

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Dai Thao, Amee Xiong, Chong Lee, and
Nelsie Yang,

Plaintiffs,

v.

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

Defendant.

Case Type: Other Civil
Court File No. 62-CV-20-1044
The Honorable Thomas A. Gilligan, Jr.

CONSENT DECREE

The parties agree to the following findings of fact and conclusions of law and enter into the following Consent Decree.

DEFINITIONS

1. The following definitions shall be used in construing this Consent Decree:
 - a. “At-Issue Restrictions” means the prohibition on a candidate for election assisting a voter and the prohibition on any person assisting more than three voters in an election, as set forth in Minn. Stat. § 204C.15, subd. 1.
 - b. “Election officials” means any official charged with administering governmental elections in Minnesota, including but not limited to state, county, municipal, township, and school district officials.

PARTIES

2. Plaintiffs Dai Thao, Amee Xiong, Chong Lee, and Nelsie Yang (“Plaintiffs”) brought the above-captioned case, seeking a declaration that two specific provisions in Minn. Stat. § 204C.15, subd. 1, which prohibit a candidate for election from assisting a voter and prohibit any person from assisting more than three voters in an election, are preempted by the Voting Rights Act, 52 U.S.C. § 10508.
3. Defendant Minnesota Secretary of State Steve Simon is a sworn Constitutional Officer whose duties include serving as the chief election officer of the State and overseeing elections and election laws in the State. The Secretary acts on behalf of the State of Minnesota in exercising his duties regarding federal, state, county and local elections, promulgating rules and executing election laws within the State, and upholding the constitutionally-protected right to vote.

4. Secretary Simon appears by and through the Office of the Minnesota Attorney General. The Minnesota Attorney General is a sworn Constitutional Officer and the chief legal officer of the State of Minnesota.

SCOPE

5. The actions required by this Consent Decree are within the authority of the Office of the Minnesota Secretary of State. The permanent injunction and all relief ordered in the Consent Decree apply to and bind the Minnesota Secretary of State in his official capacity, including any and all successors in office, employees, and assigns, and all persons in active concern or participation with them.

BACKGROUND AND FACTS

6. Minnesota Statutes, section 204C.15, subdivision 1, states in full:

Physical assistance in marking ballots.

A voter who claims a need for assistance because of inability to read English or physical inability to mark a ballot may obtain the aid of two election judges who are members of different major political parties. The election judges shall mark the ballots as directed by the voter and in as secret a manner as circumstances permit. A voter in need of assistance may alternatively obtain the assistance of any individual the voter chooses. Only the following persons may not provide assistance to a voter: the voter's employer, an agent of the voter's employer, an officer or agent of the voter's union, or a candidate for election. The person who assists the voter shall, unaccompanied by an election judge, retire with that voter to a booth and mark the ballot as directed by the voter. No person who assists another voter as provided in the preceding sentence shall mark the ballots of more than three voters at one election. Before the ballots are deposited, the voter may show them privately to an election judge to ascertain that they are marked as the voter directed. An election judge or other individual assisting a voter shall not in any manner request, persuade, induce, or attempt to persuade or induce the voter to vote for any particular political party or candidate. The election judges or other individuals who assist the voter shall not reveal to anyone the name of any candidate for whom the voter has voted or anything that took place while assisting the voter.

7. The Minnesota Legislature enacted the first version of Minn. Stat. § 204C.15, subd. 1, in 1981. Earlier versions of Minnesota's voter assistance statutes, though, date back to the 1890s. *See* Minn. Stat. § 4.57 (1891); *State v. Gay*, 59 Minn. 6 (1894).

8. The Secretary of State's Office does not enforce chapter 204C and cannot prosecute violations. The Office provides guidance to Minnesota's counties, which are responsible for enforcing the chapter, and trains election judges on election laws, including the laws in the chapter.

9. In 1965, the Voting Rights Act was passed by Congress to ensure and protect the right of American citizens to vote. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433-34 (2006). Under the Act, “[a]ll citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, . . . county, [or] city, . . . shall be entitled and allowed to vote at all such elections.” 52 U.S.C. § 10101(a)(1).

10. In 1982, Congress added Section 208 of the Voting Rights Act, which provides that “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance *by a person of the voter’s choice*, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508 (emphasis added).

11. The Senate Judiciary Committee explained that this provision was specifically designed to protect individuals at the polls from discrimination. S. Rep. No. 97-417, 1982 U.S.C.C.A.N. 177, 240.

To limit the risks of discrimination against voters in these specified groups and avoid denial or infringement of their right to vote, the Committee has concluded that they must be permitted to have the assistance of a person of their own choice. The Committee concluded that this is the only way to assure meaningful voting assistance and to avoid possible intimidation or manipulation of the voter. To do otherwise would deny these voters the same opportunity to vote enjoyed by all citizens.

Id. at 241.

12. The Voting Rights Act expressly preempts any state law that imposes restrictions that conflict with and are contrary to its protections. 52 U.S.C. § 10101(a)(1). Minnesota does not have the authority to enforce a criminal law that is preempted by the Supremacy Clause of the United States Constitution.

13. In 2017, Mr. Dai Thao was prosecuted in Ramsey County for assisting an eligible Hmong-American voter who was elderly and sought Mr. Thao’s assistance, because Mr. Thao was on the ballot as a candidate in the election for the Mayor of St. Paul. Ramsey County District Court Judge Nicole Starr issued an Order finding that Minn. Stat. § 204C.15, subd. 1, conflicts with the Voting Rights Act, 52 U.S.C. § 10508, and is preempted. As she explained:

[T]he legislative history of the VRA demonstrates that Congress considered situations such as this, and determined that the overriding interest was access to the voting versus possible voter manipulation. The committee made special note of the need for flexibility with regard to insular communities comprised of “language minorities” where there are few choices of people who speak the same language. . . . Congress saw the individual’s ability to determine who would be a trustworthy assistant as an internal check against manipulation.

