A23-1354

State of Minnesota

In Supreme Court

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

Petitioners,

v.

Steve Simon, Minnesota Secretary of State,

Respondent,

v.

Republican Party of Minnesota,

Respondent.

RESPONDENT REPUBLICAN PARTY OF MINNESOTA'S BRIEF

Charles N. Nauen (#121216)
David J. Zoll (#0330681)
Kristen G. Marttila (#0346007)
Rachel A. Kitze Collins (#0396555)
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue South, Suite 2200

KEITH ELLISON
Attorney General
State of Minnesota
NATHAN J. HARTSHORN
Assistant Attorney General
Atty. Reg. No. 0320602
ALLEN COOK BARR
Assistant Attorney General

Minneapolis, MN 55401-2159
(612) 339-6900
cnnauen@locklaw.com
djzoll@locklaw.com
kgmarttila@locklaw.com
rakitzecollins@locklaw.com

FREE SPEECH FOR PEOPLE
Ronald Fein (*pro hac vice*)
Amira Mattar (*pro hac vice*)
Courtney Hostetler (*pro hac vice*)
John Bonifaz (*pro hac vice*)
Ben Clements (*pro hac vice*)
1320 Centre St. #405
Newton, MA 02459
(617) 244-0234
rfein@freespeechforpeople.org
amattar@freespeechforpeople.org
chostetlet@freespeechforpeople.org
jbonifaz@freespeechforpeople.org
bclements@freespeechforpeople.org
Attorneys for Petitioners

R. Reid LeBeau II (#347504)
JACOBSON, MAGNUSON, ANDERSON
& HALLORAN, P.C.
180 E. Fifth St. Ste. 940
St. Paul, MN 55101
(651) 644-4710
rlebeau@thejacobsonlawgroup.com
Attorneys for Respondent Republican Party of Minnesota

Atty Reg. No. 0399094
445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1252 (Voice)
(651) 297-1235 (Fax)
nathan.hartshorn@ag.state.mn.us
allen.barr@ag.state.mn.us
Attorneys for Respondent Steve Simon, Minnesota Secretary of State

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Regulations

Constitutional provisions

INTRODUCTION

The Petition presents a litany of incurable jurisdictional defects – each of which provides separate grounds for the Court to deny the Petition for lack of jurisdiction. To promote judicial efficiency, the Republican Party of Minnesota ("RPM") concurs and joins Candidate Donald J. Trump's brief on each of the Fourteenth Amendment issues not addressed herein. The RPM writes separately to emphasize critical issues specific to the RPM.

First, application and enforcement of Section 3 of the Fourteenth Amendment are nonjusticiable political questions because the U.S. Constitution vests Congress with the authority to apply and enforce Section 3. Moreover, the political question doctrine precludes judicial interference with a political party's process for selecting and nominating a presidential candidate. Second, Petitioners do not have standing. Minnesota law is not a proper vehicle for this claim because it does not apply to presidential candidates nor permit a Section 3 determination. Third, Section 3 is not self-executing. A self-executing Section 3 would usurp federal authority and inconsistently infringe on political parties' and voters' First Amendment rights in a piecemeal fashion—an absurd and unconstitutional result.

Lastly, judicial restraint cautions against this Court's interference with matters best left for Congress to decide. If wrongly decided, these issues would have a grave impact on the RPM and voters' fundamental rights.

For these reasons and more, the Petition must be denied.

ARGUMENT

I. This matter is not justiciable because it presents political questions.

State court review of the issue at hand not only presents significant federalism concerns, but any judicial review—state or federal—would usurp Congressional authority under Section 5 of the Fourteenth Amendment and purloin voters' rights. A case is nonjusticiable if it involves a political question. *In re Guardianship of Tschumy*, 853 N.W.2d 728, 762 (Minn. 2014) ("The central concept of 'justiciability' is then divided into 'more specific categories of justiciability—advisory opinions, . . . political questions, and administrative questions.'") (quoting 13 Charles Alan Wright et al., *Federal Practice and Procedure* § 3529, at 612 (3d ed. 2008)).

