**STATE OF MINNESOTA** **DISTRICT COURT**

**COUNTY OF RAMSEY** **SECOND JUDICIAL DISTRICT**

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

62-CV-20-3625

Plaintiffs,

**ORDER**

v.

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

Defendant

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The above named matter came before this Court on July 31, 2020 on Plaintiffs' motion for a temporary injunction pursuant to Rule 65 of the Minnesota Rules of Civil Procedure, as well as Proposed Intervenors Donald J. Trump for President, Inc., the Republican Party of Minnesota, the Republican National Committee, and the National Republican Congressional Committee's motion to intervene, and Plaintiffs' and Defendant's requests that the Court enter the Proposed General Election Consent Decree.

Based on the pleadings, arguments and submissions of counsel, the Court makes the following:

**Order**

1. The motion of Donald J. Trump for President, Inc., the Republican Party of Minnesota, the Republican National Committee, and the National Republican Congressional Committee's ("the Committees") to intervene as a matter of right is **denied.**

2. The motion of the Committees to intervene on a permissive basis is **granted.**

3. The request by the Plaintiffs and the Defendant to enter the General Election Consent Decree is **granted.**

4. The Plaintiff's motion for a preliminary injunction is **denied**.

5. The attached memorandum is incorporated herein.

Dated: August 3, 2020

BY THE COURT:

Sara Grewing

Grewing, Sara (Judge)
Aug 3 2020 3:05 PM

Sara Grewing
Judge of District Court

Plaintiffs, the National Association for the Advancement of Colored People Minnesota-Dakotas Area State Conference; Susan Bergquist; and Eleanor Wagner have sued Minnesota's Secretary of State in his official capacity, arguing that Minnesota's witness and application requirements for absentee ballots are unconstitutional burdens on the right to vote as applied during the COVID-19 pandemic. Donald J. Trump for President, Inc., the Republican Party of Minnesota, the Republican National Committee, and the National Republican Congressional Committee ("the Committees") have moved to intervene as a matter of right or in the alternative for permissive intervention.

## BACKGROUND

### 1. The COVID-19 Pandemic

As Chief Justice John Roberts wrote earlier this year, COVID-19 has killed "more than 100,000 nationwide. At this time, there is no known cure, no effective treatment, and no vaccine. Because people may be infected but asymptomatic, they may unwittingly infect others." *South Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (May 29, 2020) (Roberts, C.J., concurring).

As explained by Dr. Arthur Reingold - a leading public health expert who serves as the Division Head of Epidemiology and Biostatistics at the University of California, Berkeley's School of Public Health and Plaintiffs' expert herein - COVID-19 spreads through interpersonal contact and through respiratory droplets spread by a carrier of the virus. (Affidavit of Dr. Arthur Reingold ("Reingold Aff.") ¶¶ 1, 3, 7.) The virus is "aerosolized, such that tiny droplets containing the virus remain in the air and can be inhaled by others who come into contact with that air." (Reingold Aff. ¶ 8.) Those infected with the virus may transmit it to others without showing symptoms. (Moran Decl., Ex. 5.)

COVID-19 can cause severe health consequences for those it infects, including long-term illness and death. (Reingold Aff. ¶ 7.) The World Health Organization estimates that approximately 20 percent of those infected by COVID-19 require hospitalization. (Moran Decl., Ex. 6.) Many who are hospitalized die from the virus; early estimates have found that the fatality rate for COVID-19 is as much as ten times higher than influenza. (*Id*., Ex. 7.)

On March 13, 2020, Governor Tim Walz declared a peacetime state of emergency in response to the public health threat posed by COVID-19, "to protect all Minnesotans by slowing the spread of COVID-19" in Executive Order 51 20-01. On March 25, Governor Walz directed all Minnesotans to remain in their homes subject to some limited exceptions, pursuant to Executive Order 20-20. Governor Walz extended that order's restrictions on April 13 in Executive Order 20-35, on May 13 in Executive Order 20-53, on June 12 in Executive Order 20-75, and again on July 13 in Executive Order 20-78. The current peacetime state of emergency is set to expire on August 12, 2020.

In addition, the Minnesota Department of Health ("MDH") has issued guidance urging all Minnesotans to "[s]tay home as much as possible, stay at least 6 feet from other people." (Moran Decl., Ex. 15). The MDH further recommends against large public gatherings, especially indoor gatherings, because when groups of people gather in places like churches, schools, or other public buildings, transmission can be "particularly effective." (*Id*., Ex. 17.)

**2. Minnesota's population**

These measures have not prevented COVID-19 from having a devastating impact on many Minnesotans. As of this writing, 56,560 Minnesotans have tested positive for COVID-19, and according to 2018 Current Population Survey ("CPS") statistics from the Census Bureau, 1,616 have died. *See* Minn. Dept. of Health,

https://www.health.state.mn.us/diseases/coronavirus/situation.html#expo1 (last visited August 3, 2020).

Twenty six percent (26%) of Minnesotans over age 18 live alone. (Moran Decl., Ex. 33.) Roughly 37% of Minnesotans over the age of 65 live alone. Among Minnesotans with a disability who are 18 and older, 47% live alone; among those with a disability who are 65 and older, 53.3% live by themselves. (*Id*.) And nearly 58% of indigenous Minnesotans live alone, much higher than the state average. (*Id*.) When these numbers are applied to Minnesota's 3.39 million registered voters (see *id*., Ex. 34), it means that nearly 900,000 Minnesota voters live alone.

**3. Minnesota's absentee ballot requirements**

Under Minnesota law, any eligible voter may vote by absentee ballot. *See* Minn. Stat. § 203B.02, subd. 1. A voter may apply for an absentee ballot at any time at least one day before the election. Minn. Stat. § 203B.04. When the county auditor or municipal clerk receives an absentee ballot application, the registrar mails the applicant a sealed envelope containing the unmarked ballot, instructions for completing the ballot, and an envelope for resealing the marked ballot. Minn. Stat. § 203B.07, subd. 1–3.

The resealing envelope has "[a] certificate of eligibility to vote by absentee ballot printed on the back" on which the voter must include personal identification information, such as the last four digits of their social security number, their driver's license number, or their state identification number. This certificate "must also contain a statement to be signed and sworn by the voter indicating that the voter meets all the requirements established by law for voting by absentee ballot." *Id*. at subd. 3.

