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July 9, 2018

The Honorable Jessica Palmer-Denig, Administrative Law Judge
Office of Administrative Hearings
600 Robert St. N.
St. Paul, MN 55101

Dear Judge Palmer-Denig,

The Advocates for Human Rights is a volunteer-driven 501(c)(3) organization based in Minneapolis. Its mission is "to implement international human rights standards to promote civil society and reinforce the rule of law."[1] Established in 1983, the Advocates for Human Rights has advocated on issues relating to gender-based violence at the state, national, and international level for over thirty years. It has published 27 reports on gender-based violence as a human rights issue, and frequently provides consultation and commentary on draft laws and regulations relating to domestic violence. It also trains lawyers, police, prosecutors, and judges to implement new and existing domestic violence laws effectively.

Summary

The Advocates for Human Rights welcomes the opportunity to submit written comments on the proposed permanent rules relating to elections administration and the presidential nomination primary, RD-4487. This written commentary responds to Section 8215.0100 *et seq.* of the proposed rules as they relate to the presidential nomination primary.

The proposed rules facilitate voter intimidation and do not take into account existing statutory provisions designed to prevent intimidation, threats, and violence against voters. The enabling legislation requires that a voter's choice of party ballot be recorded in the Statewide Voter Registration System and makes that choice public information. But individuals and organizations may access the public voter roll information only for prescribed purposes. The proposed rules, however, do not ensure that at the time a voter casts her vote that her party choice is public information only for prescribed purposes. Moreover, the proposed rules endanger public safety and facilitate voter intimidation. The proposed rules should better incorporate existing statutory safeguards to guard against voter intimidation.

I. Applicable International Standards

The International Covenant on Civil and Political Rights, a treaty ratified by the United States in 1992, recognizes that "[e]very citizen shall have the right and the opportunity, without . . . distinctions [of any kind, such as . . . sex, . . . political or other opinion, . . . or other status] [t]o vote . . . at genuine periodic elections which . . . shall be held by secret ballot, guaranteeing the free expression of the will of the electors."[2]

The proposed rules violate the United States' obligations under Article 25 of the International Covenant on Civil and Political Rights. As drafted, the proposed rules will have a

[1] The Advocates for Human Rights, https://www.theadvocatesforhumanrights.org/mission (last visited July 3, 2018).
[2] International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, art. 25; see also *id.*, art. 2.

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discriminatory effect on the voting rights of women who are experiencing domestic violence as well as LGBTQ youth of voting age by making them vulnerable to voter intimidation and violence. More generally, the proposed rules also facilitate harassment and retaliation against voters based on their political opinion, as expressed by their choice of political party.

II. The proposed rules facilitate voter intimidation and violate the privacy rights of voters at the time the vote is cast.

A. The proposed rules facilitate disclosure of a voter's party affiliation at the polling place (8215.0300).

The logistical setup at polling places enables publication of a voter's choice of political party at the polling place. This publication facilitates voter harassment and intimidation, particularly endangering vulnerable groups that are already at risk, such as victims of domestic violence and LGBTQ youth of voting age.

1. The proposed rules allow voters to see other voters' choice of political party at the polling place, in violation of Minnesota law.

The Supreme Court of Minnesota recognizes a right to privacy in common law that extends to the publication of private facts. [3] Yet the proposed rules allow for the publication of a voter's choice of political party at the time a voter casts her ballot, in violation of that right to privacy and in violation of statutory law recognizing that voter information is public only for prescribed purposes.

Voter registration information and voter history are public information, but access to that information is limited under Minnesota law. Minnesota Statutes Section 201.091, subdivision 4 requires county auditors to make available for inspection a public information list including the name, address, year of birth, and voting history of each registered voter in the county.[4] The new legislative amendments and proposed rules add a voter's choice of political party to that public information. Individuals are prohibited from using this information for any purposes unrelated to elections, political activities, or law enforcement. They can access this information only by providing identification and stating in writing that the information obtained "will not be used for purposes unrelated to elections, political activities, or law enforcement."[5]

Under the proposed rules, an individual at the polling place may obtain this voter information without following the procedures set forth in subdivision 4. The proposed rules publicize a voter's choice of political party immediately after the voter signs the polling place roster in the Presidential Nomination Primary Election. At this time other voters in the precinct can gain access to the voter's information without complying with the statutory requirements.

