

STATE OF MINNESOTA
IN SUPREME COURT

No. _____

FILED

February 6, 2024

**OFFICE OF
APPELLATE COURTS**

Ken Martin,

Petitioner,

v.

Steve Simon, Minnesota Secretary of
State,

Respondent.

**PETITION PURSUANT TO MINN.
STAT. § 204B.44 TO DECERTIFY THE
LEGAL MARIJUANA NOW PARTY**

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TO: The Supreme Court of the State of Minnesota:

Pursuant to Minn. Stat. § 204B.44, Petitioner Ken Martin petitions the Supreme Court of the State of Minnesota for an Order declaring that the Legal Marijuana Now Party does not qualify as a major political party under Minn. Stat. § 202.02, subd. 7, and instructing respondent Secretary of State Steve Simon to decertify the Legal Marijuana Now Party as a major political party and to deny the Party the rights and privileges afforded by such status. Petitioners state and allege as follows:

I. INTRODUCTION

1. Minnesota election law recognizes a “major political party” as a party which maintains a party organization—as specified in statute—within the state and realizes a threshold level of support evidenced through its electoral results, the number of candidates the party presents at the state general election, or a petition signed by party members equal to at least five percent of the total number of individuals who voted in the preceding state general election. Minn. Stat. § 200.02, subd. 7. These major political parties are entitled to benefits that are not available to other political parties in Minnesota. Most notably, their candidates may apply to appear on the ballot for a partisan office by filing an affidavit of candidacy rather than filing a nominating petition and those major political parties that participate in a national convention may participate in the Minnesota presidential nomination primary. Minn. Stat. §§ 204B.03, 207A.11(d).

2. The Legal Marijuana Now Party (“the LMN Party” or “the Party”) was recognized as a major political party in Minnesota since 2018. It obtained this status by satisfying the then-applicable statutory requirements which included, in pertinent part,

“maintain[ing] a party organization in the state, political division, or precinct in question” and presenting at least one candidate for a statewide office who received votes in each county and from at least five percent of the total number of individuals who voted in the election. Minn. Stat. § 200.02, subd. 7 (2022).

3. In 2023, the Minnesota legislature adopted new requirements for major political parties which take effect for the 2024 elections. 2023 Minn. Laws Ch. 62, Art. 4, § 6. The amended statute now specifies the organizational structure which must be maintained across the state and requires each major political party to submit a certification to the Minnesota Secretary of State that the party satisfies the statutory requirements. Minn. Stat. § 200.02, subd. 7(a) (2023).

4. On November 8, 2023, the LMN Party submitted a letter to the Secretary of State seeking recognition as a major political party, signed by Dennis Schuller, the Chair of the LMN Party. Exhibit 1. In relevant part, the letter states: “In compliance with Minnesota Statutes, sections 202A.12 and 202A.13, the Legal Marijuana Now! Party held conventions on June 8, 2022, at 9425 Syndicate Avenue, in Bloomington, and online via Zoom, and on April 29, 2023, at 75 Rev. Dr. Martin Luther King Jr. Boulevard, in Saint Paul. The LMN Party submitted a second letter to the Secretary of State on November 21, 2023 which omitted the reference to the April 29, 2023 convention and described the June 8, 2022 in-person and Zoom event as “state, congressional district, county, and legislative district conventions”. Exhibit 2.

5. On November 22, 2023, in response to this letter, the Secretary of State informed Mr. Schuller that his submission was deficient because it “fail[ed] to include the

specific set of conventions required by 200.02, subd. 7, clause a,” and that “a document listing each unit which held a convention and the date and location of that convention, in the numbers now required by section 202A.13 would be compliant.” Exhibit 3. On November 27, 2023, Mr. Schuller submitted a third letter to the Secretary of State, including as an “addendum” “a list of the party’s 2022 conventions.” Exhibit 4. This addendum lists eight (8) Congressional District Conventions, and sixty-seven (67) County/Senate District Conventions, and indicates that all 75 of these conventions, in addition to the State Convention, were held on June 8, 2022, at “9425 Syndicate Avenue, Bloomington + online via Zoom.”

6. As set forth below in more detail, the LMN Party plainly fails to satisfy the requirements of a major political party. It does not have the state-wide organization structure which the legislature deemed necessary to obtain major political party status and its assertion in its certification to the Secretary of State that it conducted 75 congressional district and local conventions—along with its state convention—on a single day in-person and via Zoom is implausible. The Party’s disregard for the requirements of Minnesota election law is underscored by its purported participation in the presidential nomination primary and designation of at least one candidate for that election who neither requested nor consented to appear on the ballot.