After a voter marks her ballot, she must (1) seal the ballot in its envelope, (2) sign the eligibility certificate on the back, and (3) have a witness sign the eligibility certificate. *Id*. at subd. 3. The witness must be "registered to vote in Minnesota [or be] a notary public or other individual

authorized to administer oaths." *Id*. subd. 3. By signing the eligibility certificate, the witness attests that the ballot was shown to him "unmarked," that "the voter marked the ballot in [his] presence without showing how they were marked," or if unable to physically mark the ballot, "that the voter directed another individual to mark them." *Id.*

When absentee ballots are counted, two or more election officers form a "ballot board" to examine each absentee ballot envelope. As relevant here, a ballot will be deemed accepted if a majority of the ballot board is satisfied that: (1) the voter's name and address match her application; (2) the signed envelope matches the identification number on the application; (3) the envelope includes a "certificate [that] has been completed," including a witness signature; and (4) the voter has not voted twice in that election. Minn. Stat. § 203B.121, subds. 2(b)(1–6).

A ballot must be rejected if any of these criteria – including lacking a witness signature – are not satisfied. Minn. Stat. § 203B.121, subd. 2(c)(1).

**B. Procedural history**

On June 4, 2020, the NAACP Minnesota-Dakotas Conference and two individual voters, Susan Berquist and Eleanor Wagner ("Plaintiffs") sued Minnesota Secretary of State Steve Simon ("Defendant") seeking to enjoin both the enforcement of Minnesota's Witness Requirement for absentee ballots, as well as the absentee ballot application statute. Further, the Plaintiffs sought a court order requiring the Defendant to mail ballots to all registered voters to protect their right to participate in the elections during the COVID-19 pandemic. *See* Minn. Stat. §§ 203B.07, subd. 3; 203B.04.

On July 2, 2020, Plaintiffs moved for a preliminary injunction that requesting essentially the same relief. On July 17, 2020 the Donald J. Trump for President, Inc., the Republican Party of Minnesota, the Republican National Committee, and the National Republican Congressional Committee ("the Committees") filed their motion to intervene and request for an expedited hearing to be heard the merits of their opposition to the preliminary injunction. The Court denied the

Committees' request for an expedited hearing, but allowed the Committees to provisionally participate in briefing and argument on July 31, 2020.

On July 23, 2020 Plaintiffs and the Secretary of State filed a stipulation and proposed order that would resolve the parties' dispute over the application of the witness signature requirement for the November 2020 election. The parties sought immediate entry of their consent decree, which the court denied. On July 30, the Court received *amici curiae* AARP of Minnesota's brief in support of Plaintiffs. The Court then heard all pending matters for argument on July 31, 2020.

## ANALYSIS

### The Republican Committees' Motions to Intervene

The Proposed Intervenors' moved to intervene as a matter of right under Minn. R. Civ. P. 24.01, or in the alternative for permissive intervention under Minn. R. Civ. P. 24.02

#### A. The Republican Committees are not entitled to intervene as a matter of right.

Rule 24.01 provides:

> Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Specifically, a party seeking intervention of right must demonstrate: (1) the application for intervention was timely; (2) an interest relating to the property or transaction which is the subject of the action; (3) circumstances demonstrating that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest; and (4) the party is not adequately represented by the existing parties. *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W. 2d 197, 207 (Minn. 1986) (citing Minn. R. Civ. P. 24.01). Would-be intervenors must satisfy all of these factors. *Luthen v. Luthen*, 596 N.W.2d 278, 280–81 (Minn. Ct. App. 1999).

**1. The Republican Committees' attempted intervention was timely.**

Under Rule 24.01, the first factor for this court to consider is whether the motion to intervene is timely. *Schumacher*, 392 N.W. 2d 197 at 207. "The timeliness of a motion to intervene must be determined on a case-by-case basis." *Omegon, Inc. v. City of Minnetonka*, 346 N.W.2d 684, 687 (Minn. App. 1984). "While Rule 24 should be construed liberally, intervention is untimely if the rights of the original parties will be substantially prejudiced." *Id*.

The Republican Committees contend that they acted with diligence in filing their motion. They contend that they sought intervention less than one month after the matter was filed, and that their notice of intervention came before the Secretary had even filed his answer. Finally, the Committees contend that since this litigation is in its nascent stages, there is no prejudice to the current parties. Neither the Plaintiffs nor the Secretary of State addressed this factor.

Because the notice to intervene was filed at the earliest stage of this litigation, before the court heard the motions to dismiss and for injunctive relief, the court finds that the Republican Committees made a "timely application."

**2. The Republican Committees have not demonstrated a sufficient enough interest in the enforcement of the absentee ballot statute to justify intervention.**

The second factor directs this court to evaluate whether the Republican Committees have an interest relating to the property or transaction which is the subject of this action. *Schumacher*, 392 N.W. 2d 197. In order to intervene as a matter of right, Proposed Intervenors must claim "an interest relating to the property or transaction which is the subject of the action." *Miller v. Astleford Equip. Co.*, 332 N.W.2d 653, 654 (Minn. 1983). They "must show an interest in the litigation and that [they] will either gain or lose by the judgment between the original parties." *Veranth v. Moravitz*, 284 N.W. 849, 851 (Minn. 1939). Interests that are "speculative" are insufficient; they must be "direct, substantial and legally protectable." *Standard Heating & Air Conditioning Co. v.*

*City of Minneapolis*, 137 F.3d 567, 571 (8th Cir. 1998). Similarly,"[a]n undifferentiated generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right." *Dalton v. Barrett*, No. 2:17-CV-04057, 2019 WL 3069856, at *4 (W.D. Mo. July 12, 2019).

The Republican Committees' assert the following factors as the basis for their intervention:

1) The Committees' support of free and fair elections for all Minnesotans;
2) The preservation of existing state laws; and
3) The interest in ensuring that the Committees are not subject to a broader range of competitive tactics than state law would otherwise allow. *See* PO MTI 11, 12.

**a. The support of free and fair elections for all Minnesotans and the preservation of existing law are interests too generalized to support intervention.**

Supporting free and fair elections is a laudable goal, and one that all Minnesotans should share. The Republican Committees' assertion of this goal as a particularized right to support intervention is misplaced. Generalized interests are insufficient to support intervention under Rule 24. See *Chiglo v. City of Preston*, 104 F.3d 185, 187 (8th Cir. 1997) (intervention improper where proposed intervenors asserted "a generalized interest in the public benefits" of enforcing an ordinance).

