

**STATE OF MINNESOTA
IN SUPREME COURT
A24-0216**

Ken Martin,

Petitioner,

vs.

Steve Simon, Minnesota Secretary of State,

Respondent.

Members of the Republican Party of Minnesota Jurisdictional Memorandum

INTRODUCTION

In the order dated February 16, 2024, the Court ordered the parties to submit a memorandum addressing the issue of jurisdiction over the § 204B.44 Petition filed by Ken Martin. Petition. St. Sup. Ct. Or. at 3.

The subject of the Petition, the Legal Marijuana Now! Party filed a motion for leave to intervene and raised the issue of jurisdiction. Members of the Republican Party of Minnesota have filed a motion for leave to intervene and have also raised serious questions about the enforceability of the statute in question based upon facts which must be aired.

This Petition does not fit into a perfect box for any of the parties or the Court. It is a case of first impression as regards a statute amended in 2023 so the caselaw is not entirely on point. The matter does not involve a single election, but rather **every**

single partisan election in the state. The Court's determination of the manner of enforcement of this statute could alter the very fabric of our political systems in one of the most controversial and divisive election cycles in the history of our country. A determination about the enforcement of this matter must be expedited to protect the rights of voters, candidates and the political parties.

Every judge must serve the Court by always remaining acutely attuned to the external and internal pressures to decide cases and controversies to appease either the advocates and media-based personalities who vocally push social and political agendas or their own personal hopes and beliefs about issues raised. A failure to recognize or acknowledge the existence of these pressures, whether overt or subtle, can easily lead to a decision that undermines the trust in the judicial system. Both of the following admonitions,

"Where law ends, tyranny begins."

-John Locke, 1689

and

"The ability of courts to fulfill their mission and perform their functions is based on the public's trust and confidence in the judiciary. In large part, the judiciary earns that trust and confidence by faithfully performing its duties; adhering to ethical standards; and effectively carrying out internal oversight, review, and governance responsibilities. These responsibilities include accountability for a failure to observe scrupulous adherence to ethical standards. The surest way to lose trust and confidence is failure to live up to established ethical standards and failure to hold judges and judiciary personnel accountable for misconduct. Transparency in efforts to ensure accountability for

misconduct, where possible and appropriate, helps foster public trust and confidence.”¹

-Strategic Plan for the Federal Judiciary

provide guidance to the courts at every level.

The matter before this Court is not about a simple Petition seeking the application of a recently amended statute. The matter before the court raises serious concerns about an amended statute buried in the middle of a more than 300-page, extremely complicated omnibus bill² with no public awareness, passed by a legislature controlled by members of one political party and signed by a governor of the same party who are seeking to use their power to quickly shift public policy away from the shared views of Minnesotans across the political spectrum towards an agenda supported by a much smaller, but active and powerful, faction of the party.³

The matter before the Court suggests that this modified law, which created a six-month timeline for compliance with longstanding law that had never previously been enforced, has the potential to destroy Minnesota’s political system and shatter what trust remains in our election system.

The matter before the Court brings to light concerns about the equal access to data and information collected and maintained by the Office of the Secretary of State,

¹See Strategic Plan for Federal Judiciary, Issue 2 at <https://www.uscourts.gov/statistics-reports/issue-2-preserving-public-trust-confidence-and-understanding> (Last accessed February 21, 2024).

² See Omnibus bill on Office of the Revisor website at https://www.revisor.mn.gov/bills/text.php?number=HF1830&version=4&session=ls93&session_year=2023&session_number=0 (Last accessed February 21, 2024).

³ See NBC News story on MN Trifecta at <https://www.nbcnews.com/politics/politics-news/minnesota-becoming-laboratory-progressive-policy-rcna79816> (Last accessed on February 21, 2024).

some of which must be filed, upon receipt, in the publicly available database of Official Documents. Whether the delay in the public recording of documents related to this matter and in the provision of data requested by members of the public was or was not politically motivated, there is an appearance of impartiality that should be dispositive as to the application of timelines created by the amended statute.