A political question is "'a matter which is to be exercised by the people in their primary political capacity,' or a matter that 'has been specifically delegated to some other department or particular officer of the government, with discretionary power to act.'" *Cruz-Guzman v. State*, 916 N.W.2d 1, 8 (Minn. 2018) (quoting *In re McConaughy*, 119 N.W. 408, 417 (Minn. 1909)). "Separation-of-powers principles preclude the judiciary from resolving political questions." *St. Cloud Educ. Rts. Advoc. Council v. Walz*, No. A19-1762, 2020 WL 6554658, at *5 (Minn. Ct. App. Nov. 9, 2020). And when those principles are violated, "the fundamental principles of a free constitution are subverted." The Federalist No. 47 (James Madison).

This case presents two nonjusticiable political questions. First, U.S Const. amend. XIV Section 3's applicability and enforcement is a political question because that authority has been delegated to Congress through Section 5 of the Fourteenth

Amendment. Second, the presidential nominee selection process is reserved to the people to determine through voting—judicial interference is barred under the political question doctrine.

A. *Section 3's application and enforcement is an exclusive Congressional power.*

Section 3's applicability and enforcement fall squarely into the definition of a "political question" because its enforcement "has been specifically delegated" to Congress through Section 5 of the Fourteenth Amendment. *In re McConaughy*, 119 N.W. at 417; U.S. Const. amend. XIV § 5. Section 5 provides that "Congress shall have the power to enforce, by appropriate legislation" Sections 1 through 4 of the Fourteenth Amendment. U.S. Const. amend. XIV § 5. Section 5 "expressly delegate[s] to Congress the authority to devise the method to enforce" Section 3. *Hansen v. Finchem*, CV-22-0099-AP/EL, 2022 WL 1468157, at *1 (Ariz. May 9, 2022).

The U.S. Supreme Court has made clear that Fourteenth Amendment enforcement belongs to Congress. The Supreme Court has stated that "§ 5 [of the Fourteenth Amendment] is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to" enforce the Fourteenth Amendment. *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966). Accordingly, it cannot be "said the *judicial power* of the general government shall extend to enforcing the prohibitions and to protecting the rights and immunities guaranteed" rather, "[i]t is the power of Congress which has been enlarged, Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the

amendments fully effective." *Ex parte Commonwealth of Virginia*, 100 U.S. 339, 345 (1879).

Congress' authority to apply and enforce Section 3 comports with other provisions of the Constitution, which reinforce Congress' similar authority to preside over the selection and removal of Presidents. Under Article II, Section 1 of the Constitution, Congress retains the power to "determine the time of choosing the elections" for a presidential election. U.S. Const. art. II, § 1, cl. 4. Likewise, the Twelfth Amendment provides that Congress oversees the counting of electoral votes, and the House is responsible for choosing a president if no candidate receives the majority of votes. U.S. Const. amend. XII. Further, the Twenty Fifth Amendment provides that Congress is responsible for determining if "the President is unable to discharge the powers and duties of his office." U.S. Const. amend. XV. And finally, Congress retains the exclusive authority to impeach a sitting president. U.S. Const. art. I, § 2, cl. 5; U.S. Const. art. I, § 3, cl. 6; U.S. Const. art. I, § 3, cl. 7.

Petitioners invite this Court to create Section 3 enforcement legislation through judicial powers—a result which the political question doctrine is designed to prevent. Section 5 unequivocally grants Congress the authority to create enforcement legislation, and plainly absent from that grant of the authority is any role for the courts and the states. *See State v. Selvig*, 212 N.W. 604, 604 (Minn. 1927) ("But [state law] provisions in so far as they relate to the election of Senators and Representatives in Congress cannot be given an effect which will interfere with or encroach upon the power vested in the houses of Congress by the Constitution of the United States."). Because Congress has the

"discretionary power to act" on Section 3, judicial interference prior to that point is a nonjusticiable issue. *In re McConaughy*, 119 N.W. at 417.

