

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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>)	VIA ZoomGov
)	VIDEO CONFERENCE
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.

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

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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 * * * *

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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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