

STATE OF MINNESOTA
IN SUPREME COURT
A23-0216

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OFFICE OF
APPELLATE COURTS

Ken Martin,

Petitioner,

vs.

Steve Simon, Minnesota Secretary of State,

Respondent.

Legal Marijuana Now Party’s Response to Petition

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Introduction

The Legal Marijuana Now Party Now respectfully requests this Court to deny the Petition of Ken Martin without reaching the merits of the dispute under Minn. Stat. § 204B. 22. This Court does not have jurisdiction to consider the merits under Supreme Court precedent. Meanwhile, the Petitioner does not dispute that LMNP meets the criteria under Minn. Stat. § 200.02, subd. 7(b)(1)(i) as a major political party for purposes of participating in the 2024 election, Martin seeks immediate relief to prohibit LMNP candidates from appearing for the 2024 state primary and general elections. Here, lies another issue. The ballots have been printed for the primary election and early voting has started. The relief requested would disenfranchise voters and their association with the LMNP.

Finally, there are other constitutional issues regarding the legality of the retroactive aspects of the law as applied to the and First Amendment, Equal Protection, and possible Due Process claims available to the LMNP. The essence is that the legislative amendments were targeting the LMNP.

Nevertheless, due the jurisdictional infirmity of the Petition and the factual disputes that undermine the Petition's allegations, the Martin Petition should be denied.

Argument

I. This Court does not have jurisdiction to hear the Martin Petition.

The Legal Marijuana Now Party respectfully suggests that this Court does not have jurisdiction to adjudicate the Ken Martin Petition. First, the primary election, for which Martin seeks to negate, is already underway. Pet. at 9, 13. As this Court would acknowledge, Minnesota’s presidential primary ballots are already printed, and early voting is underway for the election on March 5, 2024. See, *Binkley for President 2024, et al. v. Steve Simon*, A23-1900, Sec. Mot. to Amend. Scheduling Or., at 2 n.1, Doc. 7-0 (citing *Joan Growe, et al. v. Steve Simon*, A23-1354, Declaration of David Maeda (Sept. 27, 2023) Doc. 7–1). “For Democrats, there are nine candidates to choose from, an uncommitted option and a write-in line. For Republicans, there are five candidates and a write-in possibility. The Legal Marijuana Now Party also has five options and a write-in line.”¹

But, to begin, this Court does not have jurisdiction over the Martin Petition.

Pet. at 4, ¶¶ 1, 6, 8–9. This Court in *Begin v. Ritchie*, 836 N.W.2d 545 (Minn. 2013), where the Green Party of Minnesota challenged the Secretary of State regarding the

¹“As early voting in Minnesota’s presidential primary starts, parties await prized data,” Ellie Roth, MPR (Jan. 19, 2024), <https://www.mprnews.org/story/2024/01/19/as-early-voting-in-minnesotas-presidential-primary-starts-parties-await-prized-data> (last visited Feb. 14, 2024) (“On paper, Minnesota voters have plenty of options on the state’s presidential primary ballot. In reality, fewer of the candidates that appear on the major-party ballots will be actively campaigning when it comes time to count the votes. Early voting opens Friday [January 19, 2024] ahead of the March 5 primary.”)

loss of its minor political party status under Minn. Stat. § 204B.44, this Court declined jurisdiction, writing that “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.

This Court went on to state that “[a]t a minimum, the plain language of the statute requires that the claim relate to a duty concerning a specific election.”); *Clark v. Pawlenty*, 755 N.W.2d 293, 299 (Minn. 2008) (dismissing the Governor from a 204B.44 petition challenging his appointment authority and noting that the statute ‘provides a remedial process only for correction of the ballot and directly related election procedures’; and because the Governor ‘is not responsible’ for ballot preparation, he cannot implement any relief sought); *Schroeder v. Johnson*, 311 Minn. 144, 145–46, 252 N.W.2d 851, 852 (1976) (noting that the legislature intended to protect potential candidates from the errors of those charged with properly completing the procedural and mechanical duties attendant to the election process). In short, our precedent recognizes that section 204B.44 ‘provides a remedial process only for correction of the ballot and directly related election procedures.’ *Clark*, 755 N.W.2d at 299.” *Id.*

First, the Petition is not about a “specific election,” but both federal and state primary and general elections as admitted by Martin. Pet. at 9, 13. Second, the Petition is not about election procedures but party designation as a major-political party.

