

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Minnesota Majority, Minnesota Voters
Alliance, Minnesota Northstar Tea Party
Patriots, Election Integrity Watch, Susan
Jeffers, individually and as an election judge,
Dorothy Fleming, Jeff Davis, Dan McGrath,
Eugene F. Delaune II, and Randy Liebo,

Plaintiffs,

Civil File No. 0:10-CV-4401

Hon. Joan N. Ericksen

v.

Joe Mansky in his official capacity as the
Elections Manager for Ramsey County, Rachel
M. Smith in her official capacity as the
Elections Manager for Hennepin County, Mike
Freeman in his official capacity as Hennepin
County Attorney, Susan Gaertner in her official
capacity as Ramsey County Attorney, and Mark
Richie in his official capacity as Secretary of
State,

Defendants.

**MOTION OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS
UNDER LAW FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE*
WITH SUPPORTING MEMORANDUM**

The proposed *amicus curiae*, The Lawyers' Committee for Civil Rights Under Law, by its undersigned counsel, respectfully moves this Court for leave to participate as *amicus curiae*, and to file the accompanying *amicus curiae* brief in support of Defendants' opposition to Plaintiffs' Motion for Injunctive Relief.

I. Proposed *Amicus* Has A Significant Interest In The Present Case.

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a nonpartisan, nonprofit organization formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. As part of its mission, the Lawyers' Committee has done extensive work to help enforce the nation's voting rights laws and to represent clients who have had their right to vote challenged. The Lawyers' Committee's longstanding Voting Rights Project has participated in hundreds of lawsuits to vindicate the right to vote guaranteed by the United States Constitution and federal statutes, including the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*, the National Voter Registration Act of 1993, 42 U.S.C. §1973gg *et seq.*, and the Help America Vote Act of 2002, 42 U.S.C. § 15301 *et seq.*

The Lawyers' Committee also leads the nonpartisan "Election Protection" coalition, which was created in the aftermath of the 2000 Presidential election. Election Protection consists of more than a hundred national, state, and local organizations, and is the largest voter protection and education effort in our nation's history. Election Protection's primary focus is on providing information to voters regarding the election process and on resolving voter problems. The Election Protection coalition runs a nationwide hotline on election day which has responded to voter inquires since 2002, and has located trained volunteers outside selected polling places to answer voter questions and receive any complaints. On November 2, 2010, Election Protection will have a local call center for its 866-OUR-VOTE nationwide hotline in Minneapolis answering calls

from Minnesota voters, and also will have volunteers at certain polling sites in the Minneapolis-St. Paul area.

Based on these experiences in running Election Protection, the Lawyers' Committee has been an active advocate on behalf of legislation to enhance federal and state protections against deceptive election practices and voter intimidation.

II. The Court Would Be Aided By Proposed *Amicus's* Participation.

As demonstrated above, proposed *amicus* has substantial experience and expertise in the issues presented by this case. Accordingly, participation by proposed *amicus* should assist the Court in addressing the important issues raised by the Plaintiffs' Complaint and their Motion for Temporary Restraining Order and Preliminary Injunction, and by the Defendants' opposition thereto. Specifically, the proposed *amicus* brief addresses the following issues: (1) the balance between any harm Plaintiffs may suffer as a result of a prohibition on wearing their "PLEASE I.D. ME" buttons in polling places and the harm suffered by Minnesota voters if the injunction is granted; and (2) the public's interest in prevention of voter deception and intimidation.

III. Proposed *Amicus's* Participation Would Not Prejudice Any Party Or Delay Disposition Of This Case.

Proposed *amicus's* involvement will not delay proceedings or prejudice any party in this case. Proposed *amicus* has enclosed its brief for filing, less than twenty-four hours after Plaintiffs' brief was filed, mindful of the Court's hearing on Plaintiffs' motion on Monday morning. Proposed *amicus* has contacted counsel for Defendant Secretary of State Mark Ritchie who consented to the Lawyers' Committee's motion and filing of a

amicus curiae brief in opposition to Plaintiffs' motion. Proposed *amicus* has also contacted counsel for Plaintiffs, who opposes the Lawyers' Committees' motion and the filing of its brief. Plaintiffs, however, have been notified of proposed *amicus*'s intent to file this motion, and no delay or prejudice will result from proposed *amicus*'s participation.

CONCLUSION

For the reasons set forth above and in the accompanying proposed *amicus curiae* brief, this Court should grant the Lawyers' Committees' leave to participate as *amicus curiae* and to file the accompanying brief and participate in oral argument on Plaintiffs' Motion for Injunctive Relief.

