

STATE OF MINNESOTA  
IN SUPREME COURT  
A23-0216

**FILED**

February 14, 2024

OFFICE OF  
APPELLATE COURTS

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Ken Martin,

Petitioner,

vs.

Steve Simon, Minnesota Secretary of State,

Respondent.

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**Legal Marijuana Now! Party Motion for Leave to Intervene as a Matter of  
Right or as a Permissive Intervenor**

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**To:** All counsel of record.

The applicant Legal Marijuana Now! Party respectfully requests leave to participate in the Petition of Ken Martin as an intervenor under Rules 24.01 or 24.02 of the Rules of Civil Procedure. Although this Court invited the LMPN to address the Petition through its Order dated February 8, 2024, it did not preserve the rights of the LMPN as a party to the action. Because there are federal constitutional issues to be raised, if this Court accepts the Petition for review and reaches the merits, the LMPN should, in the first instance, be able to address the underlying allegations as the targeted party, and raise all other issues for this Court's consideration. Notably, it will

preserve the LMNP's ability to petition for a writ of certiorari before the U.S. Supreme Court as a party intervenor.

The LMNP's motion to intervene should be granted as a matter of right or for permissive intervention.

**I. The Legal Marijuana Now Party has a significant interest in the instant matter and believes this Court will be aided by its participation as a party.**

It is without question the Legal Marijuana Now Party has a significant interest in the instant petition. Petitioner Ken Martin seeks to remove the LMNP's legal status as a major political party in Minnesota. As Martin has correctly noted, the LMNP has been a major political party in Minnesota since 2018. Pet. at 1 (Feb. 6, 2024). The LMNP is the target and presently has no voice in the matter.

The Petition itself makes numerous allegations of non-compliance of newly enacted statutory requirements and accuses the LMNP of "implausible" acts. At the present time, the Secretary of State appears to welcome the Petition. See Sec. of State Response (Feb. 14, 2024). It also appears that the Secretary is not vigorously supporting the interests of the LMNP's status as a major political party. *Id.* In addition, there are constitutional issues under the First and Fourteenth Amendments of the U.S. Constitution and Minnesota Constitution that are implicated if this Court decides to grant the Petition and decide the merits.

However, as to granting review of the Petition, the LMNP believes that this Court lacks jurisdiction to take the Petition in the first instance. Moreover, Martin's

Petition is late. As this Court would acknowledge, Minnesota’s presidential primary ballots are already printed, and early voting is already 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.”<sup>1</sup>

Likewise, this Court in *Begin v. Ritchie*, 836 N.W.2d 545 (Minn. 2013), where the Green Party of Minnesota challenged the Secretary of State to the 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. The LMNP believes that *Begin* is applicable here.

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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.”)

Regardless, the issue Martin has presented before this Court directly affects the LMNP.

**II. The LMNP should be granted the right to intervene because as the target of the underlying Petition to void its status as a major political party, it has an express interest in the issues presented before this Court.**

As a target of the underlying Petition, the LMNP has much to lose in the Minnesota political process. 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.<sup>2</sup>

Regardless, losing its status as a major political party will have a significant impact. For example, all major and minor parties are entitled to:

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<sup>2</sup> 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.”).

- Public campaign subsidies. Campaign subsidies are provided under the state income tax checkoff, if certain filing agreements are met. Minn. Stat. § 10A.31, subs. 3 and 3a;
- Political contribution refunds. A major or minor party, or its candidates, may issue political contribution refund receipts to contributors. Minn. Stat. § 290.06, subd. 23;

And, major-political parties are entitled to additional state-granted benefits:

- Protection of party name. A major party’s name is protected by law from being used by another party. Minn. Stat. § 202A.11, subd. 2;
- Access to subsidies through the general state elections campaign account. Eligible candidates of a major party are entitled to a share of the general state elections campaign account (the “general” account includes an allocation provided by law, in addition to income tax checkoffs that are designated for the “general account” rather than a specific party);
- Access to the presidential nomination primary. A major party and its candidates may participate in the presidential nomination primary. The results of the primary must bind the election of delegates to the party’s national convention. Minn. Stat. ch. 207A;
- Designation of election judges. A major party must prepare a list of eligible voters to act as election judges in each precinct. Minn. Stat. § 204B.21, subd. 1; and
- Designation of polling place challengers. A major party may place challengers in the polling place. Minn. Stat. § 204C.07, subd. 1.<sup>3</sup>

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<sup>3</sup> “State Regulation of Political Parties,” Minnesota House Research (Jan. 2019), <https://www.house.mn.gov/hrd/pubs/regpolparty.pdf> (last visited Feb. 14, 2024).

