

STATE OF MINNESOTA
IN SUPREME COURT
No. A23-1354

FILED

October 4, 2023

**OFFICE OF
APPELLATE COURTS**

Joan Growe, Paul Anderson, Thomas
Beer, David Fisher, Vernae Hasbargen,
David Thul, Thomas Welna, and Ellen
Young,

Petitioners,

v.

Steve Simon, Minnesota Secretary of
State,

Respondent,

v.

Republican Party of Minnesota,

Proposed Intervenor.

**PETITIONERS' OPPOSITION TO
DONALD TRUMP FOR PRESIDENT
2024, INC.'S MOTION TO INTERVENE**

On September 27, 2023, Donald Trump for President 2024, Inc. (“the Campaign”) filed a purported response to the petition in this matter. In that filing, the Campaign asserted that it “moves to intervene as a Respondent in this proceeding.” Campaign Resp. to Petition at 3, n.1. To the extent the Campaign’s assertion is considered a motion to intervene, Petitioners submit this response pursuant to Rule 127 of the Minnesota Rules of Civil Appellate Procedure in opposition to such motion and request that the purported response to the petition be stricken from the record.

The Court’s September 20, 2023 Order stated “Donald J. Trump may serve and file [a] response[] to the petition” and that “Donald J. Trump may also file a responsive brief addressing the same legal issues” as are to be addressed by Petitioners and

Respondents. Sept. 20 Order at ¶¶ 2, 4. But the Campaign is not Donald J. Trump, and the Order neither contemplates nor authorizes any submission by the Campaign.

Nonetheless, the Campaign purported to appear on Trump’s behalf asserting that it is “fully prepared to vindicate his interests as a candidate, including his right to be a candidate on the Minnesota primary ballot.” Campaign Resp. to Petition at 3, n.1. The Campaign unapologetically states that it is seeking to appear on Trump’s behalf because “Donald J. Trump himself is not subject to the personal jurisdiction of this Court, and wishes to preserve that objection in light of Defendants’ (sic) unprecedented and inappropriate request to conduct discovery under this Court’s original jurisdiction.”¹ *Id.* That is, Trump made a strategic decision not to appear on his own behalf. Even assuming Trump is free to make that choice, *but see* Minn. Stat. § 204B.44(b) (“[i]n the case of a review of a candidate’s eligibility to hold office, the court may order the candidate to appear and present sufficient evidence of the candidate’s eligibility”), that does not mean the candidate can appoint the Campaign to stand in his shoes and litigate on his behalf.

¹ The Campaign asserts that discovery in this matter “would serve no apparent purpose, other than creating a political spectacle and burdening President Trump and his campaign.” Campaign Resp. to Petition at 27. This is untrue. To the extent discovery is necessary, Petitioners anticipate that it would focus on matters relating to the authentication of certain evidence to satisfy the requirements of Minn. R. Evid. 901 and to obtain relevant testimony from witnesses who may be unavailable to appear at an evidentiary hearing in this matter. Such discovery has been allowed in at least one other recent § 204B.44 eligibility challenge. *See Fischer v. Simon*, A22-1112, Order at *2 (Minn. Aug. 23, 2022) (noting in paragraph 4.c. that the referee has approved the testimony of two witnesses by video deposition).

The candidate and the campaign are not legally interchangeable.² The campaign is merely the vehicle by which a candidate seeks to persuade the electorate to cast their votes in his favor whereas the candidate is the individual who, if the campaign is successful, will be elected to the public office and whose eligibility is at issue in this matter.

The Campaign has not identified a single interest of its own to justify its intervention. Rather, the Campaign, by its own admission, seeks only to act on behalf of Trump so he may remain an observer of these proceedings in which his eligibility to hold the Office of President will be determined.

The Campaign is not entitled to intervene as of right as provided in Minn. R. Civ. P. 24.01 because it has failed to identify any independent interest relating to the Petition. It is not authorized to intervene permissively pursuant to Minn. R. Civ. P. 24.02 because, as the Campaign admits, it lacks its own claim or defense arising out of a common question of law or fact as the claims asserted in the Petition. And it was not invited to file a response by the Court's September 20, 2023 Order.

Moreover, the Campaign's request to intervene appears to rest on the faulty premise that "Donald J. Trump himself is not subject to the personal jurisdiction of this Court". Campaign Resp. to Petition at 3, n.1. Consistent with the Due Process Clause of the 14th Amendment, Minnesota courts may exercise personal jurisdiction over a non-

² It is a well-established and long-settled principle of Minnesota law that a corporation, such as the Campaign, "is an entity separate and distinct from the body of its shareholders" and that it is "a real legal unit possessing individuality and endowed by the

resident where the non-resident “has ‘minimum contacts’ with the state and maintaining the lawsuit ‘does not offend traditional notions of fair play and substantial justice.’” *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 327 (Minn. 2016) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). The requisite “minimum contacts” exist when the non-resident respondent “‘purposefully avails itself’ of the privileges, benefits, and protections of the forum state, such that the [non-resident respondent] ‘should reasonably anticipate being haled into court there.’” *Id.* (citing *Burger King Corp v. Rudzewicz*, 471 U.S. 462, 474-75 (1985)). No one disputes, nor could they, that Trump is a candidate for president in 2024 and that he intends to appear on the ballot for the presidential nomination primary and, if he receives the Republican Party nomination, the ballot for the general election. Availing himself of the State’s electoral process, with the ultimate goal of securing for himself the State’s ten electoral votes for the office of the presidency, undoubtedly satisfies the Due Process requirements of the 14th Amendment.

But even if the Court lacked personal jurisdiction, that does not permit Trump to send the Campaign as his emissary to intervene on his behalf, assert his arguments, and allow him to litigate this matter from the shadows. He cannot have the benefit of *de facto* party status while avoiding the less convenient consequences of engaging in the litigation which will determine whether he is eligible to hold the Office of President (e.g., application of the hearsay exclusion in Rule 801(d)(2) for statements made by a party-opponent).

law with many of the attributes of persons.” *Matthews v. Minnesota Tribune Co.*, 10 N.W.2d 369, 374 (Minn. 1943).

Accordingly, Petitioners respectfully request the Court deny the request by Donald Trump for President 2024, Inc. to intervene as a respondent in this matter and strike the September 27, 2023 filings by the Campaign.

Date: October 4, 2023

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this petition conforms to the requirements of Minn. R. Civ. App. P. 132.02, for a response produced with a proportional 13-point font. The length of this brief is **1,073** words. This brief was prepared using Microsoft Word 2016.

s/Charles N. Nauen

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