Dated: October 30, 2010

Respectfully submitted,

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**MEMORANDUM OF *AMICUS CURIAE* LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF**

LAWYERS' COMMITTEE FOR CIVIL
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*Attorneys for Amicus Curiae Lawyers'
Committee for Civil Rights Under Law*

Amicus curiae Lawyers' Committee for Civil Rights Under Law respectfully files the following brief, with respect to the demand for injunctive relief by Plaintiffs Minnesota Majority *et al.* *Amicus* Lawyers' Committee has simultaneously filed a motion seeking leave to file this memorandum. For the equitable and legal reasons discussed herein, the Court should deny the injunctive relief requested by Plaintiffs.

IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a nonpartisan, nonprofit organization formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. As part of its mission, the Lawyers' Committee has done extensive work to help enforce the nation's voting rights laws and to represent clients who have had their right to vote challenged. The Lawyers' Committee's longstanding Voting Rights Project has participated in hundreds of lawsuits to vindicate the right to vote guaranteed by the United States Constitution and federal statutes, including the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*, the National Voter Registration Act of 1993, 42 U.S.C. §1973gg *et seq.*, and the Help America Vote Act of 2002, 42 U.S.C. § 15301 *et seq.*

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nationwide hotline on election day which has responded to voter inquires since 2002, and has located trained volunteers outside selected polling places to answer voter questions and receive any complaints. On November 2, 2010, Election Protection will have a local call center for its 866-OUR-VOTE nationwide hotline in Minneapolis answering calls from Minnesota voters, and also will have volunteers at certain polling sites in the Minneapolis-St. Paul area.

Based on these experiences in running Election Protection, the Lawyers' Committee has been an active advocate on behalf of legislation to enhance federal and state protections against deceptive election practices and voter intimidation.

BACKGROUND

Plaintiffs identify themselves as members of a "concerned grass roots effort to protect election integrity," which has developed a program for individuals to act as "poll watchers" on election day. Pls.' Br. at 3-4 [Doc. 4]. Plaintiffs' claims are based principally upon a button created and distributed by Plaintiff Election Integrity Watch, which reads in relevant part "PLEASE I.D. ME."¹ The individual Plaintiffs and others intend to wear these buttons to the polls on Election Day.²

The web site of Plaintiff Election Integrity Watch contains several pages describing aspects of its election-day program. Most relevant to the issues presented here is the "Action Plan" page, which explicitly urges individuals to wear the "I.D. Me"

¹ The remaining claims are premised upon T-shirts that Plaintiffs assert will be prohibited by the Defendants.

² "Election Integrity Watch has disseminated its button and instructed its separate organizational members and supporters to wear the "Please I.D. Me" button on the forthcoming election day, November 2, 2010, in their respective polling places." Pls.' Br. at 4.

button in order to create a false impression about state voting requirements. Specifically, Plaintiffs seek to falsely convey to voters that Minnesota law requires that they produce personal identification at the polls in order to cast a ballot (“While Minnesota does not require an individual to show an ID, let’s act like it does.”).³ Other pages on this web site encourage participants to engage in other questionable and potentially disruptive activities, such as the “Watch List” page, which urges participants to “follow” buses,⁴ and the “What to Do and What to Watch For” page, which also urges participants to “follow” buses and also to attempt to intrude upon voters receiving assistance.⁵

ARGUMENT

The Hennepin County Defendants and Defendant Mark Ritchie have effectively demonstrated in their opposition briefs that Plaintiffs cannot meet their burden of showing a substantial likelihood that Plaintiffs will succeed on their claims against

³ “Show Your ID – When you go to vote on November 2, *wear your Election Integrity Watch button* and show your photo ID when you sign-in to vote. *While Minnesota does not require an individual to show an ID, let’s act like it does. This simple act of showing an ID will likely result in a spontaneous reaction from others in line behind you to show their ID as well.*” (emphasis added). <http://www.electionintegritywatch.com/action-plan/>

⁴ “**Things to watch for during the election:** Buses arriving at the polling place (photograph or video the bus and follow if possible). . . .
What to do: Take photos or video of busses arriving at the polls. Follow them if possible, and document times. Email pictures with details to report -at- electionintegritywatch.org.”
<http://www.electionintegritywatch.com/watch-list/>

⁵ “**Buses**

If you see a bus load of voters arrive at the polls to be vouched for, take pictures of the bus, the people boarding or exiting the bus and the license plate of the bus. If you don’t have a camera, take notes of the number of people on the bus, the name of the bus company, the bus number (if any), the license plate number and the exact time and location. If possible, when the bus leaves your polling place, try to follow that bus without being noticed to see if it transports the same people to another polling place. Take note of the times and locations.”