The matter before the Court requires a timely resolution, by a Court that clearly articulates its reasoning behind whatever order ultimately issues. This case requires an impartial, transparent analysis of the statute in question, the timeline for its implementation and a clear indication of the path for future challenges under this statute, which may differ from the path of the Petition brought before the Court, specifically because the Petition is a case of first impression as to the timelines and now required court analysis under the amended language.

Our country is in the midst of a legal crisis, largely created by judicial officers, including lawyers and judges, who both weaponize the law to target their social, political or personal interests and also ignore the law to protect those same interests.

For well over 100 years most of the People of Minnesota were able to place their trust in the United States and Minnesota courts. While there has always been, and will always be, some level of dissatisfaction with the judicial system, the duty of every court to both uphold and protect the rights enshrined on our applicable

Constitutions and to interpret and apply the law in a fair manner to the cases and controversies brought forward is supposed to be inviolable.⁴

The People are losing trust in the judicial system because lawyers too often bring cases with no regard to the law or circumstances that are heard, because courts dismiss valid cases that raise serious concerns about violations of constitutional and legal requirements, and finally because few people can afford the cost of seeking justice in our current legal system because the cost of even a simple, straight forward legal challenge can now easily reach \$50,000 before the matter gets to discovery, where hope truly ends for those who live on any sort of budget.

In 2022, a Pew research study conducted nationwide found overall satisfaction with the United States Supreme Court had fallen to its lowest level in the 30 years of public polling.⁵ A breakdown in the data showed that while the view of the Court has been ratcheting downward for decades, the favorability reported by identified Democrats and Republicans flipped multiple times. It is this flipping of trust based upon political ideology of the appointer of a Judge that must be addressed, head on, by a Court that adheres to the rule of law while also abiding by its duty to hear the specific case or controversy before it and issue a fair ruling based upon the relevant facts and circumstances.

⁴ See the entire Code of Judicial Conduct at https://www.revisor.mn.gov/court_rules/rule/prjudi-toh/ (Last accessed on February 21, 2024.)

⁵ See Pew Research article “Favorable views of the Supreme Court fall to historic low” at <https://www.pewresearch.org/short-reads/2023/07/21/favorable-views-of-supreme-court-fall-to-historic-low/> (Last accessed February 21, 2024).

Case law created at a different time about a different matter may be supportive, but it should never be blindly applied without regard for the specific facts that surround the case at hand.

On February 11, 2024, an opinion piece by the Chief Justice of the Minnesota Supreme Court was published online by the Pioneer Press.⁶ In this article, Chief Justice Hudson posits:

“I will also use my position as Chief Justice to help preserve the independence of our judiciary and to keep our courts free from partisan influence. Minnesota has largely avoided the big money, politicized judicial elections that have plagued so many other states. I believe it is wrongheaded to insert partisan politics into our judicial system, and I will work with all Minnesotans to insulate our courts from external pressures and maintain their ability to administer justice impartially.

I also recognize that our courts must make every effort to prove that our decisions are unbiased and impartial. As members of the judiciary, our solemn pledge is to uphold the trust placed in us, to ensure that every verdict and judicial action is steeped in fairness, and that the scales of justice remain balanced for every case we preside over.”⁷

Petitioner filed this action seeking an order requiring the Secretary of State to strip major party status from the Legal Marijuana Now! Party based upon the failure of that party to comply with the requirements of a statute amended in 2023. The issue of Court jurisdiction over the Petition at bar challenges the Court and each of the

⁶ See Article *Minnesota Chief Justice Natalie Hudson: On the importance of a fair and independent judiciary* at <https://www.twincities.com/2024/02/11/natalie-hudson-on-the-importance-of-a-fair-and-independent-judiciary/> (last accessed on February 21, 2024).