7. The Secretary’s decisions to certify the LMN Party as a major political party notwithstanding its plain ineligibility for such status and to allow the LMN Party to participate in the 2024 presidential nomination primary were erroneous. Petitioner brings this petition to prevent subsequent errors—namely, allowing candidates to appear on the

ballots for the state primary or general election utilizing the procedures available for candidates seeking the nomination of a major political party—which are the natural consequence of the Secretary’s erroneous certification of the LMN Party. Allowing candidates for a partisan office to seek the nomination of the LMN Party as a major political party would constitute a “wrongful act, omission, or error” by the Secretary of State which may be addressed in a petition to this Court pursuant to Minn. Stat. § 204B.44(a)(4).

II. JURISDICTION

8. This Court has original jurisdiction over this matter pursuant to Minn. Stat. § 204B.44, which allows any individual to file a petition directly with this Court asking it to correct any wrongful act, omission, or error of the Secretary of State or any other individual charged with any duty concerning an election.

9. This action is necessary to prevent the error of allowing LMN Party candidates from appearing on the ballots for the state primary or state general elections utilizing the procedures available to candidates for a partisan office who seek the nomination of a major political party.

III. PARTIES

10. Petitioner Ken Martin is a resident and registered voter in the State of Minnesota. He has served as the Chair of the Democratic-Farmer-Labor Party (“DFL Party”) since 2011.

11. Respondent Steve Simon (“Simon”) is the Minnesota Secretary of State (“Secretary of State”). The Secretary of State is responsible for the administration of

elections in the State of Minnesota including the March 5, 2024 presidential nomination primary election, the August 13, 2024 state primary election, and the November 5, 2024 general election. The Secretary of State is also responsible for accepting submissions from parties for purposes of confirming whether the parties qualify as Major Political Parties, and for determining whether a Major Political Party qualifies to participate in the presidential primary election.

GENERAL ALLEGATIONS

I. MINNESOTA LAW ESTABLISHES REQUIREMENTS FOR QUALIFICATION AS A MAJOR POLITICAL PARTY.

12. Minnesota Statute 200.02, Subdivision 7(a), defines “Major Political Party,” to mean “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.”

13. Minnesota Statute § 202A.12, provides:

Subdivision 1. Time of convention.

The final authority over the affairs of each major political party is vested in the party's state convention to be held at least once every state general election year at the call of the state central committee.

Subd. 2. State central committee.

Subject to the control of the state convention the general management of the affairs of the state party is vested in the party's state central committee.

Subd. 3. State executive committee.

The state executive committee of the party shall have charge of the administration of the party's affairs, subject to the direction and control of the state convention and the state central committee.

Subd. 4. Constitution, filing.

The chair of the state central committee of each party shall file with the secretary of state a copy of the party's constitution and all amendments to the constitution as they are enacted.

14. Minnesota Statute § 202A.13 provides:

The rules of each major political party shall provide that for each congressional district and at least 45 counties or legislative districts a convention shall be held at least once every state general election year. Each major political party shall also provide 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. The party rules may provide for only one executive committee and one convention where any county and congressional district have the same territorial limits.

15. In addition to these requirements, a Major Political Party must meet one of several criteria evidencing sufficient support among Minnesota voters in Minn. Stat. § 200.02, subdivision 7(b). For purposes of this action, Petitioner does not dispute that LMN met the criteria in (b)(1)(i) for purposes of participating in the 2024 election.

II. LMN'S PARTY STRUCTURE AND PROCEDURES DO NOT COMPLY WITH MINNESOTA LAW.

16. The plain text of the LMN Party's Constitution fails to satisfy the requirements of Minn. Stat. §§ 202A.12 and 202A.13.

17. Section 202A.12 describes the general structure a major political party must establish, which includes vesting final authority over the party's affairs in the state convention, vesting authority over the general management of the party in the state

central committee, and vesting authority over administration of the party in the state executive committee.

18. The LMN Party’s Constitution provides only for the creation of one governing body, named “The Head Council,” consisting of a Chairperson, Secretary, and Treasurer (of which one person may hold up to two offices), plus “Senior members,” of the Party, up to a total of nine persons. Exhibit 5.

19. The LMN Party’s Constitution does not mention a State Central Committee or a State Executive Committee, and even assuming The Head Council accounts for one of those committees, the LMN Party’s Constitution does not contemplate the second committee required by Minn. Stat. § 202A.12.

20. By comparison, both the Republican Party of Minnesota¹ (“RPM”) and the DFL Party Constitutions² lay out in detail the separate formation, structure, and responsibilities of the State Central Committee and State Executive Committee.

