenever the underlying dispute between the parties is settled or otherwise resolved, but is a flexible discretionary doctrine. *Dean*, 868 N.W.2d at 4 (cleaned up). Courts will dismiss a case as moot if it is unable to grant effectual relief. *Kahn*, 701 N.W.2d at 821.

A consent decree, like that entered into by the Secretary of State with the plaintiffs in *Thao*, is "the product of a negotiated agreement similar to a contract," and prospective in effect. *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. Ct. App. 2003)(citations omitted). "A consent decree *is not* a judicial determination of the rights of the parties and does not represent the judgment of the court, but merely records a preexisting agreement of the parties." *Id.* (citation omitted)(emphasis in original).

The Consent Decree is an agreement between the parties in *Thao*, which include the Secretary of State. The scope of the Consent Decree provides for a: "permanent injunction and all relief ordered in [it] apply to and bind the Minnesota Secretary of State in his official capacity, including any and all

successors in office, employees, and assigns, and all persons in active concern or participation with them." The Consent Decree qualifies that: "[t]he Secretary of State's Office does not enforce chapter 204C and cannot prosecute violations. The Office provides guidance to Minnesota's counties, which are responsible for enforcing the chapter, and trains election judges on election laws, including the laws in the chapter." State and local prosecuting authorities were not parties to the Consent Decree. No political parties, including the DFL and Republican Parties and their affiliates, were parties to the Consent Decree.

The Consent Decree specifies that Minn. Stat. § 204C.15 is "preempted by the Voting Rights Act and that any enforcement of [its] restrictions by election officials in Minnesota would violate the Supremacy Clause of the United States Constitution." Under its terms, the Secretary of State agreed to do certain additional tasks, such as proper training for election judges, translation of voting instructions, and requesting an opinion from the Minnesota Attorney General's Office on the statute's preemption by the VRA. There is no enforcement mechanism in the Consent Decree for parties or non-parties if the Secretary of State does not live up to its terms.

The Democratic Committees' Complaint here was served and filed before the Consent Decree was agreed upon by the parties in *Thao* and entered by this court. The Complaint makes three claims about Minn. Stat. § 204C.15: (1) it is preempted by the VRA; (2) it violates the Minnesota Constitution's guarantee of the right to vote for eligible Minnesota residents; and (3) it violates the Minnesota Constitution's guarantee of the right of free speech and the United States Constitution's guarantee of freedom of association. In the Complaint, the Democratic Committees seek declaratory judgment on the preemption of Minn. Stat. § 204C.15 by the VRA, as well as declaratory judgment that the provision is unconstitutional and invalid. They also seek to permanently enjoin Minn. Stat. § 204C.15.

Although the Consent Decree has obvious public benefit, because its terms enjoin the Secretary of State from enforcing Minn. Stat. § 204C.15 and because the Secretary of State agrees that the provision is preempted by the VRA, it remains a private agreement. It is not, as the *Sabri* court observed, "a judicial determination of the rights of the parties and does not represent the judgment of the court…" 657 N.W.2d at 205. Moreover, since there is no mention in the Consent Decree about its intent to benefit non-parties, or of an ability for non-parties to enforce it if the Secretary of State fails to follow it, it is less than clear that the Democratic Committees could force compliance.

While the Consent Decree makes clear that the Secretary of State agrees with the Democratic Committees that Minn. Stat. § 204C.15 is preempted by VRA, it only provides that the Secretary of State will not enforce Minn. Stat. § 204C.15, not that it is unenforceable. The Consent Decree also does not address the constitutionality of Minn. Stat. § 204C.15 or the declaratory relief the Democratic Committees request. It also does not address the threat of criminal enforcement by state and local authorities, which would be conclusively impacted by a declaration that Minn. Stat. § 204C.15 was unconstitutional. For these reasons, the claims made by the Democratic Committees and the relief they seek go well beyond that covered by the Consent Decree.

This court is guided by the Minnesota Supreme Court's directive that the mootness doctrine is not a mechanical rule that is automatically invoked whenever the underlying dispute between the parties is settled or otherwise resolved, but rather a flexible discretionary doctrine. *Dean*, 868 N.W.2d at 4. With that guidance, this court concludes that it still may be able to grant effectual relief to the Democratic Committees. Their claims regarding Minn. Stat. § 204C.15 are therefore not moot.

The Secretary of State's motion to dismiss the claims of the Democratic Committees under Minn. Stat. § 204C.15 for mootness is denied.

INTERVENTION STANDARD OF REVIEW

The Republican Committees moved to intervene as of right under Minn. R. Civ. P. 24.01 and alternatively for permissive intervention under Minn. R. Civ. P. 24.02.

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.

Minn. R. Civ. P. 24.01. Therefore, in order to intervene as of right under Rule 24.01, the Republican Committees must show: (1) a timely application for intervention; (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) that the intervening party is not adequately represented by existing parties. *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986). Parties seeking intervention of right must satisfy all of these factors. *Luthen v. Luthen*, 596 N.W.2d 278, 280-81 (Minn. Ct. App. 1999).

Rule 24.02 provides for permissive intervention. This rule states in pertinent part:

> Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a common question of law or fact. *** In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Minn. R. Civ. P. 24.02. Thus, in order to obtain permissive intervention, a proposed intervenor must show: (1) a timely application for intervention; (2) an interest in litigating common questions of law or fact with the main action; and (3) that the intervention will not delay or prejudice the adjudication of the rights of the parties. *Id.*

The court provisionally accepted the written and oral arguments of the Republican Committees in opposition to the motion for temporary injunction filed by the Democratic

Committees. Since the court must decide whether it will actually consider the Republican Committees' arguments on the motion for temporary injunction before it makes its decision on that motion, it will next decide next whether the Republican Committees should be allowed to intervene in this matter.

THE REPUBLICAN COMMITTEES MAY INTERVENE

I. THE REPUBLICAN COMMITTEES' ATTEMPTED INTERVENTION WAS TIMELY

Under Rule 24.01, the first factor for this court to consider is whether the motion to intervene is timely. "The timeliness of a motion to intervene must be determined on a case-by-case basis." *Omegon, Inc. v. City of Minnetonka*, 346 N.W.2d 684, 687 (Minn. Ct. App. 1984). "While Rule 24 should be construed liberally, intervention is untimely if the rights of the original parties will be substantially prejudiced." *Id.*

The Republican Committees contend that they acted with diligence in filing their motion. They contend that they sought intervention less than two months after the matter was filed. They also contend that they preemptively filed a motion for leave to oppose the Democratic Committees' motion for a temporary injunction. Finally, they contend that since this litigation is in its nascent stages, there is no prejudice to the current parties. Neither the Democratic Committees nor the Secretary of State addressed this factor.

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

II. THE REPUBLICAN COMMITTEES HAVE DEMONSTRATED AN INTEREST SUFFICIENT TO INTERVENE AS OF RIGHT

The second factor asks this court to evaluate whether the Republican Committees have an interest relating to the property or transaction which is the subject of the action. The Republican Committees contend that they have standing to intervene, just as the Democratic Committees have

standing to sue the Secretary of State to address the challenged laws. The Republican Committees also contend that that they have an interest in the challenged laws. They maintain that "they have a significant interest in preserving the existing legally valid competitive environment and in protecting the integrity and reliability of Minnesota's elections in which the Republican Committees and their members, supported candidates, and voters actively participate." They also suggest that any order which would enjoin the enforcement of the challenged laws would threaten "to change the free and fair electoral environment" and subject their members, supported candidates and voters to a "broader range of competitive tactics than state law otherwise would allow."