Voters sign in on a polling place roster, each page listing about twelve voters. Under the current system, the only information visible on this page is a potential voter's name and address and, as indicated by the presence of a signature, whether another voter on that same page voted earlier that day. There is not reasonable expectation of privacy with respect to this information. In a single precinct, people tend to know their neighbors, and the fact of where they live and that they voted is not an intrusion on privacy. But under the proposed rules, other voters can see people's choice of political party on that page of the polling place roster.

The Statement of Need and Reasonableness (SONAR) acknowledges that some voters will not want to have their choice of political party disclosed at the polling place: the SONAR rejects the proposal of requiring voters to state their choice of political party orally,

[3] *Lake v. Wal-Mart Stores*, 582 N.W.2d 231 (1998).
[4] Minnesota Statutes 2017, Minnesota Statutes § 201.091 Subd. 4.
[5] *Ibid.*

acknowledging that some voters may prefer to point to their choice silently.[6] The SONAR also rejects having a visual signal of a person's choice of party, such as by giving voters color-coded receipts displaying party choice.[7] The SONAR acknowledges the importance of making the voter's choice of political party invisible to others at the polling place "to minimize any undue influence in the polling place and to protect voter anonymity as best as possible when the voter is voting." [8] But the SONAR does not acknowledge the additional likelihood of voter intimidation and harassment caused by the logistics of the voter sign-in rolls.

The SONAR does not acknowledge or discuss the fact that each page of the roster includes about a dozen names, and voters voting later in the day would be able to see the political party choices of other voters whose surnames are near theirs in the alphabet. Moreover, people can access that information without complying with Section 201.091, subd. 4.

2. Disclosure of a voter's choice of political party facilitates voter harassment and intimidation.

Under the proposed rules, the disclosure of voters' party-choice at the polling place creates a danger of harassment and intimidation. People are increasingly segregated by political opinion, and as a result people who are in a political minority in their precinct may face retaliation or harassment from people who live near or with them. People who have political opinions that differ from the opinions of their families, spouses, local employers, and union officials, for example, may face harassment.

3. Victims of domestic violence and LGBTQ youth will be at particular risk for voter intimidation and violence.

Family members who share common surnames pose the highest risk of disclosure at the polling place. First, it is important to understand the context of domestic violence. Domestic violence is characterized by a pattern of actions that an individual uses to intentionally control or dominate his intimate partner.[9] The proposed rules facilitate the efforts of an abuser to control and dominate his victim. A victim of domestic violence, for example, may come to the polls with her abuser, and he may insist that she sign in before he does in order to monitor her conduct. If she supports a political party that differs from the party her abuser supports, she may not feel free to select that party at the time she signs in, for fear he may retaliate against her. Or, she may vote while the family's children are in school, and he may vote on his way home from work, at which point he may discover her choice of political party and may use her choice as a pretext for violence when he arrives at home.

The same risks are at stake for LGBTQ youth of voting age who live with and depend financial on family members who are politically unsupportive of LGBTQ rights. Those LGBTQ youth may vote differently from their parents or other relatives and may face retaliation when an unsupportive family member sees their party choice on the voter sign-in sheet.

Such voter intimidation is particularly insidious because it is nearly impossible to detect and would only rarely be reported. In most cases, the victim of intimidation would face further danger by reporting the intimidation.

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[6] Minnesota Office of Secretary of State, *State of Need and Reasonableness*, "Presidential Nomination Primary Election Administration Election Administration, Voter Registration, Petitions, Absentee Ballots, Election Judge Training Program, and Ballot Preparation" (May 7, 2018), at 28.
[7] *Ibid.*
[8] *Ibid.*
[9] Domestic Abuse Intervention Programs, FAQs About the Wheels, https://www.theduluthmodel.org/wheels/faqs-about-the-wheels/, last accessed July 9, 2018.