Certainly, by the Petitioner’s own admission of the LMNP’s right to participate in the 2024 election, his relief to prevent LMNP candidates to appear on the primary (already printed and made available to voters) does not align with the arguments presented. Pet. at 6 (“For purposes of this action, Petitioner does not dispute that LMN met the criteria in [7](b)(1)(i) for purposes of participating in the 2024 election.”²

Nevertheless, at the outset, because the LMNP believes that *Begin* is applicable here, this Court should deny jurisdiction and deny the Petition accordingly.

II. The LMNP complied with statutory requirements as a major political party as the allegations are incorrect as to the underlying facts.

The LMNP has complied with the law. The Petition is replete with factual errors because of misinterpretations of statutory law.³ First, the Petition has offered exhibits, irrelevant to the so-called dispute. References to DFL documents filed with the Secretary of State is a “compared to” the LMNP filings is a meaningless

² The Secretary of State’s response to the petition, barely mentions jurisdiction affording his comments to a footnote. Sec. Resp. at 4 n.1. Moreover, his argument is superficial at best. Regardless, the Secretary’s comment, having identified *Begin* distinguishable because it deals with a minor-political party is disingenuous. “Minor” or “major” it’s still a political party. The Secretary makes no attempt to argue or identify the holding of the case to the applicability of § 204B.44 as it relates to general elections or election procedures.

³ For purposes of the LMNP’s response, it will not contest paragraphs that recite the present statutes as reflected in the Petition. *E.g.*, Pet. at 5–6, ¶¶ 12, 13, 14, 33. As for the Secretary’s Errors cited in the Petition at pages 12–13, ¶¶ 39–41, the LMNP contends the Secretary did not make any error in identifying the LMNP as a major-political party in Minnesota or having LMNP candidates appear on the primary and in the future, state general election ballots.

demonstration of wordsmithing at best. As the Petition admits, the Secretary did accept the LMNP’s documents to acknowledge it as a major-political party after corrections were made after receiving from the Secretary notices of deficiencies.⁴ *See* Pet. at 7 ¶¶ 20, 23, 7 n.1, 2; DFL documents, Pet. Exs. 6, 8. **The LMNP is not required to meet the DFL “standards” but only that of the law.**

For example, the Petition in paragraphs 16–19, Martin contends that Minn. Stat. § 202A.12, requires the identification of “separate committees,” like the DFL and Republican Party of Minnesota,⁵ alleging the LMNP failed to comply with those provisions, apparently disliking the structure of the LMNP party. The statute states no such requirement:

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.

⁴ Deficiencies are not uncommon and expected to some degree and not necessarily fatal unless ignored, as this Court would acknowledge. *See e.g.*, Sup. Ct. Notice of Case Filing, Doc. 2 (Feb. 7, 2024) (“If any deficiencies are noted above, they must be corrected by the filing party (or otherwise noted) within ten days....”)(upper case lettering omitted)).

⁵ Pet. at 7, ¶ 20, 7 n.1, 2.

There is nothing in the statute that requires that the committees must (1) be named as separate committees, or (2) that the members of one committee cannot be made up of the same members for the other committee. Here, the LMNP, while maybe not as sophisticated as the more well-established major-political parties in Minnesota, has a Head Council of nine members, it functions as the equivalent of the required committees under § 202A.12.

Likewise, the Petition cites § 202A.13, asserting the LMNP has violated the statutory provision to “*provide* for each congressional district and at least 45 counties or legislative districts and executive committee consisting of a chair and such other officers as may be necessary.” Emphasis added. Pet. at 7 ¶ 21–22. Those were *provided*. “Provide” means “to make available.” *Webster’s New Universal Unabridged Dictionary* 1556 (2nd ed. Barnes & Noble 2001). The statute doesn’t say “establish” which has an entirely different meaning. (“[T]o found, institute, build, or bring into being.” *Id.* at 663. The Petition does not, and rightfully so, declare a committee was not provided for and chaired (which they were by the current LMNP chair).