Similarly, an interest in preserving the statutory status quo is a goal that could be shared by millions of Minnesotans. A general ideological interest in enforcing the current law is insufficient to support intervention, particularly when the statutes at issue do not involve the regulation of a party's conduct. *See, Coal. to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 782 (6th Cir. 2007).

**b. The preservation of a competitive environment is insufficient to support intervention as a matter of right in a case involving the witness and ballot application requirements.**

The Republican Committees rely primarily on *Shays v. Fed. Election Comm'n*, in support of their argument that protecting the competitive electoral environment is sufficient to justify

intervention. 414 F.3d 76, 85 (D.C. Cir. 2005). In *Shays*, the United States Court of Appeals for the District of Columbia recognized that candidates for public office had standing to challenge Federal Election Commission's regulations under the Bipartisan Campaign Finance Reform Act of 2002. *Shays* 414 F.3d 76 at 83. The court reasoned that, as candidates for office, the proposed plaintiffs were among those who benefit from BCRA's restrictions on practices Congress believed to be corrupting. *Id.* Moreover, the court surmised that no one would suffer more directly than candidates if political rivals were to get elected using illegal financing. *Id.*

The Court finds that the Committees' reliance on *Shays* is somewhat misplaced. This case involves a determination of who is allowed to vote safely, not the regulation of political parties' expenditure of resources. The Committees did not address *how* they would allocate their resources differently if Ms. Berquist or Ms. Wagner received their ballots without an application or voted without the signature of a witness. When pressed, the Committees did not claim that a change to the absentee voting requirements would directly harm their electoral prospects, cause them to spend more money, or burden the campaign activity, as was at issue in *Shays*. *Id.*

**c. The Donald J. Trump for America Campaign is not the "mirror image" of the NAACP.**

The Committees also allege that their intervention is justified as a matter of right because they are the "mirror image" of the NAACP. In supporting this argument, the Committees rely on *Democratic Nat'l Comm. v. Bostelmann*, in which the U.S. District Court for the Western District of Wisconsin granted intervention to the Republican National Committee and Republican Party of Wisconsin in a case brought by the Democratic National Committee and Democratic Party of Wisconsin. No. 20-cv-249, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020).

The relationship between the parties in *Democratic National Committee* is far different than that which exists between the parties here. Clearly, if the Plaintiffs in this case were the

opposing committees for President or the Democratic National Committee in general, there would be no doubt that the Committees would be entitled to intervention as a matter of right, as "mirror image" parties.

But to suggest that the Republican Committees are a mirror image of the NAACP as it relates to this action borders on the absurd. By the Committees' own admission, the NAACP's interests include enhancing voting rights, improving access to the ballot box, supporting voter turnout, and protecting and increasing participation in free and fair elections. If the Court were to accept the Committees' "mirror image" reasoning, it would necessitate a finding that the Donald J. Trump for America Campaign has a right to intervene because, as the mirror image of the NAACP's interest, its interests include limiting voting rights, decreasing access to the ballot box, suppressing voter turnout and decreasing voter participation in elections. Such a finding is an anathema to the interests of justice and would merit denial of the Committee's motion on that argument alone.[1]

**3. The Republican Committees have not demonstrated an interest that would be impaired or impeded by the non-enforcement of the witness requirements.**

The third factor asks this Court to consider the circumstances revealing that the disposition of the action may, as a practical matter, impair or impede the party's ability to protect that interest. *Schumacher*, 392 N.W.2d 197 at 207. This factor should be viewed from a practical standpoint rather than one based on strict legal criteria. *Id*.

The Committees argue that if the Plaintiffs' action succeeds, then the absentee ballot requirements and their safeguards against voter fraud, ballot tampering, and undue influence in voting will be upended in the run-up to a general election. The Committees argue that Plaintiffs'

[1] When pressed at argument, counsel for the Committees conceded that perhaps he meant that the Committees' interest are "parallel" to the NAACP. But Counsel did not abandon the reasoning altogether and made a similar argument in the case that was heard immediately following this one in *LaRose v. Simon*, NAACP v. Simon, No. 62-CV-20-3625 (Minn.Dist.Ct., filed June 4, 2020)

lawsuit and the parties' proposed consent decree aims to "'short circuit the democratic process'" by enjoining in their entirety two state laws that "'embody[] the will of the people'" and reflect the Legislature's appropriate effort to uphold the integrity of Minnesota's elections. *See* Committees' Br. (citing *Voting for Am., v. Steen*, 732 F.3d 382 (5th Cir. 2013).

The Court remains concerned that the Committees have not demonstrated *how* the waiver of the witness requirement or the absentee-ballot application would undermine electoral integrity. There is nothing in the record that suggests that waiving the witness requirement or providing absentee ballots to all registered voters would result in fraud. Certainly, there are safeguards in place to prevent such fraud, which is punishable as a felony in Minnesota.

Moreover, the Committees' interest in Minnesota holding "free and fair elections" is indistinguishable from the interest of any Minnesota voter. The suspension of the witness and application requirements for all absentee ballots during the pendency of the COVID-19 epidemic is non-partisan in nature, because the benefits of such relief will accrue equivalently to all voters, whether they cast their votes for Democrats, Republicans, Independents or the Green Party—no voters would be obligated to endanger themselves and their community to exercise their right to vote. The Committees present no evidence that the outcome of this litigation will specifically disadvantage their candidates or the voters they represent.

**4. The Secretary of State does not adequately represent the Committees' interest.**

The final factor for consideration by this Court relates to the adequacy of the representation of the Republican Committees' interest by the Defendant. *Schumacher*, 392 N.W.2d 197 at 207. The inquiry here is whether the Secretary of State and its representation by the Office of the Minnesota Attorney General would sufficiently represent the interests of the Republican Committees.

The Committees argue that they have a minimal burden of showing that the existing parties may not adequately represent their interests. *Faribo Farms*, 464 N.W.2d 568, 570 (Minn. App. 1990). The Committees argue that two decisions made recently by the Secretary to abandon any defense of the witness requirements without notice to the public or the Committees are enough to justify a finding that the Secretary's representation is insufficient. Further, the Committees argue that there are courts across the country that have found the witness requirement constitutional. Finally, the Committees maintain that courts express skepticism over government entities serving as adequate advocates for private parties, "often conclud[ing] that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (2003).