4. **Less intrusive methods of voter sign-in are consistent with the enabling legislation, reduce the risk of voter intimidation and violence, and give force to existing statutory provisions promoting voter safety.**

The SONAR does not adequately explore alternative, less intrusive methods to achieve the purpose of the proposed rule. Particular attention should be paid to alternatives that promote voter privacy at the time they vote. The SONAR does not identify whether the Secretary of State's office considered any such alternatives, nor does it explain why it rejected such alternatives. The Secretary of State has the authority to "prescribe the form of polling place rosters."[10] He could adopt roster procedures that would mitigate the risk of disclosure of a voter's choice of political party on the polling place roster. There is at least one low-tech alternative that would ensure that other voters cannot see a voter's choice of political party on the roster: Election judges could take a manila folder and create a cut-out window in it so that only a single row of the sign-in sheet would be visible to the person signing in. Such a device would conceal the political party choices of the other voters on the page. This device would also deter or prevent voters from signing in on the wrong line, a mistake that sometimes leads to unfounded allegations of voter fraud. In the alternative, the Secretary of State could revise proposed rule 8215.0300, subpart 2 to create a separate document where an election judge would record the voter's choice of political party, and the polling place roster could simply state that the voter has indicated her choice to the election judge.

The SONAR does not consider the negative effects of these rules on victims of intimate partner violence, LGBTQ youth of voting age, or other vulnerable classes of voters. The Secretary of State's oversight is particularly unreasonable because the Office of the Secretary of State is already aware of the need to be sensitive to the particular needs of vulnerable classes of voters through efforts such as the "Safe at Home" program.[11]

Moreover, the proposed rules fail to take into account statutory provisions that allow individuals to opt out of public disclosure of their voting history. Minnesota Statutes Section 201.091 subdivision 4 reads: "Upon receipt of a statement signed by the voter that withholding the voter's name from the public information list is required for the safety of the voter of the voter's family, the Secretary of State and county auditor must withhold from the public information list the name of a registered voter."[12] There is no evidence that the legislature intended to eliminate this provision for purposes of the Presidential Nomination Primary. The personal information covered by subdivision 4 therefore includes the information deemed public by the proposed rules. Part III of this document discusses this provision in greater detail.

Finally, the SONAR does not acknowledge the non-financial costs of the proposed rules on the vulnerable groups described above. There is no indication that the Office of the Secretary of State consulted with any individuals or organizations with expertise in the areas of domestic violence, LGBTQ youth, or similarly situated vulnerable classes of voters.

B. The proposed rules facilitate disclosure of a person's party affiliation when the person votes at home (8215.0500).

For people voting from home, the proposed rules endanger voters already at risk of violence or intimidation.

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[10] Minnesota Statutes 2017, Minnesota Statutes § 201.221 Subd. 3.

[11] Minnesota Secretary of State, "Safe at Home," accessed July 3, 2018. https://www.sos.state.mn.us/safe-at-home/. The Safe at Home Program is "a statewide address confidentiality program administered by the Office of the Minnesota Secretary of State. It is designed to help survivors of domestic violence, sexual assault, stalking, or others who fear for their safety maintain a confidential address. It was established by Minnesota state law." People who enroll in this program are assigned a P.O. Box to use as their legal address in efforts to avoid their abuser or stalker.

[12] Minnesota Statutes 2017, Minnesota Statutes § 201.091 Subd. 4.

For example, people voting from home must show the blank ballot of the party of their choice to their witness.[13] The witness thereby learns the voter's choice of political party. Victims of domestic violence who live with their aggressor and who support a party different from the aggressor's would likely be reluctant to show them the ballot, fearing that disclosure of her political party would place her in greater danger of violence.

The proposed rules should be amended to require the voter to show the witness *both* empty ballots or just the back of the chosen ballot before voting.

A second problem that the proposed rules create is the disclosure of a voter's choice of political party on the outer envelope containing her ballot. In jurisdictions that do not require a third envelope, the voter's choice of party is displayed on the outer (second) envelope.[14] Any person in the household or with access to outgoing mail would be able to see the voter's choice of political party. A readily available alternative is used in other Minnesota jurisdictions—requiring a third envelope. The proposed rules should require a third envelope to conceal the voter's choice of political party.

III. By automatically including a voter's choice of political party on the public information lists, the proposed rules facilitate voter intimidation by ignoring statutory provisions protecting voter safety.

Minnesota Statutes Section 201.091, subdivision 4, referenced above, allows individuals to opt out of public disclosure of their voter information by signing a statement "that withholding the voter's name from the public information list is required for the safety of the voter or the voter's family."[15] The proposed rules do not mention Section 201.091 subdivision 4's opt-out provision, but nothing in the new legislation abrogates it.

Most voters do not have safety concerns related to the disclosure of their name, address, year of birth, and voting history. Survivors of domestic violence and victims of stalking use these provisions, however, to keep their home addresses private from people who may harm them. Other individuals with safety concerns, such as prosecutors and judges, also use this provision to keep their home addresses private and out of the hands of disgruntled litigants.