Instead of usurping Congressional authority, this Court should follow other courts, who recognize that the political question doctrine precludes judicial review of presidential qualifications. *Grinols v. Electoral Coll.*, No. 2:12-CV-02997-MCE, 2013 WL 2294885, at *6 (E.D. Cal. May 23, 2013), *aff'd,* 622 F. App'x 624 (9th Cir. 2015) ("[T]he Constitution make[s] clear that the Constitution assigns to Congress, and not to federal courts, the responsibility of determining whether a person is qualified to serve as President of the United States. As such, the question presented by Plaintiffs in this case—whether President Obama may legitimately run for office and serve as President—is a political question that the Court may not answer."); *Strunk v. New York State Bd. of Elections*, 35 Misc. 3d 1208(A), 950 N.Y.S.2d 722 (Sup. Ct. 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) ("Accordingly, the political question doctrine instructs this Court and other courts to refrain from superseding the judgments of the nation's voters and those federal government entities the Constitution designates as the proper forums to determine the eligibility of presidential candidates."); *Robinson v. Bowen*, 567 F. Supp. 2d 1144, 1147 (N.D. Cal. 2008) (Dismissing a challenge to a presidential candidate's qualifications under Article II and stating "that the challenge presented by plaintiff is committed under the Constitution to the electors and the legislative branch, at least in the first instance. Judicial review—if any—should occur only after the electoral and Congressional processes have run their course."). This Court

should decline Petitioners' invitation to make law out of whole cloth and insert itself in a matter exclusively reserved for Congress.

B. *The presidential nomination process has been delegated to political parties.*

Petitioners request that this Court interfere with the RPM's presidential nominee selection process. However, the political question doctrine prevents judicial interference with the presidential nomination process because that is a "matter which is to be exercised by the people in their primary political capacity. . . ." *In re McConaughy*, 119 N.W. at 417.

As the RPM established in its Response,[1] Minnesota law commands that political parties are responsible for determining who is on a ballot—not the judiciary and not the Secretary of State. RPM Resp. at 12-15; Minn. Stat. § 207A.13 (The RPM "*must* determine which candidates are to be placed on the presidential nomination primary ballot for" the RPM); Minn. Stat. § 208.04, subd. 1, ("The 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") *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).

[1] The RPM incorporates its Response, filed on September 27, 2023.

Moreover, the selection of a political party's presidential nominee at a national convention is a matter of internal party procedure in which "[t]he States themselves have no constitutionally mandated role." *Cousins v. Wigoda*, 419 U.S. 477, 489 (1975). Minnesota law reflects this long held national practice. It provides that political parties are to send delegates to their national convention based on the primary results, but does not dictate how delegates are to be apportioned or vote at the national convention because those are matters of internal party procedure. RPM Resp. at 2; Minn. Stat. § 207A.12(d); Republican Party of Minn. Bylaws Art. VI § 2.

Minnesota law delegates presidential nominee selection to political parties—who are composed of individual voters engaging in concerted action. *California Democratic Party v. Jones*, 530 U.S. 567, 568 (2000) ("The 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.'") (quoting *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 216 (1986)).

Since there has been a clear delegation to voters to determine who appears on a ballot and who is ultimately selected as a presidential nominee, interference with that process presents "[h]ighly important questions . . . concerning justiciability." *O'Brien v. Brown*, 409 U.S. 1, 4–5 (1972) ("We must also consider the absence of authority supporting the action of the Court of Appeals in intervening in the internal determinations of a national political party, on the eve of its convention . . . . [N]o holding of this Court up to now gives support for judicial intervention in the circumstances presented here,

involving as they do relationships of great delicacy that are essentially political in nature.").

Indeed, precedent reflects that a political party's internal process is outside the scope of judicial review. *Democratic-Farmer-Lab. State Cent. Comm. v. Holm*, 227 Minn. 52, 56–57 (1948) ("The delegates in a nominating convention meet for the purpose of selecting and agreeing upon candidates for office, to be supported by the party. The discharge of this duty involves the exercise of judgment and discretion on the part of the members of the convention . . . . [I]ts final determination as to candidates, or any other question of which it has jurisdiction, will be followed by the courts.") (internal quotation marks and citation omitted); *see e.g.*, *Irish v. Democratic-Farmer-Labor Party*, 399 F.2d 119, 120, 121 (8th Cir. 1968) ("What is complained of here and now is something which permeates party operations from the constitutionally prescribed Electoral College down to, but not including, the precinct caucus level in Minnesota" and is a nonjusticiable political question.).

The presidential nomination process, especially at the primary election stage, is a matter of internal party procedure. RPM Resp. at 8-11. The Petitioners' requested relief would necessarily "permeate[] party operations from the constitutionally prescribed Electoral College down to" the RPM's local presidential candidate selection process by removing the RPM's ability to freely select a presidential nominee. *Irish*, 399 F.2d at 120. This is a political question because the presidential nominee selection process has been delegated to political parties who decide which presidential candidate appears on a ballot and ultimately who is selected as that party's presidential nominee.

