

STATE OF MINNESOTA
IN SUPREME COURT

FILED

September 27, 2023

**OFFICE OF
APPELLATE COURTS**

Joan Growe, et al.,
Petitioners,

Case No.: A23-1354

vs.

Steve Simon, Minnesota Secretary of
State,
Respondent.

**RESPONSE OF THE REPUBLICAN
PARTY OF MINNESOTA**

Introduction

Petitioners request that this Court use state law as a sword to cut away the constitutionally protected rights of the Republican Party of Minnesota. Petitioners invite the State of Minnesota to violate the Fourteenth Amendment by cleaving the Republican Party of Minnesota's First Amendment right of association. Petitioners ask that this Court flip federalism on its head and usurp federal authority by asserting that this Court and the Secretary of State have the authority to disqualify a candidate for federal office.

Petitioners' shortsighted requests would do violence, not simply to the Republican Party of Minnesota, but to all political parties and their members. This Court should decline Petitioners' invitation to play butcher to the U.S. Constitution. Rather, this Court should follow the volumes of case law which clearly establish that the First Amendment freedom of association is a shield from the very harm which Petitioners seek to inflict.

Facts

The Republican Party of Minnesota (“RPM”) is a major political party, as defined in Minn. Stat. § 200.02, subd. 7, that sends delegates to the Republican Party National Convention. Republican Party of Minn. Bylaws Art. VI; *see* Minn. Stat. § 207A.11(d).

In 2016, Minnesota established a presidential preference primary. Minn. Stat. § 207A.11(a). Under this system, it is within the sole discretion of each respective major political party chair to inform the Secretary of State as to which candidates should appear on the presidential primary ballot. Minn. Stat. § 207A.13, subd. 2. The party is bound to send delegates to its national convention based on the primary results. Minn. Stat. § 207A.12(d).

Neither Republican National Committee nor RPM rules dictate how the party chair may select names for the primary ballot. In 2024, the Minnesota Republican Party intends to follow a threshold similar to what which the Republican National Committee utilizes for debate participation.

RPM internal policy dictates how delegates are apportioned based on primary ballot results. Delegates are required, per RPM policy, to vote according to the primary results on only the first round of delegate balloting. After that, RPM bylaws state that no national delegate is bound to vote for any particular candidate at the National Convention. Republican Party of Minn. Bylaws Art. VI § 2.

Material Facts in Dispute

On September 12, 2023, Petitioners filed a Petition with this Court pursuant to Minn. Stat. § 204B.44. The Petition contains allegations regarding the events surrounding

January 6, 2021, and asserts that Donald Trump is not qualified to hold office. Petition ¶¶ 1-24, 37-305. While the RPM is not the subject of the alleged facts, it notes that they are either statements of opinion or conclusions of law, to which it objects in whole. Furthermore, these unsubstantiated allegations do not support the conclusion that “Trump is disqualified from holding” office. Petition ¶ 302.

The RPM submits this Response to address the Petitioner’s requested relief. Petitioners request that this Court direct the Secretary of State to exclude Donald Trump from the presidential nomination primary and general election ballots. *See* Petition at 79-80 ¶¶ 1-4. Inherent in this request is a request that this Court direct the Secretary of State to infringe on the RPM’s First Amendment rights by interfering with the RPM’s process for selecting a presidential nominee.¹

Argument

The First Amendment protects the RPM’s right to choose and associate with a presidential candidate to represent the RPM in the 2024 presidential election. U.S. Const. amend. I. The U.S. Supreme Court has repeatedly affirmed that the First and Fourteenth Amendments protect political parties’ free association rights. *Eu v. S.F. Cnty. Democratic Cent. Comm. et al.*, 489 U.S. 214, 224 (1989) (“It is well settled that partisan political organizations enjoy freedom of association protected by the First and Fourteenth

¹ This Court ordered that the Fourteenth Amendment and justiciability issues be briefed in the parties’ October briefs. Minn. Sup. Ct. Order (Sept. 20, 2023). As such, this Response will be limited to the requested relief’s potential and concerning impact on the RPM’s First Amendment rights and only touch on those issues as necessary to articulate the RPM’s First Amendment rights.

Amendments.”); see *Williams v. Rhodes*, 393 U.S. 23, 30–31, (1968) (“We have repeatedly held that freedom of association is protected by the First Amendment. And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States.”).

