

No. A23-1354

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**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

Joan Growe, et al.,

Petitioners,

vs.

Steve Simon, Minnesota Secretary of State,

Respondent.

RESPONDENT STEVE SIMON'S BRIEF

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LEGAL ISSUES

I. Do Petitioners have standing to bring the petition?

The Court raised this issue in its September 20 order.

Most apposite authorities:

Minn. Stat. § 204B.44 (2022)

League of Women Voters Minn. v. Ritchie, 819 N.W.2d 636 (Minn. 2012)

Clifford v. Hoppe, 357 N.W.2d 98 (Minn. 1984)

II. Is the petition ripe for adjudication?

The Court raised this issue in its September 20 order.

Most apposite authorities:

Onvoy, Inc. v. ALLETE, Inc., 736 N.W.2d 611 (Minn. 2007)

Dean v. City of Winona, 868 N.W.2d 1 (Minn. 2015)

State v. Rud, 359 N.W.2d 573 (Minn. 1984)

STATEMENT OF THE CASE

Petitioners invoked this Court's original jurisdiction under Minn. Stat. § 204B.44, asking the Court to (1) declare that Donald J. Trump is disqualified from holding the office of President of the United States and (2) direct Respondent Secretary of State Steve Simon to exclude Trump's name from the ballot for Minnesota's presidential nomination primary in March and its general election in November.

The Court directed the parties to file briefs addressing standing, ripeness, and the interpretation and application of Section 3 of the Fourteenth Amendment to the U.S. Constitution.

STATEMENT OF FACTS

Minnesota will hold a presidential nomination primary on March 5, 2024. *See* Minn. Stat. § 207A.11(b) (2022) (addressing date for presidential nomination primary). Major political parties in the state wishing to participate in the primary are required to submit the names of the candidates that will appear on their respective primary ballots no later than January 2. *See id.* § 207A.13, subd. 2(a) (2022). In the 2020 election cycle, the two participating parties submitted their candidate lists months before the deadline. *See, e.g., De La Fuente v. Simon*, 940 N.W.2d 477, 481 (Minn. 2020) (noting that Republican Party of Minnesota submitted candidate list for 2020 presidential nomination primary in October 2019). The Secretary, however, has no knowledge regarding when the parties will transmit their lists in the 2024 cycle.

In September 2023, Petitioners asked this Court to hold that an anticipated candidate for the Republican Party presidential nomination is ineligible to appear on ballots in

Minnesota because he is disqualified from office under Section 3 of the Fourteenth Amendment.

Because of the deadlines in state and federal law, Minnesota election officials must provide printed ballots and programmed assistive voting equipment to voters no later than January 19, 2024. *See* Minn. Stat. §§ 203B.081, subd. 1; 204B.35, subd. 4; 204B.45, subd. 2; 207A.12(a) (2022); Maeda Decl. ¶ 5. To meet this deadline, election officials must have the final list of candidates for the presidential primary ballot no later than the close of business on Friday, January 5, 2024. (Maeda Decl. ¶¶ 10-12.)

ARGUMENT

The Secretary agrees with Petitioners that they have standing to bring this petition and that the issues raised in the petition are ripe for adjudication. He takes no position, however, on the further issues the Court referenced in its September 20 order regarding the interpretation and application of the Fourteenth Amendment. (*See* Order ¶ 3(2).)

The question presented by the petition is of extraordinary importance. Minnesota election officials have a pressing need to see the question resolved within the limited time remaining before the January 5 deadline—which promises to be a tall order if the Court determines, as it has in other recent cases involving candidate eligibility, that a fact-finding hearing before a special master is necessary in this matter. As a result, the Secretary asks the Court to hear and rule on the merits of the petition so that the county and local officials at the core of the state’s election system can conduct the presidential primary in the orderly and professional fashion that Minnesotans expect and deserve.

I. SECTION 204B.44 GRANTS PETITIONERS STANDING TO BRING THE PETITION.

Standing is the requirement that a party have a sufficient stake in a controversy to seek relief from a court. *Sierra Club v. Morton*, 405 U.S. 727, 731-32 (1972). A suit brought by an entity that lacks standing must be dismissed. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 497 (Minn. 1996). Under Minnesota law, a plaintiff can acquire standing in two ways: by alleging that they have suffered an “injury-in-fact” or by demonstrating that they are the beneficiary of a legislative enactment granting standing. *Snyder’s Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 221 N.W.2d 162, 165 (Minn. 1974).