. . .

Voters Getting Assistance

Observe whether the voter is voting for themselves, or is the assistant doing the voting?”
<http://www.electionintegritywatch.com/watch-list/what-to-do-and-what-to-watch-for-in-detail/>

Defendants. A prohibition on Plaintiffs' "PLEASE I.D. ME" buttons inside the polling place, should it occur, would be a "reasonable means of ensuring an orderly and peaceful voting environment," and would be constitutional. *See Marlin v. District of Columbia Bd. of Elections and Ethics*, 236 F.3d 716, 720 (D.C. Cir. 2001).

Amicus here respectfully seeks to emphasize for the Court, in further opposition to Plaintiffs' motion, Plaintiffs' specific expressed intention of employing the buttons at issue here in order to deceive voters about Minnesota's voter eligibility requirements, and the relevance of that fact to the third and fourth factors in the *Dataphase* preliminary injunction analysis. For the reasons set forth below, the injury that would be inflicted on Minnesota voters by granting an injunction giving Plaintiffs the wholesale right to wear their "PLEASE I.D. ME" buttons inside polling places outweighs any harm Plaintiffs may suffer as a result of any potential restriction in that regard; and the public interest in preventing voter deception and intimidation weighs heavily against the granting of such an injunction.

I. The Balance of Harms Weighs Strongly Against Plaintiffs' Requested Relief.

As quoted above, the Plaintiffs' "PLEASE I.D. ME" buttons are explicitly part of a larger effort to deceive voters regarding the requirements for registration and voting on Election Day. Furthermore, the unstated but foreseeable effect of Plaintiffs' efforts would be to deter and/or intimidate eligible voters who are not carrying photo or other identification in the polling place, and the intent to do so can readily be inferred under these circumstances.

Plaintiffs' representation to the Court that "the only individual that *could be* intimidated is the non-eligible voter – such as a non-citizen or a non-eligible convicted felon," (Pl.'s Br. at 21 (emphasis in original)), is not only false, but reveals the very deception the button is intended to produce.

As Plaintiffs acknowledge on the referenced web site, Minnesota law does *not* include any general requirement that registered voters produce identification at the polls in order to cast their ballot. The only requirement is that registered voters sign "a polling place roster" and, if requested by the election judge, orally "confirm [their] name, address, and date of birth." Minn. Stat. § 204C.10.⁶ Thus, registered voters who are not in possession of any personal identification document at their polling place on election day could readily be deceived by the Plaintiffs' use of their "PLEASE I.D. ME" buttons, and, moreover, that is precisely the false impression that Plaintiffs seek to create. The foreseeable consequence of that false impression would be that qualified registered voters who are not carrying photo or other identification could, or would, abandon their plan to vote. Moreover, Plaintiffs' campaign also essentially amounts an effort to have poll workers violate state law at least with regard to persons wearing the button, since poll workers are not allowed to either ask for, or examine, any voter identification presented by a registered voter.⁷

⁶ See *2010 Election Judge Guide*, at 20. www.sos.state.mn.us/Modules/ShowDocument.aspx?documentid=5060.

⁷ The only circumstance in which a potential voter may be required to produce sort form of identification concerns those persons who do not register to vote before election day and, instead, seek to register at the polls. Minn. Stat. § 201.061. Plaintiffs' proposed wearing of the "PLEASE ID ME" buttons inside Minnesota polling places fails to communicate this crucial distinction, and indeed their brief to this Court seeks to suggest, wrongly, that their buttons are consistent with Minnesota election procedures. See Pls' Br. at 20.

This evidence of the intention to create a false impression regarding voting requirements clearly distinguishes the “PLEASE I.D. ME” buttons from the examples provided in Plaintiffs’ brief. A Neighborhood Watch button makes no representations about voting requirements and creates no impression, accurate or not, about such requirements. The consequence of granting Plaintiffs’ request for injunction, and permitting individuals to wear the “PLEASE I.D. ME” buttons in the polling place, would be to enable their express scheme to create voter deception and confusion regarding voter requirements, and result in intimidation of those citizens not carrying identification at the polling place. Confusion and intimidation will be even greater if the “PLEASE I.D. ME” buttons are worn by election officials or individuals challenging voters on behalf of political parties.