While the Democratic Committees and the Secretary of State contend that the Republican Committees lack standing to intervene, this court has already determined that the Democratic Committees have standing to contest the challenged laws. The interests expressed by the Republican Committees are different than those articulated by the Democratic Committees with regard to the challenged laws; however, all the interests asserted by the Republican Committees may be impacted by any injunction or other relief which may be granted by this court related to the challenged laws. While the Democratic Committees and the Republican Committees impugn each other's expressed interests, it seems clear to this court that the interests are similar enough to each other (getting out the vote and access to the ballot vs. ballot integrity and a fair election environment) to demonstrate an interest relating to the challenged laws. *See Jerome Faribo Farms, Inc. v. Cty. of Dodge*, 464 N.W.2d 568, 569 (Minn. Ct. App. 1990)("Ordinarily, one with an interest similar to that of a party, should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee.").

The Republican Committees have demonstrated an interest sufficient to intervene of right.

III. THE REPUBLICAN COMMITTEES HAVE DEMONSTRATED AN INTEREST THAT WOULD BE IMPAIRED OR IMPEDED BY THE DISPOSITION OF THIS LAWSUIT

The third factor asks 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. This factor should be viewed from a practical standpoint rather than one based on strict legal criteria. *See Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986) (cleaned up).

The Republican Committees argue that if the Democratic Committees succeed on their claims, then the challenged laws "and their safeguards against voter fraud, ballot tampering, and undue influence in voting will be upended in the run-up to a general election," and will "short circuit the democratic process." Accordingly, they maintain that an order enjoining the enforcement of the challenged laws threatens to interfere with a free and fair election. The Democratic Committees contend that the impairment of the Republican Committees' interest is speculative and insufficient to warrant intervention. The Secretary of State does not address this factor.

As a practical matter, the Republican Committees contend that they will be affected by "subjecting Republican candidates and voters to competitive tactics that state law currently does not allow." While this court questions how the any determination on the motion for injunctive relief would affect one party's competitive tactics differently than another, the Republican Committees have identified an impediment which may affect their interest. *See Ohio Democratic Party v. Blackwell*, 2005 WL 8162665, at *2 (S.D. Ohio Aug. 26, 2005)(there can be no dispute that the Republican Committees have an interest in the subject matter of this case, given the fact that changes in voting procedures could affect candidates running as Republicans and voters who are members of the Republican Party)(cleaned up). The articulated interest and its impediment need not be identical, or even similar to that of the current parties.

The Republican Committees have demonstrated that, as a practical matter, their interest could be impeded by the entry of injunctive relief concerning the challenged laws. The Republican Committees have demonstrated an impairment of their interest sufficient to intervene of right.

IV. THE ATTORNEY GENERAL DOES NOT ADEQUATELY REPRESENT THE REPUBLICAN COMMITTEES' INTERESTS

The final factor for consideration by this court relates to the adequacy of the representation of the Republican Committees' interest by an existing party. The inquiry here, as all current and proposed parties recognize, 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 Republican Committees contend that they have a minimal burden of showing that the existing parties may not adequately represent their interests. *Faribo Farms*, 464 N.W.2d at 570. They argue that past comments of the Secretary of State which cast doubt on the validity of Minn. Stat. § 204C.15, as well as the Consent Decree which it entered into with the plaintiffs in *Thao*, render the Secretary of State unsuitable to defend that law and the Republican Committees' interest in upholding it here. *Thao v. Sec. of State*, 62-CV-20-1044. They also contend that the Attorney General "has previously taken positions in another capacity that call into question the zeal of his advocacy in this case" because he filed an amicus curiae brief to the United States Supreme Court in which he opposed an Indiana law which required the presentation of photo identification to vote. For these reasons, the Republican Committees argue that they should not need to rely on "doubtful friends" to represent their interests. Broadly, the Republican Committees maintain that governmental entities do not serve as adequate advocates for private parties. This is so, according to the Republican Committees, because a governmental entities' generalized interest in defending or enforcing the law on behalf of all of a state's citizens is distinct from the private interest of particular, individual intervenors. *See, e.g.*, *Utah Ass'n of Ctys. v. Clinton*, 255 F.3d 1246, 1255-56 (10th Cir. 2001)("[T]he government's representation

of the public interest generally cannot be assumed to be identical to the individual parochial interest of a [private party] merely because both entities occupy the same posture in the litigation."). The Republican Committees also contend that they have focal, partisan interests, which are different from the Secretary of State, which has no corresponding interest in the election of particular partisan candidates.

The Secretary of State contends 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). It maintains that it is providing an adequate defense to the challenged laws. It claims that the adequacy of its thorough defense is evident from its motion to dismiss this lawsuit in its entirety and its opposition to the Democratic Committees' motion for injunctive relief. The Secretary of State also claims that voting rights positions which it, and the Attorney General have articulated at other times in other situations, are not germane to an evaluation of the defense strategies used by them in this case.

The Democratic Committees make similar arguments to those advanced by the Secretary of State. They also claim that alleged partisan bias on behalf of government officials is not sufficient evidence of inadequate representation. *See Planned Parenthood of Wisconsin, Inc. v. Kaul*, 942 F.3d 793, 796 (7th Cir. 2019)(affirming denial of motion to intervene as of right of Republican legislature, when defendant was a Democratic Attorney General, because "the Legislature did not demonstrate that the Attorney General [was] an inadequate representative of the State's interest absent a showing he is acting in bad faith or with gross negligence").

This court is persuaded by federal authority 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. *See, e.g.*, *Stenehjem*, 787 F.3d at 921 ("Although the burden of showing inadequate

representation usually is minimal, 'when one of the parties is an arm or agency of the government, and the case concerns a matter of sovereign interest, the bar is raised because in such cases the government is presumed to represent the interests of all its citizens."). This presumption may be rebutted when the proposed intervenor makes "a strong showing of inadequate representation." *Id.* at 921 (citation omitted). In the end, "the proposed intervenor cannot rebut the presumption of representation by merely disagreeing with the litigation strategy or objectives of the party representing him." *Id.* at 922.

Although the *Stenehjem* decision is not binding on this court, its articulated presumption of adequate governmental representation and rebuttal burden is persuasive and makes sense. The Secretary of State here has been zealous in its defense of this case.[3] It moved to dismiss the entire action and has opposed the Democratic Committees' motion for injunctive relief. The legal arguments advanced by the Secretary of State in support of the motion to dismiss and in opposition to the motion for injunctive relief were plausible and meritorious. If it were simply a matter of assessing the adequacy of the government's representation in this lawsuit, this court would probably conclude that the Republican Committees had not met their burden for intervention as of right on this factor.