The statutes and proposed rules for the Presidential Nomination Primary Election render Minnesota Statutes Section 201.091 subd. 4 relevant for a broader class of voters, including victims of intimate partner violence who live with their abusers, LGBTQ youth who live with or depend financially on their parents, employees whose political views differ from their employers', and members of unions who hold political views that differ from their union's political position.

Publication of party choice places these individuals at risk. The risk is twofold. First, individuals may be deterred from exercising their right to vote in the presidential nomination primary election because they do not want to disclose publicly their party choice. Second, they may face retaliation or even violence for their choice of political party. Such retaliation may undermine voters' financial or job security or may present itself in the form of harassment or workplace retaliation.

The Safe At Home program acknowledges that abusers and stalkers can and do access public records to exert control over their victims. Access to the public information in Section 201.091, subd. 4 is technically limited, but at the time an individual makes a request to inspect the public information list, there is no real way to tell whether an individual is using the list for permissible or nefarious purposes.

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[13] Proposed Rules RD-4487, § 8215.0500 subpart 3.

[14] Proposed Rules RD-4487, § 8215.0500 subpart 4.

[15] Minnesota Statutes 2017, Minnesota Statutes § 201.091 Subd. 4 "Upon receipt of a statement signed by the voter that withholding the voter's name from the public information list is required for the safety of the voter or the voter's family, the secretary of state and county auditor must withhold from the public information list the name of a registered voter."

Contrary to the plain language of Section 201.091, subdivision 4, the proposed rules require all voters to acknowledge that their choice of party is public information (8215.0300, subpart 1).[16] This rule similarly applies to absentee ballots (8215.0400, subpart 2(A)(3)).[17] For voters who exercise their opt-out rights under Section 201.091, subd. 4, such an acknowledgement is false and misleading.

To be less intrusive and impose lower costs on voters who may avail themselves of the Section 201.091, subd. 4 opt-out provision, Section 8215.0300 of the proposed rules should be amended as follows. First, subpart 1 should incorporate notice of Sec. 201.091 Subd. 4 at the time voters are asked to declare their choice of party so that all voters know they can opt out of public disclosure if they have a safety concern. Second, at the time voters are asked to sign the new oath, every voter should be presented with the opportunity instead to sign a statement that would comply with the opt-out provision of Sec. 201.091 subd. 4. Such a procedure could and should be a seamless part of the sign-in procedure, so as not to attract the attention of other people in the polling place.

These revisions to the proposed rules are necessary to ensure voter safety and to reduce the risk of voter intimidation. The Secretary of State's office does outreach to potential beneficiaries of the Safe at Home program, and prosecutors and judges can easily find out about the opt-out provision through colleagues. But the broader classes of individuals who are vulnerable to voter intimidation under the proposed rules are much more difficult to identify through similar outreach, particularly because they are likely to live with the people who are most likely to engage in voter intimidation. The proposed rules should therefore be revised to provide affirmative notification of the voter's ability to opt-out, and to facilitate her exercise of that statutory right, at the time she casts her ballot.

IV. Conclusion

The proposed rules are unreasonable. They ignore the voter safety provisions in Minnesota Statutes Section 201.091 subdivision 4, facilitate voter intimidation, and endanger public safety by increasing the risk of harm to already vulnerable voters.

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[16] Minnesota Office of Secretary of State, *State of Need and Reasonableness*, "Presidential Nomination Primary Election Administration Election Administration, Voter Registration, Petitions, Absentee Ballots, Election Judge Training Program, and Ballot Preparation" (5/07/2018 Registration Date) at 27. "Requires an affirmative statement that the voter understands that her or his party ballot choice will be public information."

[17] *Id.* at 33. "The rule requires that the roster be marked with the [absentee] voter's major political party choice."

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STATE OF MINNESOTA
Office of Minnesota Secretary of State
Steve Simon

July 9, 2018

The Honorable Jessica A. Palmer-Denig
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
Saint Paul MN 55101

Judge Palmer-Denig:

This is the statement of the Office of the Secretary of State in response to comments and testimony from the public in the matter of Proposed Rules Governing Presidential Nomination Primary Election Administration and the Proposed Amendment of Rules Governing Election Administration, Voter Registration, Petitions, Absentee Ballots, Election Judge Training Program, and Ballot Preparation, *Minnesota Rules*, 8200, 8205, 8210, 8240 and 8250, and proposed new Rule Chapter 8215; Revisor's ID Number R-04487; OAH Docket 71-9019-34528.