The “[f]reedom of association” clearly “encompasses a political party’s decisions about the identity of, and the process for electing, its leaders.” *Eu*, 489 U.S. at 229. The freedom of association provides “special protection” for “the process by which a political party ‘select[s] a standard bearer who best represents the party’s ideologies and preferences.’” *California Democratic Party v. Jones*, 530 U.S. 567, 575 (2000) (quoting *Eu*, 489 U.S. at 224). Indeed, “[t]he moment of choosing the party’s nominee . . . is ‘the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community.’” *Jones*, 530 U.S. at 568 (quoting *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 216 (1986)).

First, the Petitioners request that this Court interfere with the RPM’s First Amendment rights by limiting who the RPM may associate with as its presidential candidate and how the RPM may communicate its platform through selecting its presidential nominee. This First Amendment infringement not only impacts the RPM’s rights as a political party, but necessarily also infringes on the rights of the individual voters who constitute the RPM. This is especially concerning when, as here, the relief sought forces the state, via judicial order to the state’s chief election official, to interfere

with preference primaries, the fundamental mechanism the RPM uses to communicate with its members and select delegates for the Republican National Convention.

Second, contrary to Petitioners' assertion, Minnesota law does not authorize the Secretary of State to investigate and determine the eligibility of a presidential candidate to appear on a ballot. *See* Petition ¶ 312. Likewise, state courts do not have a role in making a presidential eligibility determination. Instead, state law illustrates a deference to a political party's First Amendment rights to determine which candidate will represent the party in presidential elections.

- I. **The RPM's First Amendment right includes the right to select a presidential nominee of their choosing.**
 - a. *The requested relief interferes with the RPM's right of association by limiting the RPM's choice of presidential nominee.*

The Petitioners request that this Court limit the RPM's ability to freely choose a presidential candidate to nominate. The RPM's "basic function" is providing a process for and selecting the Republican Party's candidate in the presidential election. *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973) (explaining "a basic function of a political party is to select the candidates for public office to be offered to the voters at general elections"). It does so through the election of delegates to its National Convention. Those delegates are determined by the results of the State's presidential preference primary.

This "basic function" has been repeatedly protected by the U.S. Supreme Court under the First and Fourteenth Amendments. In *Eu*, the U.S. Supreme Court held that a state's interference with a political party's internal procedure violates that party's First Amendment right to associate. *Eu*, 489 U.S. at 233. In that case, the Court struck down

California laws that prohibited “political parties from endorsing candidates in party primaries” and attempted to regulate intraparty matters. *Id.* at 217-18. In striking the laws down, the Court made clear that without compelling reason, a state may not “limit[] a political party’s discretion in how to organize itself, conduct its affairs, and select its leaders.” *Id.* at 230.

In *Jones*, the U.S. Supreme Court again rejected state interference with a political party’s candidate nomination process by striking down a California law that required blanket primaries which permitted voters that were unaffiliated with a political party to participate in that political party’s primary. *Jones*, 530 U.S. at 581-82. The Court made clear that a state law that has the “deleterious effects . . . [of] altering the identity of [a] nominee” infringes on political parties’ First Amendment rights. *Id.* at 579. The Court reaffirmed that the states must adhere to “limits imposed by the Constitution” when regulating elections and that interference with the candidate-nomination process would interfere with political parties’ freedom of association. *Id.* at 573.

The Court emphasized that the Constitution protects political party’s processes for selecting a nominee. *Id.* at 575 (“Unsurprisingly, our cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party ‘select[s] a standard bearer who best represents the party’s ideologies and preferences.’”) (quoting *Eu*, 489 U.S. at 224). Both *Eu* and *Jones* illustrate that a state infringes on political parties’ First Amendment rights when the state interferes with a party’s ability to select a nominee to represent that political party.

Here, Petitioners request that the Secretary of State interfere with the RPM's process for selecting a nominee by removing Donald Trump from the primary and general election ballots, thereby limiting the potential choices primary voters would have in selecting their party's "standard bearer." *Eu*, 489 U.S. at 224 (internal quotations omitted). The freedom of association necessarily encompasses free choice – freedom cannot exist without choice. *Jones*, 530 U.S. at 590 (Kennedy, J., concurring) ("When the State seeks to regulate a political party's nomination process as a means to shape and control political doctrine and the scope of political choice, the First Amendment gives substantial protection to the party from the manipulation. In a free society the State is directed by political doctrine, not the other way around."). The Petitioners' requested relief would take away free choice by eliminating a presidential candidate from the RPM's selection process.

