

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Minnesota Alliance for Retired Americans  
Educational Fund, Teresa Maples, and Khalid  
Mohamed,

Case Type: Civil Other/Misc.  
Case No. 62-cv-24-854  
Judge Edward Sheu

Plaintiffs,

v.

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

Defendant,

Republican National Committee and  
Republican Party of Minnesota.

Intervenors.

**MEMORANDUM IN SUPPORT OF  
INTERVENORS' MOTION FOR LEAVE  
TO FILE MOTION TO DISMISS OR,  
ALTERNATIVELY, MEMORANDUM IN  
SUPPORT OF DEFENDANT'S MOTION  
TO DISMISS**

The Republican Party of Minnesota and the Republican National Committee (collectively, “Intervenors” or “Republican Committees”) have sought to intervene in this case. Their intervention notice is pending, and Plaintiffs have objected. Also pending is Defendant’s Motion to Dismiss (“Defendant’s Motion”), which is set for hearing on May 23, 2024. Because of the timing of the hearing on Defendant’s Motion, the Republican Committees’ status as intervenors may not be resolved ahead of time under Rule 24 of the Minnesota Rules of Civil Procedure. As they have explained, the Republican Committees have substantial interests in this litigation, which could be significantly affected by the outcome of Defendant’s Motion. Therefore, out of an abundance of caution, the Republican Committees respectfully seek the Court’s leave to file a Motion to Dismiss and a memorandum in support of that motion, and to participate in the May 23, 2024 hearing. Alternatively, the Republican Committees ask for leave to file a memorandum in support of Defendant’s Motion and to participate in the May 23, 2024 hearing.

## BACKGROUND

On February 13, 2024, Plaintiffs filed this lawsuit against Defendant Steve Simon in his capacity as Secretary of State (“Defendant” or “Secretary of State”) challenging the lawfulness of Minn. Stat. 203B.07, subdiv. 3 (the “Witness Requirement”). The Witness Requirement requires a voter casting a mail ballot to have a witness verify the voter’s personal completion of the ballot. *Id.* The Witness Requirement is a commonsense rule which prophylactically protects and promotes Minnesota’s legitimate interests in preventing voter fraud and in safeguarding voter confidence in the State’s elections. Plaintiffs’ Complaint nonetheless seeks a declaration that these rules violate Section 201 of the Voting Rights Act and the Materiality Provision of the 1964 Civil Rights Act. Plaintiffs’ Complaint also seeks injunctive relief on these bases.

On March 15, 2024, the Republican Committees served and then subsequently filed a notice of intervention and proposed pleading, seeking intervention as of right under Minnesota Rule of Civil Procedure 24.01, and, alternatively, permissive intervention under Rule 24.02. Although Defendant does not object to the Republican Committees’ intervention, Plaintiffs have objected.

Defendant has given notice of a hearing respecting the Motion to Dismiss on May 23, 2024. Defendant’s brief in support of the Motion to Dismiss is currently due by April 25, 2024, pursuant to Minn. Gen. R. Prac. 115.03. The Republican Committees respectfully seek leave to (1) *either* file their own Motion to Dismiss *or* file a memorandum in support of Defendant’s Motion and (2) participate in the May 23, 2024 hearing.<sup>1</sup>

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<sup>1</sup> Prior to filing this motion, counsel for the Republican Committees contacted counsel for Plaintiffs and counsel for Defendant. Counsel for Plaintiffs stated that Plaintiffs oppose the motion. Counsel for Defendant stated that Defendant does not object to the motion.

## ARGUMENT

The Republican Committees' served their Notice of Intervention in a timely fashion, on March 15, 2024, but their status as intervenors remains pending. Thus, as matter of procedural rule, the Republican Committees face an uncertain timeline regarding their status as intervenors and ability to participate with respect to Defendant's Motion to Dismiss if leave is not granted. Because Plaintiffs have objected to Intervenors' intervention, Rule 24.03 provides the Republican Committees an opportunity to file a motion to intervene. Plaintiffs will then presumably file a brief opposing that motion. It therefore seems unlikely that the Court will have resolved Intervenors' motion to intervene by the time of its May 23, 2024 hearing addressing Defendant's Motion to Dismiss. That creates the risk that Defendant's Motion to Dismiss will be briefed and heard without the Republican Committees having had opportunity to represent their substantial interests in this case—something to which they would be entitled as Intervenors. Out of an abundance of caution, the Republican Committees respectfully request leave to file a motion to dismiss and a memorandum in support of that motion, and also to participate in the May memorandum in opposition to Plaintiffs' motion and to participate in the May 23, 2024 hearing. To avoid unnecessary delay, the Republican Committees have served and filed their proposed motion and memorandum in support of that motion. Alternatively, the Republican Committees respectfully request leave to file a memorandum in support of Defendant's Motion and for leave to participate in the May 23, 2024 hearing.

Allowing the Republican Committees to participate in the briefing and May 23, 2024 hearing of Defendant's Motion is a modest request, particularly in light of the case's current procedural posture. Although some courts have gone so far as to delay the briefing and hearing of such motions to allow a proposed intervenor to participate, *e.g.*, *Washington Cattlemen's Ass'n v. U.S. Env'tl. Prot. Agency*, No. C19-0569-JCC, 2019 WL 3206052, at \*2 (W.D. Wash. July 16,

2019), the Republican Committees do not even ask the Court to take such a step. They simply want to ensure their position is heard on Defendant's Motion. Permitting this will not cause any delay and the current parties will not suffer any prejudice, let alone undue prejudice.

This Court has previously permitted the Republican Committees to file a brief and participate in a hearing while their motion to intervene was pending. In 2020, in the *NAACP v. Simon* case, the Republican Committees filed a timely notice of intervention. The plaintiffs in that case then filed a motion for temporary injunction, and later objected to the Republican Committees' intervention. Because the Republican Committees' motion for intervention would not be resolved prior to the injunction hearing, the Republican Committees asked for leave to file a brief in opposition to the injunction motion and participate in the hearing. The Court granted that request and also set for argument at the same time the motion to intervene. *See* July 23, 2020, Order, *NAACP v. Simon*, Case No. 62-cv-30-3149. Permitting the Republican Committees to participate in a similar fashion makes sense here.

### CONCLUSION

The Republican Committees respectfully seek leave to (1) *either* file their own Motion to Dismiss *or* file a memorandum in support of Defendant's Motion and (2) participate in the May 23, 2024 hearing.

DATED: April 25, 2024

Respectfully submitted,

/s/ Benjamin L. Ellison

Benjamin L. Ellison (#392777)

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**ACKNOWLEDGEMENT**

The undersigned acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

DATED: April 25, 2024

/s/Benjamin L. Ellison

Benjamin L. Ellison (#392777)



MINNESOTA  
JUDICIAL  
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