State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. R. No. 3

1.1   A House resolution

1.2 providing for the impeachment of Sara Grewing, Assistant Chief Judge of the Second
1.3 Judicial District of the State of Minnesota, for violating the plain language of the United
1.4 States Constitution and Minnesota election law.

1.5   WHEREAS, article VIII, section 1, of the Minnesota Constitution provides the House of

1.6 Representatives the power of impeachment, and provides the Senate the power to try impeachments;

1.7 and

1.8   WHEREAS, Judge Sara Grewing violated the legislative authority of the Minnesota

1.9 Legislature, a coequal branch of state government, by failing to impartially administer justice and

1.10 by colluding with Secretary of State Steve Simon and the Democracy Docket to provide the

1.11 impression of legality to the consent decree issued in LaRose v. Simon; and

1.12   WHEREAS, Judge Sara Grewing's actions violate the right of franchise of every voter in

1.13 Minnesota who entrusts elected officials, including judges, to protect the principle of one citizen,

1.14 one vote; violate equal protection under the laws of Minnesota; and violate article I, section 2, of

1.15 the United States Constitution; and

1.16   WHEREAS, Judge Sara Grewing violated the judicial oath of office to uphold the Minnesota

1.17 Constitution, Minnesota law, and the United States Constitution; NOW, THEREFORE,

1.18   BE IT RESOLVED by the House of Representatives of the State of Minnesota that Sara

1.19 Grewing, Assistant Chief Judge of the Second Judicial District of the State of Minnesota, is

1.20 impeached for violating the plain language of the United States Constitution and Minnesota election

1.21 law.

1.22   BE IT FURTHER RESOLVED that the following article of impeachment is adopted by the

1.23 House of Representatives and must be exhibited to the Senate.

1.24   BE IT FURTHER RESOLVED that, in accordance with article VIII, section 3, of the

1.25 Minnesota Constitution, Judge Sara Grewing must not exercise the duties of district court judge

2.1 from the time this resolution is adopted and may resume the duties of district court judge only if

2.2 acquitted by the Senate of the State of Minnesota.

2.3 BE IT FURTHER RESOLVED that, in accordance with article VIII, section 4, of the

2.4 Minnesota Constitution, the Speaker of the House of Representatives must ensure that Judge Sara

2.5 Grewing is served with papers giving notice of the articles of impeachment as expeditiously as

2.6 possible.

2.7 BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives is

2.8 directed to prepare an enrolled copy of this resolution, to be authenticated by his signature and that

2.9 of the Speaker, and transmit it to the Governor of Minnesota, the Secretary of State of Minnesota,

2.10 the President of the Senate, and the Secretary of the Senate.

2.11 The following article of impeachment is exhibited by the House of Representatives of the

2.12 State of Minnesota against Sara Grewing, Assistant Chief Judge of the Second Judicial District of

2.13 the State of Minnesota, in maintenance and support of impeachment for corrupt conduct in office

2.14 and for other crimes and misdemeanors.

ARTICLE 1

2.16 Article II of the United States Constitution grants state legislatures the authority to select

2.17 presidential electors and Congress the authority to select the date of the election. The "electors

2.18 clause" states that each "State shall appoint, in such Manner as the Legislature thereof may direct,

2.19 a Number of Electors." The Constitution gives the United States Congress the power to set the date

2.20 on which the presidential election occurs, but it requires the "day shall be the same throughout the

2.21 United States." Congress has set "the Tuesday next after the first Monday in November" as the date

2.22 for selecting presidential electors under United States Code, title 3, section 1. In 2020, that day fell

2.23 on November 3, 2020, which was Election Day.

2.24 By its plain terms, the electors clause vests the power to determine the manner of selecting

2.25 electors exclusively in the "Legislature" of each state, as established in the United States Constitution,

2.26 article II, section 1, clause 2. In McPherson v. Blacker, 146 U.S. 1, 27 (1892), the United States

2.27 Supreme Court made clear that the constitution "leaves it to the legislature exclusively." This vested

2.28 authority is not just the typical legislative power exercised pursuant to a state constitution. Rather,

2.29 when a state legislature enacts statutes governing presidential elections, it operates "by virtue of a

2.30 direct grant of authority" under the United States Constitution. Bush v. Palm Beach County

2.31 Canvassing Board, 531 U.S. 70, 76 (2000).

2.32 A legislature's power in this area is such that it "cannot be taken from them or modified"

2.33 even through "their state constitutions." McPherson, 146 U.S. at 35; see also Palm Beach, 531 U.S

2.34 at 76-77.

2.35 Under Minnesota Statutes, section 203B.02, subdivision 1, any "eligible voter may vote by

2.36 absentee ballot."

3.1   For the 2020 general election, voters were able to cast absentee ballots beginning September

3.2   18. Minnesota Statutes, section 203B.081, subdivision 1, provides an "eligible voter may vote by

3.3   absentee ballot...during the 46 days before the election." A voter may request an absentee ballot

3.4   any time up until the day before Election Day.

