

## Whether a State Can Delay a Congressional Election When a Candidate Dies

*Craig v. Simon* 0:20-cv-2066) and *Overby v. Simon*  
(0:20-cv-2250 (*Wilhelmina M. Wright*, D. Minn.))

A congressional candidate died shortly before the election, and Minnesota’s law specified that the election would be delayed from November to February. A district judge granted the incumbent an injunction against a delay of the election.

*Subject:* Election dates. *Topics:* Enjoining elections; intervention; interlocutory appeal; pro se party; case assignment; party procedures.

A member of Congress running for reelection in Minnesota and a voter filed a federal complaint in the District of Minnesota on October 9, 2020, challenging a Minnesota statute that would postpone the candidate’s election from November 3 to February 9, 2021, because an opposing candidate—Adam Weeks, the Legal Marijuana Now Party’s nominee—died on September 21.<sup>1</sup> On September 29, the plaintiffs filed a motion for a preliminary injunction.<sup>2</sup>

Judge Wilhelmina M. Wright set the case for a telephonic hearing on October 7, providing contact information for the call on the public docket sheet.<sup>3</sup> Judge Wright added to the hearing’s agenda consideration of a motion to intervene in opposition to the suit by the Republican nominee.<sup>4</sup> The judge began the telephonic hearing with several reminders, including instructions that speakers identify themselves every time they speak and that no one may record or broadcast the hearing.<sup>5</sup>

Judge Wright granted intervention and granted the plaintiffs relief on October 9.<sup>6</sup> Minnesota’s statute conflicted with federal law on the election of

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1. Complaint, *Craig v. Simon*, No. 0:20-cv-2066 (D. Minn. Sept. 28, 2020), D.E. 1; *Craig v. Simon*, 493 F. Supp. 3d 773, 778–79 (D. Minn. 2020); see Jessie Van Berkel, *Craig Sues Over Election Delay in U.S. House Race*, Minneapolis Star Trib., Sept. 29, 2020, at 2B.

“Minnesota law accords ‘major’ party status to the [Legal Marijuana Now] Party because the party’s candidate for state auditor received at least five percent of the statewide vote in 2019.” *Craig v. Simon*, 978 F.3d 1043, 1045 (8th Cir. 2020).

2. Preliminary Injunction Motion, *Craig*, No. 0:20-cv-2066 (D. Minn. Sept. 29, 2020), D.E. 14; *Craig*, 493 F. Supp. 3d at 778–79.

3. Briefing Schedule, *Craig*, No. 0:20-cv-2066 (D. Minn. Sept. 29, 2020), D.E. 21; Docket Sheet, *id.* (Sept. 28, 2020) [hereinafter *Craig* Docket Sheet] (D.E. 22); see Minutes, *id.* (Oct. 7, 2020), D.E. 48; Notice, *id.* (Oct. 1, 2020), D.E. 38.

4. See Notice *id.* (Oct. 1, 2020), D.E. 36; Intervention Brief, *id.* (Sept. 30, 2020), D.E. 26; Intervention Motion, *id.* (Sept. 30, 2020), D.E. 24; see Jessie Van Berkel, *Timing Matters for Craig vs. Kistner*, Minneapolis Star Trib., Oct. 6, 2020, at 1B.

5. Transcript at 4–7, *Craig*, No. 0:20-cv-2066 (D. Minn. Oct. 7, 2020, filed Oct. 30, 2020), D.E. 64.

6. *Craig*, 493 F. Supp. 3d 773; see *Craig* Docket Sheet, *supra* note 3 (order denying stay, D.E. 60).

members of Congress, and the death of a candidate did not create a vacancy requiring a special election.<sup>7</sup>

On October 23, the court of appeals denied the Republican candidate a stay of Judge Wright's injunction.<sup>8</sup> "It is an open question whether a State may refuse to certify results of an election for United States Representative based on a natural disaster, death of a candidate, or other event beyond the State's control."<sup>9</sup> "But it is unlikely that federal law allows Minnesota to cancel the election on account of Week's death and to select a new date in February 2021 to fill a vacancy caused by the cancellation."<sup>10</sup>