⁷ *Id.*

Parties to remain rooted in the ever-present requirements to ensure the constitutional rights of the people, collectively, and each person, individually, are protected; that the laws are subject to review by the courts and that the Supreme Court is vested with the power to hear those cases in which it determines it has original jurisdiction.

STATEMENT OF FACTS

On May 24, 2023, the Minnesota Governor signed into law an amended statute, Minn. Stat. 200.02, subd. 7, that created new requirements for a major political party including a mandatory loss of major party status for noncompliance with certain requirements of that statute.

The applicable portion of the statute is:

Minn. Stat. § 200.02 DEFINITIONS.
Subd. 7. Major political party.

(a) "Major political party" means a political party that maintains a party organization in the state; has complied with the party's constitution and rules; is in compliance with the requirements of sections 202A.12 and 202A.13; files with the secretary of state no later than December 1 of each odd-numbered year a certification that the party has met the foregoing requirements, including a list of the dates and locations of each convention held; and meets all other qualification requirements of this subdivision.

because the requirements listed in paragraphs (b)-(d) do not require fact-finding by the Secretary in order to determine compliance with the statute. Those requirements are facially determinative, so the Secretary has discretion to determine whether a major party has met the thresholds necessary to retain major party status.

On February 6, 2024, the Petition under consideration was filed by Ken Martin, a resident and eligible voter in the State of Minnesota and not coincidentally the long-time Chair of the Minnesota Democratic-Farmer-Labor Party (“MNDFL”). Pet. at 4. It is important to note that this Petition was not brought by Martin in his capacity as the Chair of the MNDFL or by the MNDFL, but rather was brought by Martin in his individual capacity as a resident and registered voter in Minnesota, which supports the right of any person to bring an action to intervene in the 204B.44 action.

The Petition seeks a Court order declaring the Legal Marijuana Now! Party (“LMNP”) does not qualify as a major political party and instructing the Secretary to decertify the LMNP as a major political party. Pet. at 1. the Secretary of State to correct an Error and Omission made when he accepted the certification of compliance from the LMNP and issued the LMNP a certification of major party status for the upcoming election cycle.

The Secretary of State has made clear that that the Secretary has no legal authority to engage in the fact-finding necessary to determine factual compliance with the requirements listed under the duty to certify compliance with the amended statute. Sec. Resp. at 3-4. The Secretary has indicated there are dispositive threshold legal issues which require fact-finding prior to any determination of noncompliance with the statute. Sec. Resp at 4. Additionally, the Secretary states these issues are ripe. Sec. Resp. at 6.

The LMNP asserts the plain language of §204B.44 prohibits the court from hearing the case because the Petition is not about a specific election. LMNP resp. at 3. The LMNP also asserts the Court does not have jurisdiction under current caselaw to hear the Petition. LMNP Resp. at 2.

The LMNP Memorandum related to jurisdiction and filed with the Court on February 21, 2024, correctly asserts there are other avenues available to the Petitioner to seek the requested remedy but doesn't address the serious issues related to time constraints and the implications of this matter not being resolved in an expedited manner. LMNP Mem. At 7-8.

The Members of the Republican Party of Minnesota (“MRPMN”) filed a motion for leave to intervene on February 20, 2024, because they assert their belief that the Republican Party will likely be targeted under the amended statute and therefore their interests could be affected by the Petition if the Court addresses merits and issues an order in the matter. MRPMN Mot. At 1-2.

The MRPMN raised concerns about the failure of the Office of the Secretary of State to make available records related to the certifications of compliance filed by the Major Parties and also the failure to provide requested data to Delegates to the Republican Party of Minnesota State Central Committee and the State Convention and these issues interfered with the ability of those Delegates to assist their party in coming into compliance. MRPMN Mot. at 8-10. These MRPMN also raised the issue of de facto retroactivity of the statute and of the near impossibility of coming into

compliance with the requirements of the amended statute under the timeline created because the path to compliance requires meetings of the subunits, State Central Committee and State Convention, which hold statutorily required meetings in the Spring. MRPMN Mot. at 7-8.

