

January 9, 2025

**STATE OF MINNESOTA  
IN SUPREME COURT**

Minnesota Voters Alliance, et al.,  
Petitioners,  
Republican Party of Minnesota,  
Petitioner,

**OFFICE OF  
APPELLATE COURTS**

vs.

Timothy Walz, in his official capacity as Governor of the State of Minnesota, et al.,  
Respondents,

Tracy West, in her official capacity as County Auditor of Ramsey County, Minnesota, et al.,  
Respondents.

**BRIEF OF AMICUS CURIAE  
LIBERTARIAN PARTY OF MINNESOTA**

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## **STATEMENT OF THE CASE AND FACTS<sup>1</sup>**

For purposes of this brief, the LPMN adopts Petitioner’s Statement of the Case as argued throughout the First Amended Petition for Correction of Errors and Omissions (Petition), and the “Background Facts and Relevant Statutes” found at ¶¶ 34-66 thereof. For further background on the types of political parties recognized in Minnesota, including how a candidate qualifies for placement on a ballot, *Martin v. Simon*, 6 N.W.2d 3d 443 at 446-7 (Minn. 2024) contains a helpful discussion.

## **STATEMENT OF THE IDENTITY AND INTEREST OF AMICUS CURIAE**

The Libertarian Party of Minnesota (LPMN) is a “Minor political party” as defined in Minn. Stat. § 200.02 Subd. 23 and has members across the State of Minnesota. It presents and endorses candidates for election to statewide and national office in accordance with its Constitution and Bylaws, and subject to Minnesota Election Law. The members of the LPMN stand for the principle that all individuals have the right to exercise sole dominion over their own lives, and they oppose the initiation of force or fraud as a means of achieving political or social goals.

Minn. Stat. § 204D.20 permits nomination by petition of candidates to fill a legislative vacancy in a special election. In order to qualify candidates for placement on

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<sup>1</sup> The LPMN certifies under Minn.R.Civ.App.P. 129.03 that this brief was not authored, in whole or in part, by counsel for any party to this appeal, and that no other person or entity, besides the LPMN, made a monetary contribution to the preparation or submission of this brief.

an electoral ballot for a county or legislative office, the LPMN faces a high hurdle in collecting a sufficient number of signatures from the electorate during the filing period to satisfy the thresholds established in Minn. Stat. § 204B.08 Subd. 3(c). Relatedly, the LPMN has an interest in ensuring that all laws governing the petition process are adhered to, including the statutory notice period associated with a special election in Minn. Stat. § 204D.22 Subd. 2. When a writ for special election is issued that violates this process, as alleged by Petitioners in this matter, it impedes or destroys the ability of LPMN candidates and all other potential candidates who are not members of a major political party to gain elected office. Its interest is public in nature.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

The LPMN concurs with the Petitioners' legal arguments and will avoid unnecessary repetition here. Instead, this brief will place particular emphasis on the consequences of Governor Walz's disregard of both the notice requirements in Minn. Stat. § 204D.22 Subd. 2, and the filing period in Minn. Stat. § 204B.08 Subd. 1, for Minnesota voters. The goal of this brief is to inform this Court on facts or matters of law from a different perspective that "may have escaped consideration."<sup>2</sup>

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<sup>2</sup> *State v. Finley*, 64 N.W.2d 769, 773 (Minn. 1954) (discussing an amicus curiae's appropriate role).

## ARGUMENT

Minn. Stat. § 204D.20, Subd. 3 authorizes candidate nomination by petition for special elections. It directs that “[c]andidates to fill a vacancy may also be nominated by petition under the conditions and in the manner provided by law for candidates filing by petition for like office at the state general election as far as practicable.”<sup>3</sup> This statute works in concert with Minn. Stat. § 204D.22 to ensure that a five-day notice window is open for all candidates: “[the] county auditor shall post a copy of the writ in the auditor's office at least five days before the close of the time for filing affidavits of candidacy for the special election.” Minn. Stat. § 204D.22 Subd. 2. Finally, Minn. Stat. § 204B.08, Subd. 1 restricts the period during which signatures may be collected to “...the period when petitions may be filed as provided in section 204B.09,” which sets forth a two-week period prior to an election. Together, these statutes govern the ability of a candidate, such as one endorsed by the LPMN, to appear on the ballot for consideration by the voters.

### **I. The Governor’s writ of special election renders simultaneous compliance with state statutes and participation in the special election impossible.**

In order to qualify and remain certified as a minor political party in Minnesota, the LPMN must govern itself under a Constitution, “designate[ ] a state party chair, [hold] a state convention in the last two years,” and “file[ ] with the secretary of state no later than

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<sup>3</sup> The language here refers to Minn. Stat. § § 204B.07-.08, which govern the contents and form of the petition, signer qualifications, time for signing, and number of signatures required, among other things.

