

**STATE OF MINNESOTA
IN SUPREME COURT
No. A24-0216**

Ken Martin,

Petitioner,

v.

Steve Simon, Minnesota Secretary of
State,

Respondent.

**PETITIONER'S RESPONSE TO
MEMBERS OF REPUBLICAN PARTY
OF MINNESOTA'S MOTION TO
INTERVENE**

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I. INTRODUCTION

A group of self-described “Members of the Republican Party of Minnesota” (“Proposed Intervenors”) filed a motion to intervene in this matter which relates to the certification of the Legal Marijuana Now Party (“LMN Party”) as a major political party pursuant to Minn. Stat. § 200.02, subd. 7(a). Proposed Intervenors’ motion, together with their February 21, 2024 Jurisdictional Memorandum, recites a litany of issues relating to the internal affairs of the Republican Party of Minnesota (“RPM”), the Minnesota Secretary of State’s compliance with the Government Data Practices Act, and conjectural allegations regarding the legislature’s motives for enacting the 2023 amendments to Minnesota’s election laws. Ultimately, however, the motion to intervene rests upon Proposed Intervenors’ speculative concern that the RPM may be subject to some future litigation challenging its major party status and that the Court’s decision in this matter may limit the defenses available to the RPM in the event its major party status is challenged.

Proposed Intervenors have no interest in the subject matter of this litigation: the LMN Party’s status as a major political party. They do not seek to assert any claims nor have any claims been asserted against them. Accordingly, Proposed Intervenors do not, and cannot, have a claim or defense sharing common questions of law or fact with this action. Their concern regarding the ability of the RPM to defend itself in the event of some future petition does not justify their intervention in this matter and their motion fails as a result.

II. ARGUMENT

The Court applies the standards of Minn. R. Civ. P. 24 to requests to intervene in actions invoking the Court's original jurisdiction pursuant to Minn. Stat. § 204B.44. *League of Women Voters Minn. ("LWV") v. Ritchie*, 819 N.W.2d 636, 641-42 (Minn. 2012). Proposed Intervenors seek to intervene in this litigation as a matter of right pursuant to Rule 24.01 or, alternatively, through permissive intervention pursuant to Rule 24.02. They cannot satisfy either standard for intervention.

A. **Proposed Intervenors are not entitled to intervention as a matter of right.**

Intervention as of right requires (1) a timely application; (2) an interest in the subject of the action; (3) an inability to protect that interest unless the applicant is a party to the action; and (4) that the applicant's interest is not adequately represented by existing parties. *LWV*, 819 N.W.2d at 641 (citing *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986)). Proposed Intervenor's motion fails because they do not have an interest in the subject of this action.

To support intervention as of right, the interest in the subject of the action must be "a direct and concrete interest that is accorded some degree of legal protection." *Miller v. Miller*, 953 N.W.2d 489, 494 (Minn. 2021) (citing *Diamond v. Charles*, 476 U.S. 54, 75 (1986)). As an initial matter, it is difficult to know the precise arguments Proposed Intervenors seek to address in this litigation due to their failure to file "a pleading setting forth the nature and extent of every claim or defense as to which intervention is sought" as is required under Rule 24.03. But regardless of the specific contours of their arguments,

Proposed Intervenors' motion must fail because they do not have "a direct and concrete interest" in the subject of this litigation: correcting the Secretary of State's erroneous certification of the LMN Party as a major political party and preventing future errors by directing the Secretary not to allow the LMN Party's candidates to utilize the ballot-access procedures available to candidates seeking the nomination of a major political party. *See* Pet. at ¶¶ 7, 41, Claim for Relief ¶¶ 1-3.

Instead, they assert that they should be allowed to intervene because of their belief that "the [RPM] will likely be a target of a future petition or court action and [Proposed Intervenors] presently have no voice in this matter, about which a determination, if the merits are heard and judgment entered, would be dispositive." Mot. at 3. But mere interest in the outcome of litigation does not establish a sufficient interest to justify intervention as of right. *See Koski v. Chicago & Northwestern Transp. Co.*, 386 N.W.2d 282, 284 (Minn. Ct. App. 1986) (affirming denial of motion to intervene as of right where individual "is concerned solely with how resolution of this action may affect his cause of action" and "is not potentially liable for any damages awarded, ... has no claim to any of the damages which [plaintiff] may be awarded, ... nor will any action be taken, or fail to be taken, by any party as a result of this litigation which will affect him.").