3.5   Minnesota Statutes, section 203B.08, subdivision 3, provides receipt deadlines for absentee

3.6   ballots depending on the delivery method. For a vote to count, election officials must receive

3.7   absentee ballots delivered by hand by 3:00 p.m., and those delivered by mail by 8:00 p.m. Ballots

3.8   received after those times must be marked as received late by the county auditor or municipal clerk,

3.9   and must not be delivered to the ballot board. To facilitate compliance with this legislative mandate,

3.10   Minnesota Rules, part 8210.2500, directs that absentee ballots arriving after the deadline "shall be

3.11   marked as received late by the county auditor or municipal court."

3.12   The rule of law, as established by the United States Constitution and the Minnesota Legislature,

3.13   dictates these rules must be followed regardless of the Secretary of State's instructions to the contrary.

3.14   There is no pandemic exception to the Constitution. See, for example, Democratic National

3.15   Committee v. Wisconsin State Legislature, No. 20A66, 2020 WL 6275871, at 4 (Oct. 26, 2020),

3.16   in which Justice Kavanaugh, in a concurrence denying application for stay, stated "the design of

3.17   electoral procedures is a legislative task, including during a pandemic."

3.18   In May 2020, the Alliance for Retired Americans Education Fund sued the Secretary to enjoin

3.19   enforcement of the receipt deadline. LaRose v. Simon, No. 62-CV-20-3149 (Minnesota District

3.20   Court 2020). The Secretary of State and Minnesota Alliance for Retired Americans Education Fund

3.21   then filed a partial consent decree for the primary election and asked the state court to approve it.

3.22   In mid-June 2020, the Minnesota state court entered the partial consent decree order. Under

3.23   the primary election consent decree, the Secretary of State agreed to not enforce the statutory

3.24   mandated ballot receipt deadline. Instead, election officials would accept all absentee ballots received

3.25   up to two days after the primary so long as they were postmarked on or before the date of the

3.26   primary. The Secretary of State also agreed to issue instructions to election officials about the

3.27   change. These included enclosing information with each absentee ballot telling voters that their

3.28   ballots could arrive up to two days after the date of the primary, as well as taking additional steps

3.29   to inform the public.

3.30   In mid-July 2020, the Secretary and the Alliance for Retired Americans Education Fund filed

3.31   a consent decree for the general election and asked the state court to approve it. The state court

3.32   entered the consent decree order on August 3, 2020. Under the general election consent decree, the

3.33   Secretary agreed to not enforce the ballot receipt deadline in Minnesota Statutes, section 203B.08,

3.34   subdivision 3. Instead, the Secretary agreed he would issue guidance to local election officials to

3.35   count all mail-in ballots with a postmark of Election Day or before, if those election officials

3.36   received the ballots within five business days or seven calendar days of Election Day, also known

3.37   as the postmark deadline. The consent decree also provided that if a mail-in ballot did not have a

4.1   postmark, the election official "should presume that it was mailed on or before Election Day unless

4.2   the preponderance of the evidence demonstrates it was mailed after the Election Day."

4.3   Judge Sara Grewing approved the LaRose v. Simon consent decree. Judge Sara Grewing

4.4   also approved a consent decree in a case brought by the National Association for the Advancement

4.5   of Colored People that successfully sought to wave the witness requirement. Empowered by the

4.6   LaRose v. Simon consent decree, the Secretary of State directed election officials, also in violation

4.7   of the legislature's authority, to not enforce state law governing the witness and postmark

4.8   requirements and to count absentee ballots received up to a week after election day.

4.9   Only the Minnesota Legislature, and not the Secretary of State or a state district court judge,

4.10   has plenary authority to establish the manner of conducting a presidential election in Minnesota.

4.11   It is not the province of a state district court judge to rewrite the state's election code, nor does state

4.12   law authorize the Secretary of State to override the legislature's ballot deadlines due to public health

4.13   concerns. The Secretary of State's actions altering the Minnesota election law governing the deadline

4.14   for mail-in ballots in the 2020 Minnesota presidential election, and Judge Grewing's approval of

4.15   those actions, violated the electors clause of Article II, Section 1, of the United States Constitution.

4.16   The Secretary of State's instructions to count mail-in ballots received up to seven days after Election

4.17   Day stand in direct contradiction to Minnesota election law governing presidential elections.

4.18   Secretary of State Steve Simon violated the plain language of the United States Constitution and

4.19   Minnesota election law passed by the Minnesota Legislature. Judge Sara Grewing was complicit

4.20   in violating the plain language of the United States Constitution and Minnesota election law passed

4.21   by the Minnesota Legislature.

4.22   Wherefore, by virtue of the conduct described in this article, Judge Sara Grewing warrants

4.23   impeachment, trial, and removal from office.