

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PAULA M OVERBY

Civil No. 20-cv-2250 WMW/TNL

Plaintiff,

v.

MEMORANDUM IN SUPPORT
OF PETITIONER'S MOTION
FOR DECLARATORY
JUDGMENT

STEVE SIMON, in his official capacity
as Minnesota Secretary of State, and
TIMOTHY WALZ, in his official capacity
as Governor of Minnesota,

Defendant.

CASE HISTORY

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 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). Pursuant to this provision, the LMNP nominated Paula Overby to run in the Second District special election. (Compl. ¶ 8 (Dkt. #1).)

FACTS

- 1) Angie Craig in her pleadings emphasized the issue of relative harm caused to her and the voters. Case No. 20-cv-2066 (WMW/TNL). Any harm alleged by the petitioners Angie Craig and Jenny Winslow Davies caused by failure to count votes already cast prior to Nov 3 is in fact due to a failure to hold the vote on the date of the election specified by Federal law 2 U.S.C. § 7. That is one contradiction that Minn. Stat. § 204B.13 seeks to address.
- 2) Plaintiff, Angie Craig [Case No. 20-cv-2066], may be required to establish harm and state a claim upon which relief can be granted but I would hate to speculate that the legitimacy or constitutionality of a Minnesota law would depend on the merits of any particular candidate for the office in question.
- 3) Plaintiff, Paula Overby, has been denied the right to register her candidacy under Minn. Stat. § 204B.13. That is sufficient to establish harm and a claim upon which relief can be granted if the court finds that Minn. Stat. § 204B.13 is enforceable

- 4) This case is a dispositive motion which does not depend on an award of damages or the mitigation or balancing of harm among all interested parties. For the court to make judgment about the potential harm of one set of circumstances over another set of circumstances places the court in the dubious position of disrupting the electoral process enacted by the duly elected legislature of the state of Minnesota, defined in article I of the US Constitution as the method of the election. I would hate to speculate that the foundations of democracy should be considered an inconvenience.
- 5) Election results are not certified on the prescribed date decreed by federal law 2 U.S.C. § 7.
- 6) Votes are cast prior to the prescribed date decreed by federal law 2 U.S.C. § 7.

ARGUMENT

- 7) The federal courts have recognized the validity of run off elections. This years Federal senate vote in Georgia takes place on Jan 5, 2021, two days after the January third date specified under federal law 2 U.S.C. § 7. Furthermore, the eighth circuit court of appeals found that it is not a violation of the voting rights act. *Sam Whitfield, Jr., and Linda Whitfield, P.l. Perkins, Julious Mcgruder, Georgia M. Varner, Annie Sykes, ollie Jennings, Sam Bennett, Appellants, v. the Democratic Party of the State of Arkansas, the State Ofarkansas Democratic Central Committee, the Phillips Countydemocratic Central Committee, Phillips County Republicanparty Committee, Appellees*, 890 F.2d 1423 (8th Cir. 1989)

- 8) Persons who were not eligible to vote in November are now eligible to vote in the January run-off vote if they turned 18 years of age during the interim period.
- 9) Exceptions to federal law 2 U.S.C. § 7 cannot be used to justify a strict interpretation of the law. There is no reason to think that simply because Congress established a federal election day it displaced all State regulation of the times for holding federal elections. See, e.g., *Millsaps v. Thompson*, 259 F.3d 535, 549 (6th Cir. 2001).
- 10) Therefore, the issue before this court, is not the date of the election or a failure to elect, but rather the definition of an election: the manner of the election which shall be prescribed in each State by the Legislature thereof; as defined in article I of the US Constitution
- 11) In *Foster v. Love*, 522 U.S. 67 (1997), the court addresses the statutory meaning of the term “Election” The Court declined to identify these combined acts of voters and officials or to specify which of them must occur on federal election day for a statute to pass muster. The court further noted that “[w]e hold today only that if an election does take place, it may not be consummated prior to federal election day. *Voting Integrity Project v. Keisling*, Civ. No. 98-1372-AA (D.Or. Mar. 22, 1999), *aff'd*, 259 F.3d 1169 (9thCir.2001), the district court favored a broad construction of the definition and concluded that an “election is the entire process by which both voters and officials make a final selection of an officeholder” and encompasses more than merely casting ballots.
- 12) Given the importance of democratic process, fair elections, and equal protection under the law, it is reasonable that the manner of the election specified by state law would

have higher priority than the time of the election specified by federal law indicating a lack of any conflict between the federal law and the state law. The federal law is a general case and the state law is a specific case that deals with rare and unusual circumstances.

13) Defendants in Craig v. Simon No. 20-cv-2066 (WMW/TNL) invoked the federal vacancy statute 2 U.S.C. § 8(a), but the court agrees that this statute does not apply to a vacancy in a general election. In a general election the people may choose a replacement for the incumbent and it would be an unreasonable bias to assume that the demise of one candidate would invoke a special election whereas the death of an opponent could not.

CONCLUSION

This case is fundamentally different in that the plaintiff is presenting a defense of the law on it's own merits and asking the court to confirm that the Minn. Stat. § 204B.13 stands as a valid election, a method of choosing a representative, just as the court has affirmed secondary voting under plurality statutes.

DATED: December 18, 2020

Respectfully submitted,

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