The RPM is bound by the statutory structure for receiving input from members on the matter of selecting its delegates for a presidential candidate. Minn. Stat. § 207A.12(d). Removing a candidate from a ballot necessarily "adulterate(s)" the RPM's presidential delegate selection process and deprives each voter of the ability to meaningfully select a candidate of their choosing. *Jones*, 530 U.S. at 581.

However, it is recognized that First Amendment rights may be limited where there is a compelling governmental interest. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997). At times, state officials may have the power to remove an ineligible

candidate from a ballot,² but only *after* the proper authority determines that the candidate is ineligible. In this case, the proper authority is neither the Minnesota Secretary of State nor this Court. *See Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983) (“[T]he State has a less important interest in regulating Presidential elections than statewide or local elections, because the outcome of the former will be largely determined by voters beyond the State’s boundaries.”). Absent the proper authority making that determination, the RPM enjoys the full protection of the First Amendment.

b. Primaries are a matter of internal procedure because they determine how delegates will be apportioned at the Republican National Convention.

The requested relief’s impact on the RPM’s First Amendment rights becomes even more apparent when one considers its impact on the presidential primary process.

Minnesota holds preferential presidential primaries. Minn. Stat. § 207A.11. These primaries serve an important purpose – they inform the party of the will and wishes of its membership concerning the candidate whose message and values best represent the party as a whole in the upcoming election for President of the United States.

In Minnesota, when a voter participates in a presidential primary, they are not directly voting for the presidential candidate; rather, they are voting for delegates to send

² In *Timmons*, the Supreme Court upheld a Minnesota law prohibiting a candidate from appearing on a ballot on behalf of two parties. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 370 (1997). In dicta, the Supreme Court notes that a person may be ineligible to hold office, which could result in a candidate not appearing on a ballot. *Id.* at 359. However, that statement was made in the context of state races, and the Court cites to state candidate qualification criteria—not presidential candidate disqualification determinations. *Timmons*, 520 U.S. at 359, n.8 (citing Minn. Stat. § 204B.06, subd. 1(c) (1994)).

to that political party's national convention. Minn. Stat. § 207A.11(d); Minn. Stat. § 207A.12(d). Once a political party's nominee is selected at the national convention, they appear on the general election ballot. *See* Minn. Stat. § 208.04. Further, when voters participate in a general election, they are not technically voting for a presidential candidate, they are casting votes for electors who are bound to vote for a presidential candidate. Minn. Stat. §§ 208.02-03, .43.

Selecting a presidential nominee is an intraparty matter that receives protection under the First and Fourteenth Amendments. When a state interferes with the delegates a political party sends to its national convention, it necessarily interferes with the party's First Amendment rights. *Jones*, 530 U.S. at 593, n.3 (“State-mandated intrusion upon either delegate selection or delegate voting would surely implicate the affected party's First Amendment right to define the organization and composition of its governing units”).

In *Wigoda*, the U.S. Supreme Court reversed an Illinois court order that gave “state law” “primacy...over the National Political Party's rules in determination of qualifications and eligibility of delegates to the Party's National Convention” and that enjoined certain delegates from participating in a political party's national convention. *Cousins v. Wigoda*, 419 U.S. 477, 483 (1975). The Court held that the court order violated the political party's “constitutionally protected rights of association.” *Id.* at 489. In reaching its holding, the Court noted that “suffrage was exercised at the primary election to elect delegates to a National Party Convention” and interference with those

delegates infringed on “intraparty dispute” that should be left to the party to determine. *Id.* at 489.

The *Wigoda* Court outlined the role of the states in the candidate-nomination process, stating plainly that, “[t]he ***States themselves have no constitutionally mandated role*** in the great task of the ***selection of Presidential and Vice-Presidential candidates***” only political parties are responsible for making that selection. *Id.* at 489-90. (emphasis added). The Court cautioned that a state’s interference in this process “could seriously undercut or indeed destroy the effectiveness of a National Party Convention as a concerted enterprise engaged in the vital process of choosing Presidential and Vice-Presidential Candidates.” *Id.* at 490.

Indeed, if state-level interference in the delegate selection process was permitted, “each of the fifty states could establish the qualification of its delegates to the various party conventions without regard to party policy, an obviously intolerable result.” *Id.* (quoting *Wigoda v. Cousins*, 342 F.Supp. 82, 86 (N.D.Ill.1972)); see *Democratic Party of U. S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 124 (1981) (“A political party’s choice among the various ways of determining the makeup of a State’s delegation to the party’s national convention is protected by the Constitution.”).

