

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil

National Association for the
Advancement of Colored People
Minnesota-Dakotas Area State
Conference; Susan Bergquist; Eleanor
Wagner,

Plaintiffs,

v.

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

Defendant.

**STIPULATION AND PARTIAL
CONSENT DECREE**

Honorable Sara R. Grewing
Court File No. 62-CV-20-3625

Plaintiffs National Association for the Advancement of Colored People Minnesota-Dakotas Area State Conference, Susan Bergquist, and Eleanor Wagner, and Defendant Steve Simon (collectively, “the Parties”) stipulate to the following and request that this Court approve this Partial Consent Decree. This Stipulation and Partial Consent Decree is limited only to Plaintiffs’ claims as they pertain to the Witness Requirement for the November 3, 2020 general election (“November General Election”) and is premised upon the current public health crisis facing Minnesota caused by the ongoing spread of the novel coronavirus.

**I.
RECITALS**

WHEREAS on June 5, 2020, Plaintiffs filed a complaint against Defendant challenging the constitutionality and enforcement of Minnesota’s requirement that each mail-in ballot be witnessed by a registered Minnesota voter, a notary, or person otherwise authorized to administer

oaths (“Witness Requirement”), Minn. Stat. §§ 203B.07, 204B.45, and 204B.46, during the ongoing public health crisis caused by the spread of the novel coronavirus;

WHEREAS among other relief requested, the Complaint seeks to enjoin enforcement of the Witness Requirement during the November General Election due to the public health crisis caused by the spread of the novel coronavirus;

WHEREAS the coronavirus public health crisis is ongoing and Minnesota remains under “Stay Safe” Emergency Executive Order 20-74, which contemplates a phased reopening of Minnesota that continues to require social distancing and mandates that “[i]ndividuals engaging in activities outside of the home follow the requirements of [the Stay Safe Order and Minnesota Department of Health and Centers for Disease Control and Prevention (“CDC”)] Guidelines,” Exec. Order 20-74 ¶ 6(a), and states that individuals “at risk of severe illness from COVID-19 . . . [are] strongly urged to stay at home or in their place of residence,” *id.* ¶4;

WHEREAS Minnesota remains under a peacetime emergency, declared by the governor, because the “COVID-19 pandemic continues to present an unprecedented and rapidly evolving challenge to our State,” Emergency Executive Order 20-78;

WHEREAS Minnesota is currently witnessing an increase in positive COVID-19 cases, Minnesota has had over 42,000 confirmed COVID-19 cases, with over 4,300 hospitalizations and over 1,500 fatalities, and current projections indicate that the coronavirus crisis will continue into the fall and well into the November General Election cycle;

WHEREAS cases continue to spread and climb across the country, and the director of the National Institute of Allergy and Infectious Diseases recently warned that the country is still “knee-deep” in the first wave of the pandemic;

WHEREAS federal guidelines state “[e]veryone should avoid close contact” by “keeping distance from others,” CDC, Coronavirus Disease 2019: How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last visited July 13, 2020), and advise that jurisdictions “offer alternative voting methods that minimize direct contact,” including “alternatives to in-person voting” such as absentee voting, CDC, Recommendations for Election Polling Locations: Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last visited July 13, 2020);

WHEREAS Minnesota is anticipated to be required to maintain social distancing and abide by CDC Guidelines until the crisis subsides;

WHEREAS the absentee voting period for the November General Election begins on September 18, 2020, 46 days prior to the date of the election, Minn. Stat. § 203B.081 subd.1; *id.* § 204B.35, and absentee instructions, ballots, and envelopes, including the certificate of eligibility, must be prepared in time to have a supply for every precinct available to cover absentee voting prior to that date;

WHEREAS available public data regarding transmission of COVID-19 supports Plaintiffs’ concerns for their safety if they are required to interact with others to cast their ballot in the November General Election;

WHEREAS on April 28, 2020, the Wisconsin Department of Health Services reported that 52 people who voted in person or worked the polls for Wisconsin’s April 7, 2020 primary election have tested positive for COVID-19 thus far;

WHEREAS courts in other states have enjoined those states from enforcing witness requirements, similar to Minnesota’s witness requirement, for primary elections this spring. *See*