“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). The potential for harm to registered voters who will be deceived or intimidated into abandoning their plans to cast a ballot, either because of the misimpression that an identification is required, or due to embarrassment from the suggestion that anyone who does not carry photo identification is a “second-class citizen,” and unqualified to vote, far outweighs the harm to individuals who lose only the opportunity to express their views at the polling place on what the voter identification requirements should be. *See, e.g., Burson v. Freeman*, 504 U.S. 191, 211 (1992) (“A long history, a substantial consensus, and simple common sense show that some [] zone

[restricting freedom of speech] around polling places is necessary to protect [the] fundamental right [to vote]”).

Even if Plaintiffs are correct that they will be prohibited from wearing their buttons on election day in the polls, they remain free to pursue their stated effort to change Minnesota law on voter eligibility requirements by wearing their buttons anywhere else and anytime else that they please. Any claimed harm to Plaintiffs’ speech rights is vastly outweighed by the harm that will occur if these buttons have their intended and foreseeable effect and discourage eligible voters from casting their ballots.

II. The Strong Public Interest In Prevention Of Voter Deception Weighs Against Plaintiffs’ Request for Injunction.

Voter deception is a crime in Minnesota. “No person shall knowingly deceive another person regarding the time, place, or manner of conducting an election or the qualifications for or restrictions on voter eligibility for an election, with the intent to prevent the individual from voting in the election.” Minn. Stat. § 204C.035. This penalty reflects the strong public interest of Minnesota in protecting voters from confusion and deception. *See also* Minn. Stat. § 204C.07 (allowing certain persons to be appointed “as challengers of voters at the polling place” while prohibiting such persons from “attempt[ing] to influence voting in any manner” while inside the polling place).

Moreover, every state “has a compelling interest in protecting voters from confusion and undue influence.” *Burson v. Freeman*, 504 U.S. at 199, *citing Eu v. San Francisco Cty. Democratic Central Comm.*, 489 U.S. 214, 228-29 (1989). Consequently, the Plaintiffs’ stated intention to mislead voters at the polls via their “PLEASE I.D. ME”

buttons justifies denial of the injunction on public interest grounds alone. The “PLEASE I.D. ME” buttons are intended to create a false impression regarding voting requirements, and the public interest weighs conclusively against issuing the requested injunction. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997) (risk of voter confusion outweighed candidate's right to associate with more than one political party by appearing on the ballot as a candidate for more than one political party).

CONCLUSION

For the preceding reasons, *amicus curiae* respectfully urges this Court to deny the injunctive relief requested by Plaintiffs in their motion.

Dated: October 30, 2010

Respectfully submitted,

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**CERTIFICATION PURSUANT TO
LOCAL RULE 7.1(c)**

Plaintiffs,

v.

Joe Mansky in his official capacity as
the Elections Manager for Ramsey
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official capacity as the Elections
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Hennepin County Attorney, Susan
Gaertner in her official capacity as
Ramsey County Attorney, and Mark
Richie in his official capacity as
Secretary of State,

Defendants.

I, Mariah Reynolds, certify that the Motion of the Lawyers' Committee for Civil
Rights Under Law for Leave to Participate As *AMICUS CURIAE* With Supporting
Memorandum complies with Local Rule 7.1(c).

I further certify that, in preparation of this motion and memorandum, I used
Microsoft Word 2003, and that this word processing program has been applied
specifically to include all text, including headings, footnotes, and quotations in the
following word count.

I further certify that the above-referenced motion contains 665 words.

I further certify that the above-referenced memorandum contains 2,187 words.

Dated: October 30, 2010

DORSEY & WHITNEY LLP

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CERTIFICATE OF SERVICE

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Gaertner in her official capacity as
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Richie in his official capacity as
Secretary of State,

Defendants.

I hereby certify that on the 30th day of October, 2010, I caused the following document:

Motion of the Lawyers' Committee for Civil Rights Under Law for Leave to
Participate As *AMICUS CURIAE* With Supporting Memorandum; and

Certification Pursuant to Local Rule 7.1(c)

to be filed electronically with the Clerk of Court through ECF, and the ECF will send an
e-notice of the electronic filing to the following:

- **Erick G Kaardal**
kaardal@mklaw.com, gynild@mklaw.com, grzybek@mklaw.com, lindahl@mklaw.com

I further certify that I caused the proposed order to be filed with the court via e-mail to
the following judge who is hearing the motion:

joanericksen_chambers@mnd.uscourts.gov

and I certify that I caused a copy of the proposed order to be e-mailed to the following:

- **Erick G Kaardal**
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I further certify that I caused a copy of the foregoing documents and the notice of electronic filing to be sent via facsimile and/or via e-mail to the following participants:

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