

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Paula M. Overby,

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

Plaintiff,

vs.

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’
REPLY MEMORANDUM
IN SUPPORT OF
MOTION TO DISMISS**

Plaintiff Paula Overby’s untimely¹ response to Defendants’ motion to dismiss fails to rebut the arguments presented in support of Defendants’ motion. Overby’s attempt to invalidate the election of Rep. Angie Craig is now moot, because Rep. Craig has been seated for her new term in Congress. Moreover, Overby failed to differentiate her claims from the directly applicable precedent from this Court and from the Eighth Circuit Court of Appeals. The Court should therefore dismiss the lawsuit.

FACTS

Plaintiff alleges that the Legal Marijuana Now Party (“the LMNP”) named her as its replacement nominee for the 2020 Second Congressional District election after its initial candidate unexpectedly died. State election officials initially concluded that, under Minn. Stat. § 204B.13, subd. 2(c), the election would be postponed until February 2021.

¹ Pursuant to local rule 7.1, Overby was required to file her response to Defendants’ motion to dismiss on or before November 30. D. Minn. L.R. 7.1(c)(3) (requiring party opposing dispositive motion to file responsive memorandum “within 21 days” after motion is filed). Instead, she filed the response on December 18—nearly three weeks late.

Craig v. Simon, No. 20-CV-2066, 2020 WL 5988497, at *1 (D. Minn. Oct. 9, 2020). After Rep. Craig and one of her supporters filed suit, however, this Court granted a preliminary injunction barring the Secretary from applying section 204B.13 to the Second District election. *Id.*

The Republican candidate in the race, who intervened in the lawsuit, appealed and moved the Eighth Circuit to stay the injunction. *Craig v. Simon*, 978 F.3d 1043, 1047 (8th Cir. 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, was likely preempted by federal law. *Id.* at 1049-50. Weeks later, the appeals court affirmed the injunction on its merits on the same grounds. *Craig v. Simon*, 980 F.3d 614, 617-18 (8th Cir. 2020). The court also denied as untimely a last-minute motion that Overby filed to intervene in the appeal. *Id.* at 618 n.3.

Rep. Craig began her current term in the House of Representatives when she and the other members of the 117th Congress were seated on January 3, 2021. *See* U.S. Const. Amend. XX, § 2; <https://craig.house.gov/media/press-releases/representative-angie-craig-statement-being-sworn-117th-congress>.

ARGUMENT

Overby's claims are contrary to directly applicable precedent from both this Court and the Eighth Circuit. Moreover, because Rep. Craig has begun the term in office to which she was elected in 2020, this case is now moot. As a result, the lawsuit should be dismissed.

I. THIS LAWSUIT IS MOOT.

Article III restricts federal courts to resolving “cases” and “controversies.” *Davis v. FEC*, 554 U.S. 724, 732 (2008). As a result, to justify federal jurisdiction, “an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.” *Arizonans for Official English v. Ariz.*, 520 U.S. 43, 67 (1997). “When, during the course of litigation, the issues presented in a case lose their life because of the passage of time or a change in circumstances and a federal court can no longer grant effective relief, the case is considered moot.” *Haden v. Pelofsky*, 212 F.3d 466, 469 (8th Cir. 2000) (internal quotation marks and ellipsis omitted).

The Constitution provides that the U.S. House of Representatives “shall be the judge of the elections, returns and qualifications of its own members[.]” U.S. Const. Art. I, § 5. Because Rep. Craig has been seated for her new term, the House now has sole authority to determine her eligibility to hold that seat. As a result, no court has legal authority to order her removed or to order the House to seat a candidate who won a hypothetical special election for her seat in February. Nor could a certificate of election issued by Minnesota after a hypothetical February vote obligate the House to make any change in the Second District’s representation.

Because this Court cannot grant Overby the relief she seeks, the instant lawsuit is moot and must be dismissed. *See Haden*, 212 F.3d at 469.

II. PLAINTIFF’S CLAIMS ARE BARRED BY BINDING PRECEDENT.

As Defendants explained in their initial memorandum on this motion, Overby’s lawsuit merits dismissal because directly applicable case law from this Court and the

Eighth Circuit have resolved the relevant legal issues against her. Overby's filings² fail to demonstrate otherwise.

In her "Response" to Defendants' motion, Overby asks the Court to deny the motion but provides no substantive basis for this request. (Pl.'s Resp. ¶ 1, Dkt. #49.) Instead, she asserts that her own motion for declaratory relief "identifies new issues" that could not be raised in the *Craig v. Simon* litigation. (*Id.*, ¶ 3.) Even if this were true, the Court denied Overby's motion for declaratory relief on November 10. (*See* Order, Dkt. #39; Pl.'s Mot. for Declaratory Order, Dkt. #29.) Overby cannot avoid dismissal based on a motion that the Court has already rejected.

Similarly, Overby's memorandum provides no basis for rejecting Defendants' motion to dismiss. Instead, the document attacks the interpretation of 2 U.S.C. § 7 that the Eighth Circuit and this Court applied in the *Craig* litigation. (Pl.'s Mem. ¶¶ 9, 12; *cf. Craig v. Simon*, 980 F.3d at 617-18 (construing 2 U.S.C. §§ 7, 8).) Because the appeals court's application of the federal statute is binding on this Court, Overby's contrary interpretation must be rejected.

² On December 18, Overby filed a "Response to Defendant[s'] Motion to Dismiss" (Dkt. #49) and a "Memorandum in Support of Petitioner's Motion for Declaratory Judgment" (Dkt. #50). The latter document appears to provide arguments in support of Overby's November 2 "Motion for Declaratory Order" (Dkt. #32), even though the Court (a) immediately noted that that motion was moot in light of the Court's previous rejection of Overby's request for preliminary injunctive relief (Dkt. #34), (b) subsequently denied the motion (Dkt. #39), and then (c) rejected Overby's request to vacate its order denying the motion (Dkt. #48). The contents of the December 18 memorandum suggest that it is yet another attempt to litigate a request for equitable relief that this court has already denied three times in different forms. Nonetheless, for the purpose of this reply Defendants construe it as a memorandum in opposition to their motion to dismiss.

Finally, Overby contends that her lawsuit is “fundamentally different” from *Craig v. Simon* because she is “presenting a defense of the [state] law on [its] own merits” and arguing that the special election required by Minn. Stat. § 204B.13 is “a valid election.” (*Id.* at 5.) To the contrary, in *Craig* both the Secretary of State and Republican intervenor Kistner emphatically defended section 204B.13 on its merits in this court, contending that its requirement that Minnesota conduct a special election in February complied with federal law. When this Court held otherwise, Kistner appealed the matter to the Eighth Circuit and made the same arguments there. Overby’s notion that Minn. Stat. § 204B.13 has not received a defense in court is therefore incorrect.

CONCLUSION

Now that Rep. Craig has begun her new term in Congress, this lawsuit is moot. Moreover, as Defendants explained in their initial memorandum, Overby’s claims are contrary to the direct holdings of this Court and the Eighth Circuit in *Craig*. For these reasons, Defendants respectfully request that the Court dismiss all claims in Plaintiff’s lawsuit.

Dated: January 4, 2021

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

s/ **Nathan J. Hartshorn**

NATHAN J. HARTSHORN
Assistant Attorney General
Atty. Reg. No. 0320602

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1252 (Voice)
(651) 297-1235 (Fax)
nathan.hartshorn@ag.state.mn.us

ATTORNEY FOR DEFENDANTS

#4869626

RETRIEVED FROM DEMOCRACYDOCKET.COM