

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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LEAGUE OF WOMEN VOTERS OF MINNESOTA	)	CIVIL FILE
EDUCATION FUND and VIVIAN LATIMER	)	NO. 20-1205 (ECT/TNL)
TANNIEHILL,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
STEVE SIMON, <i>in his official</i>	)	
<i>capacity as Secretary of State of</i>	)	
<i>Minnesota,</i>	)	<b>VIA ZoomGov</b>
	)	<b>VIDEO CONFERENCE</b>
Defendant,	)	
	)	
	)	
THE REPUBLICAN NATIONAL COMMITTEE	)	
and DONALD J. TRUMP FOR PRESIDENT,	)	
INC.,	)	
	)	
Intervenor Defendants,	)	
	)	
	)	
REPUBLICAN PARTY OF MINNESOTA,	)	Courtroom 3B
	)	Tuesday, June 23, 2020
Movant.	)	St. Paul, Minnesota
	)	11:00 A.M.

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**EXCERPT TRANSCRIPT FROM**

**FAIRNESS HEARING ON**

**STIPULATION AND PARTIAL CONSENT JUDGMENT AND DECREE**

[ COURT'S RULING FROM THE BENCH ]

BEFORE THE HONORABLE ERIC C. TOSTRUD  
UNITED STATES DISTRICT JUDGE

**A P P E A R A N C E S :**

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1 (1:20 p.m.)

2 P R O C E E D I N G S I N P R O G R E S S

3 I N O P E N C O U R T

4 ( V I A Z o o m G o v V I D E O C O N F E R E N C E )

5 THE COURT: All right. Thank you.

6 All right. As I indicated earlier, I think that  
7 given the nature of the claims in this case and the  
8 background circumstances against which it is litigated,  
9 speedy decisions are important, and so I am prepared to rule  
10 from the bench today and I'll do that. Let me make a couple  
11 of prefatory points for those who are on the phone.

12 Because I'm going to be ruling from the bench  
13 today, it may sound a little awkward to those who are  
14 uninitiated in this sort of thing, because I'm going to be  
15 citing cases as I describe my ruling here today and that  
16 will interrupt the flow of the reasoning some, but it's  
17 necessary to substantiate the legal basis in the law that I  
18 think drives this decision.

19 As I did before with the motions to intervene,  
20 I'll explain my ruling on the record and this will be the  
21 only record of this ruling apart from short text-only orders  
22 that will be entered memorializing it on the docket. I'll  
23 not issue a written opinion later.

24 Let me deal with two threshold issues first.  
25 There's an argument that the **Colorado River** abstention

1 doctrine, under that doctrine I should abstain from deciding  
2 this question at this time. I do not believe that **Colorado**  
3 **River** applies here for several reasons. I'll name four or  
4 five of them.

5 First, **Colorado River** by its nature requires  
6 abstention or permits abstention from the whole of a case,  
7 not from particular issues in the case.

8 Second, there are different parties and somewhat  
9 different claims at issue in the state case. As I  
10 understand it, the state case also involves claims under the  
11 Minnesota state constitution, but more to the point, the six  
12 factors I am to determine whether there are exceptional --  
13 or I am to apply, I should say, to determine whether there  
14 are exceptional circumstances justifying abstention are not  
15 met here.

16 There is no property over which the courts  
17 established jurisdiction.

18 There is no inconvenience to the federal forum.

19 I am concerned that separate actions may result in  
20 piecemeal litigation, but that is not uncommon when  
21 different parties file different lawsuits seeking  
22 essentially similar relief.

23 No one's made an argument about priority here,  
24 though this is the second filed case. I think the speed  
25 with which these cases have proceeded obviates any need to

1 consider that factor or any practical reason to base a  
2 decision to abstain here on that factor.