II. This case is nonjusticiable because Minnesota law does not provide a mechanism to bring this claim and the Petitioners do not have standing.

Justiciability in general speaks to a court's ability to hear a claim. *Cruz-Guzman*, 916 N.W.2d at 7 ("The presence of a justiciable controversy is essential to our exercise of jurisdiction.") (internal quotation marks and citation omitted). A case is only justiciable if it "involves definite and concrete assertions of right that emanate from a legal source . . . ." *Onvoy, Inc. v. ALLETE, Inc.,* 736 N.W.2d 611, 617-18 (Minn. 2007).

Justiciability also encompasses standing. "Standing is acquired in two ways: either the plaintiff has suffered some 'injury-in-fact' or the plaintiff is the beneficiary of some legislative enactment granting standing." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996).

Petitioners solely rely on and errantly assert that Minn. Stat. § 204B.44 confers standing and provides the "appropriate vehicle for this challenge." Pet. Br. at 2. It does not. Minnesota statutes section 204B.44 is not an appropriate vehicle because it does not permit a challenge to a presidential candidate's appearance on a ballot. Since Minn. Stat. § 204B.44 is not an appropriate mechanism for this challenge, it cannot confer standing to Petitioners.

A. *Minnesota statutes section 204B.44 does not permit a challenge to a presidential candidate's appearance on a ballot.*

Minnesota law does not permit a challenge to a presidential candidate's ability to appear on a ballot. As explained in RPM's Response, Minnesota law restricts the Secretary of State's role in the primary and general elections to a procedural role and does not give the Secretary of State the authority to exclude a presidential candidate from

a ballot. RPM Resp. at 13-14. Additionally, Minn. Stat. § 204B.44 does not give this Court the authority to remove a presidential candidate from a ballot because Minn. Stat. § 204B.44 is limited to candidates that "file" for office and to review of "eligib[ility]" criteria. The Petition implicates neither – Donald J. Trump has not filed for candidacy and Section 3 disability is not an eligibility criterion. Therefore, Section 204B.44 does not provide Petitioners a cause of action and the Court lacks jurisdiction to hear this matter.

First, Minn. Stat. § 204B.44's eligibility determination does not apply to presidential candidates. Minnesota statutes section 204B.44(a)(1) permits a challenge to "the placement of a candidate on the official ballot who is not eligible to hold the office for which the *candidate* has *filed* . . ." and allows this Court to order that an ineligible candidate be removed from a ballot. (emphasis added).

However, Minn. Stat. § 204B.44 does not provide a mechanism to challenge presidential candidate's eligibility because under Minnesota law, *a presidential candidate does not "file" for office with the State*. This is plainly clear in Minnesota law—presidential candidates do not file an affidavit of candidacy with the State. Minn. Stat. § 204B.06, subd. 4 ("Candidates for president or vice president of the United States are not required to file an affidavit of candidacy for office."); *see* Minn. Stat. § 204B.11, subd. 1(a)-(b) (No "filing fee" is required for presidential candidates); Minn. Stat. § 204B.03 ("Candidates of a major political party for any partisan office *except presidential elector* and all candidates for nonpartisan office shall apply for a place on the primary ballot by

filing an affidavit of candidacy . . . .") (emphasis added). And, indeed, Donald J. Trump has not filed an affidavit of candidacy with the State.

Rather, in primary elections, the major political party "*determines* which candidates are to be placed on the presidential nomination primary ballot for that party" and "[t]he *chair of each participating party* must submit to the secretary of state the names of the candidates to appear on the ballot for that party." Minn. Stat. § 207A.13, subd. 2 (emphasis added); *see* Minn. Stat. § 204B.04, subd. 5 ("[A] Candidate . . . shall not appear on the ballot as minor party or independent candidates if either candidate is *certified* as a major party candidate for president or vice president pursuant to section 208.03.") (emphasis added).

