

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

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

Case Type: Other Civil

Plaintiffs,

v.

COMPLAINT

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

Defendant.

Plaintiffs Dai Thao, Amee Xiong, Chong Lee, and Nelsie Yang for their Complaint, state and allege as follows:

INTRODUCTION

1. The right to vote is a fundamental right, protected by the United States and Minnesota Constitutions.
2. The Voting Rights Act of 1965 was passed to ensure that states and local governments do not erode the rights of eligible voters to access and cast election ballots.
3. In 1985, Congress amended the Voting Rights Act to expressly secure ballot access for eligible voters who need assistance to cast their ballot by reason of blindness, disability, or inability to read or write and ensure that eligible voters are not disenfranchised simply because of limitations in their language or disability. With three narrow exceptions—for the voter’s employer, that employer’s agent, or an agent of the voter’s union—the Voting Rights Act ensures that the voter shall have the assistance of “*a person of the voter’s choice.*” 52 U.S.C. § 10508 (emphasis added).

4. By contrast, Minnesota Statute § 204C.15, subd. 1 prohibits eligible voters from seeking assistance from persons allowed under the Voting Rights Act. Specifically, Minnesota makes it a criminal offense for an individual to assist a voter if such individual has already assisted three voters or if the individual is a candidate for office. Minn. Stat. § 203B.03 subd. 1 (a)(7) and subd. 2.

5. The Plaintiffs are all Hmong-Americans that have either needed assistance in voting and/or provided assistance to other eligible voters in Minnesota. They are representative of Minnesotans throughout the state struggling to make the voices of their communities heard by voting. A clear example of this struggle is the story of Plaintiff Dai Thao, Saint Paul's first Hmong-American city councilmember. He was criminally prosecuted when, while a candidate for mayor of St. Paul, he agreed to help a neighbor who requested his assistance to cast her ballot. The voter was a Hmong-speaker and had a visual impairment. She needed assistance translating and marking her ballot. Mr. Thao helped the voter cast her ballot as she directed and was criminally prosecuted for providing that assistance. Although Mr. Thao fought the charges and was acquitted of all charges, the criminal statute remains on the books and stands as an impediment to the fundamental right to vote and democratic ideals.

6. The limitation on voter assistance in Minn. Stat. § 204C.15, subd. 1 is inconsistent with the guarantees of the Voting Rights Act and unconstitutional under both the United States and Minnesota Constitutions.

PARTIES

7. Plaintiff Dai Thao is the elected Councilmember representing Ward 1 at the St. Paul City Council. Mr. Thao was first elected to the St. Paul City Council in November 2013. Mr. Thao was reelected on November 3, 2015 and November 5, 2019.

8. Plaintiff Amee Xiong is a community organizer in the Hmong community and has worked as a campaign manager for Dai Thao, to whom she is also married. Ms. Xiong has sought to assist eligible voters who are unable to vote without assistance but has been limited in her ability to do so by Minn. Stat. § 204C. In the next election, Ms. Xiong plans to help any voter who needs and requests her assistance in the voting booth.

9. Plaintiff Chong Lee is a first-generation Hmong-American. She was born in Thailand and now lives in Ramsey County and volunteers as a community organizer in the Hmong community. Ms. Lee has benefitted from the assistance of others in voting. Ms. Lee has also sought to assist eligible voters who are unable to vote without assistance but has been limited in her ability to do so by Minn. Stat. § 204C. In the next election, Ms. Lee plans to help any voter who needs and requests her assistance in the voting booth.

10. Plaintiff Nelsie Yang is the first Hmong-American woman to serve on the Saint Paul City Council. Prior to being elected to office, she worked for TakeAction Minnesota, a statewide network of people working to realize racial and economic equity across Minnesota. In her work then and now, Ms. Yang is committed to empowering communities of color; this includes providing voting assistance to eligible voters. But Ms. Yang has been limited in her ability to do so by Minn. Stat. § 204C. In the next election, Ms. Yang plans to help any voter who needs and requests her assistance in the voting booth.

11. Defendant Steve Simon is sued in his official capacity as the Minnesota Secretary of State (the “Secretary”). The Secretary has sworn under oath to uphold the Constitution of the State of Minnesota in carrying out his duties, which include serving as the chief election officer of the State and overseeing elections and election laws in the State.

12. 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.

The Secretary develops and implements policies and advises county officials on election conduct, including conduct in state polling places. The Secretary is responsible for implementation and enforcement of Minn. Stat. § 204C and related provisions.