Background:

The 2016 Legislature, not the Office of the Secretary of State, made certain determinations as to the future of political party national delegate choice, and established a process for identifying the proportion of delegates to be pledged to each presidential candidate based upon a process called the presidential nomination primary, where only those eligible voters self-identifying with each major party may participate in that process and express their choice of candidate in a manner similar to that previously administered privately by the parties. The results of this new process are binding upon the major parties.

Pre-Hearing

There were 68 persons who communicated with this office prior to the hearing held June 18, 2018, to comment, request a hearing or both. Three of those persons also testified at the hearing, and their comments are addressed in response to their testimony at the end of this letter.

Hearing requests only

33 of those persons simply asked for a hearing. [Some, but not all, of these requests were 'valid' under 14.25, subd. 1.]

Comments

The communications that did express an opinion about the proposed rules were primarily to object to rules to be codified as chapter 8215. Many of these comments also requested a hearing.

Comments Other than Presidential Nomination Primary

Only two organizations and no individuals commented on any part of the proposed rules other than those relating to the presidential nomination primary (PNP):

1) The Minnesota County Attorneys Association made a comment and suggestion relating to the proposed amendment to part 8200.7200, and the Office of the Secretary of State agreed with the suggested change and modified the proposed amended rule as shown in Exhibit P; and
2) The League of Minnesota Cities expressed general agreement and support for all of the proposed rules.

Comments Objecting to PNP in Addition to Requesting a Hearing

Nine persons had the exact same comment:

> "I object to provisions in the proposed rules in sections 8215.03-8215.05 concerning how Presidential primary voters will be required to state their support for a particular party before being allowed to vote and that will make voters' party selection public information. "

Another thirteen made comments along the same lines, but with varying language.

2016 Legislation:

It must be noted that the legislation enacting chapter 207A, Laws 2016, Chapter 162, specifically requires in sections 1, 7, 10 and 11, the exact items being objected to by these individuals, and section 9 requires the secretary of state to make rules to implement this chapter. Exhibit N includes the text of the legislation as well as the codified version of Minnesota Statutes, chapter 207A.

Even if the Office of the Secretary of State proposed no rules at all (in violation of section 9 of the legislation), the statutes remain in force and voters would not receive a ballot without:

1) Specifying the major party whose ballot they wish to vote;
2) Declaring their general agreement with the principles of the party whose ballot they requested;
3) Having that choice be public information; and
4) Agreeing to all this by signing the roster oath.

Disqualifying the proposed rules will not eliminate any of these voting requirements.

Comments from persons who object to being excluded from the PNP

A number of persons commented that as non-affiliated voters they objected to being excluded from the PNP process. The PNP process is intended to address only major parties and their adherents.

PMP Not An Election for Public Office

It should be pointed out that the PNP is not an election for public office. The PNP is therefore not an election as defined in Minnesota Statutes, section 200.02, subds. 2, 3, 4, and 5.

No specific individual candidates for delegate appear on the PNP ballot, nor are officially affiliated by law with specific candidates for President. By the terms of Laws 2016, chapter 162, section 9, the PNP is limited to major parties. There will be at least two major parties at the time

of the PNP, and it is possible there will be more major parties. Minor parties and non-affiliated persons are not covered by the PNP process, which is a way to organize the selection process of privately-affiliated persons exercising their First Amendment freedom of association right in the form of a political party.

The PNP is binding on the major political parties, see Laws 2016, chapter 162, section 10, for the election of their delegates, which are party offices, not public offices, consistent with party rules that are not addressed in statute or rule. The parties will determine their own processes that will elect individual delegates consistent with the results of the PNP. No public offices are elected through the PNP. The nominee of a major political party for President is determined by the national conventions of major political parties and the nomination itself is not a public office. *Minnesota Statutes*, chapter 208 provides for the process of listing major party Presidential candidates on the ballot, for the selection of Presidential Electors (which *is* a public office) and for the casting of electoral votes.

Private associations such as the major parties, have the right to select their membership, as long as they do not discriminate illegally in that process. Exclusion on the basis of failure to share the principles of the party is not illegal in this context.

Comments from persons who believe that disclosure of the ballot voted is risky.

