

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<p>Minnesota Voters Alliance; Mary Amlaw; Ken Wendling; Tim Kirk,</p> <p style="text-align:center">Plaintiffs,</p> <p style="text-align:center">v.</p> <p>Keith Ellison, in his official capacity as At- torney General; Brad Johnson, in his offi- cial capacity as Anoka County Attorney,</p> <p style="text-align:center">Defendants.</p>	<p>Court File No. 0:23-cv-02774-NEB-TNL</p> <p style="text-align:center">[PROPOSED] ORDER GRANTING PRELIMINARY INJUNCTION</p>
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This matter came before the Court on February 21, 2024, on Plaintiffs’ motion for a preliminary injunction. Appearances were noted on the record. Based on the files, records, and proceedings herein, the Court issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Plaintiffs are Minnesota voters and an organization of Minnesota voters who want to speak freely on important matters of public concern regarding elections in Minnesota. Am. Compl. ¶¶ 23–31.

2. Plaintiffs specifically wish to discuss their view that the Minnesota Constitution does not allow felons still serving felony sentences to vote prior to their lost civil rights being fully restored, among other issues of voter eligibility.

3. In 2023, the Minnesota Legislature passed a law that, on its face, allows those serving felony sentences to register to vote and vote upon leaving incarceration, and before the completion of their sentences.

4. Plaintiffs believe this law is unconstitutional, and their speech clearly states that belief.

5. In 2023, the Minnesota Legislature passed another law, codified at Minn. Stat. § 211B.075, which forbids anyone, within 60 days of an election, from speaking in several different ways:

Subdivision 1.

Intimidation.

(a) A person may not directly or indirectly use or threaten . . . damage, harm, or loss . . . against:

(1) any person with the intent to compel that person to register or abstain from registering to vote, vote or abstain from voting

Subd. 2.

Deceptive practices.

(a) No person may, within 60 days of an election, cause information to be transmitted by any means that the person:

(1) intends to impede or prevent another person from exercising the right to vote; and

(2) knows to be materially false.

(b) The prohibition in this subdivision includes but is not limited to information regarding the time, place, or manner of holding an election; the qualifications for or restrictions on voter eligibility at an election; and threats to physical safety associated with casting a ballot.

Subd. 3.

Interference with registration or voting.

No person may intentionally hinder, interfere with, or prevent another person from voting, registering to vote, or aiding another person in casting a ballot or registering to vote.

6. Subdivision 5 makes a violation of this prohibition a “gross misdemeanor” subject to “a civil penalty of up to \$1,000 for each violation” and authorizes the “attorney general, a county attorney, or *any person* injured by an act prohibited by this section” to “bring a civil action to prevent or restrain a violation of this section,” including money damages and injunctive relief. Am. Compl. ¶ 46 (emphasis added).

7. What’s more, it allows those same parties to “restrain a violation of this section if there is a reasonable basis to believe that an individual . . . *intends to commit* a prohibited act.” *Id.* ¶ 47 (emphasis added).

8. And under subdivision 4, an organization like Plaintiff Minnesota Voters Alliance is potentially criminally liable for the speech of its members, and its members for the speech of the organization. *Id.*

9. Both MVA and each individual plaintiff regularly engage in speech on matters of public concern, including Minnesota election law. *Id.* ¶¶ 23, 26, 28, 30. They intend to continue to regularly engage in such speech, but now they must do so with trepidation, because section 211B.075 threatens them with criminal and civil charges if they express their views. *Id.* ¶¶ 24, 27, 29, 31.

10. After the Plaintiffs filed this lawsuit, the Defendant Anoka County Attorney brought a counterclaim for the very speech that Plaintiffs have made and wish to continue making.

11. Thus, Plaintiffs and all others who share their views are currently threatened with prosecution for their speech and proposed speech.

12. Those fears are particularly acute for Plaintiffs, since they are actively challenging a voting regulation they believe is unconstitutional. *Id.* ¶ 3; *See Minn. Voters All. v. Hunt*, Minn. Dist. Ct. No. 02-CV-23-3416. In *Hunt*, as in the Amended Complaint here, the same Plaintiffs argue that Article VII, section 1, of the Minnesota Constitution requires a felon to first be “restored to civil rights” before regaining the right to vote. Am. Compl. ¶ 53.

