

STATE OF MINNESOTA
IN SUPREME COURT

A24-0216

FILED

February 14, 2024

**OFFICE OF
APPELLATE COURTS**

Ken Martin,

Petitioner,

vs.

**SECRETARY'S RESPONSE
TO PETITION**

Steve Simon, Minnesota Secretary of
State,

Respondent.

Petitioner Ken Martin alleges that the Legal Marijuana Now Party (“the LMN Party”) is not eligible for major-party status and that Respondent Minnesota Secretary of State Steve Simon erred in certifying the LMN Party as a major party. The Secretary disputes particular contentions in the petition regarding the Secretary’s actions. Nonetheless, he neither supports nor opposes the petition on its merits. As the state’s chief election official, charged with general administration of elections statewide, the Secretary takes no position on Martin’s contentions regarding the LMN Party’s eligibility for major-party status.

RESPONSE TO PETITION

Except as otherwise specifically addressed, the Secretary does not have knowledge of the factual matters alleged in the petition sufficient to admit or deny them. With regard to the legal contentions in the petition (most notably, the ones contained in paragraphs 6 and 16-23), the Secretary takes no position on such contentions except as specifically

detailed below. In response to Petitioner’s allegations that particular assertions within documents that the LMN Party filed with the Secretary are “implausible,” “unlikely,” “practically and logistically impossible,” and “infeasible” (*see* Pet. ¶¶ 6, 22, 25, 28, 30), the Secretary notes that no law gives him the authority to evaluate the contents of a political party’s filings. Nor does he have legal authority to reject a filing or decertify a political party based on a determination that the party’s factual representations are implausible, unlikely, or infeasible.

Finally, the Secretary understands, as a result of communications with Petitioner’s counsel, that Petitioner seeks no relief related to the 2024 presidential nomination primary. For this reason, the Secretary contends that the allegations and contentions in the petition related to the presidential nomination primary are moot.

I. SECRETARY’S SPECIFIC RESPONSES TO PETITION

1. The Secretary agrees with the allegations in paragraphs 1-5.
2. The Secretary takes no position regarding the contentions in paragraph 6.
3. The Secretary denies the contention in paragraph 7 that he erred in certifying the LMN Party as a major party.

4. The Secretary agrees with the allegations and contentions in paragraph 11 regarding his identity and responsibilities regarding election administration, but he notes that state law entrusts many election-administration responsibilities to local election officials, not the Secretary of State. The Secretary further agrees with the contention in paragraph 11 that he is responsible for accepting submissions pursuant to Minn. Stat. § 200.02, subd. 7(a). The Secretary notes, however, that no law authorizes him to

independently investigate or adjudicate facts underlying a party's submission pursuant to subdivision 7(a). He also states that no law authorizes him to remove a political party's status as a major political party based on the structural defects that Petitioner alleges the LMN Party suffers from.

5. In response to the contentions in paragraphs 12-15, the Secretary agrees that the paragraphs provide accurate recitations of the contents of the statutes referenced therein.

6. The Secretary takes no position regarding the allegations in paragraphs 16-23.

7. The Secretary agrees with the allegations in paragraph 30 regarding the number of LMN Party candidates that ran for office in 2022.

8. The Secretary agrees that paragraph 33 contains an accurate quotation of the cited statute.

9. The Secretary agrees with the allegation in paragraph 35 that the LMN Party sent him a list of candidates to appear on the party's ballot for the presidential nomination primary.

10. The Secretary agrees with the allegations in paragraph 38.

11. In response to the allegations in paragraphs 39-41, the Secretary denies that he has committed errors or will commit further errors. The Secretary reiterates that nothing in the election statutes authorizes him to independently investigate or make determinations regarding the facts underlying a party's certification pursuant to Minn. Stat. § 200.02, subd. 7(a). Nor does he have the authority to evaluate the contents of a political party's

filings to evaluate whether a party's structure complies with the requirements of state law. In short, the Secretary is a filing officer, not an investigator or an enforcement officer.

12. The Secretary affirmatively states that, in November 2023, the LMN Party submitted a certification that facially satisfied the requirements of the statute. He accepted it in accordance with state law. The Secretary agrees that the state's courts are the appropriate forum to determine whether a political party has met the statutory criteria for major-party status. Minnesota's courts are also the proper forum for fact-finding regarding a party's status.