The Defendant contends that courts presume that the defense of a statute from a state official is adequate as a matter of law "because in such cases the government is presumed to represent the interests of all its citizens." *N.D. ex rel. Stenehjem v. United States*, 787 F.3d 918, 921 (8th Cir. 2015). In addition, the Defendant maintains that he is providing an adequate defense to the challenged laws and argues that this Court need look no further than his aggressive defense of the ballot request statute in this case and his opposition to Plaintiffs' motion for injunctive relief.

Plaintiffs advance a similar argument, and argue that the Committees bear a heavier burden on this factor because the Secretary has a constitutional and statutory mandate to support the Committees' interests. *Swinton v. SquareTrade, Inc.*, 960 F.3d 1001, 1005 (8th Cir. 2020) *see also Oakland Bulk & Oversized Terminal, LLC v. City of Oakland*, 960 F.3d 603, 620 (9th Cir. 2020) ("To establish inadequate representation, Intervenors needed to make a "very compelling showing" because: (1) a governmental entity (Oakland) was already acting on behalf of their interests in this action: and (2) Intervenors and Oakland share the same ultimate objective of upholding the Ordinance and Resolution.").

This Court is persuaded by the authority advanced by Plaintiffs which raises the bar for demonstrating inadequacy when one of the parties is an arm or agency of the government and the case concerns a matter of sovereign interest. *Stenehjem*, 787 F.3d 918, at 921. The Court is further persuaded, however, that the Committees have sufficiently demonstrated that inadequacy because the Secretary has twice conceded the witness requirement in *LaRose* as well as in United States District Court. *See League of Women Voters v. Simon*, No. 20-1205, Tr.1–13 (D. Minn. Jun. 23, 2020). Therefore, the Committees' interests are not sufficiently represented by the Secretary of State.

The Committees have failed to demonstrate factors two and three under Minn. R. Civ. P. 24.01 and *Schumacher*. Because the Committee must satisfy all four factors to succeed, their motion to intervene as a matter of right is denied. *Luthen*, 596 N.W.2d 278, at 81.

**B. The Republican Committees are entitled to permissive intervention.**

Under Rule 24.02, a court may grant intervention "upon timely application . . . when an applicant's claim or defense and the main action have a common question of law or fact." Minn. R. Civ. P. 24.02. Moreover, in exercising its discretion under Rule 24.02, "the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

As discussed above, the Committees' application to intervene is timely under both 24.01 and 24.02. See, e.g., *State ex rel. Lucero v. CSL Plasma, Inc*., No. 27-CV-19-3629, 2020 WL 807356, at *10 (Minn. Dist. Ct. Feb. 12, 2020).

Second, it is undisputed that the Committees will raise defenses that share many common questions with the claims and defenses of the parties. Plaintiffs allege that the disputed statutes surrounding absentee balloting are unconstitutional. The Committees contend that these state election laws are valid and enforceable.

Third, the Committees argue that allowing their intervention will not lead to delay or prejudice. This case is in the earliest of stages, and Committees' participation will add no additional delay.

In considering the Committees' motion for permissive intervention, this Court is mindful of the arguments advanced by the Plaintiffs and the Defendant that the Court should evaluate whether granting permissive intervention would prompt other similarly-situated non-parties to seek intervention. *Ohio Valley Environmental Coalition v. McCarthy*, 313 F.R.D. 10, 30 (S.D. W. Va. 2015). Certainly the risk of opening the door to a parade of would-be intervenors is significant, particularly when considering the general election is 92 days away. A strict adherence to the timeliness requirement of 24.02 should address the parties' very valid concerns.

In making its narrow ruling that permissive, though not mandatory, intervention is appropriate, this Court is mindful of the fact that public trust in government remains at an all-time low. *See* i.e. Matt Stevens, *Falling Trust in Government Makes It Harder to Solve Problems, Americans Say*, New York Times, July 22, 2019, https://www.nytimes.com/2019/07/22/us/politics/pew-trust-distrust-survey.html. The once-in-a-century global pandemic and the attendant societal unease likely only exacerbates that anxiety and distrust. The Court is concerned that the denial of a seat at the litigation table to the Committees would only erode public confidence in the electoral process in this unique global moment. The Committees' motion for permissive intervention is granted.

**The Plaintiffs' and Defendant's Motion to Approve the Consent Decree**

At the outset, the Plaintiffs and Defendants disagree with the Committee on the legal standard under which this Court should review the proposed General Election Consent decree. It is undisputed that a consent decree is the product of a negotiated agreement. *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. App. 2003); *see also Elsen v. State Farmers Mut. Ins.*, N.W.2d

652, 655 (Minn. 1945) (describing a consent decree as a "mere agreement of the parties under sanction of the court" to be interpreted as an agreement). While the court may assess the fairness of such an agreement before approving it, "the court does not, in a consent decree, judicially determine the rights of the parties." *Hentschel v. Smith*, 153 N.W.2d 199, 206 (Minn. 1967) (quoting *Hafner v. Hafner*, 54 N.W.2d 854, 858 (Minn. 1952)). Plaintiffs and Defendant argue that a trial court's power to set aside a consent decree is limited to three instances: fraud, mistake, or the absence of real consent. *Hafner*, 54 N.W.2d at 857.

The Committees argue that the judicial review of a consent decree requires a far more thorough inquiry and fairness finding as articulated by the Federal court, namely whether the plaintiff has made an adequate showing of a likelihood of success on the merits of the claim. *See Flinn v. FMC Corp.*, 528 F.2d 1169, 1172 (4th Cir. 1975). Courts can gauge "the fairness of a proposed compromise" only by "weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered." *Carson v. Am. Brands, Inc*., 450 U.S. 79, 88 n.14 (1981).[2]

This Court is required and bound to follow Minnesota law interpreting the Minnesota Statutes. Because the Court would reach the same result under the federal standards, this Court will analyze the proposed entry of the consent decree under both Minnesota and federal law.