Instead, the Petitioner relies upon the LMNP’s constitution that cites to an aspirational goal once it achieves the “minimum number of 10 dues-paying members and three Cadres.” Pet. at 8, ¶ 22. If, and when that goal is met, the LMNP would, instead of “providing,” it would “establish” a “subdivision”—the LMNP’s terminology for “committee”—for that congressional district or legislative district or county. Again, there is nothing in the statute requiring the establishment of a

“committee,” but *providing for*, which also indicates how a major-political party *provides* that requirement, is at the discretion of that party.

In addition, the Petitioner contests the means by which the LMNP has held its state-wide conventions, not that it didn’t hold them. The Petition contends that the Petitioner, Ken Martin, is in disbelief that separate conventions could be held in one day, doesn’t like the LMNP’s notice, and finds all of it “impossible” or “implausible.” Pet. at 9–10, ¶¶ 25–32. The focus of attention is the LMNP’s actions during the election cycle year of 2022, in which a LMNP convention was held on June 8, 2022. Minnesota Statute § 202A.13 governs the convention requirement of having one during the general election cycle:

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.

Again, the statute is specific as it relates to the *discretion* given to a major-political party by way of the “rules of each major political party.” None of the Petitioner’s allegations in paragraphs 25 through 32 refer to or mention a LMNP rule. The Petitioner’s complaints are embedded within claims of the Petitioner’s disbelief and impossibility or implausibility which are not facts tied to a rule as required by statute.

First, no one has claimed that the LMNP, as a major-political party, is flooded with thousands of dues-paying members. But, it does have thousands of people

voting for LMNP candidates as it met the required percentage of voters in the last general election in 2022, (then five percent and now eight percent per amended Minn. Stat. § 202.02, subd. 7(b)(1)(ii)).

Second, even the Petitioner’s definition of “convention” citing to Minn. Stat. § 200.02, subd. 13, does not reveal a requirement of how a body of delegates are to be assembled to conduct the business of the major-political party. Pet. at 9, ¶ 28. Again, it is the rule of the party that controls because that delegation of authority to the party is provided for under Minn. Stat. § 202A.13. Moreover, the statute does not reflect *where* conventions are to be held. *See e.g.*, Pet. Ex. 4 (and attachment).

Finally, in this day and age of electronic communications, almost anything is possible. And, in this case, meetings via Zoom can accommodate virtually an unlimited number of people on one call.⁶ Regardless, the Petitioner does not state the call wasn’t made, just that he didn’t believe it could happen. As the LMNP stated: “[T]he Legal Marijuana Now! Party held state, congressional district, county, and

⁶ *See e.g.*, Zoom Support:

Account types and participant limit

By default, these are the meeting participant limit per account type:

- Basic (free or free with credit card): 100 participants
- Pro: 100 participants
- Business: 300 participants
- Enterprise: 500 participants

(Optional) Add-ons: 500 participants; 1,000 Participants....

support.zoom.com/hc/en/article?id=zm_kb&sysparm_article=KB0068002#:~:text=Basic%20(free%20or%20free%20with,Enterprise%3A%20500%20participants (last visited Feb. 14, 2024).

legislative district conventions on June 8, 2022, during the most recent state general election year at 9425 Syndicate Avenue, in Bloomington [Minnesota], and online via Zoom.” Pet. Ex. 4. And, while the Petitioner implies the meeting was for “one hour,” again, that was an aspirational goal for the LMNP, not a “time limit.” It served as an incentive for people to attend. The LMNP would suspect that the Petitioner wishes DFL conventions could be as efficient. But that is reflective of the current status of membership within the respective parties, not that the LMNP did not comply with required laws for major-political parties.

