

STATE OF MINNESOTA
IN SUPREME COURT
A24-0216

FILED

February 20, 2024

OFFICE OF
APPELLATE COURTS

Ken Martin,

Petitioner,

vs.

Steve Simon, Minnesota Secretary of State,

Respondent.

Members of the Republican Party of Minnesota Motion for Leave to Intervene as a Matter of Right or as a Permissive Intervenor

To: All counsel of record.

The applicant Members of the Republican Party of Minnesota respectfully request 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. Exhibit A. The Republican Party of Minnesota is one of three major parties in Minnesota and these Members of the Republican Party of Minnesota, who each serve the Republican Party as volunteers in various roles of leadership within the party including as a Precinct Officer, BPOU officer, Delegate to their BPOU Convention, Delegate to their Congressional District Convention, delegate to the State Central Committee, delegate to the State Convention. The Members of the Republican Party of Minnesota have a clear interest in the matter before the court and are so situated that the disposition of the action may impair or impede these applicants' ability to protect their interests as Members of the Republican Party of

Minnesota unless they are adequately represented by the existing parties. These Members' claims and defenses and the main action have a common question of law. Because there are federal constitutional issues to be raised, if this Court accepts the Petition for review and reaches the merits, these Members of the Republican party should, in the first instance, be able to address the questions of law and jurisdiction. The applicants assert that because the major party status of the Republican Party of Minnesota could be similarly challenged under the statute in question at any time, these Members should be able to address the allegations of noncompliance with the recently amended statute and raise all other relevant issues for the Court's consideration.

The Members of the Republican Party of Minnesota should be granted intervention as a matter of right or permissive intervention.

I. The Applicant Members of the Republican Party have a significant interest in the instant matter and believe this Court will be aided by its participation as a party.

These Members of the Republican Party of Minnesota have a significant interest in the instant petition. This petition raises serious questions about the implementation and enforcement of newly amended Minn. Stat. 200.02, subd. 7. While the Republican Party has existed as a major political party in Minnesota for well over 100 years, failure to comply with this statute under the timeline imposed by the legislature in May, 2023 has jeopardized this status. These applicants believe the Republican Party of Minnesota was and is currently in violation of various provisions of this statute and therefore would be subject to the potential loss of major party status if relevant issues are not raised during the Court's consideration of this Petition. The applicant Members of

Republican Party of Minnesota assert their belief that the Republican Party of Minnesota will likely be a target of a future petition or court action and presently have no voice in this matter, about which a determination, if the merits are heard and judgement entered, would be dispositive.

The Petition before the Court raises issues of noncompliance with provisions of this newly enacted statute by a major political party. In his response to the Petition, the Minnesota Secretary of State has clearly stated he believes the issues raised in the Petition are ripe for judicial determination.¹ The Secretary also informs the Court of his belief the state's courts are the appropriate fact-finding forum to determine whether or not a major political party has fully complied with all statutory requirements necessary to maintain that status.²

The applicants agree with the assertions made by proposed intervenor, Legal Marijuana Now! Party as regard the constitutional issues which could be raised under the First and Fourteenth Amendments of the U.S. Constitution and the Minnesota Constitution. Applicants assert their right to participate in this matter to protect their interests.

The applicant Members of the Republican Party of Minnesota disagree with the position taken by Legal Marijuana Now! Party as to the Court's jurisdiction in this matter. Legal marijuana Now! Party raised *Begin v. Ritchie*, 836 N.W.2d 545 (Minn. 2013) to challenge the Court's jurisdiction under Minn. Stat §204B.44. It is preposterous to suggest that the question of major party status is either tangentially related to elections or generally related to elections: major party status is determinative in nearly every

¹ See MN Supreme Court case A24-0216, Secretary's Response to Petition filed 2/14/2024, p. 5.