Furthermore, on general election ballots, presidential candidates are nominated and their names are *certified*—the presidential *candidate* does not *file* to be on a general election ballot. Minn. Stat. § 208.04, subd. 1 ("The 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.") (emphasis added). Minnesota law only requires that the names of a "party's electors and alternates" be "filed with the secretary of state" by the major political party. Minn. Stat. § 208.04, subd. 1; Minn. Stat. § 208.03. But even this "filing" is actually just a certification, and again, the political parties are responsible for this, not the presidential electors. Minn. Stat. § 208.03; Minn. Stat. § 204B.07, subd. 2 ("This subdivision does not apply to candidates for presidential elector or alternate nominated by major political parties. Major party candidates for presidential elector or alternate are *certified* under section 208.03.") (emphasis added).

What the plain text of Minnesota law makes clear is that a challenge under Minn. Stat. § 204B.44(a)(1) is confined to state-imposed eligibility requirements because it only creates a cause of action when a *candidate* has *filed* for an office with the State. As this Court has held, "[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" and Minnesota law makes clear that it is political parties who alone nominate and submit presidential candidate names to the Secretary of State. *De La Fuente*, 940 N.W.2d at 494-95. The presidential candidates themselves are *not* filing for office.

Indeed, in this context, Minn. Stat. § 204B.44's reference to "federal" offices makes perfect sense given federal congressional candidates are required to file for office with the State because there are State-imposed residency requirements on congressional candidates. Minn. Stat. § 204B.06, subd. 4 (imposing residency requirements on congressional candidates and requiring "[c]andidates who seek nomination for the office of United States senator or representative" to submit an affidavit of candidacy); Minn. Stat. § 204B.06, subd. 5 ("When two candidates are to be elected United States senators from this state at the same election, each individual filing for the nomination shall state in the affidavit of candidacy the term for which the individual desires to be a candidate, by stating the date of the expiration of the term."); Minn. Stat. § 204B.03 ("Candidates of a major political party for any partisan office except presidential elector and all candidates for nonpartisan office shall apply for a place on the primary ballot.").

And further, the phrase "not eligible to hold the office for which the candidate has filed" in Minn. Stat. § 204B.44 could not be reasonably read to extend to the recognition of presidential candidacy under federal law given a presidential candidate does not need to file paperwork to be considered a candidate. 52 U.S.C. § 30101(2). A person falls into the federal statutory definition of "candidate" when they "seek[] nomination for election, or election, to Federal office" and receive contributions or make expenditures over a certain threshold. 52 U.S.C. § 30101(2); 11 CFR § 100.3. The reporting requirements after meeting the statutory definition for candidacy relate to political committee organization and designation and campaign finance, and those "designations, statements, and reports" are filed with Federal Election Commission. *See* 52 U.S.C. §§ 30102–30104; *see also* 11 CFR §101.1 ("Within 15 days after becoming a candidate under 11 CFR 100.3, each candidate, other than a nominee for the office of Vice President, shall designate in writing, a principal campaign committee in accordance with 11 CFR 102.12. A candidate shall designate his or her principal campaign committee by filing a Statement of Candidacy on FEC Form 2 . . . ."); 11 CFR § 102.1 ("Principal campaign committees. Each principal campaign committee shall file a Statement of Organization in accordance with 11 CFR § 102.2 no later than 10 days after designation pursuant to 11 CFR 101.1."). And, unlike the affidavit of candidacy required to filed with Minnesota Secretary of State for all other offices, the Statement of Candidacy for presidential candidates submitted to the Federal Election Commission does not require any sworn statements or affirmations related to candidate eligibility. Accordingly, Minn. Stat. § 204B.44 could not be reasonably construed to permit judicial review of Federal Election

Commission filings relating to political committee organization and designation and campaign finance given they have no bearing on a candidate's eligibility to be placed on a ballot. *See* 52 U.S.C. § 30109 (providing for civil penalties if a campaign finance law is violated.).

Second, related statutory provisions show that Minn. Stat. § 204B.44 does not apply to presidential candidates. Minnesota statutes section 204B.10 subdivision 6 entitled "Candidate's eligibility to hold office" permits a "filing officer" to remove the name of a candidate from a ballot if that candidate has been convicted of "a felony and the person's civil rights have not been restored," is "under guardianship" of the court, or is "legally incompetent." Minnesota statutes 204B.10 explicitly provides for judicial review of the filing officer's action under Minn. Stat. § 204B.44.