3 So, for those reasons, I just don't think the  
4 **Colorado River** abstention doctrine is a good fit.

5 I also do not think that the state case moots this  
6 case. There's a practical reason for that, which is the  
7 procedural posture of the state case. It is still pending.  
8 I'm not going to guess the likelihood of the consent decree  
9 in state court getting affirmed or reversed. That's not my  
10 point. My point is simply that there are proceedings  
11 ongoing there, and as long as those are ongoing, that state  
12 case cannot under the law serve to moot this case or render  
13 it moot. And here I would cite a case that the plaintiffs  
14 alluded to in their brief. The rule of law from that case  
15 is that a case or controversy is not rendered moot by a  
16 parallel state court decision that is either pending or  
17 likely to be appealed. That's **Myer vs. Americo Life, Inc.**,  
18 469 F.3d 731 (8th Cir. 2006).

19 So, I think the law requires me to move forward  
20 here and issue a decision, and I'll not approve the consent  
21 decree and I'll explain my reasons why here.

22 First, just so everybody knows, I understand the  
23 law that I'm obligated to apply here. The law requires me  
24 to exercise discretion to accept or reject a proposed  
25 consent decree. That's the **BP Amoco Oil** case, 277 F.3d

1 1012, an Eighth Circuit case from 2002.

2 I abuse my discretion "when a relevant factor that  
3 should have been given significant weight is not considered;  
4 when an irrelevant or improper factor is considered and  
5 given significant weight; and when all proper factors, and  
6 no improper ones, are considered, but [], in weighing those  
7 factors, [I] commit[] a clear error of judgment. That's  
8 ***Kern vs. Txo Production***, 738 F.2d 968, an Eighth Circuit  
9 case from 1984.

10 The Supreme Court has made clear that consent  
11 decrees should "spring from and serve to resolve a dispute  
12 within the court's subject-matter jurisdiction," "com[e]  
13 within the general scope of the case [from] the pleadings,"  
14 and "further the objectives of the law upon which the  
15 complaint was based." That's the ***Firefighters vs. City of***  
16 ***Cleveland*** case, 478 U.S. 501 (1986).

17 The Eighth Circuit instructs that relevant  
18 considerations to evaluate a consent decree: "include, but  
19 are not limited to, the interest of the public, federalism,  
20 the relative strength of Plaintiff's claim, and whether the  
21 consent decree resolves the actual controversy in the  
22 complaint." Here I would cite ***Dalton vs. Barrett***, 2020 WL  
23 420833. That is a Western District of Missouri case  
24 applying Eighth Circuit law from 2020.

25 When reviewing a proposed consent decree, the law

1 requires me to review it for fairness, reasonableness, and  
2 adequacy. I am not to rely on the standards for post-trial  
3 relief. **EEOC vs. Siouxland Oral Maxillofacial Associates,**  
4 578 F.3d 921 (8th Cir. 2009). It is true that the law  
5 prefers settlement agreements, and although that is true,  
6 the law is also clear that courts must not abdicate their  
7 duty to adjudicate controversies before them in accordance  
8 with the law merely because the parties have proposed a  
9 consent decree. **Angela R. by Hesselbein vs. Clinton,**  
10 999 F.2d 320 (8th Cir. 1993). Accordingly, a federal  
11 district court cannot merely "rubber stamp" a consent  
12 decree, but must instead "carefully consider[] the  
13 underlying facts and legal arguments ...."

14 In some cases, federal courts "give due deference  
15 to [a federal agency's] inherent expertise [] in determining  
16 whether to approve the consent decree," and I will assume  
17 for the time being that it is proper here to give the  
18 Secretary that kind of deference. Here I'm looking at  
19 **United States vs. City of Waterloo** as an example of that,  
20 2016 WL 254725 (Northern District of Iowa 2016).

21 Courts considering whether a consent decree is  
22 fair must consider both procedural fairness and substantive  
23 fairness. Procedural fairness turns on whether the parties  
24 "were ... negotiating in good faith and at arm's length."  
25 "To measure procedural fairness, a court should ordinarily

1 look to the negotiation process and attempt to gauge its  
2 candor, openness, and bargaining balance." That's the **Union**  
3 **Electric Company** case, 943 F.Supp. at 327.