Thomas v. Andino, -- F. Supp. 3d --, 2020 WL 2617329 (D.S.C. May 25, 2020); *League of Women Voters of Va. v. Va. State Bd. of Elections*, -- F. Supp. 3d --, 2020 WL 2158249, at *8 (W.D. Va. May 5, 2020) (“In our current era of social distancing—where not just Virginians, but all Americans, have been instructed to maintain a minimum of six feet from those outside their household—the burden [of the witness requirement] is substantial for a substantial and discrete class of Virginia’s electorate. During this pandemic, the witness requirement has become both too restrictive and not restrictive enough to effectively prevent voter fraud.”);

WHEREAS multiple courts have found that the pandemic requires or justifies changes to other aspects of states’ election laws, *see, e.g., The Constitution Party of Virginia v. Virginia State Board of Elections*, 20-cv-349, 2020 WL 4001087 (E.D. Va. July 15, 2020); *People Not Politicians Oregon v. Clarno*, 20-cv-1053, 2020 WL 3960440 (D. Or. July 13, 2020); *Cooper v. Raffensperger*, -- F. Supp. 3d --, 20-cv-1312, 2020 WL 3892454 (N.D. Ga. July 9, 2020); *Reclaim Idaho v. Little*, 20-cv-268, 2020 WL 3892454 (D. Idaho June 26, 2020); *Libertarian Party of Ill. v. Pritzker*, 20-cv-2112, 2020 WL 1951687 (N.D. Ill. Apr. 23, 2020); *Paher v. Cegavske*, -- F. Supp. 3d --, 20-cv-243, 2020 WL 2089813 (D. Nev. Apr. 30, 2020);

WHEREAS the Parties agree that an expeditious resolution of this matter for the November General Election, in the manner contemplated by the terms of this Stipulation and Partial Consent Decree, will limit confusion and increase certainty surrounding the November General Election, including in the days remaining before the September 18, 2020 deadline for absentee ballot preparation, and is in the best interests of the health, safety, and constitutional rights of the citizens of Minnesota, and, therefore, in the public interest;

WHEREAS the Parties wish to avoid the burden and expense of litigation over an expedited preliminary injunction as to the Witness Requirement for the November General Election;

WHEREAS the Parties, in agreeing to these terms, acting by and through their counsel, have engaged in arms' length negotiations, and both Parties are represented by counsel knowledgeable in this area of the law;

WHEREAS, on June 17, 2020, this Court signed and approved a stipulation and partial consent decree implementing substantially similar relief for the August 11, 2020 primary election in *LaRose v. Simon*, 62-CV-20-3149;

WHEREAS, on July 17, 2020, the parties in *LaRose v. Simon*, 62-CV-20-3149, submitted a stipulation and partial consent decree containing relief identical to the relief provided in this stipulation and partial consent decree, as to the Witness Requirement for the November General Election;

WHEREAS voters have been informed about the rule changes for the primary election, voting has begun with those rules in place, and it would minimize confusion to have consistent rules regarding how elections are conducted during this pandemic;

WHEREAS it is the finding of this Court, made on the pleadings and upon agreement of the Parties, that: (i) the requirements of the Minnesota Constitution, Art. I, §§ 2, 7, and Art. VII, § 1, will be carried out by the implementation of this Partial Consent Decree, (ii) the terms of this Partial Consent Decree constitute a fair and equitable settlement as to the Witness Requirement for the November General Election, and (iii) this Partial Consent Decree is intended to and does resolve Plaintiffs' claims with respect to the Witness Requirement for the November General Election;

NOW, THEREFORE, upon consent of the Parties, in consideration of the mutual promises and recitals contained in this Stipulation and Partial Consent Decree, including relinquishment of certain legal rights, the Parties agree as follows:

II. JURISDICTION

This Court has jurisdiction over the subject matter of this action pursuant to Minn. Const. Art. VI, § 3 and Minn. Stat. § 484.01 and has jurisdiction over the Parties herein. The Court shall retain jurisdiction of this Stipulation and Consent Decree for the duration of the term of this Partial Consent Decree for purposes of entering all orders, judgments, and decrees that may be necessary to implement and enforce compliance with the terms provided herein.

III. PARTIES

This Stipulation and Partial Consent Decree applies to and is binding upon the following parties:

- A. The State of Minnesota by Steve Simon, Secretary of State of Minnesota; and
- B. All Plaintiffs.