Even so, despite the presumption of adequacy of the government's representation, as well as its ostensible zealous advocacy in opposition to the claims and tactics of the Democratic Committees, what remains distinct and unique to this case is the Secretary of State's entry into the *Thao* Consent Decree. In that case, the Secretary of State agreed, among other things that it:

> Agrees that the at-issue restrictions, as set forth in Minn. Stat. § 204C.15, subd. 1, are preempted by the Voting Rights Act and that any enforcement of the at-issue restrictions by election officials in Minnesota would violate the Supremacy Clause of the United States Constitution…

Thao v. Sec. of State, 62-CV-20-1044. By conceding an identical issue, in a contemporaneous case, the Secretary of State may be unable to adequately represent the interest of the Republican Committees

[3] The *Stenehjem* decision's suggestion that only a "dereliction of duty" would render the advocacy of an arm or agency of the government inadequate, goes too far. *Id.* at 922.

here. Under these unique circumstances, this court holds that the Republican Committees should have the opportunity to intervene and present their own defense to the challenged laws. The Republican Committees' motion to intervene as of right is therefore granted.[4]

TEMPORARY INJUNCTION STANDARD OF REVIEW

"A temporary injunction is an extraordinary equitable remedy. Its purpose is to preserve the status quo until adjudication of the case on its merits." *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). A temporary injunction, "should be granted only when it is clear that the rights of a party will be irreparably injured before a trial on the merits is held." *Miller*, 317 N.W.2d at 712. "The party seeking the injunction must establish that his legal remedy is not adequate, and that the injunction is necessary to prevent great and irreparable injury." *Cherne Indus., Inc. v. Grounds & Associates, Inc.*, 278 N.W.2d 81, 92 (Minn. 1979) (citations omitted). "Injunctive relief should be awarded only in clear cases, reasonably free from doubt, and when necessary to prevent great and irreparable injury." *AMF Pinspotters, Inc. v. Harkins Bowling, Inc.*, 110 N.W.2d 348, 351 (Minn. 1961). Failure to show irreparable harm is generally, by itself, a sufficient ground for denying temporary injunctive relief. *Morse v. City of Waterville*, 458 N.W.2d 728, 729 (Minn. Ct. App. 1990).

The Democratic Committees contend that the challenged laws "will irreparably harm [their] efforts to support the election of DFL candidates up and down the ballot in Minnesota in the 2020 election," if the challenged laws are in effect in November, they "will be unable to fund or support efforts to assist voters in completing or returning their ballots in Minnesota," and if they "are unable to engage in such activities in Minnesota, it will have a direct impact on the failure or success of their preferred candidates in November." They also maintain that many Minnesota voters who will be affected by the challenged laws will also suffer irreparable harm. In summary, the Democratic

[4] In light of its decision on the Republican Committees' motion to intervene as of right under Minn. R. Civ. P. 24.01, the court need not address the Republican Committees' alternative motion for permissive intervention under Minn. R. Civ. P. 24.02.

Committees argue that "once the election has come and gone," their injuries cannot be undone through monetary remedies. *See Cunningham v. Adams*, 808 F.2d 815, 821 (11th Cir. 1987). *See also* Complaint, ¶ 7 ("Absent an injunction, [the challenged laws] will not only obstruct the ability of disabled, elderly, and non-English speaking Minnesotans to vote, but [the challenged laws] will also undermine [the Democratic Committees'] efforts to help those Minnesotans vote.").

The Secretary of State argues that the Democratic Committees' delay in suing has some bearing on whether it will suffer irreparable harm absent an injunction. It points out, as it did in connection with the motion to dismiss, that the challenged laws have been in existence for years, but that the Democratic Committees waited until January of this election year to begin its action. The court rejected that argument previously. It is equally unavailing here. *See, e.g.*, *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1335-36 (N.D. Ga. 2018)(preliminary injunction issued regarding enforcement of voter signature matching procedures which had been in place over a decade, rejecting laches contention).

The Republican Committees don't offer an argument on whether the Democratic Committees have met their burden of demonstrating irreparable harm.

It is clear that there is a threat of irreparable harm with regard to the Democratic Committees claims to the challenged laws. As the court in *Pavek* noted on the irreparable harm at issue for the Democratic Committees' constitutional challenge in that case:

> First and foremost, the harm to [the Democratic Parties'] constitutional rights under the First and Fourteenth Amendment are themselves routinely recognized as irreparable injuries for the purposes of a preliminary injunction motion. "The denial of a constitutional right is a cognizable injury ... and an irreparable harm." *Portz v. St. Cloud Univ.*, 196 F. Supp. 3d 963, 973 (D. Minn. 2016) (citations omitted). Indeed, the Supreme Court has noted that the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373–74 (citing *N.Y. Times Co. v. United States*, 403 U.S. 713 (1971)); *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) ("Courts routinely deem restrictions on fundamental voting rights irreparable injury." (citations omitted)) (collecting cases), *cert. denied*, 575 U.S. 950 (2015); *Marcus v. Iowa Public Television*, 97 F.3d 1137, 1140–41 (8th Cir. 1996) ("If [Plaintiffs' allegations that their First Amendment rights have been violated] are correct ... [such a violation] constitutes an irreparable harm." (citation omitted)). * * * And because the potential

> abridgment of [the Democratic Parties'] constitutional rights stems from its effect on voting and associational rights in connection with an election, it is certainly irreparable in the sense that it cannot be adequately compensated post-election: "[O]nce the election occurs, there can be no do-over and no redress. The injury to these voters [and, relevant here, political party committees] is real and completely irreparable if nothing is done to enjoin [the challenged law]." *League of Women Voters of N.C.*, 769 F.3d at 247.

2020 WL 3183249, at *21 (cleaned up). Similarly, the Democratic Committees are making constitutional challenges regarding voting, speech, and associational rights here. The injury to the Democratic Committees and those associated with them is real and irreparable if nothing is done to enjoin the challenged laws. The Democratic Committees have therefore established the threat of irreparable harm.

The next step in this court's inquiry on the Democratic Committees' motion for a temporary injunction is to assess what are commonly known as the *Dahlberg* factors. These five factors are: (1) the nature and relationship of the parties; (2) the balance of relative harm between the parties; (3) the likelihood of success on the merits; (4) public policy considerations; and (5) any administrative burden involving judicial supervision and enforcement. *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship.*, 638 N.W.2d 214, 220-21 (Minn. Ct. App. 2002) (citing *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965)).

I. THE RELATIONSHIP OF THE PARTIES IS NEUTRAL

The first *Dahlberg* factor requires this court to consider the nature and relationship of the parties. A temporary injunction order is issued to maintain the status quo pending a decision on the merits. *See Pickerign v. Pasco Mktg., Inc.*, 228 N.W.2d 562, 564 (Minn. 1975). This factor does not appear to be a consideration relevant to the issuance of injunctive relief here, since the Democratic Committees scarcely mention it and because neither the Secretary of State nor the Republican Committees address it at all. For these reasons, because this factor does not appear to be important to the parties, the court will consider the relationship of the parties' factor as neutral.

II. THE BALANCE OF HARMS FAVORS THE DEMOCTRATIC COMMITTEES

The second *Dahlberg* factor requires this court to balance the relative harm between the parties. "A party requesting an injunction must show irreparable harm if the injunction is not issued, while the party opposing the injunction need only show substantial harm if it is issued." *Shakopee Mdewakanton Sioux (Dakota) Cmty. v. Minnesota Campaign Finance and Public Disclosure Board*, 586 N.W.2d 406, 410 (Minn. Ct. App. 1998)(citation omitted).

As indicated above, the Democratic Committees contend that they will suffer irreparable harm to their constitutional rights of freedom of speech and association. *See Elrod*, U.S. at 373 ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *League of Women Voters of N.C.*, 769 F.3d at 247 ("Courts routinely deem restrictions on fundamental voting rights irreparable injury.")(citations omitted). They have also identified irreparable harm they will suffer in their efforts to support the election of DFL candidates up and down the ballot in the 2020 election. They plan to make significant contributions and expenditures to support a candidate for the U.S. Senate and several candidates for the U.S. House of Representatives. They contend that if the challenged laws remain in effect in November 2020, they will be unable to fund or support efforts to assist voters in completing or returning their ballots in Minnesota. According to the Democratic Committees, if they are unable to engage in such activities, it will have a direct effect on the failure and success of their preferred candidates, and there is no monetary remedy for them after the election is over. *See Obama for America v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012).

