

STATE OF MINNESOTA  
IN SUPREME COURT

A19-1994

**FILED**

December 18, 2019

**OFFICE OF  
APPELLATE COURTS**

Roque “Rocky” De La Fuente, et al.,  
Petitioner,

vs.

Steve Simon, Minnesota Secretary of  
State,  
Respondent.

**SECRETARY’S MOTION TO AMEND  
SCHEDULING ORDER**

Respondent Steve Simon respectfully moves the Court under Minn. R. Civ. App. P. 127 to amend the schedule provided in the Court’s December 17, 2019 order. The Court required written arguments to be submitted by December 31 and scheduled oral argument for January 9, 2020. But for absentee balloting in the state’s presidential nomination primary to commence on the date provided by law, Minnesota election officials need to receive a decision in this matter within the first few days of January. As a result, on behalf of the state’s election officials, the Secretary requests a revision to the order that will permit the Court to issue a decision in this matter early enough that the Secretary can transmit the list of candidates for the presidential nomination primary to county election officials and their ballot-production vendors on or before January 3.

As the Court noted in its December 17 order, state law requires election officials to permit absentee balloting during the 46 days before the presidential nomination primary. *See* Minn. Stat. §§ 203B.081, subd. 1; 207A.12(a). In the current election cycle, the 46-day deadline falls on January 17. As of that date, ballots must be available for voting in person at county auditors’ offices and must be mailed to voters whose absentee ballot applications were received

on or before that date. (Black Aff. ¶ 4.) Assistive voting equipment must also be programmed before January 17 so that it is available in county auditors' offices for use by voters with disabilities who are voting in-person absentee. (*Id.*)

Ballots for the presidential nomination primary are prepared by the county auditors of Minnesota's 87 counties. (*Id.* ¶ 5.) The process of formatting, programming, printing, and shipping ballots for all of the counties typically takes more than a week. (*Id.* ¶ 8.) This is, in part, because most county auditors in the state procure ballot printing and programming services from a single vendor. (*See id.* ¶¶ 6-7.) This vendor has told the Secretary's staff that, in order to meet the January 17 statutory deadline, it would need to receive a finalized list of candidates for the presidential nomination primary by the close of business on December 31, 2019. (*Id.*) While the Secretary believes that counties and their vendors are capable of completing these tasks in slightly less time than this under exigent circumstances, the practicalities of formatting, programming, printing, and shipping 87 counties' ballots are such that the process cannot realistically be completed in much less time than the seventeen calendar days that the predominant ballot vendor has requested. (*Id.* ¶ 8.)

For these reasons, the Secretary requests an amended scheduling order. The Secretary respectfully asks that the order be structured so that he is in a position to provide county auditors and their ballot vendors with a final list of candidates for the nomination primary by the close of business on January 3, 2020.

If the Court's order makes clear the names that are to be placed on the final candidate list without requiring further proceedings, that order could be filed in the mid-afternoon of January 3 and still provide the Secretary sufficient time to transmit the list to county auditors and ballot vendors. If, however, the Court determines that further processes need to take place—such as a

time period during which new candidates can file to appear on the nomination primary ballot, or a period during which candidates currently on the list can formally withdraw their names from the ballot<sup>1</sup>—the schedule will need to be altered to provide sufficient time for such processes to take place, and the candidate list to thus be finalized, before the end of business on January 3.

Dated: December 18, 2019

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

/s/ **Nathan J. Hartshorn**

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STEVE SIMON, MINNESOTA SECRETARY  
OF STATE

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<sup>1</sup> Cf. Minn. Stat. § 204B.12, subd. 1 (2018) (permitting candidate to withdraw from August state primary ballot within two days after close of filing period for the office).

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**AFFIDAVIT OF  
BIBI BLACK**

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF RAMSEY    )

Bibi Black, being first duly sworn, deposes and says as follows:

1. I am Legal Advisor to the Office of the Secretary of State of Minnesota. I have held that position since January 2003. I also have extensive prior experience in the Office of the Secretary of State, having served in the Office since 1981 in various management and legal capacities prior to assuming my current position. This affidavit is based on my personal knowledge and review of records maintained in the normal course of business by the Office.

2. My current duties include advising the Secretary of State and the Director of Elections with regard to elections issues generally and specifically with regard to ballot formatting, creation, distribution, and absentee balloting, in compliance with Minnesota law.

3. As a result of my position, I am familiar with the steps entailed in preparing ballots and distributing absentee ballots.

4. Minnesota law requires the state’s presidential nomination primary to be conducted “in the manner provided by law for the state primary.” Minn. Stat. § 207A.12(a)

(2018). Thus, absentee voting must begin no later than 46 days before the presidential nomination primary. *Id.* § 203B.081, subd. 1. In 2020, this deadline falls on Friday, January 17, 2020. As of that date, ballots must be available for voting in person at county auditors' offices and must be mailed to voters whose absentee ballot applications were received on or before that date. Assistive voting equipment must also be programmed before that date so that it is available in county auditors' offices for use by voters with disabilities who are voting in-person absentee.

5. Ballots for the presidential nomination primary are prepared by the county auditors of the 87 Minnesota counties. Each county has its own contracts and agreements with its ballot printing and programming vendor. Because the Office is not privy to the terms of those contracts and agreements, I cannot predict with certainty the latest date by which an order must be issued to enable all counties to complete any necessary printing and programming by the January 17, 2020 statutory deadline.

6. It is my understanding, however, that the vast majority of counties in Minnesota use the same vendor. It would therefore be impossible, in practical terms, for all 87 counties in the state to print and program their ballots within the span of a few days.

7. The vendor that prepares the ballots for the vast majority of county auditors has informed me that that vendor would need to have the candidates' names finalized no later than the close of business on December 31, 2019, in order to ensure compliance with state and federal deadlines. Should a decision be rendered in favor of Petitioner in this case and a one-or-two day filing period ordered by the Court, that would move the deadline for decision further back towards December 29 or earlier.

8. This would provide counties with a two-and-a-half-week period for printing, programming, and shipping. Such a period is typical and would clearly be sufficient.

9. It is possible that county auditors and their vendors could print, program, and ship all of Minnesota's ballots for the presidential nominating primary in slightly less than the sixteen calendar days between December 31 and the beginning of absentee voting. If, however, a decision in this case is not rendered until a substantially later time, it is highly likely that the volume of ballots to be programmed, printed and shipped would make it impossible for a number of counties to commence absentee balloting by January 17. A decision thus rendered would leave a very limited number of days for formatting, programming, printing, and shipment of absentee ballots. It is unlikely that Minnesota's counties could perform the necessary work in such a short time.

FURTHER THE AFFIANT SAYETH NAUGHT.

Dated: December 18, 2019

/s/ **Bibi Black**  
BIBI BLACK

Subscribed and sworn to before me on  
this 18<sup>th</sup> day of December, 2019.

/s/ **Nancy K. Breems**  
NOTARY PUBLIC  
My Commission Expires 1/31/2021



Jennifer Carnahan, Chair  
Republican Party of Minnesota  
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Minneapolis, MN 55404  
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/s/ **Brenda Hanson**  
BRENDA HANSON

Subscribed and sworn to before me on  
the 18<sup>th</sup> day of December, 2019.

/s/ **Elizabeth A. Soderstrom**  
NOTARY PUBLIC  
My Commission Expires 1/31/2020