13. The Secretary will treat the LMN Party in a manner consistent with whatever determinations the Court makes in this dispute.

II. POTENTIALLY DISPOSITIVE THRESHOLD LEGAL ISSUES

The Court has ordered the Secretary to identify threshold legal issues that may be dispositive in this matter. While a respondent to the petition could conceivably raise laches or ripeness here, the Secretary does not believe that either doctrine provides a basis to dismiss the petition. The Secretary does not believe that there are other dispositive legal issues upon which the Court can or should decide this matter at the current stage of litigation.¹ He believes that findings of fact are necessary to determine whether Petitioner is entitled to the relief he seeks.

¹ The Secretary notes that this Court held that a different petition pertaining to a political party's status under Minn. Stat. § 200.02 fell outside of the jurisdiction granted to the Court by section 204B.44. *Begin v. Ritchie*, 836 N.W.2d 545, 548-49 (Minn. 2013). The Secretary, however, believes that *Begin* is distinguishable from the current case because it involved the petitioning political party's status as a *minor* party—which status impacts campaign finance but not election ballots. *See id.* at 546; *Clark v. Pawlenty*, 755 N.W.2d

A. Laches

Voting for the 2024 presidential nomination primary is currently underway and ends March 5. Based on communications with Petitioner’s counsel, the Secretary understands that Petitioner does not seek any relief related to the nomination primary. Were Petitioner to seek relief with respect to the presidential nomination primary at this late date, such relief would be barred by the doctrine of laches. *See, e.g., Kieffer v. Governing Body of Municipality of Rosemount*, 978 N.W.2d 442, 443-44 (Minn. 2022); *Clark v. Pawlenty*, 755 N.W.2d 293, 299-303 (Minn. 2008). As the result of counsel’s statements, however, the Secretary does not believe that laches currently represents a barrier to the petition.²

B. Ripeness

The Secretary believes that the issues raised in the petition are ripe for judicial determination. With the candidate filing period approaching in May (*see* Part III, *infra*), the issues Martin presents are current and concrete; they exist outside of “the realm of future possibility” and are not hypothetical. They are therefore ripe. *Grove v. Simon*, No. A23-1354, 2024 WL 464567, *6-7 (Minn. Feb. 7, 2024).

293, 299 (Minn. 2008) (holding that section 204B.44 “provides a remedial process only for correction of the ballot and directly related election procedures”).

² As explained below, Minnesota election officials need a judicial determination of the proper status of the LMN Party no later than May 15. While such a determination may require substantial judicial proceedings, likely including an evidentiary hearing before a special master, the Secretary believes that such proceedings can reasonably be conducted within the three months available.

III. PREPARATIONS FOR 2024 STATE PRIMARY AND GENERAL ELECTIONS

The Court has ordered the Secretary to provide the date by which a judicial determination in this matter is necessary so that Minnesota election officials can conduct and determine the results of the 2024 state primary election in an orderly fashion.

The two-week filing period for candidates in Minnesota's 2024 state primary and general elections begins on May 21. *See* Minn. Stat. §§ 204B.09, subd. 1(a) (filing period begins 84 days before state primary); 204D.03, subd. 1 (setting state primary on second Tuesday in August in each even-numbered year). While all candidates must file an affidavit of candidacy during the filing period, each minor-party and independent candidate must also submit a nominating petition bearing the signatures of between 500 and 2,000 eligible Minnesota voters, depending on the office they are seeking. *Id.* §§ 204B.03 (affidavits of candidacy); .08, subds. 1-3 (nominating petitions). By contrast, major-party candidates need not submit nominating petitions.

Candidates, parties, and election officials all need time to make the proper arrangements to circulate, complete, and accept affidavits and petitions beginning on May 21. If a court determines that the LMN Party is no longer a major party, all Legal Marijuana Now candidates will be required to use the nominating-petition process to access the ballot. Election officials in the Secretary's Office and in county election offices will be required to process those petitions.

To allow the participants in Minnesota's election system sufficient time to prepare for the work they must do during the filing period, the Secretary respectfully requests that the issues set forth in the petition be finally determined on or before May 15.

CONCLUSION

The Secretary takes no position on the central merits issues of fact and law in the petition. On behalf of Minnesota's election officials, the Secretary requests that the issues in the petition be finally determined no later than May 15.

Dated: February 14, 2024

Respectfully submitted,

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