The Democratic Committees acknowledge that temporary injunctions are typically used to maintain the status quo. But they maintain that Minnesota courts also: "have the power to shape relief in a manner which protects the basic rights of the parties, even if in some cases it requires disturbing the status quo." *N. Star State Bank of Roseville v. N. Star Bank Minn.*, 361 N.W.2d 889, 895 (Minn. Ct.

App. 1985). They contend that the issuance of a temporary injunction here would protect their basic rights and those of Minnesota voters, and would ensure that neither are irreparably harmed in the 2020 election. As will be discussed below in the factor related to likelihood of success on the merits, the Democratic Committees have introduced several Declarations which outline the deleterious effect of the challenged laws on non-English speaking Hmong-American and Somali-Americans, the disabled and Native voters.

The Secretary of State contends that the sole purpose of a temporary injunction is to preserve the status quo until adjudication, and issuing a temporary injunction here would upend the status quo by nullifying election laws which have been in place for decades. According to the Secretary of State, the issuance of a temporary injunction would work a "needlessly chaotic and disruptive effect on the electoral process." *Benisek*, 138 S. Ct. at 1945. It cautions that, especially in an already fluctuating environment due to the COVID-19 pandemic, creating further uncertainty in this lawsuit, rather than letting the Secretary of State, the Legislature or other state officials consider the best interests of the public in making decisions on voting. While the Secretary of State does not specifically address the balancing of harms, it does make clear that the public would not be advantaged in disrupting the status quo by issuing a temporary injunction.

The Republican Committees briefly address the balancing of harms factor and echo the arguments which the Secretary of State has made about the Democratic Committees' delay in commencing this action, though the challenged laws have been in force for years. They also contend that this court should wait to resolve any remaining issues here on a fully developed record, rather than an abbreviated temporary injunction record.

As discussed above, the Democratic Committees have introduced evidence of irreparable harm to their GOTV and voter assistance efforts if the temporary injunction is not issued. Neither

the Secretary of State nor the Republican Committees have come forward with any specific evidence of substantial harm if the injunction is issued.[5]

In *Pavek*, the court balanced the harms between the Democratic Committees and the Secretary of State on a challenged voter law that addressed the order in which a political parties' candidate appeared on a ballot. The court reasoned:

> Absent an injunction, [the Democratic Committees] are likely to suffer irreparable harm because the [challenged law] forces them to compete and vote on an uneven playing field. Minnesota, on the other hand, does not suffer at all because a State has no interest in enforcing laws that are unconstitutional and an injunction preventing the State from enforcing the [challenged law] does not irreparably harm the State.

Pavek, 2002 WL 3183249, *28 (cleaned up)(citations omitted). Like *Pavek*, the Secretary of State has no interest in enforcing unconstitutional laws. In entering into the Consent Decree in *Thao*, the Secretary of State implicitly recognized that Minnesota has no interest in enforcing unenforceable laws.

Moreover, to the extent which the challenged laws are intended to serve election or ballot integrity interests like preventing people from influencing voter choices or tampering with ballots, as the Republican Committees suggest, they are duplicative of other election integrity measures which already protect against such behavior. Minn. Stat. § 204C.15 provides that an "individual assisting a voter shall not in any manner request, persuade, induce, or attempt to persuade or induce the voter to vote for any particular party or candidate." Minn. Stat. § 203B.08 provides that "[a]ny person designated as an agent who tampers with either the return envelope or the voted ballots" faces a misdemeanor charge. Finally, Minn. Stat. § 203B.03(a)(5) criminalizes "do[ing] any act…for the purpose of casting an illegal vote." To the extent that election or ballot integrity should influence the balancing of harms, a temporary injunction of the challenged laws is unlikely to alter the prospective

[5] Any decision of this court will not prevent the Secretary of State, the Legislature or other state officials from taking actions to protect the voting public during the COVID-19 pandemic.

enforcement of existing laws which deter actions like illegal persuasion, ballot tampering or anything else done for the purpose of casting an illegal vote. This factor favors the issuance of a temporary injunction.

III. THE LIKELIHOOD OF SUCCESS ON THE MERITS FAVORS THE DEMOCRATIC COMMITTEES

The third *Dahlberg* factor requires the court to consider the likelihood of success on the merits. The Democratic Committees seek a temporary injunction on two challenged laws – (1) Minn. Stat. § 204C.15; and (2) Minn. Stat. § 203B.08 – for three claims: (1) Count I – Preemption for violating Section 208 of the VRA; (2) Count II – Unconstitutional Burden on the Right to Vote; and (3) Count III – Unconstitutional Infringement on Speech and Associational Rights. The temporary injunction which the Democratic Committees seek would enjoin the Secretary of State from enforcing the provision in Minn. Stat. § 204C.15 which prevents certain individuals from assisting more than three voters mark their ballot and the provision in Minn. Stat. § 203B.08 which prevents certain individuals from assisting more than three voters return their absentee ballot.

In support of their motion, the Democratic Committees submitted Declarations from the National Field Director of the DCCC (Alexander Edelman ("Edelman")); the Coordinated Campaigns Director of the DSCC (Shaun Kelleher("Kelleher")); a leader of the Service Employees International Union's Asian Pacific Islander Caucus (Francis Hall ("Hall")); an employee of Honor the Earth (Sarah Littleredfeather ("Littleredfeather")); a Professor Emeritus of Political Science at the University of Utah (Daniel McCool ("McCool")); a DFL member of Minnesota House of Representatives (Mohamud Noor ("Noor")); a Professor of Labor Studies and Employment Relations at Rutgers University (Lisa Schur ("Schur")); the Chair of the Hmong American Caucus for the DFL (Wang-Yu Vu ("Vu")); a Somali American DFL political candidate (Osman Ahmed ("Ahmed"); and a Research Associate at the Institute for Asian American Studies at the University of Massachusetts, Boston (Carolyn Wong ("Wong")).

The Declarations of Edelman and Kelleher provide testimonial support for the allegations in the Complaint that pertain to the impact the challenged laws will have on the DCCC and DSCC's GOTV and voter assistance efforts and expenditures for the 2020 election. The initial Declaration of McCool supports and explains his opinion that Minn. Stat. § 203B.08 creates a significant burden on Minnesota's Native voters, especially those in remote areas such as the White Earth Reservation. McCool's Supplemental Designation addresses the effect that anticipated COVID-19 pandemic voting changes (such as closing local polling places, moving to an all-mail voting system or opening distant voting centers) would have on voter turnout and participation, especially on Minnesota's Native voters. He also rendered the opinion that voter fraud due to voting by mail is not a problem in Minnesota. The Declaration of Littleredfeather discusses the obstacles faced by rural Native voters, generally and the effect of Minn. Stat. § 203B.08 on them specifically. The Declarations of Noor and Ahmed discusses the effect of the challenged laws on Somali-American voters in Minnesota and on those who would otherwise assist them to vote. The Declaration of Wong supports and explains her opinion that without ready access to language assistance, many Hmong-American voters in Minnesota will be unable to exercise their right to vote. The Vu Declaration discusses the effect of the challenged laws on Hmong-American voters in Minnesota and on those who would otherwise assist them to vote. The Schur Declaration supports and explains her opinions that lower turnout by voters with disabilities is partially explained by inaccessible voting procedures and limitations from their disabilities, and that voters with disabilities are more likely to require assistance at a polling place or to vote by mail. The Schur Declaration concludes that the challenged laws will disproportionately impact people with disabilities and are likely to reduce the probability of them voting. Finally, the Hall Declaration discusses the effect of the challenged laws on Hmong-American and disabled voters in Minnesota and on those who would otherwise assist them to vote.

