

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.

**MOTION TO ADD RECORD
MATERIALS**

Pursuant to Minnesota Rule of Civil Appellate Procedure 127, Intervenor-Respondents Robert LaRose, Teresa Maples, Mary Sansom, Gary Severson, and Minnesota Alliance for Retired Americans Educational Fund (collectively, the “Alliance”) respectfully request that this Court add to the record documents that are necessary to resolve the petition filed by Petitioners Donald J. Trump for President, Inc., Senate Victory Fund, House Republican Campaign Committee, and Ryan J. Beam. *See* Pet. Pursuant to Minn. Statute § 294B.44 (“Pet.”). These proposed record materials are limited and targeted to resolving the petition, and they are attached, for the Court’s review, to the Declaration of Abha Khanna, filed concurrently with this motion.

ARGUMENT

This Court has the authority to add materials to the record before it to resolve the petition. Minnesota Statutes section 204B.44 provides the Court with original jurisdiction over certain election-related proceedings and contemplates that the Court will make factual findings. *See* Minn. Stat. § 204B.44(b); *see also Monaghan v. Simon*, 888 N.W.2d 324, 326 (Minn. 2016) (per curiam). Even in direct appeals, where the record is presumptively limited to “[t]he documents filed in the trial court, the exhibits, and the transcript of the proceedings,” Minn. R. Civ. App. P. 110.01, this Court is nonetheless empowered to “supplement the record.” *State v. Rhodes*, 657 N.W.2d 823, 835 n.5 (Minn. 2003); *see also* Minn. R. Civ. App. P. 110.05.

The Alliance asks this Court to exercise its authority to consider materials beyond the petition’s four corners because additional record materials are necessary to resolve Petitioners’ claims and the Alliance’s arguments. Petitioners assert that Respondent Steve Simon, the Minnesota Secretary of State (the “Secretary”), engaged in a “wrongful act, omission, or error” under Minnesota Statutes section 204B.44 “by deciding that he will not enforce Minnesota’s mail-in ballot deadlines.” Pet. ¶¶ 4–5. The petition acknowledges that the Secretary’s conduct derives from “a consent decree,” which was entered by a state court in an action brought by the Alliance (the “Consent Decree”). Pet. ¶¶ 4, 39; *see also LaRose v. Simon*, No.62-CV-20-3149 (Ramsey Cty. Dist. Ct.). The petition also asserts that the Secretary’s “actions are the subject [of] a pending federal court action.” Pet. ¶ 62; *see also Carson v. Simon*, No. 20-CV-2030 (NEB/TNL) (D. Minn.). Based on post-petition developments, Petitioners now ask this Court to hold this case “in abeyance pending any

vacatur or material modification of the injunction” entered by the federal court as a result of the U.S. Court of Appeals for the Eighth Circuit’s opinion in *Carson*. Pet’rs’ Suppl. Informal Mem. (“Mem.”) 3; *see also Carson v. Simon*, No. 20-3139, 2020 WL 6335967 (8th Cir. Oct. 29, 2020) (per curiam).

To assess whether the Secretary engaged in a “wrongful act, omission, or error,” it is necessary to consider the records of the proceedings in *LaRose*, the state court action that resulted in the Consent Decree, and *Carson*, the related federal matter. Indeed, *LaRose* and the Consent Decree underlie the petition and are referenced throughout. *See, e.g.*, Pet. ¶¶ 39–58. The *LaRose* record is probative for an additional reason: Petitioner Donald J. Trump for President, Inc., a party in a related state court action consolidated with *LaRose* on appeal, agreed in a stipulation filed with this Court to “waive the right to challenge in any judicial forum” both the Consent Decree and related state courts orders. Declaration of Abha Khanna (“Khanna Decl.”) Ex. 9, at 2.

Consideration of the *Carson* record is also necessary to resolve the petition, which discusses that pending federal action and raises the specter of post-Election Day challenges to the Consent Decree, “either in the ongoing *Carson* litigation or in an action brought after Election Day.” Pet. ¶¶ 62, 66. Moreover, Petitioners now ask the Court to hold this matter in abeyance based on a preliminary injunction entered in that pending federal case. Mem. 3.

The Alliance requests that the Court add an additional document not yet filed in either *LaRose* or *Carson*—information from the U.S. Postal Service (“USPS”) website “on requesting mail-in ballots and voting by mail.” Khanna Decl. Ex. 20, at 1. USPS explains

that domestic voters should “mail their completed ballots before Election Day and *at least one week prior* to [the applicable] deadline.” *Id.* Ex. 20, at 2 (emphasis added)—vital information that informs the Alliance’s discussion of laches and the need for this Court to uphold the lawfulness of the Consent Decree.

Since the probative filings from *LaRose* and *Carson* and the USPS information are essential to determining whether the Secretary engaged in a “wrongful act, omission, or error,” the Exhibits to the Declaration of Abha Khanna should be added to the record.

CONCLUSION

For the foregoing reasons, the Alliance respectfully requests that the Court add the Exhibits to the Declaration of Abha Khanna to the record before the Court.

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 797 words.

/s/ Sybil L. Dunlop
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