ARGUMENT

I. Petitioner’s action raises serious questions related to the enforcement of Minn. Stat. § 200.02, subd. 7 that suggest this petition should be used as a vehicle for the Court to determine: what process will be best able and necessary to address future cases brought forward that allege violations of the amended Minn. Stat. § 200.02 subd. 7; the necessity of ensuring any petition, writ of prohibition, complaint or other related action be addressed using expedited fact-finding; and whether the certification deadline put in place for December 1, 2023, should be determined to be retroactive and therefore inapplicable to the major parties at this time so as to protect the voters from the uncertainty raised by potential ongoing challenges over the next few months.

When the Democratic-controlled legislature amended the definition of a major party in May 2023, it placed in jeopardy the stability of the political system in Minnesota. Previous to this statute change, the courts had taken a relatively hands off approach to addressing concerns related to the actions of the major parties, leaving most disputes to be resolved by the parties themselves, unless there were violations of clear statutory requirements, or the Party engaged in fraud or duress. Prior to the implementation of the amended statute, the courts refrained from interfering with party politics. “As elections belong to the political branch of the government, the courts will not be astute in seeking to find ground for interference, but will seek rather to maintain the integrity and independence of the several departments of the

government by leaving questions as to party policy, the regularity of conventions, the nomination of candidates, and the constitution, powers, and proceedings of committees, to be determined by the tribunals of the party.” *Democratic-Farmer-Labor State Central Com. v. Holm*, 33 N.W.2d 831, 227 Minn. 52 (Minn. 1948) That case went on to identify a critical issue that could open the door to judicial intervention: A controlling statute or clear right identified in a statute. *Democratic-Farmer-Labor State Central Com. v. Holm*, 33 N.W.2d 831, 227 Minn. 52 (Minn. 1948). The courts have also indicated a willingness to intervene in party politics if a party "acts arbitrarily, oppressively or fraudulently” related to candidate selection or “any other question of which it has jurisdiction”. *Phillips v. Gallagher*, 73 Minn. 528, 76 N.W. 285 (Minn. 1898).

The amended statute has now created a requirement for each major party to submit a certification of compliance with its constitution and rules in order to maintain major party status. If any person brings an action challenging that certification on the grounds the party is not in compliance with its constitution and rules, the courts are now required, by the amended statute, to engage in fact-finding to determine whether the filed certification was, in fact, false. How would the courts avoid using a plain language approach to making that determination? Would it be ethical to avoid using a plain language approach to determining compliance?

If the court engages in the required fact-finding and determines that a false certification was filed by a party with the Secretary of State, the person responsible for

submitting that false filing would be subject to perjury charges. “A person who signs a document submitted to the secretary of state without authority to sign that document or who signs the document knowing that the document is false in any material respect is subject to the penalties of perjury set forth in section 609.48.” Minn. Stat. § 5.15 (a). Violations of Minn. Stat § 609.48 are felonies.

The amended statute also requires the certification of compliance with Minn. Stat. §§ 202A.12-13. These are long-standing statutes that require the party to recognize the party’s State Convention is the final authority over the affairs of the party, and that the party’s State Executive Committee and State Central Committee are subject to the authority of the State Convention. Minn. Stat. § 202A.12, subd 2 and 3. If a major party were now to amend its constitution to remove, or even undermine, the final authority from the State Convention, it would be in violation of the amended statute. Additionally, if a major party were to amend its constitution to alter the ability of its State Central Committee to engage in oversight of the State Executive Board or officers, that major party would be in noncompliance with Minn. Stat. § 202A.12, subd. 2.

The court must assume the legislative intent was to create this oversight because the language of the statute is clear about the need for a major party to certify compliance with its party’s rules and constitution. Requiring the major parties to certify compliance with the MNSOS creates a path for criminal consequences if a party violates the statute. It also creates a mandatory loss of major party status.