The Secretary of State did not submit Declarations or other evidence in response to the Democratic Committees' motion for a temporary injunction. The Republican Committees also did not submit Declarations in opposition to the motion, but they did submit a 2005 Report of the Commission on Federal Election Reform entitled "Building Confidence in U.S. Elections." ("Commission Report"). They point to the Commission Reports' observation that absentee balloting is vulnerable to abuse in several ways – including: (1) interception if the ballot is mailed to the wrong address or to a large residential building; (2) citizens who vote at home, at nursing homes, at the workplace or in church may be more susceptible to pressure or intimidation; or (3) that vote buying schemes are much harder to detect when citizens vote by mail.

A. The Democratic Committees are likely to Succeed on the Merits of their Preemption Claim

The Democratic Committees maintain that the challenged laws are preempted by Section 208 of the VRA, which provides in pertinent part: "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice," provided the person is not "the voter's employer or agent of that employer or officer or agent of the voter's union." They claim that the challenged laws conflict with this provision because they restrict a voter's ability to select the person of their choice to help them vote or cast an absentee ballot.

The Supremacy Clause of the United States Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. CONST., art. VI, cl. 2. The preemption of state law may operate impliedly, "through the direct operation of the Supremacy Clause," because a federal statute conflicts with a state statute. *Kurns v. Railroad Friction Prods. Corp.*, 132 S. Ct. 1261, 1265-66 (2012)(cleaned up). Conflict preemption occurs in one of two ways: (1) when it is impossible to comply with both state and federal law; or (2) "where

state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S.88, 98, 109 (1992)(cleaned up).

The Democratic Committees maintain that the challenged laws have added an additional restriction on a voter's right to assistance; namely, that a voter may not choose someone to assist them cast an in-person or absentee ballot, who has also helped three other voters. They contend that this restriction conflicts with the explicit language of Section 208 of the VRA and stands as an obstacle to achieve the Congress' purpose and objectives. They offer *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017) as an example of conflict preemption applied to strike down a state law which conflicted with Section 208. In that case, the Fifth Circuit struck down a Texas law which restricted who may provide interpretation assistance to English-limited voters because it "impermissibly narrow[ed] the right guaranteed by Section 208 of the VRA." *Id.* at 615. The Democratic Committees also contend that legislative history makes clear that voters who had limited English skills and voters with disabilities "run the risk that they will be discriminated against at the polls and that their right to vote in State and Federal elections will not be protected," and that those voters "must be permitted to have the assistance of a person of their own choice." S. Rep. No. 97-417, at 62 (1982).

The Republican Committees contend that the Democratic Committees have not identified any Minnesota voter covered under Section 208 who has been unable to vote or to use their assistants of choice because of either of the challenged laws. They therefore maintain that the record does not support a likelihood of success on their preemption claim. The Republican Committees also contend that Minn. Stat. § 204C.15 does not violate Section 208, because absentee voting was not the focus of Congress in passing Section 208 and because it is not "necessary to make a vote effective" under the VRA.

This court concludes that Democratic Committees have met their burden in showing a likelihood of success on their claim that the challenged laws do conflict with Section 208 and are therefore preempted.

As for Minn. Stat. § 204C.15, the best evidence of preemption is the Secretary of State's concessions in the Consent Decree that:

> 15. Minnesota Statutes, section 204C.15, subdivision 1, conflicts with the Voting Rights Act, 52 U.S.C. § 10508, because it prohibits conduct expressly allowed by the Voting Rights Act. Specifically, Minnesota law prohibits a candidate for election from assisting a voter and prohibits any person from assisting more than three voters in an election. Minn. Stat. § 204C.15, subd. 1.
>
> 16. Minnesota Statutes, section 204C.15, subdivision 1, acts as an obstacle to the accomplishment and execution of the full purposes and objectives of 52 U.S.C. § 10508.

Applying the same reasoning to Minn. Stat. § 203B.08, that law also "prohibits any person from assisting more than three voters in an election" so it conflicts with the VRA and acts as an obstacle to the accomplishment and execution of the full purposes and objectives of the Section 208. *See OCA*, 867 F.3d at 615.

The Democratic Committees have also provided several Declarations which reveal how English-limited, disabled and Native voters covered by Section 208 would be affected in the 2020 elections. They have also shown how their efforts at voter assistance to these affected Minnesota voters would face obstacles created by the challenged laws. Section 208 applies to both in-person and absentee ballot assistance because the phrase "to vote" "plainly contemplates more than the mechanical act of filling out the ballot sheet…Indeed, the definition lists 'casting a ballot' as only one example in a non-exhaustive list of actions that qualify as voting." *Id.* at 615 (citing 52 U.S.C. § 10310(c)(1)).

The Democratic Committees have therefore shown a likelihood of success on their preemption claim. This *Dahlberg* factor, therefore, favors the issuance of a temporary injunction on this claim.

B. The Democratic Committees are likely to Succeed on the Merits of their Unconstitutional Burden on the Right to Vote Claim

The Democratic Committees allege that the challenged laws violate the rights to vote which are guaranteed by two provisions of the Minnesota Constitution. MINN. CONST. art. I, § 2 and art. VII, § 1. Article I, section 2 provides in pertinent part: "No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Article VII, Section 1 provides in pertinent part: "Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct."

Both the Democratic Committees and the Republican Committees agree that this court should use the *Anderson/Burdick* test when evaluating whether the challenged laws violates the right to vote under the Minnesota Constitution. *Kahn v. Griffin*, 701 N.W.2d 815, 831 (Minn. 2005)(citing *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) and *Burdick v. Takushi*, 504 U.S. 428, 433 (1992)). Thus, a district court must "weigh the character and magnitude of the burden imposed on voters' rights against the interests the state contends justify that burden," "consider[ing] the extent to which the state's concerns make the burden necessary." *Kahn*, 701 N.W.2d at 833. "Regulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest," while those imposing '[l]esser burdens…trigger less exacting review, and [the] State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Id.* at 832 (cleaned up). They differ, however, on whether the challenged laws present a severe burden on voters'

rights (as the Democratic Committees contend) or a lesser burden (as the Republican Committees contend).

The Democratic Committees contend that the challenged laws severely burden voters' rights, especially Minnesota's language-minorities, Natives and those with disabilities, all of which are groups which they seek to turnout to vote in November. They cite their Declarations, which make the burden of the challenged laws on those groups clear. They maintain that Minn. Stat. § 203B.08 imposes a severe burden on voters who need assistance completing a ballot because of language barriers and disabilities, while Minn. Stat. § 204C.15 severely burdens those same voters, as well as those have a lack of transportation, reliable mail service or are a significant distance from their polling place. The Democratic Committees contend that the impact on these subgroups, for whom the burden, when considered in context, may be more severe than the general electorate. *Crawford*, 553 U.S. at 199-203; *see also League of Women Voters of Fla., Inc. v. Detzner*, 314 F. Supp. 3d 1205, 1216-20 (N.D. Fla. 2018).