Moreover, Proposed Intervenors have not claimed they themselves will suffer an injury based on the results of the Petition. *Cf. Schroeder v. Simon*, 950 N.W.2d 70, 78 (Minn. Ct. App. 2020). Rather, the interests Proposed Intervenors seek to protect (the interests in defending against a future petition challenging the RPM's major party status) belong to the RPM, not its individual members. *Cf. Wessin v. Archives Corp.*, 592 N.W.2d

460, 464 (Minn. 1999) (“Minnesota has long adhered to the general principle that an individual shareholder may not directly assert a cause of action that belongs to the corporation.”). Proposed Intervenors have not demonstrated that they enjoy the constitutional rights they seek to advance in this litigation or that they are otherwise authorized to take any action on behalf of the RPM. Accordingly, even if the Court’s decision in this matter could justify intervention as of right by the RPM, the Proposed Intervenors lack standing to intervene on behalf of the Party. *See Massey v. Helman*, 196 F.3d 727, 740 (7th Cir. 1999) (holding that where plaintiff has no rights under Eighth Amendment, “he cannot possibly have a personal stake in the outcome of the Eighth Amendment claim he seeks to advance on behalf of [others.]”); *State v. Mireles*, 619 N.W.2d 558, 561 (Minn. Ct. App. 2000) (an individual generally has no standing to challenge a statute “on the ground that it might conceivably be applied unconstitutionally to others, in other situations not before the court.”).

B. Proposed Intervenors do not satisfy the requirements for permissive intervention.

Rule 24.02 provides that “anyone may be permitted to intervene in an action when an applicant’s claim or defense and the main action have a common question of law or fact.” Permissive intervention pursuant to Rule 24.02 is discretionary and, when exercising its discretion, “the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.”¹ Minn. R. Civ. P. 24.02.

¹ Orders denying motions for permissive intervention are not appealable, *Engelrup v. Potter*, 224 N.W.2d 484, 485-86 (Minn. 1974), and, therefore, the Court rarely addresses the standard for permissive intervention.

Proposed Intervenors cannot satisfy the requirements for permissive intervention in this case. Proposed Intervenors are neither asserting a claim nor has any claim been asserted against them. Instead, they seek to intervene solely to preserve potential defenses the RPM may raise in the event it is the subject of a similar petition in the future. Accordingly, they have no “claim or defense” to advance in this action, let alone a “claim or defense” sharing a “common question of law or fact” with the main action. Moreover, as explained above, the defenses Proposed Intervenors seek to address through their intervention belong to the RPM itself and not to its individual members. Proposed Intervenors lack standing to litigate this defense on behalf of the Party. *See Mireles*, 619 N.W.2d at 561.

Because Proposed Intervenors do not have a claim or defense to assert in this litigation, the Court does not need to reach the question of whether their intervention would unduly delay or prejudice the adjudication of the rights of the original parties. But even if the Proposed Intervenors could pre-litigate the RPM’s potential defenses, it would be unduly prejudicial to allow them to do so here. The Petition before the Court presents a narrow and discrete issue: whether the LMN Party satisfied the statutory criteria for certification as a major political party. Although Proposed Intervenors assert that they seek to litigate the same constitutional defenses as are raised by the LMN Party, their submissions to the Court make plain that they also intend to address concerns extending well beyond anything at issue in this litigation. Mot. at 2 (Proposed Intervenors “should be able to *address the allegations of non-compliance* with the recently amended statute and *raise all other relevant issues* for the Court’s consideration.”) (emphasis added). Granting

their motion to intervene pursuant to Rule 24.02 will needlessly complicate and delay adjudication of the rights and interests of the existing parties.

Finally, this court should deny Proposed Intervenor's motion because they are seeking an advisory adjudication of a potential challenge to the RPM's major party status. As stated in their motion, the Proposed Intervenors request leave to intervene because "the major party status of the Republican Party of Minnesota could be similarly challenged under the statute in question at any time." Mot. at 2. The fact remains, however, the RPM's major party status has not been challenged. Accordingly, there is no actual case in controversy and the Proposed Intervenor's claims are not justiciable." *Schowalter v. State*, 822 N.W.2d 292, 298 (Minn. 2012) ("We have recognized that '[i]ssues which have no existence other than in the realm of future possibility are purely hypothetical and are not justiciable.'" (quoting *Lee v. Delmont*, 36 N.W.2d 530, 537 (Minn. 1949))).

III. CONCLUSION

For these reasons, Petitioner Ken Martin respectfully requests that the Court deny Proposed Intervenors' motion to intervene.

Date: February 26, 2024

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs.1 and 3, for a brief produced with a proportional 13-point font. The length of this brief is **1,602** words. This brief was prepared using Microsoft Word 365.

s/Charles N. Nauen

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