

FILED

November 2, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A20-1362

Donald J. Trump for President, Inc., Senate
Victory Fund, House Republican Campaign
Committee, and Ryan J. Beam,

Petitioners,

vs.

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

Respondent.

**RESPONDENT STEVE SIMON'S
OPPOSITION TO PETITIONERS'
MOTION TO WITHDRAW
PETITION**

The Secretary of State objects to Petitioners' request to withdraw their Petition or, in the alternative, for dismissal without prejudice. This is the second time that challengers to the consent decree have asked this Court to review the consent decree on an expedited basis, only to ask the Court to dismiss their challenge days later. The issues of laches, waiver, and the merits have been briefed. Petitioners cannot keep evading review of these issues for vague strategic reasons that leave Minnesota voters and election officials in the dark about important state law issues, on the eve of this crucial election. Minnesota voters and election officials would benefit from the clarity that would come from an order by this Court on these issues.

Under the rules of procedure, Petitioners cannot unilaterally withdraw or dismiss their Petition. Dismissal is only allowed based on the agreement of all parties or default. Minn. R. Civ. App. P. 142. Neither is applicable here.

In addition, this morning, the Secretary filed a response and motion to dismiss. The Secretary's motion to dismiss is an active item before this Court that must be resolved. There are several pressing items of state law for the Court to resolve, as detailed in the Secretary's submission earlier this morning.

First, there is the issue of waiver and privity – specifically, whether Donald J. Trump for President waived its rights to challenge the consent decree in its August 18 submission to this Court, and whether Trump for President is in privity with the Republican electors who brought suit in federal court.

Second, there is the issue of laches. Petitioners waited too long to challenge a consent decree that has been in place since August 3. For some reason, they believe it is better to challenge the consent decree after the election. As explained in the Secretary's submission this morning, that position is absurd. Laches is fully briefed for the Court's consideration.

Third, there is the issue of the merits, in particular the state law question of whether the Secretary's implementation of the consent decree is a valid exercise of the Secretary's delegated authority under section 204B.47, which expressly authorizes the Secretary "to adopt alternative election procedures to permit the administration of any election affected by [a court] order," such as the court order and consent decree at issue here. Minn. Stat. § 204B.47. Rather than attempt to offer a counterargument to the clear

language of the statute, Petitioners ask this Court to drop their emergency Petition. Rather than have this important state law issue clarified now, they would prefer that the uncertainty hang over the election on election day and beyond.

To bring clarity to this election, this Court should issue an order clearly addressing each of these issues, instead of letting Petitioners evade them, only to bring a post-election challenge.

Dated: November 2, 2020

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