IV. SCOPE OF CONSENT DECREE

A. This Stipulation and Partial Consent Decree constitutes a partial settlement and resolution of Plaintiffs' claims against Defendant pending in this Lawsuit. Plaintiffs recognize that by signing this Stipulation and Partial Consent Decree, they are releasing any claims under the Minnesota Constitution that they might have against Defendant with respect to the Witness Requirement in the November General Election. Plaintiffs' release of claims will become final upon the effective date of this Stipulation and Partial Consent Decree.

B. The Parties to this Stipulation and Partial Consent Decree further acknowledge that by signing this Stipulation and Partial Consent Decree, the Parties do not release or waive the following: (i) any rights, claims, or defenses that are based on any events that occur after they sign this Stipulation and Partial Consent Decree, (ii) any claims or defenses that are unrelated to the allegations filed by Plaintiffs in this Lawsuit, and (iii) any right to institute legal action for the purpose of enforcing this Stipulation and Partial Consent Decree or defenses thereto.

C. By entering this Stipulation and Partial Consent Decree, Plaintiffs are partially settling a disputed matter between themselves and Defendant. The Parties are entering this Stipulation and Partial Consent Decree for the purpose of resolving a disputed claim, avoiding the burdens and costs associated with the costs of a preliminary injunction motion and hearing, and ensuring both safety and certainty in advance of the November General Election. Nothing in this Stipulation and Partial Consent Decree constitutes an admission by any party of liability or wrongdoing. The Parties acknowledge that a court may seek to consider this Stipulation and Partial Consent Decree, including the violations alleged in Plaintiffs' Complaint, in a future proceeding distinct from this Lawsuit.

V. CONSENT DECREE OBJECTIVES

In addition to partially settling the claims of the Parties, the objective of this Stipulation and Partial Consent Decree is to ensure that Minnesota voters can safely and constitutionally exercise the franchise in the November General Election, and to ensure that election officials have sufficient time to implement changes for the November General Election and educate voters about these changes before voting begins.

VI. INJUNCTIVE RELIEF

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED FOR THE REASONS
STATED ABOVE THAT:**

A. For the November General Election Defendant shall not enforce the Witness Requirement, with respect to voting only, as set out in Minn. Stat. § 203B.07, subd. 3 (1) and (2), that each absentee ballot and designated mail ballot for voters previously registered in Minnesota be witnessed by a registered Minnesota voter, a notary, or person otherwise authorized to administer oaths, Minn. Stat. § 204B.45 - .46, and Minn. R. 8210.3000.

B. Defendant shall issue guidance instructing all relevant local election officials to count all absentee and designated mail ballots in the November General Election, as long as they are otherwise validly cast by voters who registered in Minnesota before casting their absentee or designated mail ballot. No witness signature will be required on those ballots.

C. Defendant shall issue instructions to include with all absentee ballots and designated mail ballots—or issue guidance instructing all relevant local election officials to modify, amend, or print the instructions accompanying each absentee ballot and designated mail ballot—to inform voters that any absentee ballot or designated mail ballot cast by a previously registered voter in the November General Election without a witness signature will not be rejected on that basis and that the witness signature line and associated language for witnesses to certify a previously registered voter's ballot, Minn. Stat. §§ 203B.07, subd. 3 (1) and (2), 204B.45, 204B.46; Minn. R. 8210.2200, subp.1; Minn. R. 8210.3000, be removed from the certification of eligibility altogether for absentee ballot and designated mail ballot materials sent to previously registered voters.

D. Defendant shall take additional reasonable steps to inform the public that the Witness Requirement for voting will not be enforced for the November General Election and issue guidance instructing all relevant city and county election officials to do the same.

E. Plaintiffs will withdraw their Motion for Temporary Injunction as to the Witness Requirement for the November General Election.

F. In accordance with the terms of this Stipulation and Partial Consent Decree, the Parties shall each bear their own fees, expenses, and costs incurred as of the date of this Order with respect to Plaintiffs' claims raised as to the Witness Requirement.

VII. ENFORCEMENT AND RESERVATION OF REMEDIES

The Parties to this Stipulation and Partial Consent Decree may request relief from this Court if issues arise concerning the interpretation of this Stipulation and Partial Consent Decree that cannot be resolved through the process described below. This Court specifically retains continuing jurisdiction over the subject matter hereof and the Parties hereto for the purposes of interpreting, enforcing, or modifying the terms of this Stipulation and Partial Consent Decree, or for granting any other relief not inconsistent with the terms of this Partial Consent Decree, until this Partial Consent Decree is terminated. The Parties may apply to this Court for any orders or other relief necessary to construe or effectuate this Stipulation and Partial Consent Decree or seek informal conferences for direction as may be appropriate. The Parties shall attempt to meet and confer regarding any dispute prior to seeking relief from the Court.