² See MN Supreme Court case A24-0216, Secretary's Response to Petition filed 2/14/2024, p. 4.

aspect of elections. This is a case of first impression challenging major party status under new and untested requirements of a longstanding Minnesota statute. The assertion that a 204B.44 Petition to Correct Errors and Omissions must relate to a singular election and more specifically a ballot issue is rooted in caselaw that did not, and could not have, considered the issue at hand. It is time for the court to revisit this case law as to matters that specifically address major party status. While the Supreme Court cannot, logistically, be the court of first impression for every election matter, when there is a serious breach of duty charged under election law to a major political party that threatens to have an impact on not one singular election but EVERY partisan election in the state, as is raised by this Petition, the Supreme Court must be the arbiter of first resort. Additionally, because election calendars now reflect greatly expanded windows for voting, the appropriate and necessary timelines for resolution of serious election related matters are shorter. The expedient resolution of election matters that will affect the election system statewide is necessary to protect the security of and public trust in that election system. That expediency can be best achieved through the 204B.44 process.

Applicants also disagree with the assertion that Martin's petition is late. If a major political party has violated the requirements of a constitutionally sound statute, enforcement of that statute should always be deemed timely. A major political party that has knowingly engaged in conduct that violates the law should not be rewarded by the fact that others were unaware of the noncompliance until it created an inconvenience for election officials, candidates or even eligible voters. Members of political parties, including candidates, have a duty to ensure their chosen party complies

with the law. When members of a political party become aware of conduct which violates Minnesota law, it must be expected that those members demand their party follow the law. Delegates to party units and conventions who knowingly ignore violations of the law are complicit in the party's conduct and responsible for adverse outcomes whenever that information comes to light. In the case of this recently amended law, there is a legitimate issue about the ability of members of a political party to demand and ensure compliance within the timeframe established by the passage of the law and the initial deadline to certify compliance with the law.

Applicants acknowledge their belief that the Republican Party of Minnesota is not in compliance with the law and believe that a false certification of compliance may have been filed by leaders of the Party, assert that many members of the Republican Party have engaged in well-documented attempts to bring the Party into compliance since they became aware of the new statutory requirements; and seek to raise the issue that the initial requirement to certify compliance by December 1, 2023 created an undue burden on the Republican Party of Minnesota and perhaps one or both of the other major parties. Election cycles run every two years and the statute at issue took effect mid-cycle. Political parties generally hold annual major conventions in the Spring. These applicants assert the initial certification of compliance should have been delayed by one election cycle to allow the subunits and governing bodies of each major party to remedy the noncompliance created by the amended statute.

The statutory timelines and requirements related to conventions held by a major party did not align with the initial enforcement deadline and created a serious barrier to compliance for the Republican Party of Minnesota. For example, amending a party

constitution requires the State Convention to be convened. The amended requirements for major parties were passed in May of 2023 with compliance required by December 1, 2024. Previous case law gave some leeway to political parties when interpreting their constitution and rules. By establishing a requirement of a certification of compliance with a party's constitution and rules, the legislature created a fact-finding duty for the Courts as to compliance. As the Courts must apply a plain language interpretation to the law, the new requirement could easily be read to require strict compliance by each major party and their sub-units. The new statute created a 6-month window for each party to assess the factual compliance of all party units, educate members of issues, create a compliance plan and hold all meetings and conventions necessary to remedy those issues. The annual meetings held by the Republican Party occur in the spring and will begin just after caucus on February 27, 2024. Requiring unplanned meetings of each of the subunits, months prior to the meetings required to prepare for the 2024 elections, created an unexpected logistical and financial burden for the party. Every subunit of the Republican Party will be meeting and can address and remedy all issues of noncompliance by mid-May, when the Republican Party of Minnesota will hold its State Convention as required by Minn. Stat. 202A.12, subd. 1.