**1. The entry of the proposed consent decree is appropriate under Minnesota law.**

Plaintiffs and Defendant assert that the Committees are relying on non-controlling federal law, and Plaintiffs assert that the court need look no further than *Hafner's* permissive language that a court "may look to see that a settlement is fair." 54 N.W.2d at 858. It follows, Plaintiffs assert, that this Court should have no problem entering the Consent Decree, which is fair,

[2] As discussed above, this Court allowed the Committees to participate in the argument regarding the entry of the consent decree in the interest of judicial economy, despite not yet having determined at argument that they would be granted leave to intervene under Rule24.02.

preservative of the rights of the citizens of the State of Minnesota, and the agreement of the parties as the result of arms-length settlement negotiations.

It is undisputed that the proposed consent decree is non-partisan and waives the Witness Requirement only with regard to the November 2020 election. The Plaintiffs and Defendant came to this agreement due to the fact that COVID-19 related illnesses and deaths in Minnesota continue to rise and have no real possibility of abatement by November. (Index #60, Consent Decree at 2-3.) If entered by this Court, Minnesotans will not have to risk their health and safety to comply with the Witness Requirement in order to vote absentee in the general election. The Consent Decree further affords Defendant sufficient time to provide instruction and certainty to voters and local election officials before absentee voting begins on September 18, 2020.

Perhaps most notably, the proposed Consent Decree reflects a limited compromise of Plaintiffs' claims, as it does not provide relief to Plaintiffs regarding their claim pertaining to universal mailing of absentee ballots.

The Committees offer no evidence that the Proposed General Election Consent Decree is the product of fraud, neglect or the absence of consent. As such, under Minnesota state law, the proposed consent decree should be entered.

**2. The entry of the proposed consent decree is fair and appropriate under the federal standard of review because the Plaintiffs are likely to succeed on the merits of their claim.**

**a. The U.S. District Court decision**

Most significantly to this Court, the Committees argue that this Court should decline to enter the proposed consent decree because the United States District Court for the District of Minnesota declined to enter a nearly identical consent decree for the August primary. *League of Women Voters v. Simon*, No. 20-1205, Tr. 1–13 (D. Minn. Jun. 23, 2020). As discussed at

argument, this Court is deeply concerned about two courts in Minnesota reaching opposite conclusions, especially on something as essential to a functioning government as the right to vote.

Unlike the claims advanced in the U.S. District Court case, this case relies solely on claims raised under the Minnesota Constitution, under which Minnesota courts can find greater protections of individual rights than the U.S. Constitution. *Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005) (noting "it is now axiomatic that we can and will interpret our state constitution to afford greater protections of individual civil and political rights than does the federal constitution."). Moreover, this Court, unlike the U.S. District Court, is bound by *Erlandson v. Kiffmeyer*, in which the Minnesota Supreme Court found that election officials were required to mail replacement ballots to all voters who requested them following the death of Senator Paul Wellstone. 659 N.W.2d 724, 726 (Minn. 2003).

In writing for the Court, Chief Justice Blatz found as follows:

> The purpose of the absentee ballot is to enfranchise those voters who cannot vote in person. To prohibit mailing of replacement absentee ballots to absentee voters who continue to be unable to vote or pick up a ballot in person disenfranchises the very people the absentee voter laws are intended to benefit. In the total absence of any rational explanation, allowing some absentee voters to revote with replacement ballots but denying that opportunity to the very group for which absentee voting is designed by prohibiting the mailing of replacement absentee ballots is a denial of equal protection that requires remedial action.

*Erlandson*, 659 N.W.2d at 734 (Minn. 2003)

As such, this Court is not bound by the same overbreadth reasoning that drew the federal court to a different conclusion.

**b. Other Federal Authority**

The Committees next assert that the proposed entry of the Consent Decree should be denied based on the authority from courts across the country that have upheld the witness requirements. The Committees cite one U.S. Supreme Court order, and three cases from other jurisdictions that

do not reflect the unique procedural posture of this case. *See Merrill v. People First of Ala*., No. 19A1063, Order (S. Ct. July 2, 2020) ("Merrill Order") (Justice Thomas granting a stay without analysis of an 11th Circuit ruling allowing curbside voting and exemptions from some absentee requirements in three counties in Alabama) *Democratic Nat'l Comm. v. Bostelmann*, No. 20-1538, 2020 WL 3619499 (7th Cir. Apr. 3, 2020) (a finding that a Wisconsin U.S. District Court exceeded the limitations of appropriate injunctive relief); *Miller v. Thurston*, No. 20-2095, 2020 WL 3240600 (8th Cir. June 15, 2020) (addressing the "wet signature" requirement for Alabama witnesses); *Clark v. Edwards*, -- F. Supp. 3d --, 2020 WL 3415376 (M.D. La. June 22, 2020) (dismissed on standing).[3]

The Plaintiffs in turn offer three cases from other districts that *do* more closely reflect the unique procedural posture of this case, namely *Thomas v. Andino*, - F. Supp. 3d. -, 2020 WL 2617329 (D.S.C. May 25, 2020) (enjoining the South Carolina State Election Commission from enforcing the witness requirement*); League of Women Voters of Va. v. Va. State Bd. of Elections*, - F. Supp. 3d --, 2020 WL 2158249 (W.D. Va. May 5, 2020) (approving a consent decree between the parties that would enjoin the enforcement of Virginia's witness requirement) *Common Cause Rhode Island et al v. Nellie M. Gorbea et. al* 2020 WL 4365608 (D. R.I. July 30, 2020) (approving a consent decree between the parties that would enjoin the enforcement of Rhode Island's witness requirement).

As such, this Court is not persuaded by the Committee's argument that the vast weight of authority rests in the Committee's favor: indeed, the three district court cases that address the very same question in other states are conclusions in favor of the Plaintiffs. Moreover, it is reasonable for the Secretary to conclude that the Plaintiffs would be likely to prevail in the instant case.

[3] The Committees also offer *Nielsen v. DeSantis*, in support of its argument that other courts have found the witness requirement constitutional, but this case does not address the witness requirement because Florida is not one of the states that has such a requirement. No. 4:20-cv-236 (N.D. Fla. June 24, 2020)

### c. The alleged speculation regarding what COVID-19 will be in November

The Committees next argue that the consent decree rests on mere speculation that COVID-19 will render voting unsafe in November. The Committees argue that the record is devoid of evidence that COVID-19 will be worse in November, or that guidance will develop that will make in-person voting unconstitutionally unsafe. Further, the Committees argue that adherence to basic social distancing practices will render the witness requirement safe for the Plaintiffs, or, alternatively, that Plaintiffs could secure a Zoom account and have a witness approve their ballot while still complying with social distancing.