21. The LMN Party also fails to comply with Minn. Stat. § 202A.13, because it has not “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.”

¹ Republican Party of Minnesota Constitution, Article IX, Section 1 (State Central Committee); Article IX, Section 2 (State Executive Committee) (May 14, 2022), available at <https://www.mngop.org/wp-content/uploads/2022/05/Constitution.pdf>.

² Constitution and Bylaws of the Democratic-Farmer-Labor Party of Minnesota, Article VII, Section 4 (State Central Committee); Article VII, Section 5 (State Executive Committee) (Aug. 10, 2023), available at <https://dfll.org/wp-content/uploads/2023/10/2023-10-28-DFL-Constitution-Rev-B.pdf>.

22. The LMN Party's Constitution states only that, "when it becomes feasible, the Party may authorize the creation of subdivisions assigned to Congressional Districts or Legislative Districts or Counties. These subdivisions would require a minimum of 10 dues-paying members and three Cadres." Exhibit 5. Nothing in the LMN Party's Constitution or any publicly available rules or other information suggests that the Party actually established any of these subdivisions for each congressional district and at least 45 legislative districts or counties, let alone provided executive committees for them. Indeed, because the LMN Party's Constitution provides that at least 10 dues-paying members are required to form a congressional district or local committee, it is unlikely that the Party would have the more than 450 members from across the state necessary to form the requisite committees.

23. Once again, by comparison, RPM and the DFL Party Constitutions clearly create and vest authority in local Organizing Units, which cover Senate and Legislative Districts, and provide for Central and Executive Committees for each Congressional District. *See* DFL Const. Art. V (Organizing Units), Art. VI (Congressional Districts); Repub. Const. Art IV (delegating power to Basic Political Organizing Units, which cover Counties, Senate, and/or House Districts); Art. VII (covering Congressional Districts).

24. Furthermore, the DFL Party's certification for recognition as a Major Political Party contained a detailed explanation of how the Party complied with Sections 202A.12 and 202A.13. Exhibit 6. The LMN Party certification contains no such explanation. Exhibit 4. Indeed, although the LMN Party certification asserts it held state, congressional district, county, and legislative district conventions on a single day in June

2022 it does not assert, at any point, that it has established any congressional district, legislative district, or county committees as it must, pursuant to Minn. Stat. § 202A.13, to qualify as a major political party.

25. Moreover, the LMN Party's representation that it conducted its state convention, eight congressional district conventions, and 67 legislative district or county conventions on a single day via Zoom is implausible.

26. First, the only known communication from the LMN Party to its members regarding the June 8, 2022, "convention" was via a Facebook event invitation. This invitation referred to the meeting solely as a "State Convention" and stated that it would be one-hour long, from 8:00 to 9:00pm. No mention is made in the invitation of congressional, senate, or legislative conventions. Exhibit 7.

27. Second, upon information and belief, the LMN Party held caucuses earlier in 2022 via zoom, but only 20 people attended the caucuses, no candidates were endorsed, no delegates were elected, and although a state convention was mentioned, no mention was made of congressional, senate, or legislative conventions.

28. Third, it is practically and logistically impossible for 76 separate conventions to be held on one day, let alone *one hour*, and in one location. "Convention" is defined in Minnesota election law as "an organized body of delegates assembled for the purpose of transacting the business of a major political party." Minn. Stat. § 200.02, subd. 13. It is infeasible for 76 bodies of delegates to complete the business of each unit in one hour at one location.

29. By comparison, the DFL Party's certification for recognition as a Major Political Party, attached a 10-page list of the Party's 2022 conventions, occurring in locations across the State of Minnesota, beginning on March 19, 2022 up until the State Convention on May 20-22, 2022. Exhibit 8.

30. Fourth, LMN only had three congressional,³ three senate⁴ and four house⁵ candidates in 2022, in addition to candidates for Governor and State Auditor, which could perhaps account for 10 conventions in addition to the state convention. It is implausible that the remaining five congressional districts and 60 local units would have sufficient attendees, let alone significant business to discuss, to warrant 65 additional conventions.

31. It is apparent that the June 8, 2022 meeting was not intended to, and in fact did not, serve as a convention for the eight congressional and sixty-seven county/senate districts and that the LMN Party is attempting to reframe the purpose of the meeting after-the-fact to preserve its status as a major political party.

32. The reality is that the LMN Party did not hold the required conventions for each Congressional District and at least 45 senate/legislative districts, as required by

³ Secretary of State, Results for All Congressional Districts, <https://electionresults.sos.mn.gov/Results/Index?ersElectionId=149&scenario=USRepresentative> (last visited January 31, 2024) (listing candidates for the First, Second, and Seventh Congressional Districts).

