

FILED

March 1, 2024

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A24-0216

Ken Martin,

Petitioner,

vs.

Steve Simon, Minnesota Secretary of State,

Respondent,

The Legal Marijuana Now Party,

Intervenor-Respondent.

O R D E R

On February 6, 2024, petitioner Ken Martin filed a petition pursuant to Minn. Stat. § 204B.44 (2022), asking this court, in part, to direct respondent Steve Simon, Minnesota Secretary of State, to (1) decertify the Legal Marijuana Now Party as a major political party, and (2) not allow candidates from the Legal Marijuana Now Party to appear on the ballots for the 2024 state primary and general elections using the procedures for candidates for partisan offices who seek the nomination of a major political party. The petition alleges that the Legal Marijuana Now Party does not meet the definition of a major political party contained in Minnesota law. *See* Minn. Stat. § 200.02, subd. 7 (Supp. 2023) (defining

major political party). In a February 8, 2024 order, we directed respondent and the Legal Marijuana Now Party to respond to the petition, and asked them, along with petitioner, to, in part, “identify any genuine issues of material fact that are in dispute” and “any potentially dispositive threshold legal issues.”

In response to the submissions by petitioner, respondent, and the Legal Marijuana Now Party, we issued an order on February 16, 2024, in which we directed petitioner, respondent, and the Legal Marijuana Now Party to file memoranda addressing our jurisdiction over this matter under Minn. Stat. § 204B.44. We also recognized that “[a]ny resolution as to the merits of the claims raised in the petition will require referral to a referee to take and receive evidence and make findings of fact,” and we ordered that “[a] referee referral and briefing order will issue, if necessary, following an order on our jurisdiction over the petition.”

Petitioner, respondent, and the Legal Marijuana Now Party filed memoranda addressing jurisdiction. Minnesota Statutes section 204B.44 authorizes the filing of a petition seeking the correction of election-related “errors, omissions, or wrongful acts which have occurred or are about to occur.” Minn. Stat. § 204B.44(a). It identifies four types of errors, including “(1) an error or omission in the placement or printing of the name . . . of any candidate . . . on any official ballot . . . ; (2) any other error in preparing or printing any official ballot;” and “(4) any wrongful act, omission, or error of . . . the secretary of state, or any other individual charged with any duty concerning an election.” *Id.* Such a petition may be filed with this court “in the case of an election for state or federal office.” Minn. Stat. § 204B.44(b).

The claims in the petition fall within the scope of section 204B.44 and have been properly brought before this court. Accordingly, consistent with our February 16, 2024 order, a referee referral and briefing schedule follows below.

Also pending before us are two motions to intervene, one by the Legal Marijuana Now Party and one by Members of the Republican Party of Minnesota. The motion of the Legal Marijuana Now Party to intervene is granted. The motion was unopposed, the Legal Marijuana Now Party focuses upon the same central and common question as to its major political party status, and its participation will assist rather than delay the suit. Thus, permissive intervention is granted, and we need not decide whether intervention exists as a matter of right. *See* Minn. R. Civ. P. 24.01, 24.02. The motion of the Members of the Republican Party of Minnesota to intervene, on the other hand, is denied. Intervention as a matter of right “requires ‘a direct and concrete interest that is accorded some degree of legal protection.’” *Miller v. Miller*, 953 N.W.2d 489, 494 (Minn. 2021) (quoting *Diamond v. Charles*, 476 U.S. 54, 75 (1986)). But the Members of the Republican Party of Minnesota have failed to assert any such interest as to the central issue of this suit—the Legal Marijuana Now Party’s major political party status. And we deny permissive intervention, “mindful of the expedited nature of these proceedings.” *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 643 (Minn. 2012); *see* Minn. R. Civ. P. 24.02 (“In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.”).

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The motion of the Legal Marijuana Now Party to intervene is granted. The Legal Marijuana Now Party shall proceed as an intervenor-respondent.

2. The motion of the Members of the Republican Party of Minnesota to intervene is denied.

3. The Honorable Edward T. Wahl is appointed to serve as referee in this matter. Judge Wahl as referee shall determine all facts relevant to, issue conclusions of law regarding, and make recommendations as to the disposition of whether the Legal Marijuana Now Party: (1) has the committees required by Minn. Stat. § 202A.12 (2022); (2) has “provide[d] for each congressional district and at least 45 counties or legislative districts an executive committee consisting of a chair and such other officers as may be necessary,” as required by Minn. Stat. § 202A.13 (Supp. 2023); and (3) held, in 2022, the conventions for each congressional district and at least 45 counties or legislative districts, as required by Minn. Stat. § 202A.13. The referee has and shall exercise the power to regulate all proceedings in the hearing before him and to do all acts and take all measures necessary and proper for the efficient performance of the referee’s duties specified herein. *See* Minn. R. Civ. P. 53.03.

4. The referee shall expedite consideration of this matter, holding any hearing necessary for fact-finding no later than March 14, 2024, and submitting findings of fact, conclusions of law, and recommendations for the disposition of said matter to this court, with a copy to petitioner and respondents on or before March 22, 2024.

5. On or before March 29, 2024, petitioner and respondents shall serve and file with the Clerk of the Appellate Courts any objections to the findings of fact, conclusions of law, and recommendations of the referee. Briefs, subject to Minn. R. Civ. App. P. 132.01, may be served and filed with any objections.

6. Any party that wishes to participate as amicus curiae must file and serve a request for leave to participate that complies with Minn. R. Civ. App. P. 129.01(c), along with the proposed amicus brief, on or before Wednesday, April 3, 2024.

7. On or before Friday, April 5, 2024, petitioner and respondents shall serve and file with the Clerk of the Appellate Courts any briefs in response to the objections, or amici requests, subject to Minn. R. Civ. App. P. 132.01. No replies will be allowed.

8. If objections are filed, oral argument will be held before our court on Tuesday, April 16, 2024, at 10:00 a.m., at the Minnesota Judicial Center, Courtroom 300.

Dated: March 1, 2024

BY THE COURT:



Natalie E. Hudson
Chief Justice

CHUTICH, PROCACCINI, JJ., took no part in the consideration or decision of this case.