They argue that by limiting the number of voters that one can help understand and complete their ballot, Minn. Stat. § 203B.08 imposes severe burdens on voting for all language minorities in Minnesota and directly suppresses their electoral participation. But its impact is particularly felt within the Somali and Hmong communities, where there is great need but a limited supply of individuals to assist. They contend that if Minn. Stat. § 203B.08, were not in place, it is extremely likely more language minorities in Minnesota would cast their ballots.

Likewise, the Democratic Committees argue that Minn. Stat. § 203B.08 also severely burdens language-minority voters more than others. It also severely burdens Native voters in Minnesota because of distances required to travel to vote, unreliable and untimely mail delivery, and socioeconomic status. *Democratic Nat'l Committee v. Hobbs*, 948 F.3d 989, 1006 (9th Cir. 2020)(en banc)(combination of lack of transportation and long distance from polling stations impacted Native voters in Arizona).

Finally, the Democratic Committees contend that both challenged laws severely burden disabled voters in Minnesota.

According to the Democratic Committees, under the *Anderson/Burdick* standard, the challenged laws impose a severe burden on the right to vote and can only survive if they meet strict scrutiny – they must be narrowly tailored to serve a compelling state interest. *See Kahn*, 701 N.W.2d at 832. They maintain that Minnesota has not articulated a precise state interest for either of the challenged laws. They also maintain that where a state election law burdens voters and the interests identified by a state for the law can be served through other means, the law cannot stand. *See Common Cause Ind. v. Indiv. Members of the Ind. Election Comm'n*, 800 F.3d 913, 928 (7th Cir. 2015). They claim that many other laws are intended to protect against the ostensible election integrity interests of Minnesota to prevent people from influencing voter choices or tampering with ballots. *See, e.g.*, Minn. Stat. §§ 204C.15, 203B.08, 203B.03(a)(5).

The Republican Committees argue that the burden of finding assistance from a person who has not already assisted three other voters is less onerous than "the inconvenience of making the trip to the" Department of Motor Vehicles, "gathering the required documents, and posing for a photograph" that was upheld as minimal and constitutional by the Supreme Court in *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 198 (2008). The Republican Committees cite no specific interest articulated by Minnesota for the challenged laws. Instead, they contend that Minnesota has an interest in maintaining "fair, honest, and orderly elections" and "may impose regulations that in some measure burden the right to vote." *Kahn*, 701 N.W.2d at 832 (citation omitted). Generally, they contend that Minnesota has an important interest in deterring and detecting voter fraud and that this problem is exacerbated by absentee voting. They also argue that the challenged laws advance Minnesota's interest in prohibiting undue influence on voters and that somehow the limitation of ballots a single person may "influence" prevents this conduct from occurring. Last, the Republican Committees argue that

the challenged laws promote Minnesota's interest in "protecting public confidence in the integrity and legitimacy of representative government." *Crawford*, 553 U.S. at 197 (cleaned up).

Even if strict scrutiny were to apply to an evaluation of the challenged laws, the Republican Committees contend that the Democratic Committees' effort fails. They maintain that the Declarations submitted are not specific enough to any particular voter who has been unable to vote because of the challenged laws. They also contend that the subgroup analysis is improper under the *Anderson/Burdick* framework. In the end, the Republican Committees contend that this court owes deference to the legislature's judgment on how best to remedy vote fraud or its appearance. *Crawford*, 553 U.S. at 196; *Griffin v. Roupas*, 385 F.3d 1128, 1131 (7th Cir. 2004).

In *Crawford*, the Supreme Court described the balancing approach it used to address election cases:

> In later election cases we have followed *Anderson's* balancing approach. Thus, in *Norman v. Reed*, 502 U.S. 279, 288–289, 112 S.Ct. 698, 116 L.Ed.2d 711 (1992), after identifying the burden Illinois imposed on a political party's access to the ballot, we "called for the demonstration of a corresponding interest sufficiently weighty to justify the limitation," and concluded that the "severe restriction" was not justified by a narrowly drawn state interest of compelling importance. Later, in *Burdick v. Takushi*, 504 U.S. 428, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992), we applied *Anderson's* standard for "'reasonable, nondiscriminatory restrictions,'" 504 U.S., at 434, 112 S.Ct. 2059, and upheld Hawaii's prohibition on write-in voting despite the fact that it prevented a significant number of "voters from participating in Hawaii elections in a meaningful manner," *id.*, at 443, 112 S.Ct. 2059 (KENNEDY, J., dissenting). We reaffirmed *Anderson's* requirement that a court evaluating a constitutional challenge to an election regulation weigh the asserted injury to the right to vote against the "'precise interests put forward by the State as justifications for the burden imposed by its rule.'" 504 U.S., at 434, 112 S.Ct. 2059 (quoting *Anderson*, 460 U.S., at 789, 103 S.Ct. 1564).
>
> In neither *Norman* nor *Burdick* did we identify any litmus test for measuring the severity of a burden that a state law imposes on a political party, an individual voter, or a discrete class of voters. However slight that burden may appear, as *Harper* demonstrates, it must be justified by relevant and legitimate state interests "sufficiently weighty to justify the limitation." *Norman*, 502 U.S., at 288–289, 112 S.Ct. 698.

Crawford, 553 U.S. at 190-91 (footnote omitted).

The first task under *Crawford* is to determine whether the challenged laws are a severe restriction. The second task under *Crawford* is the identification of the precise interest being put forward by Minnesota as justification for the burden imposed by the challenged laws. The last task under *Crawford* is for this court to balance the burden on the political party, individual voter or discrete class of voters against an interest weighty enough to justify the limitation.

The *Crawford* analysis begins with a determination of whether the challenged laws severely burden the right to vote. "Ordinary and widespread burdens, such as those requiring 'nominal effort' of everyone, are not severe." *Crawford*, 553 U.S. at 205 (J. Scalia, concurring)(citing *Clingman v. Beaver*, 544 U.S. 581, 592 (2005). "Burdens are severe if they go beyond the merely inconvenient." *Id.* (citing *Storer v. Brown*, 415 U.S. 724, 728–729 (1974)).

The Democratic Committees have identified how they will be affected during this election cycle by the challenged laws. They contend that their GOTV and voter assistance efforts will be hampered and will result in a lower number of expected submitted ballots from English-language-limited voters and will have to expend money and divert resources if the challenged laws remain in place. They predict that the challenged laws will affect the turnout of voting populations (language-minorities, Natives and the disabled) who are more likely to vote for DFL candidates. They contend the challenged laws "have already harmed and will continue to harm [the Democratic Committees] electoral prospects in the state of Minnesota." For these reasons, it appears likely that they will be able to show that the challenged laws are a severe burden.

The Democratic Committees have also come forward with Declarations from persons who are among or who have knowledge about discrete classes of voters (language-minorities, the disabled, Natives) who will be affected by the challenged laws. They have also placed things into further context with the support of Declarations from academics. As a whole, they present information which identifies specific voter assistance needs – e.g., translation and assistance from a trusted person

because of language barriers, help filling out or sending ballots because of disability barriers, access to absentee ballot collection assistance because of remote location, poor postal service and lack of resources and transportation. They've also identified the size of these voter classes, which demonstrate that there are thousands of voters who are potentially affected by the challenged laws. The Democratic Committees have also argued, with the support of the Supplemental McCool Declaration, that the effects of the COVID-19 pandemic will exacerbate the burden on those same affected classes of voters. The identified burdens are not insubstantial, as the Republican Committees suggest. These burdens go beyond the "merely inconvenient" as Justice Scalia noted in his *Crawford* concurrence. It appears likely that the Democratic Committees will be able to establish that the challenged laws present a severe burden.