The spirit of this amended law is, hopefully, to ensure the political parties and the people are protected from corrupt party officers or other leaders who attempt to usurp the rights the members of these political parties. It is difficult to imagine how or why any person or any court, would defend those officers or leaders of a political party that engaged in conduct that violates the laws governing those parties or that violates its constitution and rules.

In this instance, because of the timeline imposed on the major parties, there is a risk that a major party submitted a certification of compliance even though the party was not in compliance, because to not file the document would result in an automatic loss of major party status.

The State Convention of a major party is only required to meet once in each general election year. Because this statute was passed in a non-general election year and required compliance with the statute before the end of that non-general election year, the legislature knowingly created a requirement that would force a major party to call its convention to order if any changes to its constitution were necessary or if any previous disputes related to party actions required action by its State Convention. A major party that was unable to come into compliance within the 6 months allowed between the passage of the law and the deadline to file a certification of compliance would automatically lose major party status by not filing a certification of compliance or by filing a false certification of compliance that once challenged would become a nullity.

MRPMN assert the legislated timeline has created a proverbial rock and a hard place for the major parties and the courts.

The Court should exercise its authority to take jurisdiction in this matter and use this petition as a vehicle to create a clear process going forward after the 2024 elections, to ensure that a major political party that is not in compliance with the amended statute will be held accountable by the courts under the plain language of the law. If actions must be filed in the district court, MRPMN assert such cases should be brought in the Ramsey County District Court just as statewide election contests are heard in Ramsey County. To protect the election process and eligible voters, the Court should exercise jurisdiction, preside over the fact-finding necessary to resolve the matter and establish, through its order, the process required for future challenges to the amended statute.

II. Determining Jurisdiction in this matter cannot be limited to an application of past caselaw because under the amended statute, this is a case of first impression. Arguing that a § 204B.44 Petition regarding major party status cannot be heard because, under the application of previous case law, such a petition could only be heard if it related to a SINGLE election is nonsensical when a party's loss of major party status will affect EVERY SINGLE partisan election on a ballot.

There is no question that § 204B.44 Petitions related to statewide or federal candidates must be filed in the Supreme Court.

The relevant portions of Minn. Stat. §204B.44 are as follows:

204B.44 ERRORS AND OMISSIONS; REMEDY.

(a) Any individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions, or wrongful acts which have occurred or are about to occur:

(4) any wrongful act, omission, or error of any election judge, municipal clerk, county auditor, canvassing board or any of its members, the secretary of state, or any other individual charged with any duty concerning an election.

To clarify, any individual may file a § 204B.44 Petition

- to correct an error, omission or wrongful act
- of any individual
- charged with ANY duty concerning an election
- which has occurred or is about to occur.

It may have been an exercise in frivolity for the Petitioner to assert the Secretary committed an error because, as attorneys should be aware, the Secretary has no authority to engage in fact-finding regarding the truthfulness of a certification submitted to the Secretary of State. This is reason enough to dismiss the Petition but that will not solve the issue because the Petition could then be filed again, substituting in the proper Respondent.

The Petition's underlying assertion is not that the Secretary committed an error, it is actually that the Chair of the LMNP, an individual charged with the election-related duty to submit a certification of compliance under Minn. Stat. 200.02, subd. 7, filed that certification knowing that it included information material to the filing that was false.

When a person granted the authority to file a certification of compliance with the Secretary files that certification, the Secretary has a duty to accept the document, attach a document number to the document and to properly file the document received in the database of official documents, which is then publicly available through the Secretary's webpage.

Every document received that is, by statute, required to be submitted should be placed in the official record as quickly as is possible.

If a document must be corrected, there is a process under Minn. Stat. § 5.16 which should be followed.

The Secretary should ensure all documents remain within the official records database because of the criminal penalties that attach to the filing of false documents.

When the Secretary is required to issue a certification regarding a political party's status, that document should also be filed upon creation to ensure the public can access the information and verify that a political party is, at least facially, in compliance with the law.

When these processes are followed it allows the public to review the documents. Each person in Minnesota has the right to file a §204B.44 Petition.

