

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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MINNESOTA VOTERS ALLIANCE;  
ANDREW CILEK; KIM CROCKETT;  
CRAIG ANDERSON; YVONNE  
HUNDSHAMER; and CRAIG JONES,

Case No. 20-CV-1688 (PJS/ECW)

Plaintiffs,

v.

ORDER

TIM WALZ, in his official capacity as  
Governor of Minnesota; STEVE SIMON,  
in his official capacity as Secretary of  
State of Minnesota; MARK V. CHAPIN,  
in his official capacity as Hennepin  
County Auditor; CHRISTOPHER A.  
SAMUEL, in his official capacity as  
Ramsey County Auditor; KEITH  
ELLISON, in his official capacity as  
Attorney General of Minnesota; MIKE  
FREEMAN, in his official capacity as  
Hennepin County Attorney; and JOHN  
CHOI, in his official capacity as Ramsey  
County Attorney,

Defendants.

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Erick G. Kaardal, MOHRMAN, KAARDAL & ERICKSON, P.A., for plaintiffs.

Elizabeth C. Kramer, Megan J. McKenzie, and Kevin A. Finnerty, MINNESOTA  
ATTORNEY GENERAL'S OFFICE, for defendants Tim Walz, Steve Simon, and  
Keith Ellison.

Kelly K. Pierce and Jeffrey M. Wojciechowski, HENNEPIN COUNTY  
ATTORNEY'S OFFICE, for defendants Mike Freeman and Mark V. Chapin.

Robert B. Roche, RAMSEY COUNTY ATTORNEY'S OFFICE, for defendants John Choi and Christopher A. Samuel.

On July 22, 2020, Governor Tim Walz issued Executive Order 20-81, which requires Minnesotans to wear face coverings in indoor public settings in order to control the spread of COVID-19. Plaintiffs—the Minnesota Voters Alliance and five political activists—have brought this action against Governor Walz and other public officials<sup>1</sup> to challenge the legality of Executive Order 20-81. Plaintiffs have framed this action as primarily relating to the impact of Executive Order 20-81 on their right to vote in the upcoming election. In fact, though, plaintiffs argue that Executive Order 20-81 is invalid in its entirety—i.e., that Governor Walz does not have authority to order any person to wear a face covering in any indoor public setting. Indeed, plaintiffs go even further: Plaintiffs argue that it is illegal for any person to *choose* to wear a face covering in a public place for the purpose of preventing the spread of COVID-19.

This matter is before the Court on plaintiffs' motion for a preliminary injunction. The Court held a lengthy hearing on that motion on September 23, 2020. For the reasons that follow, plaintiffs' motion is denied.

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<sup>1</sup>Plaintiffs have sued Governor Walz, Secretary of State Steve Simon, and Attorney General Keith Ellison (“the State defendants”); Hennepin County Attorney Mike Freeman and Hennepin County Auditor Mark Chapin (“the Hennepin defendants”); and Ramsey County Attorney John Choi and Ramsey County Auditor Christopher Samuel (“the Ramsey defendants”).

## I. BACKGROUND

### A. *The COVID-19 Pandemic*

COVID-19 is a deadly disease caused by a virus that is easily spread between people through respiratory droplets produced when an infected person coughs, sneezes, or talks. Kramer Decl. Ex. 2. It appears that the virus may also be transmitted via respiratory microdroplets that can travel in the air for tens of meters and remain airborne for hours. *Id.* Exs. 3, 4. As a result, COVID-19 is easily transmitted in indoor environments, particularly if those environments are crowded or lack adequate ventilation. *Id.* Ex. 3. The virus may be transmitted by infected people who have no symptoms and do not even know that they are infected. *Id.* Exs. 5, 8.

On March 11, 2020, the World Health Organization declared a global pandemic. *Id.* Ex. 6. Since the start of the pandemic, over 7.2 million cases of COVID-19 in the United States have been reported to the Centers for Disease Control and Prevention (“CDC”) and over 206,000 Americans have died, including over 2,000 Minnesotans.<sup>2</sup> There is currently no cure and no vaccine. *Id.* Exs. 1, 5. In response to this public-health crisis, the President declared a national emergency on March 13, 2020 and later

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<sup>2</sup>See Centers for Disease Control and Prevention, at [www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html](http://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html) (last visited Oct. 2, 2020).

approved major disaster declarations in all 50 states—the first time a president had done so in the history of the United States. *Id.* Exs. 9, 10.

*B. Face Coverings*

Federal and state health officials recommend face coverings to slow the spread of COVID-19. According to CDC officials, “the more individuals wear cloth face coverings in public places where they may be close together, the more the entire community is protected.” *Id.* Ex. 12. Recent studies have found that face-covering mandates are associated with large declines in the growth rate of COVID-19 infections and fatalities. *Id.* Exs. 21, 22, 24. One study estimated that a nationwide mandate would significantly benefit the economy by substituting a mask mandate for renewed lockdowns that would subtract nearly 5% from GDP. *Id.* Ex. 24. Projections by the University of Washington indicate that universal use of face coverings would save thousands of lives in Minnesota. *Id.* Ex. 23.

It is important to stress that plaintiffs do not deny any of this. Plaintiffs do not deny the existence of COVID-19, or that it is a dangerous disease, or that it is easily spread (including by people who do not know that they are infected), or that face coverings slow its spread and thus save lives. To the contrary, plaintiffs emphasize that “[n]o one in this case is saying that mask wearing isn’t a good thing.” ECF No. 1 at 1–2.

### *C. Executive Order 20-81*

On March 13, 2020, the same day that the President declared a national emergency, Governor Walz declared a peacetime emergency in Minnesota. *See* Executive Order 20-01; Minn. Stat. § 12.31, subd. 2(a). Among the actions that Governor Walz has taken pursuant to his emergency powers is issuing Executive Order 20-81 (“EO 20-81”), which requires Minnesotans to wear face coverings while present in indoor businesses and public indoor spaces and while waiting outdoors to enter an indoor business or public indoor space. Am. Compl. Ex. 1 [hereinafter “EO 20-81”] ¶ 9(a). Certain individuals are exempt from the mandate, including individuals with physical or mental conditions that make it unreasonable for them to wear a face covering, workers for whom a face covering would create a job hazard, and children under the age of six. EO 20-81 ¶ 8. An individual who willfully violates EO 20-81 is guilty of a petty misdemeanor. EO 20-81 ¶ 20(a).

## II. ANALYSIS

### *A. Standard of Review*

In reviewing a motion for a preliminary injunction, a court must consider four factors: (1) the movant’s likelihood of success on the merits; (2) the threat of irreparable harm to the movant if the injunction is not granted; (3) the balance between that harm and the harm that granting the injunction will inflict on the other parties; and (4) the

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