

STATE OF MINNESOTA
IN SUPREME COURT

A23-1354

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

Petitioners,

vs.

Steve Simon, Minnesota Secretary of
State,

Respondent.

**SECRETARY'S RESPONSE
TO PETITION**

The petitioners allege that potential candidate Donald Trump is ineligible to appear on a ballot as a candidate for elected office in 2024. Respondent Minnesota Secretary of State Steve Simon disputes particular contentions in the petition regarding the Secretary's authority to determine the eligibility of candidates for elected office. Nonetheless, he neither supports nor opposes the petition on its merits. As the state's chief election official, charged with general administration of elections statewide, the Secretary takes no position on Petitioners' contentions regarding Trump's eligibility. But the Secretary agrees with Petitioners that the current proceeding—a ballot-error petition pursuant to Minn. Stat. § 204B.44—is the proper process by which Trump's eligibility should be determined.

The Secretary further requests that the Court decide this matter no later than January 5, 2024, so that Minnesota's election officials and their ballot vendors have

sufficient time to carry it out, whatever the decision may be. At that point, pursuant to his authority under Minn. Stat. § 204B.47¹ or any other authority he has, the Secretary will take whatever actions the Court requires of him as the result of the petition.

RESPONSE TO PETITION

Except as otherwise specifically discussed above or below, the Secretary does not have knowledge of the factual matters alleged in the petition sufficient to admit or deny them. With regard to the legal contentions in the petition, the Secretary takes no position on such contentions except as specifically detailed below.

As to paragraph 25, the Secretary agrees with the legal contention that this Court has jurisdiction over this matter under Minn. Stat. § 204B.44.

The factual allegations in paragraphs 26 and 306-08 concerning the correspondence between the Secretary and Petitioners' counsel, followed by the Secretary's public statement of September 7, are accurate. The legal position those paragraphs ascribe to the Secretary is correct, and the Secretary stands by it.

The Secretary agrees with the contentions in paragraph 36 regarding his legal authority and responsibilities, but he notes that state law entrusts many election-administration responsibilities to local election officials, not the Secretary of State. The Secretary affirmatively notes, however, that no Minnesota law authorizes him to independently block or remove a candidate from an election ballot in Minnesota on the

¹ When a provision of state election law “cannot be implemented as a result of an order of a state or federal court,” the Secretary is required to adopt binding alternative election procedures to any affected election to be administered. Minn. Stat. § 204B.47 (2022).

grounds that that candidate fails to meet eligibility requirements imposed by the United States Constitution.

The factual allegation in paragraph 309 is accurate. The Secretary affirmatively asserts that state law grants him no authority to exclude Trump from a Minnesota ballot as a candidate for President without a court order. *See* Minn. Stat. § 204B.44(a)(1), (b) (2022).

In response to the legal contentions in paragraph 310:

- a. Petitioners are correct that Minnesota conducts a presidential nomination primary in March of each presidential-election year. *See* Minn. Stat. ch. 207A (2022). The Secretary affirmatively asserts that the 2024 state presidential nomination primary will take place on March 5.
- b. Petitioners are correct that election procedures for the presidential nomination primary are generally the same as those for the August statewide primary “[e]xcept as otherwise provided by law,” *see* Minn. Stat. § 207A.12(a)—but the selection of candidates for the ballot is a matter that is explicitly “otherwise provided by law” in section 207A.13. As Petitioners correctly note, the names of the candidates in the presidential nomination primary are provided by the chairs of the state’s major political parties. *See id.* § 207A.13, subd. 2(a). As a result, however, Petitioners are incorrect about the manner by which candidates acquire a place on the ballot: candidates for the presidential nomination primary do *not* submit affidavits of candidacy to the Secretary or any other Minnesota filing official, nor does any such official have any authority under Minnesota law to reject a name

that has been submitted for inclusion on the ballot by a chair of a participating political party. *Id.*

- c. As a result, the Secretary's duty to certify to Minnesota's county auditors the names of all candidates who have filed affidavits of candidacy for the August statewide primary, *see id.* § 204D.06, does *not* apply to the March presidential nomination primary.² Instead, state law assigns the Secretary a straightforward and ministerial duty to certify to the county auditors the names for the presidential nomination primary based solely on the lists that have been provided to him by the chairs of the participating political parties. *Id.* § 207A.13, subd. 2(a).

The legal contentions in paragraph 312 are erroneous. Nothing in the statutes Petitioners cite, nor any other legal authority, grants the Secretary the power “to determine whether a candidate for [President] is ineligible to appear on the ballot for the presidential nomination primary or the general election.” Section 207A.13, subdivision 2, requires party chairs to submit candidate and write-in names to the Secretary, but it does not direct the Secretary to verify eligibility. Similarly, section 208.04, subdivision 2, states that certain procedural rules for presidential ballots are the same as those procedural rules for state general election ballots, but neither that section nor the cross-referenced general-election rules grant the Secretary eligibility-determination authority.