VENUE

13. Venue is proper in this Court under Minn. Stat. § 542 because this cause of action arose in Ramsey County.

JURISDICTION

14. This Complaint raises claims under the U.S. and Minnesota Constitutions and the laws of the United States and the State of Minnesota. Thus, this Court has jurisdiction over all of Plaintiffs' claims.

15. This Court is authorized to grant declaratory relief pursuant to the Declaratory Judgments Act. Minn. Stat. § 555.01. The Declaratory Judgments Act “is remedial, intended to settle and to afford relief from uncertainty with respect to rights, status, and other legal relations.” *Holiday Acres No. 3 v. Midwest Fed. Savs. & Loan Ass’n of Minneapolis*, 271 N.W.2d 445, 447 n.2 (Minn. 1978); *see also* Minn. Stat. § 555.12 (stating that the Act “is to be liberally construed and administered”).

16. District courts of Minnesota are courts of general jurisdiction. Minn. Stat. § 484.01; Minn. Const. art. VI, § 3. Under Minnesota Rule of Civil Procedure 65, district courts also have the authority to grant injunctive relief.

BACKGROUND

I. The Right To Vote Is A Fundamental Right.

17. “There is no right more basic in our democracy than the right to participate in electing our political leaders.” *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 190 (2014). Moreover, “[i]t is beyond cavil that ‘voting is of the most fundamental significance under our constitutional structure.’” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (quoting *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)).

18. Voting involves both a form of speech or expressive conduct and a means of political association and is protected under the First and Fourteenth Amendments of the United States Constitution. *See, e.g., id.; see also Doe v. Reed*, 561 U.S. 186, 224 (2010); *id.* at 224 (Scalia, J., concurring) (“We have acknowledged the existence of a First Amendment interest in voting . . .”); *California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000). Indeed, the right to vote is the “fundamental political right . . . preservative of all rights.” *Reynolds v. Sims*, 377 U.S. 533, 561 (1964) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)).

19. The right to vote also includes the right of eligible voters to access the ballot. State laws restricting ballot access implicate “interwoven strands of liberty” because they place “burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms.” *Anderson v. Celebrezze*, 460 U.S. 780, 787-89 (1983).

II. The Voting Rights Act Secures Access To The Ballot For All Citizens, Regardless of Language or Disability.

20. In 1965, the Voting Rights Act (“the Act”) was passed by Congress to ensure that state and local governments do not pass laws or policies that deny American citizens the right to

vote. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433-34 (2006) (“The purpose of the Voting Rights Act is to prevent discrimination in the exercise of the electoral franchise. . . .”) (quoting *Georgia v. Ashcroft*, 539 U.S. 461, 490 (2003))).

21. In enacting the Voting Rights Act, Congress found that “through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process.” 52 U.S.C. § 10503(a). “In order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.” *Id.*; see also 52 U.S.C. § 10508; 42 U.S.C. § 12132.

22. 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 elections” and “any constitution, law, custom, usage, or regulation of any State to the contrary notwithstanding.” 52 U.S.C. § 10101(a)(1).

23. In order to effectuate that end, “[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).

24. The Senate Judiciary Committee explained that this provision was specifically designed to protect individuals at the polls from discrimination and from being “unduly influenced or manipulated.” S. Rep. No. 97-417, 1982 U.S.C.C.A.N. 177, 240.

To limit the risks of discrimination against voters in these specific 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.

III. Minnesota Prohibits Voters From Exercising Their Rights Under The Voting Rights Act.

25. Despite the guarantees of the Voting Rights Act, Minnesota law restricts who a voter may seek assistance from.

26. Minnesota law states that an eligible voter may have assistance casting a ballot if they have “an inability to read English or a physical inability to mark a ballot.” Minn. Stat. § 204C.15, subd. 1 provides that a “voter in need of assistance may alternatively obtain the assistance of any individual the voter chooses.”

27. Contrary to that assertion, Minn. Stat. § 204C.15 actually prohibits eligible voters from obtaining assistance from persons otherwise permitted by the Voting Rights Act, including: (i) a candidate for election; and (ii) any person who has already assisted three voters in that same election.

28. A violation of Minn. Stat. § 204C.15 is a criminal offense.

IV. Plaintiff Dai Thao Was Criminally Charged In Minnesota For Helping An Elderly Hmong Voter Who Requested His Assistance With Their Ballot.

