

FILED

October 13, 2023

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A23-1354

Joan Growe, et al.,

Petitioners,

vs.

Steve Simon, Minnesota Secretary of State,

Respondent.

O R D E R

This matter involves a petition filed under Minn. Stat. § 204B.44 (2022) asking, in part, for an order declaring that Donald J. Trump, who served as President of the United States and has filed federal paperwork as a candidate for President in the 2024 election, is disqualified from holding the office of President of the United States pursuant to Section 3 of the Fourteenth Amendment to the United States Constitution. Steve Simon, Minnesota Secretary of State, was the sole respondent named in the petition. Shortly after the petition was filed, the Republican Party of Minnesota filed an unopposed motion to intervene as a respondent.

On September 20, 2023, we issued an initial scheduling order. *Growe v. Simon*, Order at 2–4 (Minn. filed Sept. 20, 2023). In it, we granted the Republican Party of Minnesota’s motion to intervene. *Id.* at 2. We also said that “[r]espondent Secretary of State Steve Simon, respondent the Republican Party of Minnesota, and Donald J. Trump

may serve and file responses to the petition on or before Wednesday, September 27, 2023.”
Id. at 2 (emphasis omitted).

Donald J. Trump did not file a response to the petition. Instead, Donald J. Trump for President 2024, Inc. (Campaign) filed a response on September 27, 2023. In its response, the Campaign included a footnote stating that it is the legal entity charged with securing Donald J. Trump’s election in 2024. According to the Campaign, Donald J. Trump has not responded because he is not subject to the personal jurisdiction of our court. The Campaign moved for leave to intervene as a respondent, “[t]o any extent that the Court deems it necessary.” Petitioners oppose the motion and ask us to strike the Campaign’s response to the petition.

The Campaign has not validly requested to intervene. A party must file a separate motion, and not simply ask for relief in a footnote of another filing. *See* Minn. R. Civ. App. P. 127 (“Unless another form is prescribed by these rules, an application for an order or other relief shall be made by serving and filing a written motion for the order or relief.”). And in any event, it is not clear what relief is affirmatively being sought in the Campaign’s qualified request because it does not identify the type of intervention. Moreover, even if the footnote could be construed as a motion, it cites no law or legal authority in support of intervention and makes no argument why the Campaign meets any intervention standard. A claim raised without argument or citation to legal authority is forfeited. *Fannie Mae v. Heather Apartments Ltd. P’ship*, 811 N.W.2d 596, 600 n.2 (Minn. 2012); *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002). Although the Campaign did make substantive arguments in its reply about intervention as of right, parties are not allowed to make

arguments for the first time in a reply. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010). Thus, the Campaign never properly moved for intervention, and its belated arguments in reply for intervention as of right were made too late.¹

In the past, we have asked parties who unsuccessfully sought intervention in election-related matters to participate as amicus curiae. *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 643 n.3 (Minn. 2012). We do the same here and invite the Campaign to participate as an amicus curiae. Under the circumstances of this case, if the Campaign chooses to participate, it may file an enlarged brief not to exceed 14,000 words and will be permitted to participate in oral argument. *See* Minn. R. Civ. App. P. 129.04 (authorizing the court to allow an amicus curiae to participate in oral argument).

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The motion of Donald J. Trump for President 2024, Inc. to intervene as a respondent in this action is denied.
2. The Clerk of the Appellate Courts shall strike the response filed by Donald J. Trump for President 2024, Inc. on September 27, 2023, from the record in this matter.

¹ Although the identified deficiencies could possibly be cured in a future filing, timing considerations would likely bar granting any future intervention motion in these expedited proceedings given the scheduled oral argument on November 2, 2023, as well as other timing considerations. *See League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 641–43 (Minn. 2012) (stating one of the requirements for intervention as of right is a “timely application” and denying a request for permissive intervention in part because the court was “mindful of the expedited nature of these proceedings”).

3. Donald J. Trump for President 2024, Inc. may file and serve a brief as an amicus curiae on or before October 18, 2023. This brief must not exceed 14,000 words.

4. If Donald J. Trump for President 2024, Inc. chooses to participate as an amicus curiae, it will be allowed to participate in oral argument scheduled for November 2, 2023.

Dated: October 13, 2023

BY THE COURT:

A handwritten signature in black ink, appearing to read "G. Barry Anderson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

G. Barry Anderson
Associate Justice

CHUTICH, PROCACCINI, JJ., took no part in the consideration or decision of this case.