The state legislative benefits provided to major-political parties in Minnesota shows that LMNP has much to lose.

The LMNP seeks leave to intervene as a matter of right. Under Minn. R. Civ. P. 24.01,

- Upon timely application anyone shall be permitted to intervene in an action
- when the applicant claims an interest relating to the property or transaction which is the subject of the action and
- the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest,
- unless the applicant's interest is adequately represented by existing parties.

Minnesota has a “policy of encouraging all legitimate interventions.” *Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28 (Minn.1981). “Rule 24 should be construed liberally and . . . technicalities should not be invoked to defeat intervention.” *Engelrup v. Potter*, 224 N.W.2d 484, 488 (Minn. 1974) (internal marks and alterations omitted). Moreover, “Rule 24.01 establishes four requirements for intervention as of right: (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) the applicant's interest is not adequately represented by existing parties.” *League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636, 641 (Minn. 2012). “In determining whether conditions for intervention have been met, the court will look to the pleadings and, absent sham or

frivolity, a court will accept the allegations in the pleadings as true. Secondly, on motion to intervene of right, the merits of the proposed [pleading] are not to be determined.” *Snyder's Drug Stores, Inc. v. Minnesota State Bd. of Pharmacy*, 221 N.W.2d 162, 164 (Minn. 1974).

The LMNP satisfies all four requirements. Timeliness should not be an issue since Martin filed his Petition just 14 days ago, on February 6, 2024.

Likewise, the LMNP has an interest in the subject of the action. Rule 24 can be liberally applied because courts encourage intervention. *Blue Cross/Blue Shield v. Flam by Strauss*, 509 N.W.2d 393, 396 (Minn. App. 1993), *review denied* (Minn. Feb. 24, 1994).

This Court has held that even if interests are similar but not identical the applicant for intervention should be allowed absent “adequate representation”:

[I]f [the applicant's] interest is similar to, but not identical with, that of one of the parties, a discriminating judgment is required on the circumstances of the particular case, but [the applicant] ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee.

*Costley v. Caromin H., Inc.*, 313 N.W.2d 21, 28 (Minn. 1981) (quoting 7A Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure*, § 1909, at 524 (1972) (footnote omitted)) (citation omitted). The rule “is designed to protect nonparties from having their interests adversely affected by litigation conducted without their participation.” *Gruman v. Hendrickson*, 416 N.W.2d 497, 500 (Minn. App. 1987); *Luthen v. Luthen*, 596 N.W.2d 278, 281 (Minn. App.1999).

Again, this should not be an issue against granting intervention as a matter of right. The LMNP is a major-political party. The Petition seeks to reverse the Secretary's decision that affirmed the LMNP's status that has existed since 2018 because in 2023, the LMNP meet the requirements of the underlying law. In fact, Martin does not contest that the LMNP has met the criteria under Minn. Stat. § 7(b)(1)(i) "for purposes of participating in the 2024 election." Pet. at 6. Yet, Martin seeks to render the LMNP impotent as a major political party, on the basis of the effective date comment of the legislature:

This section [Minn. Stat. § 200.02, subd. 7 as amended] is effective the day following final enactment and applies to major party status for elections held in 2024 and thereafter. The December 1, 2023, certification of a political party that is recognized as a major political party as of the effective date of this section must include certification that the party was in compliance with paragraph (a) during the most recent state general election year.

Paragraph (a) reads, as amended,

- (a) "Major political party" means a political party that maintains a party organization in the state, political division or precinct in question and that has presented; 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.

Nevertheless, because the Petition targets the LMNP, its interests to remain as a major-political party in Minnesota is at stake and the party should have a voice as it relates to its future without relying on the Secretary of State.