To date, there is nothing in the record which demonstrates the precise interest of Minnesota as justification for the burden imposed by the challenged laws. Though the Republican Committees have identified generalized interests of Minnesota, such as the "orderliness and integrity of the election process" and "fair, honest, and orderly elections," it has not identified Minnesota's "precise" interest in the challenged laws. *See Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 730 (Minn. 2003)(citation omitted); *Kahn*, 701 N.W.2d at 832 (citation omitted). As a result, it is rather difficult to assess a "precise" interest which has not been articulated.

The Republican Committees have cited external sources which discuss problems of voter fraud, which they offer as the ostensible justification for the challenged laws. None of these sources are germane to Minnesota. The only Minnesota-specific information in the record concerning voter fraud comes from the Democratic Committees through the Supplemental McCool Declaration, which demonstrates that voter fraud is not a problem in in this state (130 voter fraud convictions from 2009 to 2018 in local, state and federal elections, out of 10-12 million votes cast – only two cases involved absentee voting abuse).

It does not appear from this record that there is a "precise," Minnesota-specific justification for the burden imposed by the challenged laws. Accordingly, it appears likely that the Democratic Committees will be able to show that there is no justification for the burdens imposed by the challenged laws.

The last inquiry balances the burden on the political party, individual voter or discrete class of voters against an interest sufficiently weighty to justify the limitation. As the Republican Committees accurately point out, there is no individual voter in this case to advance how the challenged laws have specifically affected them. Nonetheless, the Democratic Committees themselves, as well as discrete classes of voters, have demonstrated the severe burdens that the challenged laws pose. Under *Crawford*, this court may assess the burdens on political parties and "subgroups" of voters. 552 U.S. at 199. Since this court has already determined that Minnesota's "precise" interest justifying the challenged laws has not been established, it appears that the Democratic Committees will succeed in demonstrating that the balance of their burdens and the burdens of language-minorities, Natives and the disabled will not be outweighed by Minnesota's "interest sufficiently weighty to justify the limitation."

This *Dahlberg* factor, therefore, favors the issuance of a temporary injunction on this claim.

C. The Democratic Committees are likely to Succeed on the Merits of their Unconstitutional Burden on Free Speech and Association Claim

The Democratic Committees allege that the challenged laws violate the rights to free speech and association found in MINN. CONST. art. I, § 3 and the First and Fourteenth Amendments to the U.S. CONST. Article I, Section 3 of the Minnesota Constitution provides, in pertinent part: "all persons may freely speak, write and publish their sentiments on all subjects." The Democratic Committees maintain that these rights are coextensive with the First Amendment. They also maintain that laws governing election-related speech is subject to exacting scrutiny, and restrictions on such speech are unconstitutional when they significantly inhibit election-related speech and are not

warranted by justifiable state interests. *See Buckley v. Am. Const'l Law Found. Inc.*, 525 U.S. 182, 186, 192 (1999); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 345 (1995).

Here, the Democratic Committees argue that the challenged laws prevent them and others from engaging in election-related speech and associational activities aimed at encouraging voters to participate in the political process. Because an individual may not assist more than three people, especially when voting absentee, the election-related speech integral to absentee voting efforts is necessarily capped and limits the overall reach of the Democratic Committees' speech. They also contend that the challenged laws make such organizing activities prohibitively expensive, which limits their outreach and reduces the overall quantum of their speech.

In response, the Republican Committees argue that the challenged laws do not involve inherently expressive or communicative activity, and therefore do not impact constitutionally protected speech. They contend that Minn. Stat. § 203B.08, merely limits "ballot harvesting," which involves the ministerial receipt and delivery of completed ballots. *See Voting for America, Inc. v. Steen*, 732 F.3d 382, 391 (5th Cir. 2013). Likewise, the Republican Committees contend that Minn. Stat. § 204C.15, merely regulates the circumstances under which a person may act as a scrivener to mark another person's ballot as directed. *Id.* The conduct covered by the challenged laws, in the assessment of the Republican Committees, is not like circulating a petition, because it is not reasonable to suggest that marking or collecting a ballot would convey any political viewpoint. Even assuming, that this non-expressive conduct is combined with another activity that involves protected speech, the Republican Committees maintain that such a combination does not create protected expressive conduct. *Id.* at 389. *See also Rumsfeld v. Forum for Acad. and Institutional Rights, Inc.*, 547 U.S. 47, 66 (2006). Last, the Republican Committees deny that strict scrutiny applies to the assessment of the Democratic Committees' free speech and associational claims, because they have not established a violation in the first place. *See Voting for America, Inc.*, 732 F.3d at 392.

It is clear that "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process." *Storer v. Brown*, 415 U.S. 724, 730 (1974). The Supreme Court has therefore held that First Amendment challenges to election code provisions governing the voting process itself require a specialized inquiry beyond a simple litmus-paper test that will separate valid from invalid restrictions. *See Tenn. State Conf. of N.A.A.C.P v. Hargett*, 420 F. Supp. 3d 683, 700 (M.D. Tenn. 2019)(cleaned up)(quoting *McIntyre*, 514 U.S. at 345). In those circumstances, the Supreme Court has pursued an analytical process that considers the relative interests of the state and the injured voters and evaluates the extent to which the state's interests necessitated the contested restrictions. *Id.*

The Democratic Committees liken their voter assistance and GOTV activities impacted by the challenged laws to canvassing done during the circulation of petitions in support of ballot initiatives. They maintain that this court should apply the analysis used in a pair of Supreme Court decisions, *Meyer v. Grant*, 486 U.S. 414, 428 (1988) and *Buckley*, 525 U.S. at 205, which addressed restrictions on petition circulators. In *Meyer*, the Supreme Court struck down Colorado's prohibition on the use of paid petition circulators. 486 U.S. at 428. In *Buckley*, the Supreme Court struck down several additional Colorado restrictions on petition circulators. *Id.* at 186, 205.

The court in *Hargett* explained the salient aspects of the *Meyer/Buckley* framework:

> The Supreme Court concluded that the regulation of the petition-drive activities at issue "involve[d] a limitation on political expression subject to exacting scrutiny." *Meyer*, 486 U.S. at 420, 108 S.Ct. 1886 (citing *Buckley v. Valeo*, 424 U.S. 1, 45, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976)). The Court explicitly rejected, moreover, the argument that the logistical aspects of collecting signatures could be easily separated from the regulation of speech, because "[t]he circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change." *Meyer*, 486 U.S. at 421, 108 S.Ct. 1886. "[T]he First Amendment," the Court explained in *Buckley*, "requires us to be vigilant" when such activities are regulated, "to guard against undue hindrances to political conversations and the exchange of ideas." 525 U.S. at 192, 119 S.Ct. 636 (citing *Meyer*, 486 U.S. at 421, 108 S.Ct. 1886). The Court held that the prohibitions were unconstitutional because they "significantly inhibit[ed] communication with voters about proposed

> political change, and [were] not warranted by the state interests (administrative efficiency, fraud detection, informing voters) alleged to justify those restrictions." *Id.*
>
> The Supreme Court noted, in particular, the laws' tendency to result in "speech diminution" by "decreas[ing] the pool of potential circulators" of petitions. *Id.* at 194, 119 S.Ct. 636; *see also Bailey v. Callaghan*, 715 F.3d 956, 969 (6th Cir. 2013) (referencing *Meyer* as an example of the rule that the First Amendment applies "not only to laws that directly burden speech, but also to those that diminish the amount of speech by making it more difficult or expensive to speak") (citing *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 337, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010); *Meyer*, 486 U.S. at 424, 108 S.Ct. 1886)). Based on the factual record provided by the plaintiffs and largely unrefuted by the defendants, the same speech diminution rationale can easily be applied to the Act's restrictions on voter registration drives, particularly those involving prior registration, mandatory attendance at state-provided training, and the threat of criminal prosecution.