29. Despite the guarantees provided for in the Voting Rights Act, Plaintiff Dai Thao was charged with violating Minnesota law when he agreed to help an eligible Hmong-American voter who was elderly and sought his assistance.

30. In November 2017, Mr. Thao was a Saint Paul City Councilman and a candidate on the ballot in the election for the Mayor of St. Paul.

31. During the 2017 general election, in-person absentee voting was available. From October 31, 2017 to November 6, 2017, eligible voters could vote at six locations in the City of Saint Paul, including at the Martin Luther King Recreation Center.

32. On November 6, 2017, Mr. Thao approached a group of elderly men and women near his home and encouraged them to vote. Mr. Thao informed the group that he was a candidate for mayor, inquired whether anyone in the group needed assistance in voting, and offered to help members of the group if they needed assistance.

33. One member of the group, Voter 1, was at the time a 63-year-old woman and eligible to vote. Voter 1's native language is Hmong, and she does not speak the English language. Voter 1 indicated that she had not yet voted and wanted to do so before leaving town later that day. Mr. Thao assisted Voter 1, and election judges, so that Voter 1 could vote in the election in accordance with her wishes.

34. Based only on these facts, the State of Minnesota charged Mr. Thao with three criminal offenses:

- Count I: Marking a ballot without lawful authorization, in violation of Minn. Stat. § 204C.15, subd. 1, a gross misdemeanor.
- Count II: Engaging in Misconduct In or Near a Polling Place, in violation of Minn. Stat. § 204C.06, subd. 2 and § 645.241, a petty misdemeanor.
- Count III: Unlawfully Assisting a Voter, in violation of Minn. Stat. § 204C.15, subd. 1 and § 645.241, a petty misdemeanor.

35. Mr. Thao brought a Motion to Dismiss and a Motion for a Verdict of Acquittal. Mr. Thao argued that the prosecution of him violated the Voting Rights Act and the Fourteenth Amendment of the United States Constitution, as well as his First Amendment Rights.

Alternatively, Mr. Thao argued that the State of Minnesota could not prove a violation of law based on the facts alleged.

36. Ramsey County District Court Judge Nicole Star issued an Order finding that Minnesota 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 trustworthy assistant as an internal check against manipulation.

37. On November 9, 2018, the Court issued a verdict of Not Guilty for all counts based on Mr. Thao reasonable reliance on the actions of the election judges.

38. Mr. Thao was re-elected. Because the Voting Rights Act allows him to do so, if asked to again to provide assistance by an eligible voter, Mr. Thao plans to do so.

39. Likewise, Amee Xiong is an active member of community who speaks both Hmong and English languages. She desires to assist community members and neighbors who need assistance casting their ballots in upcoming elections and who request her assistance, even if she has already assisted three other voters.

40. Ms. Xiong is limited from providing the assistance voters request of her by the prohibitions in § 204C.15, subd. 1.

41. Chong Lee is a first generation bi-lingual Hmong-American who was born in Thailand and now lives in Ramsey County. Ms. Lee has benefitted from others assisting her with voting in prior elections. In more recent elections, she has also provided assistance in voting to others. Ms. Lee desires to continue to provide assistance to community members and neighbors

who need assistance casting their ballots in upcoming elections and who request her assistance, without being limited by the three-voter restriction.

42. Ms. Lee is limited from providing the assistance voters request of her by the prohibitions in § 204C.15, subd. 1.

43. Nelsie Yang is a Saint Paul City Councilmember. She desires to assist community members and neighbors who need assistance casting their ballots in upcoming elections and who request her assistance, even if she has already assisted three other voters.

44. Ms. Yang is precluded from providing the assistance voters request of her by the prohibitions in § 204C.15, subd. 1.

V. Minnesota Laws Disenfranchises Eligible Voters Who Have An Inability to Read English or a Physical Inability to Mark a Ballot.

45. Eligible voters who need assistance may have several reasons to seek a specific person, regardless of their candidacy or help of others. For example, a voter may: (i) want to receive assistance from someone they know and trust; or (ii) speak a language that is uncommon in the area, providing them limited choices of people who are able to effectively translate and assist them.