4 Here, I have no basis to find that the consent  
5 decree is not procedurally fair. We've got multiple  
6 individuals involved on both sides of this case between  
7 Plaintiffs and Defendants, several lawyers and their  
8 parties, their clients. There were no pre-suit  
9 negotiations. The settlement agreement -- well, the consent  
10 decree, I should say -- went through multiple drafts and  
11 several rounds of communication over a relatively extended  
12 period of time given the speed with which this case has  
13 proceeded. The negotiations ramped up after the motion for  
14 a preliminary injunction was filed. Material terms -- I  
15 should say terms that both parties considered material --  
16 were deleted. And I think most importantly, counsel here  
17 have represented that the negotiations were at arm's length  
18 and I have no difficulty whatsoever accepting that  
19 representation. Against that backdrop, I cannot say that  
20 the terms of the settlement agreement -- or of the consent  
21 decree, rather -- themselves show procedural unfairness.

22 I'll confess that I've read numerous cases in  
23 preparation for this hearing, and I'm not sure of the  
24 difference between substantive fairness, reasonableness, and  
25 adequacy. My take on these cases is that these elements

1 call for consideration of overlapping factors. So I'll  
2 quote a couple of cases here that I think fairly describe  
3 the standard that I am to apply.

4 "When determining whether a consent decree is  
5 reasonable, the court must consider the technical adequacy  
6 of the remedies, the adequacy of the settling defendants'  
7 obligations, and the savings represented by settlement over  
8 litigation." That's from ***United States vs. Mallinckrodt,***  
9 ***Inc.***, 2007 WL 1231665 (Eastern District of Missouri 2007).

10 In evaluating reasonableness, I am not to examine  
11 whether the settlement is one which I myself might have  
12 fashioned or consider to be ideal, but whether the proposed  
13 decree is fair, reasonable, and faithful to the objectives  
14 of the governing law. At the same time, however, as we've  
15 talked about today a number of times, "A consent decree is a  
16 judicial act. Thus, before entering such a decree, the  
17 Court must ensure that it does not 'put the court's sanction  
18 on and power behind a decree that violates [either the]  
19 Constitution, statute, or jurisprudence.'" Here I'm citing  
20 ***Missouri vs. Westinghouse Electric, LLC***, 487 F.Supp. 2d 1076  
21 (Eastern District of Missouri 2007). In other words, I must  
22 be satisfied that the decree represents a reasonable,  
23 factual and legal determination, and relevant considerations  
24 here include the interest of the public, federalism, the  
25 relative strength of Plaintiff's claim, and whether the

1 consent decree resolves the actual controversy in the  
2 complaint.

3 I find that the consent decree is not  
4 substantively fair or reasonable because it would, if  
5 approved, impose relief that goes well beyond remedying the  
6 harm Plaintiffs allege to suffer in support of their  
7 as-applied challenge to Minnesota's witness requirement for  
8 the August primary. It would impose injunctive relief that  
9 is not necessary or justified by Plaintiffs' factual  
10 showing.

11 I want to be clear about something here. I have  
12 no doubt that Ms. Latimer Tanniehill has established that  
13 she suffers from serious health conditions, that she  
14 reasonably has gone to great lengths to protect herself from  
15 exposure to COVID-19, that if she contracted COVID-19, she  
16 would be at grave risk. I am concerned that Minnesota's  
17 witness requirement would, if enforced against her in  
18 connection with the August primary, jeopardize both the  
19 efforts that she has taken not to expose herself to the  
20 virus and her health. But I also want to be clear that I'm  
21 not deciding whether Plaintiffs have or have not shown that  
22 the issuance of a consent agree or injunctive relief  
23 excusing Ms. Latimer Tanniehill -- and others like her who  
24 reasonably fear that complying with the witness requirement  
25 will risk their health and safety -- from complying with the

1 witness requirement for the August primary would be  
2 justified. I am not deciding that issue. I do think it's  
3 important nonetheless to acknowledge these concerns. The  
4 problem as I see it under the law is that the consent decree  
5 goes well beyond that and, in doing so, violates settled  
6 legal principles that I understand I am required here by the  
7 Eighth Circuit to apply in adjudicating the reasonableness  
8 of the decree.