Several persons suggested that the disclosure of the ballot voted is risky for persons in situations where there is physical or other danger from another who objects to the party whose ballot was voted.

Political participation in this country is not a secret process. Before participating under current law and party processes, as a general rule, one must agree to agree with most of the parties' principles. For example, when one signs in to an attendance sheet at the precinct caucus, there is a statement required by party rules, (and allowed by *Minnesota Statutes*, section 202A.16, subds. 2 and 3), that the person is in agreement with the principles, or will vote for (or did vote for) the party in the next or most recent election. Similarly, most physical party meetings are held in public spaces, and participants can be identified as they enter or leave the meeting.

Also, the list where this information would appear is available but only for elections, political or law enforcement purposes, and the person requesting the data, for which there is a charge, must agree to limit their usage to these matters.

It is also possible for a person who is in fear for their safety to use the existing provisions of Minnesota Statutes, section 201.091, subd. 4, the third paragraph, to remove their name and information, including the voter history which would disclose the party ballot choice, from the public information list.

Party Affiliation

Finally, one person commented on changing affiliation and for absentee voting for either party.

There is no binding party affiliation proposed in these rules. The party ballot choice is shown but it does not dictate any subsequent action. At the next PNP, a voter may choose to vote the ballot of the same party, of another major party, or of no party whatsoever (by not voting). There is no mechanism that one must go through prior to showing up at the polling place, or requesting the absentee ballot.

With respect to absentee voting, one must request the ballot of a specific party, but if a voter changes one's mind about the party in which to vote, prior to the seventh day before the PNP, then pursuant to

proposed part 8215.0400, subp. 7, a voter can spoil the ballot and submit a new absentee ballot application indicating a different party. This can be done by fax, mail, email or in person.

Testimony at Hearing:

Three persons testified at the hearing:

Erik Larson

Amy Bergquist

Rick Heller

Testimony and Comments of Erik Larson:

Mr. Larson testified orally, submitted written testimony and also provided a lengthy written comment prior to the hearing as well.

Mr. Larson raises a number of points, falling into several categories:

a) Alleged Constitutional issues, which he assert then render the SONAR deficient;
b) Asserted ambiguities with respect to compliance with the rules
c) Effects of the public nature of data indicating the ballot voted by the voter
d) Use of state resources to promote political parties

a) Mr. Larson suggests that there is some inherently un- or less - constitutional quality to partisan primaries such as the one created by Laws 2016, Chapter 162. This is clearly not the case under the United States Constitution, as numerous states have both partisan primaries, as well as party registration, with public information available about both the participation in the primaries as well as the party registration of particular voters.
Mr. Larson also asserts that despite the 2016 legislation, the Secretary of State should perhaps refuse to promulgate rules implementing these statutes. Given the nature of the statutory provisions, which the Office of the Secretary of State is not in a position to alter or contradict through rulemaking, and the command to promulgate implementing rules contained in section 9 of that legislation, the notion that the Secretary of State should violate the statutory provisions is not within the scope of review in this rulemaking process.

Mr. Larson suggests that the oath prescribed by Laws 2016, Chapter 62, section 7 is unconstitutional because it differs from oaths used at other elections. This oath is repeated from the statute, for the convenience of those reading the rules, as part of part 8215.0300. Mr. Larson then asserts that due to this unconstitutional nature, the SONAR is deficient as it does not account for the costs of defending against a challenge on that basis.

Firstly, this view misreads the uniform oath provision, and assumes that the exact same oath must be applied at every election. There is nothing in the Minnesota Constitution that specifically indicates that. The policy of having a uniform oath at an election is to ensure that no person is turned away from voting at any specific election due to the imposition of an impermissible discriminatory policy within that election. As long as the oath being used in the election is the same oath, the Minnesota Constitution has been satisfied. That is specifically the case in the PNP.

Secondly, the oath repeated in the rules is established by statute. It is the statute that would be unconstitutional, if successfully challenged. Challenging the rule would simply leave the statute in place, and the oath would continue to be applied as provided in Laws 2016, chapter 162. Thus, the costs of defending against such a challenge are not a part of the SONAR process. Litigation in the United States can be entered into easily; under the theory proposed by Mr. Larson, every SONAR would have to include the costs of defending against a challenge of any kind. This is demonstrably not required.

The SONAR is not deficient because it fails to consider challenges to the underlying legislation that are without merit, but could still be brought.

b) Mr. Larson suggests that the rules must provide detailed provisions for the provision of information on the principles of the various major parties, penalties for false swearing of the oath as well as for the criteria to be used by challengers in the polling place.