⁴ Secretary of State, Results for All State Senate Races, <https://electionresults.sos.mn.gov/Results/Index?ersElectionId=149&scenario=StateSenate> (listing candidates for SD 26, 38, 43).

Minn. Stat. § 202A.13 and, therefore, cannot qualify as a major political party under Minnesota law.

III. THE LMN PARTY’S CONDUCT WITH RESPECT TO THE PRESIDENTIAL NOMINATION PRIMARY UNDERSCORES ITS DISREGARD FOR MINNESOTA ELECTION LAW.

33. A Major Political Party may only participate in the presidential nomination primary, if it “selects delegates at the presidential nomination primary to send to a national convention. A major political party that does not participate in a national convention is not eligible to participate in the presidential nominating primary.” Minn. Stat. § 207A.11(d).

34. LMN is only recognized as a major political party in Minnesota and Nebraska. Upon information and belief, the leaders of the LMN Nebraska Party have separated from the Minnesota Party and the LMN Party lacks any form of national party structure. Indeed, Petitioner is unaware of any evidence demonstrating that LMN ever held a national convention or that it is planning to hold a national convention in 2024.

35. Notwithstanding that it plainly is ineligible to participate in the election, the LMN Party submitted a list of candidates to the Secretary of State to appear on the party’s ballot for the presidential nomination primary. This list includes at least one individual who neither requested nor consented to appear as a candidate.

⁵Secretary of State, Results for All State Representative Races, <https://electionresults.sos.mn.gov/Results/Index?ersElectionId=149&scenario=StateRepresentative> (listing candidates for 53A, 53B, 54A, 65A).

36. As detailed in a January 29, 2024 report by the Minnesota Star Tribune⁶, the LMN Party placed Krystal Gabel, a Colorado resident, on the Minnesota presidential primary ballot without her knowledge or consent. Ms. Gabel learned of her candidacy through a news alert on January 19, 2024, the day early voting started in Minnesota.

37. Ms. Gabel contacted LMN Party leadership to inform them she did not want to be a candidate, and never agreed to be a candidate. The LMN refused to take any steps to correct their error or inform its members that Ms. Gabel was not and did not want to be a candidate for President.

38. Ms. Gabel also contacted the Minnesota Secretary of State, to inform him that she had not agreed to be a candidate for the LMN Party. The Secretary of State informed Ms. Gabel that, due to the requirements in Minnesota law, there was no mechanism to remove her name from the ballot once it had been submitted by the Party Chair, or to otherwise invalidate her candidacy.

RESPONDENT'S ERRORS

39. The Secretary of State erred by recognizing the LMN Party as a major political party, because the LMN Party failed to comply with the requirements of Minn. Stat. §§ 200.02, subd. 7; 202A.12; and 202A.13.

40. The Secretary of State erred by including the LMN Party in the presidential nomination primary because they do not qualify as a major political party, and even if it

⁶ See, <https://www.startribune.com/colorado-woman-says-she-didnt-consent-to-being-on-minnesotas-presidential-primary-ballot-now-she-cant-get-off-it/600339354/> (last visited Feb. 5, 2024).

were, it does not participate in a national convention, and therefore is not eligible to participate in the presidential nomination primary.

41. If the error of recognizing the LMN Party as a major political party is not corrected the Secretary will commit further errors by allowing the LMN Party's candidates to appear on the state primary and general election ballots using the procedures available to candidates for partisan offices who seek the nomination of a major political party.

CLAIM FOR RELIEF

WHEREFORE, Petitioner Ken Martin respectfully prays for an Order of the Court as follows:

1. Declaring that the Legal Marijuana Now Party is not a major political party as defined in Minn. Stat. § 200.02, subd. 7;
2. Directing the Secretary of State to take all appropriate actions necessary to reflect that the Legal Marijuana Now Party is not a major political party;
3. Ordering that the Secretary of State must not allow Legal Marijuana Now Party candidates to appear on the ballots for the 2024 state primary and general elections using the procedures available for candidates for partisan office who seek the nomination of a major political party pursuant to Minn. Stat. § 204B.03 or allow the Legal Marijuana Now Party to designate presidential candidate using the procedures available to major political parties pursuant to Minn. Stat. § 208.03.
4. Such other relief as may be just and necessary.

Date: February 6, 2024

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

s/Charles N. Nauen
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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, subds.1 and 3, for a brief produced with a proportional 13-point font. The length of this brief is **3,355** words. This brief was prepared using Microsoft Word 365.

s/Charles N. Nauen
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