46. By limiting these voter's assistant of choice, Minn. Stat. § 204C.15, impacts thousands of voters in Ramsey County and across the State of Minnesota. For example:

A. In 2015, more than 19,000 voting-age residents of St. Paul identified as Hmong. Of those, 28.2 % (5,374 individuals) identified as speaking English “not well” or “not at all.” Among individuals over 65 years of age, that number rose to 80.5%. (United States Census Bureau, data available through American Fact Finder tool, available at <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>). Yet many polling stations do not provide interpreters for Hmong language speakers.

B. More generally, in 2017, Minnesota had approximately 225,510 citizens who are foreign born and naturalized. Of those, the American Community survey reports that more than 35% of foreign-born citizens do not speak English “very well.” Ramsey County, alone, is home to more than 19,000 citizens who are foreign-born and do not speak English “very well.” (*Id.*). Polling stations across Minnesota do not provide interpreters for all foreign-languages spoken by voters in their district.

C. Minn. Stat. § 204C.15, subd. 1 also affects individuals who require physical assistance marking their ballot. Ramsey County is home to more than 71,903 individuals above the age of 65. Of those 33% are reported to have a disability. Statewide, approximately 31% of more than 803,718 residents over 65 in Minnesota have a disability. (*Id.*)

47. Eligible voters who need assistance are at greater risk of disenfranchisement. A 2012 survey conducted by the Research Alliance for Accessible Voting found that voter turn-out rate for people with disabilities nationwide was 5.7 percentage points lower than that of people without disabilities.¹ Thirty percent of voters with disabilities reported difficulty voting at a polling place and requiring assistance. The most common problems reported were (i) reading or seeing the ballot, and (ii) understanding how to vote or use the equipment.

¹ LISA SCHUR, MEERA ADYA & DOUGLAS KRUSE, DISABILITY, VOTER TURNOUT, AND VOTING DIFFICULTIES IN THE 2012 ELECTIONS 4 (2012), <https://www.eac.gov/assets/1/1/Disability%20and%20voting%20survey%20report%20for%202012%20elections.pdf>.

48. The State of Minnesota reports about 593,700 persons in Minnesota with a disability.² Assuming thirty percent of those voters required assistance, Minn. Stat. § 204C.15, subd. 1 could impact approximately 180,000 voters statewide.

VI. The Burdens Associated With Minn. Stat. § 204C.15, Subd. 1 Are Unnecessary.

49. The limitations in Minn. Stat. § 204C.15, subd. 1 are unnecessary to protect either the accuracy of the vote or individual voters.

50. As Congress recognized when it enacted 52 U.S.C. § 10508, by allowing the voter to select an assistant of their choice, the voter is able to rely on an assistant who they trust to accurately read and mark their ballot. S. Rep. No. 97-417, 1982 U.S.C.C.A.N. at 241.

51. Furthermore, Minnesota law provides more well-tailored prohibitions to prevent voter manipulation. Among other things, Minn. Stat. § 204.15:

- States that any 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, and
- Provides that a voter who wants verification that their ballot was accurately marked is able to have it reviewed by an election judge.

52. Minn. Stat. § 204C.15, subd. 1 burdens the right to vote and disenfranchises voters without any significant corresponding benefit to the State.

² ANDI EGBERT, MINNESOTANS WITH DISABILITIES: DEMOGRAPHIC AND ECONOMIC CHARACTERISTICS: MORE THAN HALF A MILLION MINNESOTANS REPORT A DISABILITY at 1 (2017), https://mn.gov/admin/assets/minnesotans-with-disabilities-popnotes-march2017_tcm36-283045_tcm36-283045.pdf.

COUNT I
Declaratory Judgment Act, Minn. Ch. 555
Supremacy Clause of the United States Constitution, Article VI, Clause 2

53. Plaintiffs incorporate by references all preceding paragraphs.

54. Minnesota does not have the authority to enforce a criminal law that is preempted by the Supremacy Clause of the United States Constitution.

55. The Voting Rights Act 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.

56. Minn. Stat. § 204C.15, subd. 1 conflicts with the Voting Rights Act, 52 U.S.C. § 10508 passed by the United States Congress because it criminalizes conduct expressly allowed by the Voting Rights Act by prohibiting the following persons from providing voter assistance: (i) a candidate for election; and (ii) any person who has already assisted three voters in that same election.

57. Minn. Stat. § 204C.15, subd. 1 acts as an obstacle to the accomplishment and execution of the full purposes and objectives of 52 U.S.C. § 10508, which Congress said “was the only way to assure meaningful voting assistance and to avoid possible intimidation or manipulation of the voter.” S. Rep. No. 97-417, 1982 U.S.C.C.A.N. 177, 241.