Additionally, Minn. Stat. 200.02, subd. 7 requires strict compliance with documents required to be submitted, as they are passed, by each of the major parties. Minnesotans have the right to know whether each of the major parties has, in fact, facially complied with the statute. Neither the documents submitted by each of the major parties nor the determinations of facial compliance by the secretary are readily available through the Official Documents portal run by the Office of the Secretary of

State. Queries of each of the terms “Republican” “Democrat” and “Legal Marijuana” produced no results related to the submitted certifications of compliance or determinations of compliance, and inconsistent search results related to the identification of party constitutions, which are required to be filed as they are passed or amended and are critical to the determination of whether or not a major party has actually complied with Minn. Stat. 200.02, subd. 7. Creating timelines that limit enforcement of a clear and constitutional statute is the responsibility of the legislature. Such a limit has not been imposed upon enforcement of the new requirements of the amended statute, so petitions related to violations of this statute are always timely unless the Court determines such enforcement is constitutionally barred.

Because the issues raised in the Petition filed by Martin will directly affect the Republican Party of Minnesota, intervention is warranted.

II. The Applicant Members of the Republican Party of Minnesota should be granted the right to intervene because these Members believe the Party will be the target of a similar action to void its status as a major political party, so have an express interest in the issues presented before this Court.

As a likely target of a similar Petition, the Republican Party of Minnesota is at risk of losing major party status. The Petition’s effort to enforce Minn. Stat. §200.02, subd. 7 is justified as to the demand the law be followed. These applicants support the enforcement of the law despite the possible elimination of some alternative candidates: the law cannot excuse the conduct, or lack of compliance with the law, because these alternative parties appease frustrated voters. Applicants again assert their position that the initial deadline imposed under the amended law created an untenable challenge to

the Republican Party of Minnesota because it created a necessity to assess and amend Party and subunit constitutions and bylaws previously enacted, review actions of the party and its subunits for any possible past violations of the Party constitution and rules and hold necessary Party and subunit conventions to attempt to remedy these past actions in order for the Party to submit a factual certification of compliance with the party's constitution and rules. While the requirement passed in May 2023 to file a certification of compliance on December 1, 2023, does not appear, on its face, to be a retroactive obligation, the compliance requirement reaches back to events and actions that occurred prior to May 2023. The need to correct actions that occurred prior to May 2023 created a de facto retroactivity under the December 1, 2023, deadline.

New statutes enacted by the legislature are generally presumed to be applied prospectively. Minn. Stat. §645.21 states, "No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." The 2023 Minnesota legislature is a trifecta: the Minnesota DFL controls the House, Senate and the Office of the Governor. This trifecta creates the opportunity for the legislature to pass state law without any check on their power. The amended statute must either be enforced prospectively, or the Court will have to determine the legislature intended the statute to be applied retroactively. If the legislature intended the amended statute to be construed retroactively, the Applicant Members will argue that legislation was actually targeted at both the Republican Party of Minnesota and the Legal Marijuana Now! Party. The Democrat Party passed a law that would allow them, statutorily, to become the sole major political party in Minnesota.

The staff and general counsel for the Minnesota Secretary of State has been

aware of the Republican Party of Minnesota's apparent noncompliance with Minnesota Statute 202A.12, subd.4 since the Spring of 2022. Exhibit B. A state central delegate to the Republican Party discovered this unfortunate Party oversight while doing research about Party documents. The general counsel for the Secretary informed this delegate that that the Party had not filed a constitution since 1988. There was follow up email communication with the Secretary's general counsel on December 2, 2022.

Exhibit C.

Because the Chair of the Republican Party informed delegates the Secretary had assured the Party there were no concerns with compliance, on September 6, 2023, Delegates to State Central and the State Convention filed a data request under Chapter 13 seeking communications between the Office of the Secretary of State and the Republican Party of MN, its officers, staff or members of the State Executive Board.