Here, Petitioners request that Donald Trump’s name be removed from the primary ballot. This infringes on the RPM’s First Amendment right at two “crucial juncture[s]” *Tashjian*, 479 U.S. at 216. First, the RPM’s chairman is responsible for informing the Secretary of State which candidates are to appear on the Republican primary ballot. Minn. Stat. § 207A.13, subd. 2. Up until that point, the RPM internally decides which

names it will give the Secretary of State. If this Court or the Secretary of State prohibited Donald Trump's name from being one of many options placed on the ballot, it would effectively impose a gag order on the RPM, rendering the party's ability to select candidates of its choosing meaningless.

Secondly, Minn. Stat. § 207A.11(d) requires the results of the primary "bind election of delegates" If this Court were to order Donald Trump's name be removed from the ballot, it would be "determining the makeup of the State's delegation" to the Republican National Convention because the Court would eliminate the possibility of the RPM sending delegates for Trump to the Republican National Convention. *La Follette*, 450 U.S. at 124. This would constitute state interference with a political party's internal procedures because the state is controlling who the *Republican* Party of Minnesota sends to the *Republican* National Convention. In short, if Petitioners' relief is granted, this Court, the Secretary of State, and the Petitioners would all be involved in selecting delegates to the Republican National Convention.

c. *Voters have the right to associate with a presidential candidate of their choosing.*

The requested relief would not only interfere with the RPM's First Amendment rights, but it would also interfere with the rights of voters who have the right to associate with a political party and presidential candidate of their choosing. It is well-recognized that "[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Wigoda*, 419 U.S. at 487 (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957)); *Anderson v. Celebrezze*, 460 U.S. 780, 786

(1983) (“Our primary concern is with the tendency of ballot access restrictions ‘to limit the field of candidates from which voters might choose’ The impact of candidate eligibility requirements on voters implicates basic constitutional rights.”) (quoting *Bullock v. Carter*, 405 U.S. 134, 143 (1972)).

When a state imposes limits on who a political party can select as its presidential nominee through its internal process, it necessarily impedes a voter’s right to associate with a candidate. Here, the requested relief would eliminate an individual voter’s choice to associate with a certain candidate by prohibiting the RPM from giving that choice to voters through the ballot.

II. The Secretary of State and this Court do not have the authority to determine the eligibility of a presidential candidate.

Petitioners assert that this Court has a role in determining if a presidential candidate is ineligible to hold office and that the Minnesota Secretary of State has the statutory authority to determine whether a candidate for office is “ineligible to appear on the ballot for the presidential nomination primary or the general election.” Petition ¶ 312. This legal theory is without merit and seeks to turn federalism on its head. However, Minnesota law, when interpreted correctly, reaffirms the RPM’s First Amendment rights to select its own nominee without state interference.

As a threshold matter, Petitioners assume, without citing any authority, that the “disability” to hold office via Section 3 of the Fourteenth Amendment is an “eligibility” criterion that a presidential candidate must satisfy. Not so. The only *eligibility* criteria for President of the United States appears in Section 1 of Article 2 of the U.S. Constitution

and requires only that the individual is over 35 years old, has been a U.S. resident for fourteen years, and is a natural born U.S. citizen. Of course, none of these eligibility criteria are at issue for Donald Trump. To the extent that Minn. Stat. § 204B.44 permits this Court to determine a presidential candidate’s “eligib[ility] to hold office,” such determination should be limited to the eligibility criteria stated in Section 1 of Article 2 of the Constitution and should not, for the reasons stated here and in our forthcoming brief on the Fourteenth Amendment, extend to determination of an individual’s “disability” under Section 3 of the Fourteenth Amendment.

Moreover, the Secretary of State does not have the authority to determine that a presidential candidate is ineligible to hold office. Instead, under Minnesota law, political parties are solely responsible for determining which presidential candidate is to appear on the primary ballot. *De La Fuente v. Simon*, 940 N.W.2d. 477, 494-95 (Minn. 2020) (“[T]he road for any candidates’ access to the ballot for Minnesota’s presidential nomination primary runs only through the participating political parties, who *alone* determine which candidates will be on the party’s ballot.”) (emphasis added).

What Minn. Stat. §§ 207A.13, subd. 2, and 208.04 make clear, and this Court has confirmed, is that the Secretary of State’s role in the “ballot-preparation” process is procedural and that role “[c]annot be equated to” substantive determinations about “qualifications to serve as President of the United States.” *De La Fuente*, 940 N.W.2d. at 492. But, Petitioners misconstrue the Secretary of State’s statutory authority, and in turn, attempt to impede the RPM’s First Amendment right. *See* Petition ¶ 316.