The accusation that the LMNP did not hold conventions on June 8, 2022, is not true, as the LMNP’s notice reflects and as its communications with the Secretary show (who did not dispute the fact). *See* Pet. Exs. 1, 2, 4 (see also, attachment), 7.⁷

III. The Petition’s allegations of the lack of a national convention is conjecture and not ripe for this Court’s review.

The underlying Petition seeks to assert the LNMP should be disqualified as a major-political party because it lacks any form of national party structure or lack of evidence that it is planning to hold a national convention. Pet. at 11, ¶¶ 33, 34. First and foremost, the status of LMNP is based upon what *had* occurred during the previous 2022 election cycle. To speculate regarding relationships with other parties in

⁷ The Petitioner also takes issue with the LMNP’s notice. Pet. at 9, ¶ 26. Again, the Petitioner fails to cite any statute or LMNP party rule that requires specific statements or phrases that must be in the notice to be “adequate” to the DFL’s—Petitioner’s liking.

other states is not an issue contemplated by the law. Minnesota Statute § 207A.11(d) does reference the need for 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.

Again, the statutory provision does not define what is a “national convention.” That is because the issue of what is a “national convention” is left to the parties to determine. Here, the Petition only speculates that the LMNP lacks any form of a national party structure, no doubt hoping this Court will use the DFL or RPM as references. But, the LMNP is neither the DFL nor the RPM on all levels of party structure. The LMNP does plan on having a national convention within the next four to five months.

Indeed, the DFL and RPM do not have identical national party conventions, as well, and in that regard each retain the right to change party rules instantaneously even at a national convention. Here, all the LNMP has claimed is that it has a national party convention structure. That is all that is required. Notably, there is no allegation that the LMNP has not “participate[d] in a national convention” and speculates that it will not participate. Pet. at 11, ¶ 35.

The issue relating to Krystal Gabel is not what the Petitioner tries to characterize as actual events. LMNP discussions that included Gabel, would lead to her being placed on the ballot as a presidential candidate. She withdrew as a candidate only after the deadline for the primary ballot had passed due to disagreements relating

to other candidates considered for the federal offices on the national level. To assert the LMNP's conduct was proof of its disregard for Minnesota election law is disingenuous at best and a misrepresentation of facts.

IV. The legislature implementing the amended provisions under Minn. Stat. § 200.02, subd. 7 raises constitutional issues that this Court must address.

The Petition's effort is to eliminate the Minnesota electorate with a choice of alternative candidates and leave the political landscape to two other major political parties in Minnesota that between them, have frustrated the electorate.⁸ Indeed, although the Petition's underlying effort in an anticipated close presidential election might be suspect⁹ considering concerns that votes to a third-party candidate may

⁸ See e.g., "The 2024 campaign gets grimmer, with Trump's extremism on full display alongside concerns over Biden's age," Stephen Collinson, CNN, (Feb. 12, 2024), <https://www.cnn.com/2024/02/12/politics/trump-biden-election-2024/index.html> (last visited Feb. 14, 2024). ("President Joe Biden and former President Donald Trump are each offering a stark glimpse at the political liabilities that have many Americans wishing they had other options in 2024. Biden, 81, is angrily refuting questions about his age and memory, struggling to lay to rest anxiety among voters that he wouldn't be capable of serving a full second term. But far from exploiting the president's rough patch, Trump offered a stunning display of extremism at the weekend, raising fresh questions over his fitness for the Oval Office."); "Voter frustration could be key to turnout in 2024, experts say," The Hill (Nov. 11, 2023), <https://thehill.com/homenews/campaign/4315788-voter-frustration-could-be-key-to-turnout-in-2024-experts-say/> (last visited Feb. 14, 2024); ("Former President Trump and President Biden appear to be headed toward a rematch, despite polls showing many voters are not satisfied with the current options for president. Experts said this could create a political environment in which more voters decide to sit out next November than in past recent elections.").