The Court is a bit flummoxed about how the witness requirement could be complied with via Zoom as offered by the Committee. Even assuming Ms. Wagner, who is 78 years old and recently diagnosed with pancreatic cancer, will have access to a computer or smart phone and could secure a Zoom account to connect with someone to witness her ballot, it is unclear to this Court how a voter could e-notarize the back of her absentee ballot. The Committees' argument further strains the limits of reasonableness when the Court considers that nearly a quarter of households in Minnesota do not have internet access and the vast majority of public libraries, which may otherwise provide internet access to those who lack it, are closed during the pandemic. Declaration of William C. Jordan Jr. ("Jordan Decl.").

As to the question of voter safety, and with deep respect to Committees' counsel, his clients can't have it both ways. As the Defendant noted at argument, the President's own tweets suggest a recognition that voter safety will be compromised in November. The day before the hearing, the President of the United States tweeted "Delay the Election until people can properly, securely and safely vote???" *See* Donald J. Trump (@realDonaldTrump) Twitter (July 30, 2020, 8:46 a.m.).

Counsel said that he had not seen his client's tweets from the previous day (which somewhat strains credulity, given his client's proclivity for Twitter) but offered, essentially, that

if the President had had the opportunity to fully state his point, he would have acknowledged that Minnesota's voter safety standards are so unique as not implicate the President's safety concerns.

The President's own admissions, as well as the prediction of experts that COVID-19 will likely surge in the fall as the election coincides with the return of cold and flu season, lead the Court to conclude that the safety concerns for the ballot box are not so speculative as to render the Secretary's decision to resolve the Plaintiff's complaints unreasonable. *See* Kristine A. Moore et al., *Part 1: The Future of the COVID-9 Pandemic: Lessons Learned from Pandemic Influenza, in COVID-19*: The Cidrap Viewpoint 6, (Ctr. for Infectious Disease Research and Policy, 2020), https://www.cidrap.umn.edu/sites/default/files/public/downloads/cidrap-covid19-viewpoint-part1_0.pdf.; Glen Howatt, *COVID-19 Cases Could Surge in Fall, Last Two Years, University of Minnesota Report Says*, Minneap. Star-Trib., (May 3, 2020), https://www.startribune.com/covid-19-cases-could-surge-in-fall-last-2-years-u-report-predicts/570130602/. Indeed, many schools throughout Minnesota will begin the school year remotely over COVID-19 concerns. *See* Erin Adler, *St. Paul Schools Likely to Begin Year with Distance Learning*, Minneap. Star-Trib. (July 30, 2020), https://www.startribune.com/st-paul-schools-likely-to-begin-year-with-distance-learning/571962822/. The fact that school districts across the state have determined that hundreds of thousands of Minnesota children will not return to the classroom in September makes the impact of COVID-19 in November far from speculative.

**d. The Plaintiffs' claims that the absentee ballot statutes present an unconstitutional burden.**

The Committees next argue that the Plaintiffs have failed to demonstrate their likelihood of success on either of their constitutional or Equal Protection claims. The Committee argues that enforcement of the witness requirement is not the sort of state election law that raises constitutional questions. *See Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (recognizing that state election laws

"will invariably impose some burden upon individual voters"). "[T]o maintain fair, honest, and orderly elections, states may impose regulations that in some measure burden the right to vote." *Kahn v. Griffin*, 701 N.W.2d 815, 832 (Minn. 2005) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)).

At a minimum, it is reasonable for the Secretary to conclude that the Plaintiffs are likely to succeed on their claim that the witness requirement violates the Equal Protection Clause of the Minnesota Constitution. By requiring voters who live alone to place their lives and health in danger in order to exercise their fundamental right to vote, it is reasonable to conclude that the Witness Requirement impermissibly and irrationally denies the fundamental right to vote to those individuals while there is still ongoing community transmission of COVID-19. As in *Erlandson*, this Court need not resolve whether strict scrutiny or rational basis review is the proper standard here, because in the circumstances of this case the witness requirement would likely not survive even the lowest level of scrutiny. *Erlandson* 659 N.W.2d at 734. Unlike the application requirement, the Secretary offers no rational basis here for the witness requirement, and the Committees' vague references to fraud prevention, without more, are insufficient to suggest a legitimate state interest for enforcing the Witness Requirement during a global pandemic.

Moreover, had the parties not reached a consent decree to suspend the witness requirements for the general election, this Court would have been empowered to grant the preliminary injunction, or *sua sponte*, find that the requirement, as applied in the current pandemic, unconstitutionally limits voting access, and simply order precisely what the consent decree achieves. *See, e.g.*, *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (holding that the constitutionality of election laws depends upon a court's balancing of the character and magnitude of any law burdening the right to vote against the relevant government interest served by the law); *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

**e. The balancing of the equities**

The Committees finally argue that this Court should reject the General Election Consent Decree because waiving the witness requirement is not in the public interest. Certainly, the Plaintiffs and *amici* have sufficiently demonstrated that the consent decree is in the best interests of the people that they represent. It is reasonable for the Secretary to conclude that this waiver is in the best interests of the health, safety, and constitutional rights of Minnesota's voters, and, therefore, in the public interest.

Under either Minnesota or federal law, the proposed General Election Consent Decree is fair and appropriate. The Motion to enter the Consent Decree is granted.

**Plaintiffs' Motion to Enjoin Enforcement of the Ballot Application Statute**

Plaintiffs have also moved the Court to enjoin the Secretary from enforcing the statutory requirement that voters apply for a mail in ballot, and have requested that the Court issue an order requiring the Secretary to mail ballots to all Minnesotans, regardless of whether they have been requested or not. Plaintiffs assert that providing all registered voters with an absentee ballot is the only path to protecting the ability of voters to access the ballot box without compromising voters' health, and that the State has no sound reason—much less a compelling one—not to take this critical step to protect the fairness of the general election. Plaintiffs argue *inter alia* that they are just as likely to succeed under their arguments requesting universal mail in ballots as they are in their arguments enjoining enforcement of the witness requirement.