December 31 following the most recent state general election a certification that the party has met” a series of strict requirements outlined in the statute. Minn. Stat. § 200.02 Subd. 23. This Court made clear in *Martin v. Simon* that failure to adhere to the strictures in the statute will result in decertification of party status.<sup>4,5</sup>

The LPMN, like other minor political parties, has adopted a Constitution and Bylaws in order to comply with the statute.<sup>6</sup> Candidates are generally endorsed at the required convention, but under certain circumstances, the Executive Committee may endorse a candidate for office on behalf of the party without approval of its members.<sup>7</sup> The party Constitution requires four days’ notice to its Executive Committee members before any emergency meeting may be held, and only *after* that notice period may the committee form to address matters such as nomination of a candidate for office. Further, at the emergency meeting, “...matters acted upon shall be limited to those announced at least four days in advance of the meeting.”<sup>8</sup> This means that the Executive Committee must actually know of the vacant seat, legitimate or not, in order to discuss it at the meeting four days later.

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<sup>4</sup> See *gen. Martin v. Simon*, 6 N.W.3d 443 (Minn. 2024) (citation omitted).

<sup>5</sup> See also *Begin v. Ritchie*, 836 N.W.2d 545, 546 (Minn. 2013) (“Specifically, a minor political party must certify to the Secretary of State by December 31 in the year of a statewide general election that it has held a party convention, adopted a state constitution, designated a state party chair, and met the remaining election-related requirements.”)

<sup>6</sup> Available at <https://LPMN.org/libertarian-party/constitution-and-bylaws/>, last accessed January 8, 2025.

<sup>7</sup> See *Id.* at 10.

<sup>8</sup> *Id.* at 6.10.2.



Here, even if the Executive Committee had instantly recognized the writ of special election when it was first posted on December 27, 2024, and immediately called an emergency meeting per its governing document, it would have already missed the deadline to qualify a candidate for House District 40B by the time the committee met. And, because signatures may only be collected during the filing period as provided in Minn. Stat. § 204B.08 Subd. 1, there was simply no opportunity to participate. The LPMN is not arguing that its Constitution would somehow preempt the statute, of course, but the party *is* entitled to govern itself under the laws of the State of Minnesota, and not under an impromptu decision by the Governor to disregard these laws for political expedience.

The writ issued for House District 40B on December 27, 2024 established a filing period of one single day, and a notice period of four days as discussed above.<sup>9</sup> This impossible signature-gathering period is the same as the one fixed by the writ for Senate District 60.<sup>10</sup> But while the five-day notice window was closed in House District 40B, it was utterly smashed in Senate District 60, along with any opportunity to petition. In that example, Governor Walz issued a writ of special election to fill the seat upon the recent passing of Senator Kari Dziedzic.<sup>11</sup> The writ was issued and posted on December 30, 2024, and it specified that “Affidavits of candidacy and nominating petitions for District 60 must be filed with the Secretary of State or the county auditor of Hennepin County on

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<sup>9</sup> See Table of Writs of Special Election, *infra* at p.7.

<sup>10</sup> *Id.*

<sup>11</sup> Available at <https://officialdocuments.sos.state.mn.us/Files/GetDocument/146375>, Last Accessed January 8, 2025.

Tuesday, December 31, 2024. Affidavits of candidacy and nominating petitions must be filed by 5:00 p.m. that day.” This means that the total period between issuance of the writ and the close of filing was one single day, which also constituted the whole of the period in which to collect the 500 signatures necessary for ballot placement.<sup>12</sup> In other words, this action completely foreclosed *any* opportunity for the LPMN, or anyone other than a major-party candidate, to participate in the special election process.

The LPMN “...has First Amendment associational rights to gather for the purpose of advancing shared beliefs including strong associational rights in delegate selection.<sup>13</sup> Further, “the associational rights of political parties to choose a candidate are well-established,” including “a First Amendment right ‘to choose a candidate-selection process that will in its view produce the nominee who best represents its political platform.’”<sup>14</sup> Here, there are two points. First, the associational rights of the LPMN include the right to govern itself under its own Constitution and Bylaws, which was rendered impossible by Governor Walz’s unlawful writ. Second, the writ also destroyed any opportunity to present a candidate at all under the current process, which also directly infringes on the party’s Constitutional right of free assembly. As it is, the door is only slightly ajar for

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<sup>12</sup> Minn. Stat. § 204B.08, Subd. 3 (c) establishes the signature threshold for a nominating petition: “for a county or legislative office, ten percent of the total number of individuals voting in the county or legislative district at the last preceding state or county general election, or 500, whichever is less.”