If either Party believes that the other has not complied with the requirements of this Stipulation and Partial Consent Decree, it shall notify the other Party of its noncompliance by

emailing the Party's counsel. Notice shall be given at least one business day prior to initiating any action or filing any motion with the Court.

The Parties specifically reserve their right to seek recovery of their litigation costs and expenses arising from any violation of this Stipulation and Partial Consent Decree that requires either Party to file a motion with this Court for enforcement of this Stipulation and Partial Consent Decree.

VIII. GENERAL TERMS

A. Voluntary Agreement. The Parties acknowledge that no person has exerted undue pressure on them to sign this Stipulation and Partial Consent Decree. Each Party is voluntarily choosing to enter into this Stipulation and Partial Consent Decree because of the benefits that are provided under the agreement. The Parties acknowledge that they have read and understand the terms of this Stipulation and Partial Consent Decree; they have been represented by legal counsel or had the opportunity to obtain legal counsel; and they are voluntarily entering into this Stipulation and Partial Consent Decree to resolve the dispute among them.

B. Severability. The provisions of this Stipulation and Partial Consent Decree shall be severable, and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Stipulation and Partial Consent Decree shall remain in full force and effect.

C. Agreement. This Stipulation and Partial Consent Decree is binding. The Parties acknowledge that they have been advised that (i) the other Party has no duty to protect their interest or provide them with information about their legal rights, (ii) signing this Stipulation and Partial Consent Decree may adversely affect their legal rights, and (iii) they should consult an attorney before signing this Stipulation and Partial Consent Decree if they are uncertain of their rights.

D. Entire Agreement. This Stipulation and Consent Decree constitutes the entire agreement between the Parties relating to the constitutionality and enforcement of the Witness Requirement and Election Day Receipt Deadline as they pertain to the November General Election. No Party has relied upon any statements, promises, or representations that are not stated in this document. No changes to this Stipulation and Partial Consent Decree are valid unless they are in writing, identified as an amendment to this Stipulation and Partial Consent Decree, and signed by all Parties. There are no inducements or representations leading to the execution of this Stipulation and Partial Consent Decree except as herein explicitly contained.

E. Warranty. The persons signing this Stipulation and Partial Consent Decree warrant that they have full authority to enter this Stipulation and Partial Consent Decree on behalf of the Party each represents, and that this Stipulation and Partial Consent Decree is valid and enforceable as to that Party.

F. Counterparts. This Stipulation and Partial Consent Decree may be executed in multiple counterparts, which shall be construed together as if one instrument. Any Party shall be entitled to rely on an electronic or facsimile copy of a signature as if it were an original.

G. Effective Date. This Stipulation and Partial Consent Decree is effective upon the date it is entered by the Court. Defendant agrees to continue to initiate and implement all activities necessary to comply with the provisions of this Stipulation and Partial Consent Decree pending entry by the Court.

IX. TERMINATION

This Stipulation and Partial Consent Decree shall remain in effect through the certification of ballots for the November General Election. The Court shall retain jurisdiction to enforce the terms of the Partial Consent Decree for the duration of this Partial Consent Decree. This Court's

jurisdiction over this Stipulation and Partial Consent Decree shall automatically terminate after the certification of all ballots for the November General Election.

THE PARTIES ENTER INTO AND APPROVE THIS STIPULATION AND PARTIAL CONSENT DECREE AND SUBMIT IT TO THE COURT SO THAT IT MAY BE APPROVED AND ENTERED. THE PARTIES HAVE CAUSED THIS STIPULATION AND CONSENT DECREE TO BE SIGNED ON THE DATES OPPOSITE THEIR SIGNATURES.

Dated: July 23, 2020

SECRETARY OF STATE OF MINNESOTA

By: Steve Simon

Steve Simon
Secretary of State

Dated: July 22, 2020

/s/ Craig S. Coleman

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IT IS SO DECREED AND ORDERED. JUDGMENT SHALL BE ENTERED IN ACCORDANCE WITH THE FOREGOING CONSENT DECREE.

Dated: August 3, 2020

The Honorable Judge Sara Grewing
Judge of District Court