Under Minnesota Statutes § 203B.04, subd. 1, citizens who wish to vote by mail must submit a written application to the County Auditor, municipal clerk, or Secretary of State's office (depending on the election) to receive a ballot. That application must be submitted at least one day prior to the election and may be submitted in person, by email, by fax, or via standard mail. *Id.* Voters who are patients in health care facilities or cannot get to the polls because of

incapacitating health reasons may have an agent deliver a completed absentee ballot application form, pick up a ballot up until 2:00 p.m. on Election Day, and drop the ballot off on the voter's behalf. Minn. Stat. §§ 203B.04, subd. 3(b)(4); 203B.11, subd. 4.

Minnesotans who live in a town outside of the Twin Cities metro area or a city having fewer than 400 registered voters are not subject to the ballot application requirement, since state law allows participating government bodies to mail ballots to all voters and provide pre-addressed ballot return envelopes. Minn. Stat. § 204B.45, subd. 1. In 2016, about 59,000 Minnesota voters in 739 precincts used this option. (*See* Moran Decl., Ex. 27.)

**1. Plaintiffs have standing to challenge the application requirement**

Somewhat confusingly, the Secretary concedes that the Plaintiffs have standing to address the witness requirement, but not the ballot application provisions of Minnesota law. This Court is inclined to agree with Plaintiffs' characterization of the Defendant's position as "a tale of two briefs" seemingly arguing opposite positions. Pl. Reply Memo at 1. Defendant does not challenge the standing of Ms. Wagner and Ms. Bergquist to contest the other statutory provisions, and the NAACP as an association possesses standing to ensure that its members can vote safely.

Notwithstanding the Secretary's self-contradictions, "the well-established notion of 'associational standing'. . . recognizes that an organization may sue to redress injuries to itself or injuries to its members." State by *Humphrey v. Philip Morris Inc*., 551 N.W.2d 490, 497–98 (Minn. 1996). The Secretary does not challenge Plaintiffs' standing as to the bulk of Plaintiffs' injuries, including injuries to members of the NAACP and injuries to the organization itself, all of which constitute cognizable injuries for the purposes of standing. *See also Rukavina v. Pawlenty*, 684 N.W.2d 525, 533 (Minn. App. 2004) (impediments to an organization's mission are "an injury sufficient for standing").

**2. An injunction against the Secretary could redress the Plaintiffs' injuries.**

The Secretary asserts that the Plaintiffs' requested relief is unlikely to redress their alleged injuries because it is local election officials, not the Secretary, who are statutorily responsible for the mailing of absentee ballots. *See* Minn. Stat. § 203B.06, subd. 3(b)(requiring "the county auditor or municipal clerk" to mail ballots); Minn. Stat. § 203B.07, subd.1 ("The county auditor or the municipal clerk shall prepare, print, and transmit a return envelope, a ballot envelope, and a copy of the directions for casting an absentee ballot to each applicant whose application for absentee ballots is accepted pursuant to section 203B.04.").

The Secretary argues that he has the authority to promulgate rules surrounding election laws, but he does not have authority under Chapter 203B to assume control of distributing absentee ballot materials to voters. The Secretary further notes that his position is confirmed by the express provision indicating that expenses—including the costs that would be incurred to preemptively mail absentee ballots to every registered voter—must be paid by counties and municipalities, not the Secretary. Minn. Stat. § 203B.15 ("Each county shall pay the expenses incurred by its county auditor and each municipality or school district shall pay the expenses incurred by its clerk for administrating the provisions of sections 203B.04 to 203B.15."). Simply put, the Secretary asserts that the correct Defendants in an injunction requiring mailed ballots to every Minnesotan are the 87 county officials and countless municipal clerks who administer the relevant statutory provisions.

The Secretary's position contradicts the longstanding holdings of several courts, both state and federal, that the Secretary—as "the chief election official in the state"—is empowered to "implement any injunction regarding election law." *Am. Broad. Cos. v. Ritchie*, 2008 WL 4635377, at *4 (D. Minn. Oct. 15, 2008). See also *Martin v. Dicklich*, 823 N.W.2d 336, 339-40 (Minn. 2012) ("pragmatic concerns related to the orderly administration of elections are best served by the Secretary of State's participation as a party in this proceeding"); *Clark v. Pawlenty*,

755 N.W.2d 293, 299 (Minn. 2008) (the Secretary is the proper party even if county auditors share certain election responsibilities). These decisions make sense, because the Legislature has conferred authority on the Secretary to "adopt alternative election procedures to permit the administration of any election affected by [a court] order." Minn. Stat. § 204B.47. This Court finds the Secretary's attempts to distinguish this line of cases in a footnote to be unpersuasive.

**3. The Dahlberg Factors do not support a Court Order requiring absentee ballots to be mailed to every Minnesotan**

A temporary injunction is an extraordinary equitable remedy whose purpose is "to preserve the status quo until the matter can be adjudicated on its merits," *Morse v. City of Waterville*, 458 N.W.2d 728, 729 (Minn. App. 1990). "Because a temporary injunction is granted prior to a complete trial on the merits, it should be granted only when it is clear that the rights of a party will be irreparably injured before a trial on the merits is held." *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982).

In addition to requiring the demonstration of an irreparable injury, five factors are relevant to determining whether to grant preliminary injunctive relief: (1) the nature and relationship of the parties; (2) the balance of relative harm between the parties; (3) the likelihood of success on the merits; (4) public policy considerations; and (5) any administrative burden associated with judicial supervision and enforcement. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965).

Of the five factors, likelihood of success on the merits is the most important. *Softchoice v. Schmidt*, 763 N.W.2d 660, 666 (Minn. App. 2009). Minnesota courts are particularly reluctant to issue mandatory temporary injunctions that alter the status quo. See *Bellows v. Ericson*, 46 N.W.2d 654, 659 (Minn. 1951).

**4. The NAACP is unlikely to succeed on the merits of its claim for universal mail-in ballots**

"A plaintiff seeking relief that would invalidate an election provision in all of its applications bears a 'heavy burden of persuasion.'" *Brakebill v. Jaeger*, 905 F.3d 553, 558 (8th Cir. 2018) (quoting *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 200 (2008)).