On October 29, a pro se complaint filed in the District of Minnesota sought an order recognizing the Legal Marijuana Now Party's selection of the plaintiff as Week's replacement on the ballot.<sup>11</sup> The court assigned the case to Judge Wright as related to the earlier filed case.<sup>12</sup> She denied immediate relief on November 2, finding the plaintiff's case inadequately briefed.<sup>13</sup>

The deceased candidate received six percent of the vote on November 3, and the plaintiff candidate came in first with forty-eight percent.<sup>14</sup> On November 20, the court of appeals affirmed Judge Wright's injunction: "Federal law establishes a uniform date for congressional elections."<sup>15</sup> Judge Wright approved a stipulated dismissal of the case on February 4, 2021.<sup>16</sup>

Meanwhile, the pro se plaintiff's efforts to keep her case alive were unsuccessful. A motion for a declaratory order dated September 30, 2020, but filed on November 2<sup>17</sup> resulted in an order to show cause why the motion was not mooted by Judge Wright's November 2 ruling.<sup>18</sup> Judge Wright denied the motion for failure to respond to the show-cause order.<sup>19</sup> In December, Judge

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7. *Craig*, 493 F. Supp. 3d 773.

8. *Craig v. Simon*, 978 F.3d 1043 (8th Cir. 2020); see Jessie Van Berkel, *Appeals Court Rules for Rep. Craig*, Minneapolis Star Trib., Oct. 24, 2020, at 3B.

The appeal was heard by videoconference on November 13, 2020. Docket Sheet, *Craig v. Simon*, No. 20-3126 (8th Cir. Oct. 13, 2020).

9. *Craig*, 978 F.3d at 1049.

10. *Id.* at 1050.

11. Complaint, *Overby v. Simon*, No. 0:20-cv-2250 (D. Minn. Oct. 29, 2020), D.E. 1; see Amended Complaint, *id.* (Nov. 2, 2020), D.E. 31; see also Order, *id.* (Nov. 3, 2020), D.E. 37 (granting permission for pro se plaintiff to file electronically).

12. Order, *Craig v. Simon*, No. 0:20-cv-2066 (D. Minn. Oct. 30, 2020), D.E. 65.

13. Opinion, *Overby*, No. 0:20-cv-2250 (D. Minn. Nov. 2, 2020), D.E. 30, 2020 WL 6438621; see also Opinion, *id.* (Nov. 2, 2020), D.E. 27, 2020 WL 6391287 (allowing plaintiffs in the other case to intervene).

14. *Craig v. Simon*, 980 F.3d 614, 617 (8th Cir. 2020); see Jessie Van Berkel, *Craig Is Re-Elected in Second District*, Minneapolis Star Trib., Nov. 6, 2020, at 2B.

15. *Craig*, 980 F.3d at 617–18.

16. Dismissal Order, *Craig*, No. 0:20-cv-2066 (D. Minn. Feb. 4, 2021), D.E. 87 (dismissing the case without prejudice).

17. Motion, *Overby*, No. 0:20-cv-2250 (D. Minn. Sept. 30, 2020, filed Nov. 2, 2020), D.E. 32.

18. Docket Sheet, *id.* (Oct. 29, 2021) (D.E. 34).

19. *Id.* (D.E. 39).

Wright denied a motion seeking relief from the failure to show cause.<sup>20</sup> On June 21, 2021, Judge Wright granted with prejudice a dismissal motion.<sup>21</sup>

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20. Order, *id.* (Dec. 2, 2020), D.E. 48; *see* Motion, *id.* (Nov. 13, 2020), D.E. 40.

21. Opinion, *id.* (June 21, 2021), D.E. 55, 2021 WL 2529920.