⁹ Pet. at 4. "Ken Martin is currently Chairman of the Minnesota Democratic-Farmer-Labor (DFL) Party, President of the Association of State Democratic Committees, and a vice chair of the Democratic National Committee." <https://dfi.org/leadership/ken->

harm the chances of another major-political party's success, it raises serious issues regarding the legislature's conduct targeting the LMNP and failing to protect the constitutional rights, not to mention the retroactivity of the amended provisions of § 207A. of the LMNP.¹⁰

There are constitutional issues at stake as well. For example, the U.S. Constitution's "freedom of association" protects certain activities of partisan political organizations, including political parties, against state interference. The freedom of association—while not an explicit right contained in the Constitution—has been recognized by the U.S. Supreme Court as a right inherent in the first amendment's freedom of speech, and the fourteenth amendment's due process guarantee. *See Elrod v. Burns*, 427 U.S. 347, 357 (1976); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958). Associational rights apply both to party organizations, as well as to each

martin/#:~:text=Ken%20Martin%20is%20currently%20Chairman,of%20the%20Democratic%20National%20Committee (last visited Feb. 14, 2024).

¹⁰ "The No Labels Party Will Re-Elect Trump," Third Way, <https://www.thirdway.org/series/the-dangerous-illusion-of-a-presidential-third-party-in-2024> (last visited Feb. 14, 2024): "Polling data shows voters are frustrated with our two-party political system, leading some to express interest in running a third-party presidential candidate in 2024. But history tells us that third-party candidates don't win and that a third-party candidate in 2024 would pull support from the Democratic ticket while boosting the Republican nominee--who will most likely be Donald Trump or a Trump acolyte. As we enter the start of the presidential election cycle, it is important to recognize the role that a well-financed third-party candidate would play. We have compiled this series of resources to share how third-party candidates underperform, hurt incumbents, and would hurt Democrats in 2024." Third Way, <https://www.thirdway.org/series/the-dangerous-illusion-of-a-presidential-third-party-in-2024>.

individual that makes up the party's membership. Indeed, this association, to be effective, must occur before an election or primary. The right to vote for someone, even one's self, and the right to do so while associated with a political party are constitutionally protected rights. According to the Supreme Court: the "freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments. ... the right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973) (citing *NAACP v. Button*, 371 U.S. 415, 430 (1963)).

And, the Equal Protections Clause of the U.S. Constitution and Minnesota Constitution has some relevancy here as well. The recent amendments to Minn. Stat. § 200.02, subd. 7, seek to treat the LMNP differently than other major-political parties as a targeted party. For example, Minn. Stat. § 200.02, subd. 7(b)(1)(ii) reveals a retroactive provision to prevent the LMNP to present presidential and senatorial candidates in federal elections:

(ii) presidential elector or U.S. senator at the last preceding state general election for presidential electors; and whose candidate received votes in each county in that election and received votes from not less than five percent of the total number of individuals who voted in that election, if the state general election was held on or before November 8, 2022, or not less than eight percent of the total number of individuals who voted in that election, at a state general election held on or after November 7, 2024....

Martin’s petition does not dispute the LMNP’s ability to engage in this 2024 election cycle because of § 200.02, subd. 7(b)(1)(i), in this election cycle because of the last preceding election in which the LMNP presented a gubernatorial and state auditor as LMNP candidates to the electorate. But, that same subsection will not necessarily apply to future elections should the LMNP not put forth the listed candidates before the electorate to maintain its status as a major political party:

(b) A political party qualifies as a major political party by:

(1) presenting at least one candidate for election to the office of:

- (i) governor and lieutenant governor, secretary of state, state auditor, or attorney general at the last preceding state general election for those offices....

Should this Court grant the Petition and address the merits, these issues must also be brought before this Court.

Conclusion

The Martin Petition should be denied. This Court does not have jurisdiction under Minn. Stat. § 204B.44. Moreover, the Petition is replete with factual errors. This Court is under no obligation to believe the allegations as true. And, in light of the factual disagreements, the status quo would be appropriate considering that primary election ballots have been sent and people have voted in early voting procedures allowed in this State.

Finally, should this Court allow the Petition to proceed, it is necessary for the Court to grant LMNP’s motion to intervene which is being filed simultaneously with

this response for the reasons cited in that motion. The Petition's disposition also raises constitutional concerns that must be addressed. Regardless, the LMNP stands by its first position that this Court does not have jurisdiction and the Petition should be denied.

MOHRMAN KAARDAL & ERICKSON, P.A.

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