

FILED

November 2, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN SUPREME COURT

Case No. A20-1362

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

Petitioners,

v.

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

Respondent,

and

Robert LaRose, Teresa Maples, Mary
Sansom, Gary Severson, and Minnesota
Alliance for Retired Americans
Educational Fund,

Intervenor-Respondents.

**INTERVENOR-RESPONDENTS'
RESPONSE TO PETITIONERS'
REQUEST TO VOLUNTARILY
WITHDRAW PETITION**

A little over two hours ago, Petitioners Donald J. Trump for President, Inc., Senate Victory Fund, House Republican Campaign Committee, and Ryan J. Beam made an improper request to withdraw their petition. *See* Pet'rs' Req. to Voluntarily Withdraw Pet. ("Req."). They seek relief "[p]ursuant to this Court's inherent power to grant equitable relief." *Id.* at 1. But there would be nothing equitable about permitting the petition's unjustified dismissal.

- Petitioners' request is procedurally improper. They cite no caselaw or rule permitting them to unilaterally withdraw their petition after invoking this Court's

original jurisdiction. Instead, the Minnesota Rules of Civil Appellate Procedure permit voluntary dismissal here *only* “[i]f the parties to an appeal or other proceeding execute and file with the clerk of the appellate courts a stipulation that the proceedings be dismissed,” Minn. R. Civ. App. P. 142.01. No stipulation has been filed here; indeed, Intervenor-Respondents Robert LaRose, Teresa Maples, Mary Sansom, Gary Severson, and Minnesota Alliance for Retired Americans Educational Fund (collectively, the “Alliance”) do *not* agree that these proceedings should be dismissed. Given the posture of this case and the timing of Petitioners’ request, voluntary dismissal should not be permitted. *See Mowry v. Stewart State Bank*, 227 N.W. 660, 660 (Minn. 1929) (denying stipulated dismissal where some parties disagreed); *State v. Hanson*, 366 N.W.2d 377, 379 n.1 (Minn. Ct. App. 1985) (denying voluntarily dismissal sought after oral argument “[b]ecause of the timing of [the] request and [the] failure to obtain the [opposing party’s] agreement”); *cf. Moore v. Carl Backdahl Moving Co.*, No. A03-288, 2004 WL 51673, at *4 (Minn. Ct. App. Jan. 9, 2004) (emphasizing that dismissal is generally appropriate “when both parties agree”).

- Prompt adjudication of the lawfulness of the consent decree agreed to by the Alliance and Respondent Steve Simon, the Minnesota Secretary of State (the “Secretary”), and entered by Ramsey County District Judge Sara Grewing (the “Consent Decree”) is necessary to restore confidence on the eve of the election and ensure that the votes of all eligible Minnesotans will be counted. A definitive ruling on Petitioners’ claims from the State’s highest court is especially essential in light

of the U.S. Court of Appeals for the Eighth Circuit’s recent misinterpretation of Minnesota Statutes section 204B.47. *See Carson v. Simon*, No. 20-3139, 2020 WL 6335967, at *6–7 (8th Cir. Oct. 29, 2020) (per curiam); *see also* Intervenor-Resp’ts’ Resp. to Pet. & Pet’rs’ Informal Mem. (“Alliance Resp.”) 14–17 (explaining why section 204.47 authorizes Consent Decree). It would therefore be inequitable to dismiss the petition when the issues it raises are in need of clarification from this Court.

- The parties have fully briefed these issues, as instructed by the Court’s scheduling order. Given the need for this Court’s immediate resolution of the critical issues raised by Petitioners, *see* Alliance Resp. 1–2, 9–10, the Alliance respectfully requests that the Court proceed with adjudication of the issues already briefed and presented to it.
- Petitioners’ new request is merely an unpersuasive repackaging of their previous request to hold this case in abeyance. *See* Pet’rs’ Suppl. Informal Mem. 2–3. For the reasons discussed in the responses filed by both the Alliance and the Secretary, this matter should be neither dismissed nor held in abeyance. *See* Alliance Resp. 9–10; Resp. of Steve Simon to Minn. Stat. § 204B.44 Pet. & Mot. Dismiss (“Secretary Resp.”) 8–10.
- Petitioners should not be permitted to forum shop. Although Petitioners rely on the Eighth Circuit’s injunction to justify their request, *see* Req. 2, *this* Court, not the Eighth Circuit, is the ultimate arbiter of the critical issues of state law raised by Petitioners. Moreover, despite Petitioners’ argument that the relief in *Carson*

obviates the need for relief from this Court, *see* Req. 2 n.1, this case raises claims not at issue in *Carson*, *see* Alliance Resp. 10; Secretary Resp. 9—crucial distinctions that will become even more important in the event of post-election litigation, the possibility of which Petitioners acknowledged in their petition. *See* Pet. Pursuant to Minn. Stat. § 204B.44 ¶ 66.

- Petitioners’ request to dismiss without prejudice is particularly galling. As the Alliance has discussed, Petitioners’ wait-and-see litigation approach has already had prejudicial effects on the fair and orderly administration of this election. *See* Alliance Resp. 11–13. Any further punting or prevaricating by Petitioners will only serve to exacerbate these harms and hardships, leaving voters and election officials in suspended uncertainty both on Election Day and after.

For these reasons, the Alliance respectfully requests that the Court deny Petitioners’ request to voluntarily withdraw their petition.

Dated: November 2, 2020

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CERTIFICATION PURSUANT TO MINN. R. APP. P. 132

This motion was prepared using Microsoft Word 2016 in 13-point Times New Roman font. The motion complies with the type face limitations set forth in Minn. R. App. P. 132.01, subd. 3, and contains 755 words.

s/ Sybil L. Dunlop

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