

FILED

October 31, 2020

**OFFICE OF
APPELLATE COURTS**

No. A20-1362

**STATE OF MINNESOTA
IN SUPREME COURT**

DONALD J. TRUMP FOR PRESIDENT, INC., *et al.*,
PETITIONERS,

V.

MINNESOTA SECRETARY OF STATE STEVE SIMON,
in his official capacity,
RESPONDENT,

AND

ROBERT LAROSE, *et al.*,
PROPOSED INTERVENOR-RESPONDENTS.

**THE DISTRICT OF COLUMBIA’S REQUEST FOR LEAVE TO FILE A BRIEF
AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS**

TO: THE MINNESOTA SUPREME COURT AND TO ALL COUNSEL OF RECORD

Pursuant to Minn. R. App. P. 129.01, Applicant District of Columbia, on behalf of itself and other states to be later identified (together, “Prospective State Amici”), respectfully requests leave to participate in this action as amicus curiae in support of Respondent.¹

I. Statement of Applicant’s Interest

Applicant’s interest in this matter is a public one. The Prospective State Amici have experience administering elections, including by adopting laws governing whether to

¹ The District of Columbia hereby certifies that its counsel authored this request in whole and that no person or entity other than the District has made a monetary contribution to the preparation or submission of this request.

accept ballots cast before—but received after—Election Day. The administration of elections is within the province of state law, and states have flexibility to accommodate voters in light of the COVID-19 pandemic and uncertainties with the United States Postal Service (“USPS”). Accordingly, the Prospective State Amici have insights into whether accepting ballots mailed before—but received after—Election Day is in the public interest.

Election experts project that voter turnout this election cycle will be “perhaps the highest in over a century.” Galston, *Election 2020: A Once-in-a-Century, Massive Turnout?* 3 Brookings (Aug. 14, 2020) (internal quotation marks omitted).² And given the risks associated with person-to-person contact due to the pandemic, the number of voters interested in absentee voting has, unsurprisingly, “skyrocket[ed] around the country.” Levy et al., *Surge of Ballot Requests Already Setting Records in the US*, CNN (Sept. 25, 2020).³ On top of challenges posed by the pandemic, USPS faces crises of its own, including unprecedented budget cuts and staffing shortages, as well as recent high-profile operational changes imposed—then partially rescinded—by the Postmaster General. *See, e.g., Pflum, Despite DeJoy’s Vows to Halt Changes, Serious Problems Persist, Postal Workers Say*, NBC News (Aug. 28, 2020).⁴

II. Statement of Applicant’s Position

Applicant will support the position of Respondent. The Prospective State Amici take the position that, faced with the skyrocketing popularity of absentee voting and myriad

² Available at <https://brook.gs/3jAGF6a>.

³ Available at <https://cnn.it/3iMhDQf>.

⁴ Available at <https://nbcnews.to/2GF3ibw>.

troubles confronting USPS, Minnesota reasonably adapted its approach to voting. By setting a clear deadline for voters to mail their ballots; allowing a reasonable time for ballots to travel through the mail; and giving voters the benefit of the doubt when—due to USPS error—their ballots are not postmarked, Minnesota exercised its authority to administer elections in ways that both safeguard residents' health and facilitate citizens' voting rights.

III. Statement of Why Participation of Amici Curiae is Desirable

An amici curiae brief is desirable in this case because the issues raised by this dispute are not isolated to Minnesota itself, and extend beyond the border of the State. The Prospective State Amici have valuable perspectives on the widespread nature of accepting timely cast ballots. Because the Prospective State Amici have experience administering elections in multiple states, they can demonstrate that Minnesota's plan of accepting ballots mailed before, but received after, Election Day is consistent with states' longstanding practices and recent responses to the pandemic. Many states have historically accepted these ballots, *see, e.g.*, Iowa Code § 53.17(2), and several others have extended their receipt deadlines for timely cast mail-in ballots in response to the pandemic and the delays plaguing USPS, *see, e.g.*, 2020 Mass. Acts Ch. 115, § 6(h)(3) (effective July 6, 2020); Miss. Code. Ann. § 23-15-637(1)(a) (effective July 8, 2020). In other words, based on the Prospective State Amici's experience, Minnesota's plan is a typical, and lawful, exercise of election discretion.

The Prospective State Amici can thus assist this Court by sharing their experiences taking reasonable, common-sense steps to ensure that—despite the COVID-19 pandemic

and ongoing issues with USPS—citizens are able to safely and timely exercise their right to vote.

IV. Conclusion

For the foregoing reasons, the District, on behalf of itself and other states to be later identified, requests leave to participate as amicus curiae in support of respondents in these proceedings.

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