13. Each of the Plaintiffs has thus publicly argued that this expansion of the franchise is unconstitutional and intends to continue arguing that felons still serving their sentences are not eligible to vote in Minnesota. Compl. at ¶¶ 16, 19, 21, 23. They have, through their attorneys, made these statements in court filings and open court, and the local media has broadcast the arguments in video, audio, and written form throughout Minnesota.

14. Section 211B.075’s express purpose is to silence certain speech. To that end, its chief author has stated that one intent of the law is to stop people from saying, “You’re a felon and you can’t vote.” Deena Winter, *Election bill would make it illegal to knowingly spread false information that impedes voting*, Minnesota Reformer (Mar. 7, 2023), <https://minnesotareformer.com/2023/03/07/election-bill-would-make-it-illegal-to-knowingly-spread-false-election-info-that-impedes-voting/>; Am. Compl. ¶ 14 & Ex. 1.

15. The legislative record is devoid of any evidence that voting rights have been threatened or are being threatened in Minnesota by pure speech on matters of public concern like the speech Plaintiffs have alleged they want to make. Yet Plaintiffs face a counterclaim under section 211B.075 for that speech.

CONCLUSIONS OF LAW

Rule 65

16. The Court will issue a preliminary injunction if the four factors of the Dataphase test favor Plaintiffs.

17. On a motion for a preliminary injunction, the Court considers (1) Plaintiffs' likelihood of success on the merits; (2) the threat of irreparable harm to Plaintiffs; (3) the balance of this harm and any injury that granting the injunction will inflict on Defendants; and (4) the public interest. *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981).

18. If the Court finds that the law is subject to First Amendment scrutiny, the burden to show that the law is constitutional and thus avoid an injunction falls on the government defendants. *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004).

**Plaintiffs' speech is quintessential political speech,
so the law is subject to strict scrutiny.**

19. Plaintiffs are engaged in core political speech. Their speech on the Felon Voting Law is on a major "matter of public concern" in Minnesota, as the Legislature just passed the new law. Further, Plaintiffs are challenging it because they believe it is unconstitutional and therefore ineffective from the start. Likewise, Plaintiffs' speech related to Minnesota's constitutional prohibition on the voting eligibility of wards of the state is core political speech. Am. Compl. ¶ 77.

20. Because Plaintiffs' speech is quintessential political speech and section 211B.075 sweeps it in and sweeps in political speech like it, it is subject to strict scrutiny. *United States v. Alvarez*, 567 U.S. 709 (2012), and its intermediate scrutiny does not apply, as the

Eighth Circuit held in *281 CARE Committee*. 766 F.3d at 783–84; *see also Am. Freedom Def. Initiative v. King Cnty.*, 577 U.S. 1202, 1206 (2016) (construing *Alvarez* as prohibiting content-based bans on false political speech).

The law does not satisfy strict scrutiny and must be enjoined

21. To survive strict scrutiny—“the most demanding test known to constitutional law,” *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997)—Minnesota must demonstrate that the law “furthers a compelling interest and is narrowly tailored.” *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 171 (2015) (cleaned up).

22. Defendants must “specifically identify an ‘actual problem’” and show that restricting “speech [is] actually necessary to the solution,” *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 799 (2011) (cleaned up), because “[c]ontent-based regulations are presumptively invalid.” *R.A.V.*, 505 U.S. at 382.

23. There is no compelling interest in directly regulating the quantum of speech about election-related issues, which section 211B.075 does.

24. In addition, it is not narrowly tailored to achieve any government interest because it expressly sweeps in speech on matters of public concern to be regulated.

25. The government has not shown, and cannot show, that counterspeech is not as effective a remedy at addressing Plaintiffs’ speech.

ORDER

For the foregoing reasons, the Court enjoins the enforcement of Minn. Stat. § 211B.075 pending the full resolution of this case. The Rule 65 bond requirement is waived for this First Amendment challenge.

IT IS SO ORDERED.

DATED:

BY THE COURT:

Nancy E. Brasel
United States District Judge