Now, the final two elements will be addressed. The LMNP must only “carry the ‘minimal’ burden of showing that the existing parties ‘may’ not adequately represent their interests.” *Jerome Faribo Farms, Inc. v. Cty. of Dodge*, 464 N.W.2d 568, 570 (Minn. App. 1990). As previously brought to this Court’s attention above, the Secretary is not the LMNP. The Secretary cannot represent the interests of the LMNP because the LMNP is a *political party*. The Secretary, regardless that Steve Simon’s election to office was through the Democratic Labor Party of Minnesota, he is to remain neutral. The Secretary of State’s Office is not a political party. That “neutrality” will not represent what the LMNP would bring to this Court because the LMNP is not neutral; it must fight for its existence as a major-political party in Minnesota and show to this Court that it is relevant to the election process, benefiting the Minnesota electorate.

Moreover, 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 individual that makes up the party’s membership. 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, it is critical that the LMNP be a party to represent its interests to remain as a major political party.

### **III. Alternatively, the Court should grant permissive intervention to the LMNP.**

Permissive intervention under Rule 24.02 may be granted where, upon timely application, “an applicant's claim or defense and the main action have a common question of law or fact.” Minn. R. Civ. P. 24.02. “The grant of permissive intervention lies within the discretion of the [ ] court.” *Heller v. Schwan's Sales Enterprises, Inc.*, 548 N.W.2d 287, 292 (Minn. App. 1996). “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.” Minn. Rule 24.02.

Further, the Court can grant limited permissive intervention. *See SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225, 230 (Minn. 1979) (the court “could exercise its discretion by allowing limited intervention if existing parties would not be prejudiced. 7A C. Wright & A. Miller, *Federal Practice and Procedure* s 1922 (1972)”). *See also* §

1922 Conditions on Intervention, 7C Fed. Prac. & Proc. Civ. § 1922 (3d ed.) (“Since the trial court has full discretion to grant or deny an application for permissive intervention under Rule 24(b), it may if it chooses impose conditions on its grant of the application. There are many reported instances in which conditions of this kind have been imposed. Most commonly, intervention has been allowed, but participation by the Intervenor has been limited to certain issues.”) (internal marks omitted).

Here, the requirements for permissive intervention are satisfied. Here, there exists “a common question of law or fact’ with the action.” *League of Women Voters Minnesota*, 819 N.W.2d at 642. The Martin Petition challenges the sufficiency of the LMNP’s filings as a matter of fact and as a matter of law. As *the* targeted party, the LMNP certainly has common issues for which the Secretary will address (or should).

And, the LMNP’s participation as a party will not unduly delay or prejudice the adjudication of the rights of the original parties. The Petition in this Court is an original proceeding. It is 14 days old as of the LMNP’s motion filing. When, or if, this Court grants the Petition for review, it will no doubt set specific due dates for filing principal, responsive, and if necessary, reply briefs. While the rule speaks to the “rights” of the original parties, as demonstrated the LMNP have statutory and constitutional rights at stake and should be in the mist of the adjudication process— including oral argument.

Regardless, there is also the issue of an appeal to the U.S. Supreme Court. *See* U.S. Sup. Ct. Rule 10. Considering the issues, as a party, the LMNP may petition the

U.S. Supreme Court for a writ of certiorari. Indeed, there is a concern that the State Attorney General's Office may not seek any further review as it relates to the protection of the LMNP's rights and abandon the pursuit of available legal jurisprudence. *See e.g., Doe v. State*, No. A22-1265, 2023 WL 2763167 (Minn. App. Apr. 3, 2023), *review denied* (July 18, 2023) (Denial of motion to intervene by Traverse County Attorney Matthew Franzese after Minnesota Attorney General Keith Ellison decided not to appeal decision of the district court finding certain abortion laws unconstitutional.)

**IV. This Court should waive any time constraints to allow this motion to be adjudicated.**

The LMNP is well aware that Minnesota Rules of Civil Procedure, Rule 24.03, governing procedure grants any party served with notice of the motion for intervention 30 days to object. Considering the circumstances in this case and the issues presented in the Petition, without presuming this Court's briefing schedule if this Court accepts jurisdiction, the LMNP respectfully requests this Court to waive the 30 day requirement for any objection and command the parties to object within three business days of the filing of this motion and additional time for briefing on the motion. This would allow this Court and the parties to proceed accordingly, file any memorandum to suggest to this Court why it should deny the LMNP's motion to intervene and for the LMNP to respond. A quick disposition on the motion to intervene could follow.

## Conclusion

This Court should grant the LMNP's motion to intervene either as a matter of right or grant permissive intervention.

**Mohrman Kaardal & Erickson, P.A.**

Dated: February 14, 2024

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