Exhibit D. Additional emails were sent to the Office of the Secretary of State seeking this information on:

- September 20, 2023
- October 2, 2023
- October 6, 2023
- October 12, 2023
- October 17, 2023
- October 20, 2023
- October 26, 2023

The general counsel for the Secretary did reply via email on October 12, 2023,

stating,

“Sorry, I was in Europe for several weeks. I’ll have the data for you tomorrow (Friday).” Exhibit E.

The Data request remains unfilled to this date.

Because the window to call meetings to remedy issues of noncompliance had effectively closed for the Delegates, no additional emails were sent demanding the information, however none were required. The Secretary of State is obligated to provide the requested data or provide information as to why the information cannot be provided. The failure of the Secretary to comply with these lawful requests of necessary information interfered with the delegates ability to exercise necessary oversight of the Republican Party of Minnesota prior to the December 1, 2023, deadline to file the certification of compliance.

On February 11, 2024, following the filing of the Martin Petition, a request was again made of the Office of Secretary of State to comply with the September 6, 2023, record request.

Applicant Members of the Republican Party of Minnesota seek leave to intervene as a matter of right under Minn. R. Civ. P 24.01, noting this application is timely, the applicants claim an interest relating to the subject of the action, the applicants are so situated that the disposition of the action may impair or impede their ability to protect their interests if they are not permitted to intervene, and their interests are not adequately represented by the existing parties.

Clearly this application to intervene is timely: Martin filed the Petition on February 6, 2024, and the Legal Marijuana Now! Party filed its notice of intervention on

February 14th. As noted by Applicant Legal marijuana Now! Party, in Minnesota, legitimate interventions are encouraged. *Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28 (Minn.1981). This Court has also held: “In *Pyle-National Co. v. Amos*, 172 F.2d 425, 428 (7 Cir. 1949), the court emphasized that the amended Rule 24 should be construed liberally and that “[t]echnicalities should not be invoked * * * to defeat intervention.” *Engelrup v. Potter*, 224 N.W.2d 484, 488 (Minn. 1974). Applicants assert their ability to protect their interests as Members of the Republican Party of Minnesota will be impaired if they are not allowed to intervene.

Finally, neither the Secretary, Ken Martin nor the Legal Marijuana Now! Party can be expected to represent the interests of the Members of the Republican Party of Minnesota. As noted previously, the Office of the Secretary of State has failed to comply with data requests made by delegates of the Republican Party of Minnesota, which were and are directly related to the matter before the Court. Whether or not the failure to comply with the data requests is because the Secretary is influenced by his connection to the Democrat Party cannot be known at this time. While it could go without saying, Members of the Republican Party contend that the interests of competing political parties are generally not aligned because those parties are in fact, competing. Rule 24 allows a person to intervene either by right, Minn. R. Civ. P. 24.01, or by permission of the court, Minn. R. Civ. P. 24.02. Rule 24 is specifically designed to protect a nonparty from having their interests adversely affected by litigation conducted without their participation. *Erickson v. Bennett*, 409 N.W.2d 884, 887 (Minn.App.1987).” *Gruman v. Hendrickson*, 416 N. W. 2d 497 (Minn. Ct. App. 1987).

The Petition seeks the stripping of major party status from the Legal

Marijuana Now! Party because that party failed to comply with the requirements of the 2023 Statute 200.02, subd. 7(a), which include compliance with the party's constitution and rules; compliance with the requirements of sections 202A.12 and 202A.13; and the filing 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. The applicants believe a similar action is likely to be filed against the Republican Party of Minnesota. The applicants should have a voice to ensure their interests are protected in this matter.