<sup>13</sup> See *Democratic Party of U.S. v. Wisconsin*, 450 U.S. 107, 121, 101 S. Ct. 1010, 67 L. Ed. 2d 82 (1981). *Grove v. Simon*, 2 N.W.3d 490, 505 (Minn. 2024) at n.14.

<sup>14</sup> Id. (quoting *N.Y. State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 202, 128 S. Ct. 791, 169 L. Ed. 2d 665 (2008)) (citation omitted).

non- major party candidates, and this Court must not allow it to be slammed shut completely.

The violation of Minn. Stat. § 204D.22 Subd. 2 has become a disturbing pattern in the Walz administration. Each of the last four writs of special election the Governor has issued reflect a total disregard of the statute, as reflected in the Table of Writs of Special Election below:<sup>15</sup>

<b>Office</b>	<b>Date Issued</b>	<b>Filing Open</b>	<b>Filing Close</b>	<b># days before close of filing</b>	<b># days to file</b>
<a href="#">27B</a>	February 13, 2024	February 14, 2024	February 15, 2024	2	2
<a href="#">45</a>	June 7, 2024	June 10, 2024	June 11, 2024	4	2
<a href="#">40B</a>	December 27, 2024	December 31, 2024	December 31, 2024	4	1
<a href="#">60</a>	December 30, 2024	December 31, 2024	December 31, 2024	1	1

There has been no change in the relevant statute since 2010. According to Respondent Secretary of State’s web site, all of the other writs of special election issued by Governor Walz, which date back to February 12, 2019, respected the 5-day Notice period, meaning the decision to disregard it this time was deliberate.<sup>16</sup> Search results for “writ of special election” at the Secretary of State web site revealed that, prior to the last

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<sup>15</sup> Data compiled from Office of the Minnesota Secretary of State web site, search term “writ of special election” with no date range specified, *available at*: <https://officialdocuments.sos.state.mn.us/Document/DocumentSearch?Page=2&DocumentTypeId=8&SortBy=DocumentNumber&ItemsPerPage=10>, Last accessed January 8, 2025.

<sup>16</sup> Id.

four writs issued by Governor Walz, only twice since 1992 has the signature-gathering window been shorter than five days, and it was four days in each case with 38-day notice periods to facilitate candidate selection.<sup>17</sup> This is a trend, it is recent, and the Court should denounce it.

## **II. It is good public policy to respect the petitioning process.**

The petitioning process is a pure expression of direct democracy in action; something that should be encouraged by legislators and the courts alike. Nominating petitions require the same feet-on-the-ground citizen participation as Minnesota charter amendments, initiatives, and referenda, which are mechanisms that allow voters to place questions of law directly on the ballot for consideration by the electorate. Minnesota does not recognize a statewide right of initiative and referendum, but the right of the people to propose amendments to their own government through the signature-collection process is preserved for charter cities in the Minnesota Constitution at Article XII, Sec. 5: “Home rule charter amendments may be proposed by a charter commission or by a petition of five percent of the voters of the local government unit as determined by law and shall not become effective until approved by the voters by the majority required by law.”

Because the right to bring about change through a voter-initiated petition nearly always presents a conflict with the will of sitting government officials, it has led to

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<sup>17</sup> Id.

extensive litigation in the courts over the years.<sup>18</sup> A nominating petition to present a candidate for election by the voters is plainly beginning to face some of the same obstacles by a governing body as voter-initiated measures in charter cities. The Court should grant the relief sought in the Petition and unequivocally reiterate the commitment to the candidate petition process made by the Legislature.

The struggle for ballot access by minor political parties via petition was recently addressed before the Minnesota Legislature in the context of the major party status debate in the Spring of 2023.<sup>19</sup> There are 201 seats in the Minnesota Legislature. Since the year 2000, a total of *twelve* LPMN candidates have managed to claw their way onto the ballot through the petition process.<sup>20</sup> 24 seats in the 2020 election went without any challenger at all.<sup>21</sup> because the LPMN and others similarly situated were simply unable to gather enough signatures to qualify or became so disenfranchised at the process that they never even attempted it. Again, the LPMN continues to vigorously advocate for greater ballot access to present Minnesota voters with more and diverse choices in their leadership, but that depends on the government's respect of the existing statutes, which was absent here.

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<sup>18</sup> See, e.g., *Kranz v. City of Bloomington*, 990 N.W.2d 695 (Minn. 2023); *Samuels v. City of Minneapolis*, 966 N.W.2d 245 (Minn. 2021); *Jennissen v. City of Bloomington*, 938 N.W.2d 808 (Minn. 2020); *Clark v. City of St. Paul*, 934 N.W.2d 334 (Minn. 2019); *Jennissen v. City of Bloomington*, 913 N.W.2d 456 (Minn. 2018); *Bicking v. City of Minneapolis*, 891 N.W.2d 304 (Minn. 2017); *Vasseur v. City of Minneapolis*, 887 N.W.2d 467 (Minn. 2016).

