

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Paula M. Overby,

Civil No. 20-CV-2250 (WMW/TNL)

Plaintiff,

vs.

**DEFENDANTS' MEMORANDUM  
OPPOSING MOTION FOR  
PRELIMINARY INJUNCTION**

Steve Simon, in his official capacity as the  
Minnesota Secretary of State, and  
Timothy Walz, in his official capacity as  
Governor of Minnesota,

Defendants.

Defendants Steve Simon, in his official capacity as the Minnesota Secretary of State, and Tim Walz, in his official capacity as Governor of Minnesota, oppose the motion for preliminary injunction filed by Plaintiff Paula Overby because the motion is barred by binding precedent from the Eighth Circuit Court of Appeals.<sup>1</sup> Plaintiff is unlikely to prevail on the merits of this action, and her motion should therefore be denied.

**FACTS**

The Legal Marijuana Now Party (“the LMNP”) is a major party under Minnesota law. See <https://www.sos.state.mn.us/elections-voting/how-elections-work/political-parties/> (listing current major parties in Minnesota); Minn. Stat. § 200.02, subd. 7 (2018) (providing criteria for major-party status). In September 2020, the LMNP candidate for

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<sup>1</sup> Notwithstanding the requirement in the Court’s October 30 order, Plaintiff has not served Defendants with the order. Defendants only learned of the existence of the order when counsel for U.S. Representative Angie Craig contacted them to discuss the prospect of Craig intervening in this action.

Minnesota's Second Congressional District, Adam Weeks, unexpectedly died. *Craig v. Simon*, No. 20-CV-2066, 2020 WL 5988497, at \*1 (D. Minn. Oct. 9, 2020). Under state election law, this created a vacancy in nomination in the Second District race. *See* Minn. Stat. § 204B.13, subd. 2(c) (2018). The Secretary therefore issued a public statement that, pursuant to the vacancy statute, the votes cast in the Second District race would not be counted, and a special election would be scheduled in February 2021. *Craig*, 2020 WL 5988497, at \*1.

Section 204B.13 further provides that the party whose nomination has been vacated may nominate a new candidate to run in the February special election. Minn. Stat. § 204B.13, subd. 2(a). Plaintiff alleges that, pursuant to this provision, the LMNP nominated her to run in the Second District special election. (Compl. ¶ 8 (Dkt. #1).)

On October 9, in an action brought by the incumbent Democratic candidate for the Second District seat and one of her supporters, this Court enjoined the Secretary from enforcing section 204B.13 as to the Second District election. *Craig*, 2020 WL 5988497, at \*1. The Republican candidate in the race—who intervened in the lawsuit—appealed and moved the Eighth Circuit to stay the injunction. *Craig v. Simon*, \_\_\_ F.3d \_\_\_, 2020 WL 6253445, at \*1 (8th Cir. Oct. 23, 2020). The appeals court denied the motion, holding that the intervenor-appellant was not likely to prevail on the merits of his appeal because section 204B.13, as applied to the 2020 Second District election, is likely preempted by federal law. *Id.* at \*4. The U.S. Supreme Court denied an emergency application to stay the injunction. *Kistner v. Craig*, No. 20-3126 (U.S. Oct. 27, 2020) (Gorsuch, J., Circuit

Justice). This Court's injunction therefore remains in place, and the election for this congressional race is scheduled to conclude November 3.

On October 29, Plaintiff filed the instant lawsuit. The next day, the Court construed one of her filings to seek a preliminary injunction reversing the injunction this Court issued on October 9. (Order, Dkt #5.)

### ARGUMENT

Plaintiff's motion is barred by binding precedent from the Eighth Circuit, because under the direct holding of that court she is unlikely to prevail on the merits of this action. Her motion should therefore be denied.

Injunctive relief is an extraordinary remedy, and the burden rests with the movant to establish its propriety. *See Watkins, Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003). A district court considers four factors when evaluating whether an injunction is warranted: (1) the threat of irreparable harm to the movant, (2) the balance between this harm and the injury that the injunction will inflict on other parties, (3) the probability that the movant will succeed on the merits, and (4) the public interest. *See Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981). While Plaintiff has arguably suffered irreparable harm by being denied the opportunity to run for the office for which she was nominated, the other three *Dataphase* factors cut entirely against her motion.

Preliminary injunctive relief generally will not be granted without a demonstration of some likelihood of success on the merits. *CDI Energy Servs. v. W. River Pumps, Inc.*, 567 F.3d 398, 402 (8th Cir. 2009). In this case, success on the merits would require Overby to show that, under the current facts, Minn. Stat. § 204B.13 is likely not preempted by

federal law. Binding precedent from the Eighth Circuit, however, holds precisely the opposite. *Craig*, 2020 WL 6253445, at \*4. This Court came to the same conclusion in its October 9 order. *Craig*, 2020 WL 5988497, at \*8.

Moreover, this Court concluded on October 9 that neither the balance of harms nor the public interest favored enforcing the vacancy statute under the current facts. *Id.* at \*8-9. Plaintiff does not explain why the same logic should not apply in her lawsuit as well. Moreover, the risks of harm to the election system and to the public have become even more serious in the past three weeks, because during that time thousands of Second District residents have voted in the congressional election in reliance on this Court's and the Eighth Circuit's rulings. All of these votes would be invalidated if the Court granted the injunction Plaintiff seeks.

### CONCLUSION

Three of the four *Dataphase* factors—likelihood of success on the merits, balance of harms, and public interest—weigh entirely against Plaintiff's motion for a preliminary injunction. For these reasons, Defendants respectfully request that the Court deny the motion.

Dated: October 31, 2020

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

**/s/ Nathan J. Hartshorn**

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