Like the LMNP, the Members of the Republican Party of Minnesota must meet 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). Neither the Chair of the MNDFL, the Secretary of State nor a competitive major political party can be trusted or assumed to be able to assert the interests of the Members of the Republican Party of Minnesota. The Secretary has a duty to follow the directive of the statute without consideration of the underlying facts and cannot represent the interests of the Members of the Republican Party of Minnesota. While his office has seemingly not complied with the law as to the data practices requests, per the policy the Secretary signed on August 1, 2023³, Applicant Members of the Republican Party of MN do expect the Secretary will follow the law at issue in this matter, as directed by the Court. The

³ “Data Practices Policy for Members of the Public”, Office of the Minnesota Secretary of State (August, 2023), <https://www.sos.state.mn.us/media/4684/data-practices-policy-for-members-of-the-public.pdf> (last visited Feb. 19, 2024).

other two major political parties seek to win elections by defeating the Republican Party of Minnesota. Their interests are clearly not aligned with the Applicant Members of the Republican Party of Minnesota.

These applicants also assert the constitutional issues raised by the Legal Marijuana Now! Party are relevant to and support their right to intervene in the Petition.

“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.” *Kasper v. Pontikes*, 414 U.S. 51, 56-57 (1973) (citing *NAACP v. Button*, 371 U.S. 415, 430 (1963)).” Legal Marijuana Now! Party Motion for Leave at 9-10. These Applicant Members assert their associational rights recognized by the Supreme Court creates a right to intervene in this matter.

The Members of the Republican Party assert that they must be afforded Party status so as to have the ability to protect their interests if the Court grants the Petition and addresses the merits.

III. Alternatively, the Court should grant permissive intervention to the Members of the Republican Party.

The granting of permissive intervention under Rule 24.02 is discretionary. *Heller v. Schwan's Sales Enterprises, Inc.*, 548 N.W.2d 287, 292 (Minn. App. 1996). Before granting permissive intervention, the court must determine the application is timely and also

that the applicant's claim or defense and the main action have a common question of law or fact. Minn. R. Civ. P. 24.02. "In exercising its discretion to grant permissive intervention, 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.

The question of law or fact relates to the duty of the secretary to strip a major political party of major party status for failing to comply with all the statutory requirements of Minn. Stat 200.02, subd. 7, which includes the requirement that the major party must comply with Minn. Stat. 202A.12. There exists a common question of law between each major party and the Secretary of State as each major party and the secretary have an interest in the determination of major party status. The duty to file the certification of compliance is charged to the major party. While it is likely the Chair of the major party would fulfill the filing duty, the law does not mandate this as it does in Minn. Stat. 202A.12, subd. 4, which requires the Chair of the major party to file the constitution and all amendments to the constitution as they are passed. Certainly, the Applicant Members of the Republican Party who serve as delegates to the State Central Committee and/ or State Convention have a duty to provide oversight related to the actions of the State Executive Board, including officers, and the State Central Committee and to ensure the Party complies with all requirements of the law. Minn. Stat. § 202A.12. The major parties and the Secretary of State share an interest in the question of the enforcement of legal compliance with the recently amended statute. The intervention of the Members of the Republican Party will not delay or prejudice the adjudication of the rights of the original parties: The Members will comply with all timelines created by

the orders filed into the record to date and will also comply with all due dates for filing principal, responsive, and if necessary, reply briefs.

The requirements for permissive intervention are satisfied because the intervention is timely and will not delay or prejudice the adjudication of the rights of the original party, and there exists “a common question of law or fact’ with the action.”

League of Women Voters Minnesota, 819 N.W.2d at 642.

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

The Members of the Republican Party of Minnesota agree with the position taken by the LMNP. While the Minnesota Rules of Civil Procedure, Rule 24.03, grants any party served with notice of the motion for intervention 30 days to object, this matter must be expedited, based upon the Secretary’s request related to impending statutory deadlines. If the Court accepts jurisdiction, the Members of the Republican Party ask the Court to waive the 30-day window for objection by the other parties to the matter and instead order those objections to be raised within three business days of the filing and to order whatever additional time deemed necessary for the parties to file briefs on the motion to intervene.

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 Applicant Members of the Republican Party of

Minnesota motion to intervene either as a matter of right or grant permissive intervention.

Dated: February 20, 2024

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