<sup>19</sup> Senate File 1827 Hearing, March 14, 2023, available at: [https://mnsenate.granicus.com/player/clip/10838?view\\_id=5&redirect=true](https://mnsenate.granicus.com/player/clip/10838?view_id=5&redirect=true); House File 2802 Hearing, March 17, 2023, available at: <https://www.house.mn.gov/hjvid/93/896626>

<sup>20</sup> *Id.*, House File 2802 Hearing at 2:24:10, testimony of Chip Tangen.

<sup>21</sup> *Id.*

The Court should reiterate the Legislature’s commitment to allow alternatives on the ballot and not allow its partisan destruction.

**III. “As far as practicable” does not mean “if politically expedient.”**

Minn. Stat. § 204D.20, Subd. 3 provides: “Candidates to fill a vacancy may also be nominated by petition under the conditions and in the manner provided by law for candidates filing by petition for like office at the state general election *as far as practicable.*” (emphasis added). The dictionary definitions of “practicable” include “capable of being put into practice or of being done or accomplished.”<sup>22</sup> The signing period for ballot placement by petition is established in Minn. Stat. § 204B.08, Subd. 1: “Nominating petitions shall be signed during the period when petitions may be filed as provided in section 204B.09,” which lays out the applicable timelines in a general election. It provides, in relevant part: “...affidavits of candidacy and nominating petitions for county, state, and federal offices filled at the state general election shall be filed not more than 84 days nor less than 70 days before the state primary.” This lays out a two-week period to collect signatures to qualify a candidate for the ballot.

The LPMN concedes that the 70- and 84- day timelines cannot “practicably” be met in a special election, which also means that they cannot be adhered to in advance of the “state primary.” However, that is not the case for the two-week signature collection window. This language exists because the Legislature intended to allow non- major party

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<sup>22</sup> Merriam-Webster Dictionary, “practicable,” available at <https://www.merriam-webster.com/dictionary/practicable>, last accessed January 9, 2025.

candidates a meaningful (albeit scant) opportunity to participate in elections. There is no reason why this filing period cannot be met, or at least approximated “as far as practicable,” for LPMN candidates and others similarly situated.

Minn. Stat. § 204D.19 Subd. 2 requires a special election within 35 days of the issuance of a writ therefor, and § 204D.21 Subd. 3 says that the special primary “...shall be held not later than the 14th day before the special election.” Finally, Minn. Stat. § 204D.22 Subd. 3 requires posting of notice of “...at least seven days before the special primary and at least 14 days before the special election.” The point of this recitation of statutes is that the deadlines applicable for special primary elections do not apply to minor party candidates, and a clear window exists to allow for more time to collect signatures during an enlarged filing period, consistent with existing law.

Election officials will not know of the nominee for each major political party until at least 7 days after issuance of the writ of special election anyway, and perhaps as many as 21 days thereafter (provided the Governor complies with the statute). This extra time would provide a vital opportunity for the LPMN to attempt to collect signatures at basketball practices, community events, door-to-door, and engage in true grassroots efforts to qualify its candidates for the ballot. The LPMN acknowledges that this will likely require a legislative fix. However, the purpose of including this argument is to provide additional perspective for this Court on the effect of these statutes on the process for ballot qualification as it currently stands, and to call attention to a situation that is in desperate need of repair.

The political climate in Minnesota is more divided than ever, and the two major political parties do not agree on much. But they both have an intrinsic interest in the creation of procedural hurdles to prevent Minnesota voters from being able to select their candidate of choice from outside the two-party system. To validate the destruction of the already vanishingly small five-day notice window for qualifying candidates by petition would materially prejudice all third parties including the LPMN and even unendorsed individuals wishing to seek elected office. This is why it is especially critical that this Court send a clear message that the notice period for writs of special election and filing period must be respected by the Governor regardless of political party affiliation. While the LPMN will continue to fight for the right of Minnesota voters to present a candidate of their choosing by advocating for longer petition periods and easier access to ballots for minor party candidates, the status quo must at least be preserved.

### **CONCLUSION**

For the foregoing reasons, the Court should grant the relief requested by the RPMN and MVA in the Petition, quash the Writ of Special Election for House District 40B or order its recall, cancel the unlawful special election currently scheduled for January 28, 2025, and enjoin Respondents from taking any further steps to effectuate it.

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**CERTIFICATE OF COMPLIANCE  
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