Findings of Fact, Conclusions of Law, and Order, *State of Minnesota v. Dai Thao*, 62-CR-18-927 (Ramsey County District Court Oct. 23, 2018).

14. Similarly, in 2017, the Fifth Circuit Court of Appeals examined a Texas law requiring that interpreters assisting voters must be registered to vote in the county where the voter needs assistance. *OCA-Greater Houston v. Texas*, 867 F.3d 604, 607 (5th Cir. 2017). The court held the state law was preempted because it “impermissibly narrows the right guaranteed by Section 208 of the VRA.” *Id.* at 615.

CONCLUSIONS OF LAW

15. Minnesota Statutes, section 204C.15, subdivision 1, conflicts with the Voting Rights Act, 52 U.S.C. § 10508, because it prohibits conduct expressly allowed by the Voting Rights Act. Specifically, Minnesota law prohibits a candidate for election from assisting a voter and prohibits any person from assisting more than three voters in an election. Minn. Stat. § 204C.15, subd. 1.

16. Minnesota Statutes, section 204C.15, subdivision 1, acts as an obstacle to the accomplishment and execution of the full purposes and objectives of 52 U.S.C. § 10508.

17. Therefore, the at-issue restrictions, set forth in Minn. Stat. § 204C.15, subd. 1, are preempted under the Supremacy Clause of the United States Constitution.

ORDER

18. With the consent of the parties, it is ordered, adjudged and decreed that Defendant is permanently enjoined as follows.

a. Defendant agrees that the at-issue restrictions, as set forth in Minn. Stat. § 204C.15, subd. 1, are preempted by the Voting Rights Act and that any enforcement of the at-issue restrictions by election officials in Minnesota would violate the Supremacy Clause of the United States Constitution;

b. Within 30 days of the Court entering judgment on this Consent Decree, Defendant shall provide notice, in a form agreed upon by the parties and attached hereto as Exhibit A, to all county attorneys and election officials in Minnesota, that the at-issue restrictions from Minn. Stat. § 204C.15, subd. 1, are unenforceable;

c. Within 30 days of the Court entering judgment on this Consent Decree, Defendant shall revise all election judge training materials that the Defendant’s Office prepares and in-person trainings that the Defendant’s Office conducts to eliminate any reference to the at-issue restrictions, including in powerpoints, tests, videos, etc. The changes shall be made before trainings occur for the November 2020 election;

d. Within 30 days of the Court entering judgment on this Consent decree, Defendant shall arrange for the translation of the following quoted statement, which Defendant will include

in the foreign-language signs to be posted at poll sites: “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the employer or agent of that employer or officer or agent of the voter’s union;”

e. Within 3 days of the Court entering judgment on this Consent Decree, Defendant will submit a request to the Minnesota Attorney General’s Office for an opinion on the issue of whether the at-issue restrictions are preempted by Section 208 of the Voting Rights Act. The Attorney General’s Office will issue an opinion concluding that the at-issue restrictions are preempted by Section 208 of the Voting Rights Act, based on the same reasoning and case law in this Order. The Attorney General’s Office will issue the opinion in time for its inclusion as an attachment to the notice sent pursuant to paragraph 18(b) of this decree.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: April 21, 2020



Gilligan, Thomas(Judge)
Apr. 21 2020 3:40 PM

Thomas A. Gilligan, Jr.
Judge of District Court

The undersigned parties enter into this Consent Decree.

PLAINTIFFS DAI THAO, AMEE XIONG,
CHONG LEE, AND NELSIE YANG

Date: March 20, 2020

By: s/ Alethea M. Huyser _____

Name: Alethea M. Huyser _____

Their: Attorney of Record _____

MINNESOTA SECRETARY OF STATE STEVE
SIMON

Date: March 20, 2020

By: Steve Simon _____

Name: Steve Simon

Its: Secretary of State

OFFICE OF THE MINNESOTA ATTORNEY
GENERAL

Date: March 20, 2020

By: s/ Liz Kramer

Name: Liz Kramer

Its: Solicitor General

Exhibit A

[Insert Date]

[Insert Addressee]

Re: Voter Assistance Allowed Under Voting Rights Act

Dear Sir or Madam:

I write to provide you notice that a Consent Order has been issued by a Minnesota District Court and an Opinion of the Minnesota Attorney General, clarifying the legal rights of voters to obtain assistance by a person of the voter's choice. Copies of both are attached.

Pursuant to the Voting Rights Act, “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance *by a person of the voter's choice*, other than the employer or agent of that employer or officer or agent of the voter's union.” 52 U.S.C. § 10508 (emphasis added). Courts have found that state law provisions seeking to place any further restrictions on a voter's choice for an assistor are preempted by the VRA. Findings of Fact, Conclusions of Law, and Order (Oct. 23, 2018), *State of Minnesota v. Dai Thao*, 62-CR-18-927; *OCA-Greater Houston v. Texas*, 867 F.3d 604, 607 (5th Cir. 2017).

The Consent Decree declares that the VRA preempts two restrictions in Minnesota law. Specifically, Minn. Stat. 204C.15, subd. 1, prohibits a candidate for election from assisting a voter and prohibits any person from assisting more than three voters in an election. Because these provisions narrow the rights guaranteed by Section 208 of the VRA, they are preempted and unenforceable.

All election materials prepared and provided by your office should be consistent with the attached Order and Opinion. It is likewise important that your office use up-to-date materials in training election judges and for posting at election sites.

Thank you for your attention to this matter.

Sincerely,

[Insert Signature]