9 Foremost among them, injunctive relief must be  
10 narrowly tailored to remedy only the specific harms  
11 established by the plaintiff, and I'll cite as one example  
12 of a case espousing -- or articulating that rule, I should  
13 say, *Lytle, L-Y-T-L-E, vs. United States Department of*  
14 *Health & Human Services*, 612 Fed. App'x 861. That's an  
15 Eighth Circuit case from 2015.

16 The harms established by Plaintiffs here are risk  
17 of exposure to COVID-19 owing to health conditions and  
18 personal circumstances that give one a reasonable fear that  
19 complying with the witness requirement will risk one's  
20 health and safety. That's not everyone. Some individuals,  
21 for example, may have compromised health but may reside with  
22 others who may fulfill the witness requirement. Many others  
23 do not face the health challenges faced by Ms. Latimer  
24 Tanniehill. Plaintiffs have not with their as-applied  
25 challenge shown a justification for the Secretary's blanket

1 refusal to enforce the witness requirement. In other words,  
2 that blanket refusal -- and the injunctive force that would  
3 go with it if the consent decree were approved -- go well  
4 beyond Plaintiffs' injuries, and Plaintiffs have not  
5 established a need for wholesale non-enforcement of the  
6 witness requirement.

7 The Secretary, as I understand the consent decree,  
8 agrees with this. The consent decree describes his position  
9 at paragraph 15, and it makes clear that he agrees, quote,  
10 "not to enforce the witness requirement for the  
11 August primary for absentee voters who fear that complying  
12 with the requirement will risk their health and safety and  
13 possibly expose them to COVID-19, close quote. It seems  
14 unreasonable to read that sentence, or clause, and conclude  
15 it is intended to describe every Minnesota absentee voter.  
16 I think it is more reasonable to conclude that describes a  
17 subset of Minnesotans, yet the remedy the consent decree  
18 would impose goes beyond that. No explanation has been  
19 provided how such an expansive remedy is needed to address  
20 the rights of these plaintiffs in this case.

21 And for those reasons, I will not approve the  
22 proposed consent decree.

23 I would ask where the case goes from here, but I  
24 appreciate that there are many possibilities, and I don't  
25 think it's fair to put you all on the spot and predict an

1 answer. Rather than do that or try to engage in that  
2 discussion, I'll simply ask at this time whether there's  
3 anything further anyone thinks we need to cover here today.

4 And I'll start with you, Ms. Taylor, for the  
5 Secretary. Anything further you think we need to cover here  
6 today?

7 MS. TAYLOR: Nothing further, Your Honor.

8 THE COURT: Okay. Mr. Diaz for the plaintiffs?

9 MR. DIAZ: Not for today, Your Honor.

10 THE COURT: All right. And then finally  
11 Mr. Norris for the intervenors.

12 MR. NORRIS: Nothing, Your Honor. Thank you.

13 THE COURT: Okay. Thank you, everyone. I  
14 appreciate the advocacy in this case. I don't say this very  
15 often, but I'm going to say it here. It was just excellent  
16 on all sides and I appreciate that. It serves the public  
17 interest and it makes our job a lot easier and I am very  
18 appreciative of that, so I thank everyone for their  
19 excellent advocacy here.

20 All right. We will stand adjourned. Thank you.

21 (Proceedings concluded at 1:38 p.m.)

22 \* \* \* \*

23

24

25

**C E R T I F I C A T E**

I, **TIMOTHY J. WILLETTE**, Official Court Reporter for the United States District Court, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes, taken in the aforementioned matter, to the best of my skill and ability.

*/s/ Timothy J. Willette*

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