Importantly, Minn. Stat. § 204B.10 explicitly *excludes* Presidential candidates from this provision. ("the filing officer shall notify the person by certified mail at the address shown on the affidavit or petition, and, for offices *other than* President of the United States, Vice President of the United States, United States Senator, and United States Representative in Congress, shall not certify the person's name to be placed on the ballot.") (emphasis added).

Moreover, Minn. Stat. § 204B.13 provides a mechanism to fill vacancies in office after a candidate is "determined to be ineligible to hold the office the candidate is seeking, pursuant to a court order issued under section 204B.44." Again, this provision *excludes* presidential candidates. Minn. Stat. § 204B.13 ("A vacancy in nomination exists for a partisan office when a major political party candidate who has been nominated in

accordance with section 204D.03, subdivision 3, or 204D.10, subdivision 1" dies, withdraws, or is declared ineligible under Minn. Stat. 204B.44); Minn. Stat. § 204D.03, subd. 3 (provision governing candidates in *state* elections); Minn. Stat. § 204D.10 (provision governing candidates in "state partisan primar[ies]").

Finally, Minn. Stat. § 204B.06, subd. 1b(b) provides that after a candidate has filed an affidavit of candidacy "[f]or an office where residency requirement must be satisfied," the filing officer may remove the candidate's name "from the ballot for that office" if the address on the affidavit "is not within the area represented by the office." Minnesota statutes section 204B.06 subdivision 1b(b) provides for judicial review of the filing officer's action under "section 204B.44." Just two subdivisions later, Minn. Stat. § 204B.06, subd. 4, states "[c]andidates for president or vice president of the United States are not required to file an affidavit of candidacy for office."

As illustrated above, the provisions of Minnesota law that prescribe eligibility requirements and permit judicial review under Minn. Stat. § 204B.44 explicitly exclude presidential candidates from their scope. This shows that an eligibility determination under Minn. Stat. § 204B.44 only applies to state-imposed candidate requirements.

This Court's authority under Minn. Stat. § 204B.44 is limited by the plain text of the statute. Since a presidential candidate does not file for office with the Secretary of State, Minn. Stat. § 204B.44 does not permit Minnesota state court review of a president's eligibility for office. Petitioners cannot bring a challenge to a presidential candidate's ability to appear on a ballot not because the RPM says so, but because Minnesota law says so.

B. *An eligibility determination under Minn. Stat. 204B.44 is not the same as a "disability" determination under Section 3.*

Petitioners incorrectly equate Section 3's disability to an eligibility criterion and assert that Minn. Stat. § 204B.44 permits this Court to remove Donald J. Trump from the ballot. But, Section 3's prohibition is not an eligibility requirement—Section 3 does *not* use the word "eligible."

Minnesota statute section 204B.44 permits review of a person's "eligib[ility] to hold office." Under Article II Section 1 of the U.S. Constitution, a person is not "eligible to the Office of President" unless they are a natural born citizen, they are thirty-five years old, and they have been a resident of the United States for fourteen years. Instead of paralleling the structure of Article II, Section 3 uses a different word, by distinguishing the inability to hold office under Section 3 as a "disability." This textual difference has meaning – it is presumed that the use of different words is intended to convey different meanings. *See, e.g.*, *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017) ("[W]e presume differences in language . . . convey differences in meaning.").

Section 3's disability is distinguishable from an eligibility criterion—it is a punishment that arises from engaging in a certain action.[2] *Griffin's Case*, 11 F. Cas. 7, 26 (C.C.D. Va. 1869) (No. 5815) ("[I]t can hardly be doubted that the main purpose [of Section 3] was to inflict upon the leading and most influential characters who had been

[2] The Supreme Court has declined to equate Section 3 with a qualification for office. *Powell v. McCormack*, 395 U.S. 486, 521, n.41 (1969) (declining to address the issue); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 788, n.2 (1995) (declining to address the issue).

engaged in the Rebellion, exclusion from office as a punishment for the offense."); Cong. Globe, 39th Cong., 1st Sess. 2900 (1866) (statement of Sen. Doolittle) (Section 3 "will have the effect of putting a new punishment . . . upon all those persons who are embraced within its provisions . . . . [I]n the nature of a bill of pains and penalties, imposed by constitutional enactment it is true, but it is a punishment different from the punishment now prescribed by law"); *Id.* at 2899 (statement of Sen. Guthrie) ("This third section is not an act of conciliation it is an act of proscription."). This Court has even recognized that "[t]he Presidential Eligibility Clause serves as the *exclusive* source for the qualifications to serve as President." *De La Fuente*, 940 N.W.2d at 490 (emphasis added).