Hargett, 420 F. Supp. at 701-02. As reflected previously, the Republican Committees argue that cases involving petition drives for ballot initiatives do not involve communication with voters about proposed political change and are not entitled to First Amendment protection. This court disagrees and will apply the *Meyer/Buckley* framework to analyze the Democratic Committees' free speech and association claims.

Reducing the number of individuals who could potentially provide assistance to potential voters, particularly those for which a political party believes would support their candidate, diminishes the speech and associational rights of political organizations like both the Democratic Committees and the Republican Committees. Allowing an individual to assist voters one through three, but not voter four, results in speech diminution by decreasing the potential pool of helpers. *See Buckley*, 525 U.S. at 194. The limitations in the challenged laws also make it more difficult and more expensive for political organizations to speak, because they must, for example, get more Somali-speaking Minnesotans to assist in ballot collection or voter assistance.

In addition, this court will reject the invitation of the Republican Committees' to follow the Fifth Circuit's holding in *Voting for America, Inc.*, 732 F.3d at 391. The logistical aspects of GOTV and voting assistance efforts cannot be easily separated from regulating speech, because making voters

aware that they can be assisted in filing or marking their ballots involves inherently expressive activity. *See Meyer*, 486 U.S. at 421. The challenged laws do not exclusively involve the ministerial receipt and delivery of ballots, or acting as a mere scrivener. Like the court observed in *Hargett*, when it considered whether registering to vote was a politically neutral act, it is the discussion of whether to vote absentee and to allow your ballot to be collected, or the discussion of whether to vote in person with a trusted helper, that inherently implicates political thought and expression. 420 F. Supp. 3d at 703 (citing *Buckley*, 525 U.S. at 195):

> Registering to vote is not a politically neutral act, and neither is declining to. A person seeking to register voters may, for example, find herself confronted with people who, based on their beliefs about politics and government, consider voting to be unimportant, a waste of time, or even a pernicious tool for lending legitimacy to an intolerable system. Even if a prospective voter does not explicitly voice those concerns, the operator of the registration drive will no doubt know that sincere reasons for refusing to vote exist and pose an obstacle to his efforts. The way that the person encouraging registration responds to or preempts the objections people have to voting will, therefore, often bear on fundamental questions at the heart of the political system. The court sees no reason that the First Amendment would treat that discussion as somehow less deserving of protection than, for example, a discussion about whether or not there should be a ballot initiative about property taxes. The court, therefore, finds *Meyer* and *Buckley* to provide the appropriate standard for considering the plaintiffs' challenges.

Id. at 703 (cleaned up). Similarly, this court sees no reason that the First Amendment would treat a discussion of whether to use voter assistance as somehow less deserving of protection than, for example, the decision whether to register to vote, or whether there should be a ballot initiative about property taxes. Ultimately, for political organizations, voter assistance walks hand in hand with their efforts to get individuals and groups, for whom they believe will support their candidates to cast votes. Under the specialized *Meyer/Buckley* framework, the Democratic Committees have shown a likelihood that the challenged laws involve protected speech and association.

The Republican Committees do not offer any additional precise interest of Minnesota which would justify the challenged laws, beyond those previously offered in the section on the alleged burden on voting rights. To survive the exacting scrutiny of *Meyer/Buckley*, a law must, at least, be substantially

related to important governmental interests. *Hargett*, 420 F. Supp. 3d at 704 (cleaned up). Therefore, for the same reason as this court articulated above, the Democratic Committees have shown a likelihood of success in overcoming Minnesota's interest in the challenged laws.

The Democratic Committees, therefore, have demonstrated an overall likelihood of success with regard to whether the challenged laws are unconstitutional burdens on free speech and association. This *Dahlberg* factor, therefore, favors the issuance of a temporary injunction on this claim.

IV. PUBLIC POLICY CONSIDERATIONS FAVOR THE DEMOCRATIC COMMITTEES

The fourth *Dahlberg* factor requires this court to assess the public policy considerations which would be implicated by the issuance of a temporary injunction. The Democratic Committees contend that protecting statutory and constitutional rights is always in the public interest. *Rodgers v. Bryant*, 942 F.3d 451, 458 (8th Cir. 2019). They also argue that the public interest is particularly served by issuing an injunction in a case in which voting rights are at issue because: "the public has a strong interest in exercising the fundamental political right to vote." *League of Women Voters of North Carolina*, 769 F.3d at 248 (cleaned up).

While the Republican Committees do not devote a discrete argument on this *Dahlberg* factor, they generally contend that public policy considerations are not implicated and do not favor the issuance of a temporary injunction.

As the court reasoned in *Obama for America* when it addressed public interest considerations:

> 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 at 436-37 (cleaned up). This court agrees.

Public policy considerations favor the issuance of a temporary injunction.

V. THERE ARE NO ADMINISTRATIVE BURDENS FOR THE COURT IF A TEMPORARY INJUNCTION IS ISSUED

The fifth and final *Dahlberg* factor requires this court to consider administrative burdens involving judicial supervision and enforcement. The Democratic Committees contend that the court will face no administrative burdens in supervising and enforcing a temporary injunction. They contend that as Minnesota's chief elections officer, the Secretary of State oversees the state's election laws. As such, the Secretary of State's responsibilities are either already set out in the Consent Decree on Minn. Stat. § 204C.15, or will be roughly equivalent to them with regard to Minn. Stat. § 203B.08. The Republican Committees do not address this issue.

It does not appear that there will be any administrative responsibility to the court if it issues a temporary injunction. This *Dahlberg* factor, therefore, favors the issuance of a temporary injunction.

After careful consideration, this court has concluded that all of the five *Dahlberg* factors are neutral or weigh in favor of granting the Democratic Committees' motion for a temporary injunction. For these reasons, the Democratic Committees' motion is granted.

CONCLUSION

In sum, the Secretary of State's motion to dismiss is denied because the Democratic Committees have established standing, and there remain unresolved issues related to the constitutionality and enforcement of voting laws that affect how Minnesotans are able to cast their vote. The Republican Committees are permitted to intervene in this matter because they sought to intervene in a timely manner, their interest could be impeded by the entry of injunctive relief or final judgment, and the Attorney General does not adequately represent their interests under the unique circumstances of this matter. Finally, this court is issuing temporary injunctive relief pending final adjudication on the merits. The Secretary of State is temporarily enjoined from enforcing the provisions of Minn. Stat. § 204C.15, subd. 1 that 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. The Secretary of State is also temporarily enjoined from enforcing the provisions of Minn. Stat. § 203B.08, subd. 1 that limits a person from assisting more than three voters in returning or mailing their ballots. Furthermore, the Secretary of State shall arrange for the translation and publication of the statement referenced in Paragraph 4(d) of the attached Order. The parties must meet and confer on a discovery plan and must submit a proposed scheduling order for consideration by the court by August 7, 2020.

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