Petitioners brought their petition under Minn. Stat. § 204B.44, which authorizes “[a]ny individual [to] file a petition . . . for the correction of” particular errors and omissions related to elections. Minn. Stat. § 204B.44(a) (2022); Pet. 1, 6 ¶ 25. The statute thus grants standing to a wide variety of persons and organizations. *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 645 n.7 (Minn. 2012). There can be no serious dispute that Petitioners, all of whom allege they are Minnesota voters, are within the class of entities who possess statutory standing to bring the petition. *See id.*; *see also Clifford v. Hoppe*, 357 N.W.2d 98, 100 n.1 (Minn. 1984) (holding that “a registered voter has a sufficient interest in the election” to sustain Minn. Stat. § 204B.44 petition); *Moe v. Alsop*, 180 N.W.2d 255, 257 & n.1 (Minn. 1970) (holding, before creation of section 204B.44,

that any “person qualified to vote” had standing to challenge eligibility of candidate on ballot).¹

II. THE PETITION IS JUSTICIABLE.

If the underlying eligibility issue in this case is not resolved in a timely manner, it runs the risk of interfering with the orderly administration of the state’s elections. As a result, in light of (1) the lack of any real ambiguity regarding whether the state Republican Party will select Donald Trump as one of its candidates for the March presidential nomination primary and (2) Minnesota election officials’ pressing need to receive the final lists of certified candidates to appear on primary ballots, the petition is both ripe and justiciable. Even if the Court holds that Petitioners’ claims are technically unripe, it should hear and decide those claims nonetheless pursuant to the “functional justiciability” standard it has adopted for technically moot issues that are presented under similarly important and exigent circumstances.

A. The Petition is Ripe for Adjudication.

Minnesota courts may only hear and decide legal claims that are justiciable—that is, claims that (1) involve “definite and concrete assertions of right that emanate from a

¹ State law balances the broad grant of statutory standing in section 204B.44 by placing narrow subject-matter restrictions on the kinds of alleged errors and omissions that are subject to correction under the statute. *See, e.g., Begin v Ritchie*, 836 N.W.2d 545, 548 (Minn. 2013) (holding that statute “does not embrace claims based on conduct that may only generally implicate elections”); *Minn. Majority v. Ritchie*, No. A09-950, at 5 (Minn. filed Jul. 22, 2009) (“[T]he plain language of the statute requires that the claim relate to a duty concerning a specific election.”). But because the instant petition unquestionably seeks “correction of [a] ballot and directly related election procedures,” *see Clark v. Pawlenty*, 755 N.W.2d 293, 299 (Minn. 2008), the petition fits within these subject-matter limitations.

legal source,” (2) involve a “genuine conflict in tangible interests between parties with adverse interests,” and (3) are “capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion.” *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 617-18 (Minn. 2007). This Court does not issue advisory opinions, nor does it “decide cases merely to establish precedent.” *Jasper v. Comm’r of Pub. Safety*, 642 N.W.2d 435, 439 (Minn. 2002). Legal claims can be non-justiciable if, among other things, they are brought too soon (rendering them unripe) or if they are brought too late for the court to provide effectual relief (rendering them moot). *McCarney v. Ford Motor Co.*, 657 F.2d 230, 233 (8th Cir. 1981).

A case is ripe when it presents “a substantial and real controversy between the parties” that is based on a “direct and imminent injury.” *State v. Murphy*, 545 N.W.2d 909, 917 (Minn. 1996). Issues that “have no existence other than in the realm of future possibility” are “purely hypothetical” and are therefore not justiciable. *Lee v. Delmont*, 36 N.W.2d 530, 537 (Minn. 1949). Finally, this Court does not apply ripeness or other justiciability doctrines “mechanically”; instead, it examines all facts and circumstances that support or cut against accepting jurisdiction over a legal dispute. *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015).

Petitioners’ claims meet the requirements that this Court has recognized for a justiciable controversy. Specifically, the claims involve definite and concrete assertions of right that emanate from Minn. Stat. § 204B.44 and Section 3 of the Fourteenth Amendment; they involve a genuine conflict in tangible interests between Petitioners, the Intervenor-Respondent Minnesota Republican Party, and Donald Trump, who are parties

with adverse interests; and they are capable of specific resolution by the Court’s judgment rather than presenting hypothetical facts that would form an advisory opinion. *See Onvoy*, 736 N.W.2d at 617-18.

Although Intervenor-Respondent Minnesota Republican Party has not, to date, submitted a list of presidential nomination primary candidates to the Secretary that includes Donald Trump, that event cannot be characterized as hypothetical. As alleged in the petition, it seems certain that the state Republican party will name Trump as one of the candidates it desires to include on the March primary ballot. (*See, e.g.,* Pet. ¶¶ 1, 315.) There is therefore no meaningful risk that this Court’s decision on the legal issues addressed by the other parties will be an advisory opinion. *Cf. Onvoy*, 736 N.W.2d at 617-18. Meanwhile, Minnesota election officials’ countervailing need to have these legal questions resolved in time for them to conduct the nomination primary in an orderly fashion counsels strongly in favor of erring on the side of addressing the merits.