As Mr. Larson himself states, it would be improper for the election officials to be providing information about the parties at the polling place. In addition to various existing legal restrictions, the parties, as private associations, should be speaking for themselves. It is also unnecessary; as a general matter, members of the public who would legitimately be voting at a partisan primary of this kind, where there are no other contests on the ballot, are highly likely to understand the difference between the various parties. Individuals will need to make a declaration of their own accord. It is up to the voter to determine whether they identify with the particular party. If they cannot choose, then they may legitimately be excluded under the specific statutes, just as in other states with party registration, persons not registered with that particular party are excluded from internal decisions by that party, and as a function of the parties' inherent right to exclude nonmembers from a party function.

A parallel situation already exists in Minnesota elections. When any ballot question is before the voters, for example, when a school district holds a referendum as to a bond request for a levy increase, the elections function does not have the responsibility to inform the voters of the details of the proposal. The voters are expected to come to the polls with the information needed to have made a choice. Similarly, voters in the PNP are expected to come to the polls knowing about the candidates and the party they are going to choose, and it is simply not the function of the elections process to educate the voter, but simply to administer and record the vote.

While all members of the electorate have the option of selecting a party whose ballot they wish to vote, the Legislature has determined that choosing a party is a requirement to vote in the party's PNP; there is no inherent right to actually vote in that primary should a voter be unwilling or unable to make the decision to select a party.

Laws 2016, chapter 162 does not require rule provisions regarding challengers. Rather, the legislation, in section 10, clause (a), directs that except as otherwise provided by law, the PNP is to be conducted in the same manner as the state primary. This means that the various provisions of existing Minnesota Election Law will apply. Challengers are governed by the provisions of section 204C.07, 204C.12 and 204C.13. There are no Minnesota Rules with respect to challengers generally, with the exception that 8210.3000, subp. 8, governing mail ballot elections has a short provision that challengers may be present when mail ballots are counted but are subject to the

statutory provisions. It is not unreasonable that there are no provisions regarding challengers at the PNP.

Mr. Larson also asserts that the rules must include provisions regarding the penalties for false swearing of the oath that one agrees generally with the principles of a party. Again, Minnesota Rules on elections do not impose penalties or include provisions on penalties, with the exception that crimes committed as felonies are referenced as they have an impact on which persons can register and vote. Penalties for failure to abide by the law are set forth in statutory law, for example, *Minnesota Statutes,* section 201.27, but not in rule. Similarly, both the provision creating a felony penalty for providing false information when signing the roster oath, *Minnesota Statutes*, section 204C.10 (a), as well as excepting the PNP voter from the felony penalty of *Minnesota Statutes,* 204C.10 (a) (section 204C.10 (b)) are in statute, not rule. A county attorney might determine that *Minnesota Statutes*, section 643.241 might apply, making it a petty misdemeanor.

c) The status of the data on which ballot a voter has chosen to vote is governed in part by specific statute relating to the PNP and in part by the other general law relating to government data. Laws 2016, Chapter 162, section 1 is quite clear that the public information list will show the party choice of voters who voted in the most recent PNP. Laws 2016, Chapter 162, section 10 (b) is also quite clear that the county auditor must post in the voter history the name of the party whose ballot was requested by the specific voter.

Government data is generally addressed by *Minnesota Statutes*, Chapter 13. Election data is also addressed in *Minnesota Statutes*, section 201.091. The 2016 legislation adds to the public information list the party choice, if any, from the most recent PNP. However, the party choice from all elections is government data, and, pursuant to *Minnesota Statutes*, sections 15.17 and 138.17, are to be retained permanently unless a shorter retention period has been approved by the records retention panel. Thus, if more than one PNP is held, the data would rotate off the public information list but remain with the office of the secretary of state.

The position of the Office is that all information other than the public information list is private data.

Thus, ample laws and regulations already in place provide the guidance necessary to resolve this concern.

d) Finally, Mr. Larsen objects to the use of state resources to promote political parties.

This use of state resources was enacted by the legislature and signed into law by the Governor, and has therefore become the policy of the state of Minnesota, to hold this PNP. State resources are already used, pursuant to law, to assist political parties. There is the Campaign Check-off, which benefits both major and minor parties. In the past, there were rebates for donations to major party candidates. The fact that primaries are already held for partisan offices benefits the major political parties.