58. Therefore, the limitations on a voter’s choice of assistance, as set forth in Minn. Stat. § 204C.15, subd. 1, are preempted under the Supremacy Clause of the United States Constitution and should be declared unconstitutional.

COUNT II

42 U.S.C. § 1983

Violation of the Voting Rights Act of 1965, 52 U.S.C. § 10508, 10302

59. Plaintiffs incorporate by references all preceding paragraphs.

60. The Voting Rights Act 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.

61. Under 52 U.S.C. § 10508, a voter who requires assistance to cast their ballot has the right to choose any person to assist them at the poll site.

62. In violation of that law, Minn. Stat. § 204C.15, subd. 1 prohibits voters from obtaining assistance from: (i) a candidate for election; and (ii) any person who has already assisted three voters in that same election.

63. Because its provisions are unlawful, Defendant should be enjoined from enforcing the prohibitions on voter assistance set forth in Minn. Stat. § 204C.15, subd. 1.

COUNT III

42 U.S.C. § 1983

First and Fourteenth Amendments of the United States Constitution

64. Plaintiffs incorporate by references all preceding paragraphs.

65. The First Amendment of the United States Constitution states that “Congress shall make no law . . . abridging the freedom of speech, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

66. The Fourteenth Amendment, Section 1, of the United States Constitution states that the State shall not “deprive any person of life, liberty, or property, without due process of law; or deny any person within its jurisdiction the equal protection of the laws.”

67. Minn. Stat. § 204C.15, subd. 1 burdens rights protected under the First and Fourteenth Amendment of the United States Constitution, including rights of free speech, association, equal protection, and due process.

68. Minn. Stat. § 204C.15, subd. 1 burdens the ability of eligible Minnesota voters to access and cast a ballot if they require assistance due to language or physical limitations. As such, the requirements in Section 204C.15, subd. 1 impose a burden on the right to vote; and indeed may result in the outright denial of the right to vote in many circumstances.

69. Minn. Stat. § 204C.15, subd. 1 burdens Plaintiffs' free speech and freedom of association by preventing them from engaging in speech and political association with neighbors and fellow-voters engaged in voting who seek their assistance.

70. Minn. Stat. § 204C.15, subd. 1 also results in disparate treatment of eligible voters based on protected classification, including national origin and disability.

71. Minnesota's justifications for the limitations in Minn. Stat. § 204C.15, subd. 1, fail to pass constitutional scrutiny.

COUNT IV
Declaratory Judgement Act, Minn. Ch. 555
Minnesota Constitution, art. I, §§ 2, 3, and 7, and VII

72. Plaintiffs incorporate by references all preceding paragraphs.

73. Under the Minnesota Constitution, the right to vote is a fundamental right. *Kahn v. Griffin*, 701 N.W.2d 815, 830 (Minn. 2005); Minn. Const. art. VII.

74. The Minnesota Constitution also protects rights of free speech, association, equal protection, and due process. Minn. Const., art. I, §§ 1, 2, and 7.

75. Minn. Stat. § 204C.15, subd. 1 unconstitutionally burdens and infringes upon Plaintiffs rights protected under the Minnesota Constitution without an adequate justification.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

- a. Issue a declaratory judgment declaring that the portions of Minnesota Statute §§ 204C.15 and 203B.03, that make it unlawful for an individual to assist a voter if such individual has already assisted three voters or they are a candidate for office, violates and is inconsistent with the provisions the Voting Rights Act, 52 U.S.C. § 10508 and/or is unconstitutional under the United States or Minnesota Constitutions;
- b. Enjoin Defendant, his employees, agents, and successors in office, and all persons acting in concert with them, from engaging in any act or practice that denies the rights secured by the Voting Rights Act, 52 U.S.C. § 10508 and the United States and Minnesota Constitutions;
- c. Require Defendant to develop and implement a remedial plan to ensure that voters are permitted assistance from persons of their choice when they cast their ballots, in compliance with the Voting Rights Act, 52 U.S.C. § 10508;
- d. Awarding Plaintiffs attorneys' fees and costs under 52 U.S.C. § 10310(e) and/or 42 U.S.C. §1988; and,
- e. Awarding such other equitable and further relief as the Court deems just and proper.

Dated: February 11, 2020

By: /s/ Alethea M. Huyser

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

Dated: February 11, 2020

s/ Alethea M. Huyser