Minn. Stat. § 207A.13 states that the RPM “*must* determine which candidates are to be placed on the presidential nomination primary ballot for” the RPM and submit the name to the Secretary of State. In turn, the Secretary of State “*must not*” change the names to appear on the ballot. Minn. Stat. § 207A.13, subd. 2. Indeed, after RPM makes that determination, the Secretary of State must put that name on the ballot. *Id.*

The Secretary of State plays the same procedural role in preparation of the general election ballots. Under Minn. Stat. § 208.04, subd. 1, “[t]he secretary of state *shall* certify the names of all duly nominated presidential and vice-presidential candidates to the county auditors of the counties of the state” and those names are placed on the ballot. The plain text of the Minn. Stat. §§ 207A.13, subd. 1, and 208.04 does not give the Secretary of State the power or responsibility to determine a presidential candidate’s eligibility, and Petitioners fail to cite to a statutory provision that would permit the Secretary of State to do so. *See* Petition ¶¶ 306-316.

Secondly, “state courts have no role” in determining the eligibility of a presidential candidate. *Strunk v. N.Y. State Bd. Of Elections*, 35 Misc. 3d 1208(A), 950 N.Y.S.2d 722, 2012 WL 1205117 at *14 (N.Y. Sup. Ct., Apr. 11, 2012) *order aff’d*, *appeal dismissed sub nom. Christopher-Earl: Strunk v. New York State Bd. of Elections*, 126 A.D.3d 777, 5 N.Y.S.3d 483 (2015) (finding that the state court “lacks subject matter jurisdiction to determine the eligibility and qualifications of President OBAMA to be President. . . .”).

While Minn. Stat. § 204B.44 allows this Court to hear challenges regarding “the eligibility of a candidate to appear on a ballot,” that authority does not permit a state

court to determine “disability” of a presidential candidate under Section 3 of the Fourteenth Amendment.³ *See Keyes v. Bowen*, 189 Cal. App. 4th 647, 660 (2010) (“In any event, the truly absurd result would be to require each state’s election official to investigate and determine whether the proffered candidate met eligibility criteria of the United States Constitution, giving each the power to override a party’s selection of a presidential candidate. The presidential nominating process is not subject to each of the 50 states’ election officials independently deciding whether a presidential nominee is qualified, as this could lead to chaotic results.”).

Minnesota law provides that the political parties, not the Secretary of State, utilize their own procedures to nominate and place their candidate on a ballot. “[T]here is a difference between constitutional qualifications for the office and procedural ballot-access or election requirements,” and only the latter falls within Minnesota law’s purview. *De La Fuente*, 940 N.W.2d. at 491. Here, the Secretary of State and this Court’s authority is limited by Minnesota statute and the U.S. Constitution. Absent the proper authority, the state officials and courts cannot impede the First Amendment rights of political parties within the State.⁴

³ This process—both determination of the Section 3 disability and removal thereof—is reserved exclusively to Congress. This issue will be addressed by the parties in their October briefs.

⁴ Certainly, the Petitioners’ requested relief would provide precedent to infringe on any major political party’s First Amendment rights in the same manner as here *i.e.*, by novel, farfetched, and untested legal arguments and on unsubstantiated factual allegations. One could assume that if a candidate of another major political party was the target of this litigation, the party would be inclined to defend its Constitutional rights. The interests the RPM seeks to protect here equally benefit all major political parties.

Conclusion

Petitioners urge this Court to take several unprecedented and impermissible actions: to find that Minn. Stat. § 207A.13, subd. 2, and Minn. Stat. § 208.04 authorizes the Secretary of State and this Court to determine a presidential candidate's disqualification for office under Section 3 of the Fourteenth Amendment; to interfere with the internal presidential candidate selection process of a major political party which is protected and authorized by state law; and to find that Minn. Stat. § 204B.44 provides a vehicle for the Court to disregard a major political party and its members' protected freedom of association.

All of this, based on a Petition premised on several untested and strained legal theories and assertions of political opinion. These legal theories are better suited for debate in academia and the political opinions for resolution by the electorate – not by this Court on the eve of an election season when the purported disqualification occurred over two years ago. And, most importantly, not at the expense of the RPM and its members' right to freedom of association.

For the reasons stated herein and in its forthcoming brief, RPM respectfully requests that this Court deny the Petition.

Respectfully submitted,

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The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat.
§ 549.211.



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