Here, Plaintiffs argue that *Erlandson* controls the Court's analysis, because just as in *Erlandson*, the requirement that some Minnesota voters must request absentee ballots while others receive them automatically treats similarly situated Minnesota voters differently, since registered voters in towns with "fewer than 400 registered voters" do not need to ask for them. *See* Minn. Stat. § 204B.45, subd. 1. Plaintiffs offer that in 2016, about 59,000 Minnesota voters in 739 precincts used this option. *See* Leiendecker Decl., Ex. 9. Plaintiffs argue, for example, that the 93 residents of Zemple are treated far differently than the 300,000 residents of Saint Paul, and the Secretary's decision to require most, but not all, Minnesotans to apply for an absentee ballot is unconstitutional.

The Plaintiffs do not carry their heavy burden of persuasion here. First, this Court cannot conclude as a matter of law that the constitutional right to vote has a corresponding constitutional right to receive an absentee ballot. Elsewhere in *Erlandson*, the Minnesota Supreme Court found, "the opportunity to vote by absentee ballot 'has the characteristics of a privilege rather than of a right.'" *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 733 n.8 (Minn. 2003) (quoting *Bell v. Gannaway*, 227 N.W.2d 797, 802 (Minn. 1975)); see also *Qualkinbush v. Skubisz*, 826 N.E.2d 1181, 1192 (Ill. App. 2004). Further, the *Erlandson* court also noted that "where only the ability to vote by absentee ballot, and not the right to vote generally, has been at issue, the United States Supreme Court has applied rational basis analysis." 659 N.W.2d 724 at 733.

Second, the very modest restriction imposed by the absentee ballot application does not rise to the level of an undue restriction on a constitutional right. It is "well-established that to

maintain fair, honest, and orderly elections, states may impose regulations that in some measure burden the right to vote." *Kahn v. Griffin*, 701 N.W.2d 815, 832 (Minn. 2005); see *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (states "may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election-and-campaign-related disorder"); *Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986).

Here, the local election officials are statutorily mandated to provide absentee ballots to voters "upon request." That request can come in a myriad of forms. Minn.Stat. § 203B.04, subd. 1(a). That request can be made in person, online, via the mail and in some counties, over the phone. (Marisam Decl. ¶¶ 11-13, Exs. 7-8.) As distinguished from the witness requirement, it is difficult to imagine the application process being any easier than as currently provided for in state law. While it is undoubtedly more convenient for Plaintiffs' members to receive a ballot in the mail without asking for one, the Court cannot conclude as a matter of law that the statute represents an unconstitutional burden on their right to vote.

Third, the Secretary has a legitimate state interest in the efficiency of absentee voting. Where, as here, a statute imposes only a modest burden on the right to vote "then the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions on election procedures." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 452 (2008). And "[a]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process." *Storer v. Brown*, 415 U.S. 724, 720 (1974).

Fourth, Minnesotans who are at lower risk of serious health effects if they contract COVID and who respect appropriate social distancing guidance may *want* to go to the polls to vote in person. "Casting a vote is a weighty civic act, akin to a jury's return of a verdict or a representative's vote on a piece of legislation." *Minn. Voters Alliance v. Mansky*, 138 S.CT. 1876,

1887 (2018). Minnesotans who can safely go through the "ritual" of "going to their polling places on Election Day" and "wait in a line, briefly interact with an election official (at appropriate social distance) enter a private voting booth and cast an anonymous ballot" and (in Minnesota) receive a red "I Voted" sticker, should have that right. *Id.* Requiring mail in ballots for all registered voters, including those who desire to vote in person, would create the very chaos the Supreme Court warned against in *Storer*, 415 U.S. at 720.

Requiring voters to apply for an absentee ballot if they want one reduces the serious risk of chaos in voting. It ensures that local election officials do not incur the unnecessary expense of sending absentee ballots to many voters who will choose to vote in person during early voting or who intend to vote in person on Election Day. The absentee ballot application process also ensures that those voters who wish to vote absentee receive a ballot where they currently live, instead of having one be automatically mailed to an address under which they were previously registered. Most significantly, there is also an added risk of ballot spoliation if voters unfamiliar with the absentee process receive a ballot addressed to a previous resident when they did not request one.

**b. The balance of harms weighs against issuance of a temporary injunction**

"Because a temporary injunction is granted prior to a complete trial on the merits, it should be granted only when it is clear that the rights of a party will be irreparably injured before a trial on the merits is held." *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). The failure to demonstrate irreparable harm is, "by itself, a sufficient ground upon which to deny a preliminary injunction." *Morse v. City of Waterville*, 458 N.W.2d 728, 729 (Minn. App. 1990).

Here, as explained, Plaintiffs have not demonstrated their likelihood of success on their constitutional claims, and thus cannot use alleged infringement of their constitutional rights as a basis to establish irreparable harm. *See*, i.e. *Sinner v. Jaeger*, No. 3:20-cv-WL 3244143, at *8 (D.N.D. June 15, 2020).

In short, the relief requested by the Plaintiffs would require that the Secretary cease enforcing the absentee balloting process, which would harm the Secretary's strong interest in enforcing constitutional election statutes that are designed to promote the integrity and effective administration of elections. In contrast, the Plaintiffs would suffer minimal to non-existent harm, with a variety of options available to them if they choose to apply for an absentee ballot.

**5. The injunction that the Plaintiffs seek disrupts the status quo with regard to ballot applications.**

The Plaintiffs' injunction seeks a sweeping change to the current state of Minnesota's election laws, substituting their own judgment about how elections should be administered. This Court is deeply troubled by such a fundamental change to the status quo, especially on only a temporary record. The public's interest is not served by such a judicially-crafted, fundamental change to the state's election laws.

Equally troubling is the fact that the Plaintiffs' requested relief could dramatically increase the costs to counties who would be forced to preemptively mail absentee ballots to all registered voters, while continuing to process absentee ballot applications from non-registered voters and registered voters who did not receive the preemptively mailed ballot, all while managing the administration of early voting and in-person voting consistent with COVID-19 guidelines. This would do nothing more than work a "needlessly chaotic and disruptive effect upon the electoral process."

In short, in addition to the reasons discussed above, such a sweeping change to the status quo - in this case, universal mail-in ballots - is more suited to the contemplative nature of legislative branch, where the impacted parties can debate the matter and address the practical and budgetary implications of the relief proposed by the Plaintiffs. The Plaintiffs' motion for a temporary

injunction and an order requiring the Secretary to mail ballots to every registered voter in Minnesota is denied.