For these reasons, the non-“mechanical” analysis of justiciability that this Court conducts, *see Dean*, 868 N.W.2d at 5, leads to the conclusion that Plaintiffs’ claims are ripe and therefore justiciable. The petition describes a live and current dispute, and as a result this Court can hear it without delay.

B. Even If It Were Not Ripe, the Court Can Hear the Petition Because It Is Functionally Justiciable and Presents an Important Question of Statewide Significance that Must Be Decided Immediately.

One important consequence of this Court’s non-mechanical approach to justiciability is that some legal claims, though they are technically moot, are nonetheless properly subject to adjudication by Minnesota courts. When a case is “functionally

justiciable” and also presents an important question of statewide significance that must be decided immediately, this Court has discretion to hear it even if it is formally moot. *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984); *see also Snell v. Walz*, 985 N.W.2d 277, 284 (Minn. 2023). If the fact that the Republican Party has not yet submitted its primary candidates to the Secretary leads the Court to conclude Petitioners’ claims are unripe, the facts of this case support recognizing a functionally identical limited exception to the ripeness standard. The Court should hold that, under very rare circumstances like these, it has discretion to hear formally unripe claims.

Mootness is the temporal mirror image of ripeness. A case must be dismissed as moot when a decision on the merits is no longer necessary or a court can no longer award effective relief. *Pfoser v. Harpstead*, 953 N.W.2d 507, 514 n.4 (Minn. 2021). This Court, however, has recognized a narrow exception to mootness that grants the Court discretion to hear a formally moot case if

1. The action is “functionally justiciable”—that is, the record contains sufficient material to permit effective judicial analysis, including substantive presentations of both sides of the relevant issues—and
2. The issues presented are “important public issues of statewide significance that should be decided immediately.”

Rud, 359 N.W.2d at 576. In the narrow range of cases that meet the above criteria, judicial resolution of questions that are technically moot is necessary to prevent serious adverse effects on the state and its judicial system. *See, e.g., In re Guardianship of Tschumy*, 853 N.W.2d 728, 741 (Minn. 2014) (applying exception to formally moot case because of

pressing need to clarify scope of guardians' authority to consent to remove their wards from life support); *State v. Brooks*, 604 N.W.2d 345, 348 (Minn. 2000) (applying exception to consideration of formally moot issue related to cash bail because rejecting appeal risked creating "a class of defendants with constitutional claims but no remedy"); *Rud*, 359 N.W.2d at 576 (applying exception because "a failure to decide [formally moot issues] now could have a continuing adverse impact in other criminal trials if trial judges were to rely on the Court of Appeals' decision").

The criteria that define the mootness exception recognized in *Rud* very rarely apply to legal claims that are unripe, because it is only under extraordinary circumstances that (1) a particular legal issue is nominally unripe *but nonetheless* (2) it has been briefed in such depth, from multiple sides, that it is functionally justiciable *and* (3) it requires resolution immediately to avoid serious consequences on a matter of statewide significance. In other words, extending the functional-justiciability exception to mootness so that it also applies to ripeness would impact only an extremely narrow class of actions. Regardless, the policy justification for recognizing this Court's discretion to hear unripe claims under these circumstances is no different than the justification for the mootness exception: there is no reason to inflict damage on Minnesotans by failing to reach highly consequential legal issues that are well within the Court's ability to resolve without delay.

Though few disputes would fall within a functional-justiciability exception to the ripeness rule, this case clearly does so. The current litigation is functionally justiciable, because the Court has received extensive briefing on all relevant legal issues from parties and amici and because there currently remains sufficient time for a special master to resolve

any genuine disputes of material fact.² Moreover, under the current circumstances, the eligibility of presidential candidates to appear on ballots in Minnesota's presidential nomination primary is a vital issue of statewide concern that requires immediate resolution. Minnesota's election officials need the legal issues raised in the petition answered so that they can conduct the March primary in an orderly and professional fashion.

For these reasons, if the Court determines that Petitioners' claims are not yet ripe, the Secretary requests that the Court extend the functional justiciability mootness exception to unripe cases as well. Under that exception, the Court can and should exercise its discretion to hear the petition so that Minnesota election officials can receive clear instructions regarding the contents of the March primary ballot no later than January 5.

CONCLUSION

For the above reasons, the Secretary requests that the Court hold that Petitioners have standing to bring the claims in the Petition and that those claims are ripe for adjudication. In the alternative, the Secretary requests that the Court find the case is functionally justiciable and decide it immediately.

² The potential need for special-master proceedings is a key element of the time pressure in this matter. There is currently sufficient time before ballot-printing must begin for a special master to conduct an evidentiary hearing and issue findings of fact and then allow the matter to return to this Court for final resolution. If, however, the Court dismisses the petition as unripe and thus forces Petitioners to wait and re-file only when the state Republican party elects to submit its list of presidential primary candidates, it is likely that there will be too little time remaining for any such process to be completed before January 5.

Dated: October 18, 2023

Respectfully submitted,

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