² Even if section 204D.06 applied in this case, nothing in that section authorizes the Secretary to refuse to certify a candidate who had “properly filed [an] affidavit[] of candidacy” on the grounds that the candidate is ineligible for the office sought.

The legal contention in paragraph 313 is erroneous. The Minnesota Secretary of State has no “inherent power” to exclude from the ballot the name of any candidate included on a list provided by the chair of a state political party pursuant to § 207A.13, subd. 2(a). Additionally, the Secretary does not place the names of candidates on ballots; the Secretary certifies candidate names to county auditors, who have the responsibility to contract with the private firms that print ballots. *See* Minn. Stat. §§ 208.04, subd. 2, 204D.11, subd. 1, 204D.12 (2022).

In response to the allegation in paragraph 314, the Secretary agrees that, as is reflected in the plain language of the statute and this Court’s precedent, the section 204B.44 petition process is the proper method for challenging a candidate’s eligibility to appear on a ballot. *Id.* § 204B.44(a)(1) (authorizing petition challenging “the placement of a candidate on the official ballot who is not eligible to hold the office for which the candidate has filed”); *see also Fischer v. Simon*, 980 N.W.2d 142, 146 (Minn. 2022) (denying, on its merits, petition challenging eligibility of state senate candidate); *Landis v. Simon*, 977 N.W.2d 663, 665-66 (Minn. 2022) (granting petition challenging state senate candidate’s eligibility); *Monaghan v. Simon*, 888 N.W.2d 324, 334-35 (Minn. 2016) (granting petition challenging state house candidate’s eligibility).

In response to the allegations in paragraph 315, the Secretary asserts that the chair of Intervenor-Respondent Republican Party of Minnesota submitted then-President Trump’s name as the only name to appear on the party’s ballot for the March 2020 Minnesota presidential nomination primary. *De La Fuente v. Simon*, 940 N.W.2d 477, 481 (Minn. 2020). This submission, however, took place in October 2019, not in 2020. *Id.* The

Secretary lacks sufficient knowledge to affirm or deny that the current chair of the party will submit Trump's name for the March 2024 presidential nomination primary.

In response to the allegations in paragraph 316, the Secretary denies that he is "about to" commit an error or omission by obeying the explicit requirements of state law governing the presidential nomination primary. Nonetheless, the Secretary agrees that the current petition process is the appropriate manner by which Trump's eligibility to appear on Minnesota election ballots in 2024 should be adjudicated.

PREPARATIONS FOR MARCH 2024 PRESIDENTIAL NOMINATION PRIMARY

The Secretary, in his capacity as the state's chief election official, believes that it is important that the Court is aware of the date by which a decision of the Court is necessary so that Minnesota election officials can conduct and determine the results of the March 2024 presidential nomination primary in an orderly fashion.

As the Court noted in its September 20 order, state law requires election officials to permit absentee balloting during the 46 days before the presidential nomination primary. *See* Minn. Stat. §§ 203B.081, subd. 1; 204B.35, subd. 4; 204B.45, subd. 2; 207A.12(a) (2022). In the current election cycle, the 46-day deadline falls on Friday, January 19, 2024. As of that date, ballots must be available for voting in person at county auditors' offices and must be mailed to voters whose absentee ballot applications were received on or before that date. (Maeda Decl. ¶ 5.) Assistive voting equipment must also be programmed before January 19 so that it is available in county auditors' offices for use by voters with disabilities who are voting in-person absentee. (*Id.*)

Ballots for the presidential nomination primary are prepared by the county auditors of Minnesota's 87 counties. (*Id.* ¶ 6.) The process of formatting, programming, printing, and shipping ballots for all of the counties typically takes well over a week. (*Id.* ¶ 7.) This is, in part, because most county auditors in the state procure ballot printing and programming services from a single vendor. (*See id.* ¶¶ 6-7.)

For these reasons, the Secretary asks that, if the Court schedules further proceedings in this matter, it do so in a manner to ensure that the Secretary is in a position to provide county auditors and their ballot vendors with a final list of candidates for the nomination primary no later than the close of business on Friday, January 5, 2024. (*See id.* ¶¶ 10-12.)

CONCLUSION

The Secretary takes no position on the central merits issues of fact and law in the Petition. He strongly agrees, though, that Minn. Stat. § 204B.44 is the proper process provided by state law for adjudicating whether a candidate is eligible to appear on Minnesota election ballots. On behalf of Minnesota's election officials, the Secretary requests that the Court rule on this matter no later than January 5, 2024.

Dated: September 27, 2023

Respectfully submitted,

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