If a Petition must be concerning a single election, couldn't a petitioner file a petition against the party official who filed the required certification and demand the respondent, who was charged with the election-related duty to file

the certification, be ordered to correct their erroneous certification because, by filing an erroneous certification, the respondent's political party maintained its major party status, thereby effecting the ballot in the petitioner's house district?

As asserted above, MRPMN believe the current caselaw used to prevent court involvement in the governance of political parties has been rendered toothless. The Legislature has now mandated the courts analyze the actions of each major political party.

Current case law posits "section 204B.44 'is not a broad vehicle through which any conduct with any relationship to an election, however tangential, can be challenged.' *Carlson v. Ritchie*, 830 N.W.2d 887, 894 (Minn. 2013). The plain language of this provision does not embrace claims based on conduct that may only generally implicate elections." *Id.* at 548. LMNP Resp. to pet. at 2

Major party status and the implications of the loss of that status is not "tangential" to elections: Major party status effects nearly every aspect of every partisan election. A claim that the loss of major party status only generally implicates elections is similarly shortsighted. When a major party loses its status, the ballots connected to every partisan election are immediately and specifically affected.

The cited caselaw, *Begin v. Ritchie*, 836 N.W.2d 545 (Minn. 2013), relates to a minor political party losing that status. Again, the loss of minor party status is relatively inconsequential to the ballots. When a major party loses its status,

there is an immediate effect on the ballot because major party candidates receive preferential treatment in ballot placement.

Pandora's Box has been opened.

The amended statute requires each major political party to have ongoing compliance with its constitution and rules and for the certification of compliance to be filed every 2 years. If a person becomes aware of noncompliance between certification deadlines, justice would be better served by the filing of a petition to correct errors and omissions BEFORE a party files a false certification. It is now possible to imagine a never-ending flow of Petitions to Correct Errors and Omissions being filed preemptively with the Court to ensure a false certification is NOT filed by a major political party.

For this reason, the Court should exercise jurisdiction in this matter.

III. The Supreme Court has the right to take jurisdiction over a matter presented when justice requires that intervention.

The literal elephant in the Petition exists because the statute, as passed, allows for a challenge at any time by any person who believes there is noncompliance with the ongoing duty to comply with the provisions of the statute.

The origins of this statute and the implications of its implementation will likely become known and there will be people on all sides of the political equation who will be uncomfortable with those facts.

The Supreme Court has previously ruled that the availability of an **alternative and adequate remedy** in the district court creates a justification for this Court to avoid jurisdiction: "Based on the nature of the allegations and the availability of an alternative and adequate remedy in the district court, we conclude that, even if we had original jurisdiction under Minn. Stat. § 204B.44(a)(4), we would not exercise it here, and, therefore, we dismiss the petition.2..." *Minn. Voters Alliance v. Simon*, 885 N.W.2d 660 (Minn. 2016).

When no alternative court or process can provide an adequate remedy, this court has the authority to take original jurisdiction. There is no adequate alternative remedy available. The Court has the opportunity to ensure that the politics is removed from this highly political situation. The Court has the ability to create a transparent process that reflects the highest aspirations of the judicial system. The Court has the ability and duty to guide this matter through a fair process so as to protect the integrity of the political system as our state prepares to enter into what could be the most contested elections in our history.

The Court should exercise jurisdiction in this matter.

CONCLUSION

The Members of the Republican Party of Minnesota contend that the Court should exercise jurisdiction in the Martin Petition under §204B.44 because the matter, if dismissed, will not be resolved. It is likely that one or more similar cases will be

filed by another person who believes one of the major parties is not in compliance with amended Minn. Stat. § 200.02, subd. 7.

If the Court does not dismiss the petition or directs the petition to be refiled in the district court, the MRPMN asks the Court to immediately grant the MRPMN motion to intervene. The participation of the MRPMN will contribute to a more complete resolution of all issues raised in this matter.

Dated: February 21, 2024

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