The fact that political parties benefit from government action does not make these rules any less needed and reasonable.

The fact that Mr. Larson disagrees with the proposed rules, or would like to see additional provisions, does not make the proposed provisions any less needed or reasonable than the Office of the Secretary of State has shown them to be through the submissions in this rulemaking proceeding.

Mr. Larson also submitted a post-hearing comment regarding specific groups of individuals that he considers to be at different risks than voters generally. In addition to the general publicity provided pursuant to the usual rulemaking processes, as shown by various exhibits in the record, please see pages 14 to 18 of Exhibit D, the SONAR, for the additional notice plan that was approved by this court earlier in these proceedings. It does include a number of organizations that could comment on the alleged risks, but which did not.

Testimony of Amy Bergquist

Ms. Bergquist makes a number of suggestions in her oral testimony.

Certainly, as the home of the Safe at Home program, the Office of the Secretary of State is aware of issues surrounding survivors of domestic violence. However, these rules are aimed at elections administrators and secondarily at the general public. The legislature did not enact any additional exemptions or variations not already in existing law with respect to the groups of which Ms. Bergquist is speaking.

It is true that persons in fear for their safety have the option to request that their information be suppressed from appearing on public information lists under Minnesota Statutes, section 201.091, subd. 4. However, the fact that the proposed rules do not speak to that is simply due to the fact that the mechanism already exists and needs no additional rules for its implementation. Publicizing that option does not require an additional rule provision.

Ms. Bergquist suggests that persons voting after an at-risk voter has voted could see how they are marked on the roster and exact retribution. It should be noted that in many jurisdictions covering a likely majority of voters in any PNP, elections are conducted using e-pollbooks, and the information of a voter is not visible to other voters. The SONAR discusses the methods for indicating the ballot choice, which do not have to be verbalized. By the time of the PNP in 2020, the proportion of voters who will be in jurisdictions that have foregone paper rosters is likely to increase substantially.

With respect to absentee voters, there is no requirement that the witness be domiciled with the voter. Other, existing law and rules provide sufficient alternatives. The voter could find another witness, or a notary public. The voter could also vote absentee in person prior to the election.

The statement that the ballot choice information is public information is statutory, appearing in one way or another in Laws 2016, Chapter 162, sections 1, 7 and 10 (b). This is clearly the intent of the legislature, subject to the option referenced above. It is not a misleading statement, as in the majority of cases, this option is simply not relevant to the voter.

Participation in party activities such as this PNP is not generally considered to be secret in the United States.

The fact that Ms. Bergquist disagrees with the procedures, or would like to see additional provisions, does not make the proposed provisions any less needed or reasonable than the Office of the Secretary of State has shown them to be through the submissions in this rulemaking proceeding.

Ms. Bergquist's written post-hearing comment will be responded to in the rebuttal period.

Testimony and Comments of Rick Heller

Mr. Heller's concerns were primarily aimed at questions about accessibility of the voting machines to be used during the PNP as well as of the documents posted in this rulemaking on the various websites. As you can see from the documents in Mr. Heller's comment, shown in Exhibit I, the Office of the Secretary of State has worked with Mr. Heller in the past on issues concerning voting machine accessibility. Those issues are not relevant to the rules proposed in this process. As to the accessibility of the web sites, many of the documents that make up the posted documents are not sourced in documents that can be converted to non-image .pdf, and the Office has posted an .html version of the rules text at the suggestion of Mr. Heller, in addition to the .pdf supplied by the Revisor.

A number of items asserted to be on the Secretary of State web site by Mr. Heller, appeared to be documents listed for prior rulemakings, not the current rulemaking. When Mr. Heller listed exhibits not present on the OSS rulemaking website at the hearing, he may have been referencing these exhibits in prior rulemaking. I will again certify that the exhibits labeled A through P were on line prior to the hearing. Since that time, Exhibit Q and also Exhibit 1 have been posted on that site as well.

Mr. Heller also testified with respect to various aspects of the programming and operation of voting machines, which are not within the scope of the currently proposed rules.

Conclusion

The rules promulgated by the Office of the Secretary of State in this process are authorized by statute as described in the SONAR; the processes used in this rulemaking are all pursuant to the law and rules on rulemaking, as demonstrated by the various exhibits submitted to this court; and the rules are needed and reasonable.

Best regards,

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