Yet, Petitioners assert that "[i]t is axiomatic that one who is disqualified from holding the office of president is 'not eligible to hold the office.'" Pet. Br. at 10. It is not axiomatic. A person can be eligible to do something on one hand but prohibited or unable to engage in the action on the other hand. A person is eligible to hold office if they meet the criteria in Article II.[3] However, it is up to Congress to determine if a Section 3 disability applies to a person who has engaged in rebellion or insurrection and to take action to enforce the punitive measures of Section 3. Here, if Petitioners are correct on every issue and Donald J. Trump is *disabled* from holding the office of President under Section 3, that determination would have no effect on his general eligibility to serve as president under Article II.

[3] The RPM maintains that the state does not have the authority to investigate Article II eligibility criterion under Minnesota law and the political question doctrine. *See e.g.*, *Grinols v. Electoral Coll.*, No. 2:12-CV-02997-MCE, 2013 WL 2294885, at *6 (E.D. Cal. May 23, 2013).

Further, the legal authority that Petitioners rely on to assert that "[n]o basis exists for distinguishing age and citizenship requirements from insurrection disqualification" is easily distinguishable. Pet. Br. at 11. First, *Greene v. Raffensperger* did not resolve the distinctions between Article II eligibility (or, there, the similar Article I eligibility requirements for U.S. Representatives) and Fourteenth Amendment disability – though the Court did acknowledge that Fourteenth Amendment disability was "similar to but distinct" from Article I eligibility. 599 F. Supp. 3d 1283, 1316 (N.D. Ga. 2022).

Further, this issue was not at play because the underlying state statute permitting review was not constrained to "a candidate on the official ballot who is not *eligible* to [] hold office." Minn. Stat. § 204B.44(a)(1) (emphasis added). Rather, the Georgia statute in *Greene* permitted broader review of a candidate's "'qualifications . . . to seek and hold the public office for which he or she is offering.'" *Greene*, 599 F. Supp. 3d at 1288-89 (quoting O.C.G.A. § 21-2-5(b)). Further, the *Hassan* and *Lindsey* cases which Petitioners and *Greene* rely on also did not address the distinctions between Article I or II eligibility versus Fourteenth Amendment disability – those cases dealt only with Article I eligibility. *Lindsay v. Bowen,* 750 F.3d 1061, 1063 (9th Cir. 2014) (clarifying that this is a case about "*undisputed* ineligibility") (emphasis added); *Hassan v. Colorado,* 495 F. App'x 947, 949 (10th Cir. 2012). Therefore, since Section 3 is a disability and not an eligibility criterion, Minn. Stat. § 204B.44 does not provide a vehicle to bring a Section 3 challenge.

C. *Petitioners do not have standing.*

Petitioners assert that Minn. Stat. § 204B.44 confers standing to bring this challenge. However, as illustrated above, Minn. Stat. § 204B.44 does not create a cause of action based on presidential eligibility criterion or permit a challenge based on a Section 3 disability. Because the present challenge falls outside of the scope of Minn. Stat. § 204B.44, the Petitioners are not the "beneficiary of some legislative enactment granting standing." *State by Humphrey*, 551 N.W.2d at 493. Accordingly, Petitioners are without standing to bring this challenge.

And, Petitioners have made no claim or argument that standing exists here because there is an "injury-in-fact" to the Petitioners. This argument has been forfeited. *See* Order at 2-3 (October 13, 2023) ("parties are not allowed to make arguments for the first time in a reply") (citing *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010)). Nevertheless, even if properly raised, the argument would fail.

"To demonstrate an injury-in-fact, the plaintiff must show 'a concrete and particularized invasion of a legally protected interest.'" *In re Custody of D.T.R.*, 796 N.W.2d 509, 512–13 (Minn. 2011) (quoting *Enright v. Lehmann,* 735 N.W.2d 326, 329 (Minn. 2007)).

Petitioners cannot demonstrate a particular harm or injury in a ballot challenge, and courts routinely dismiss voter challenges to federal candidate eligibility and voter challenges asserting disqualification under Section 3. *Caplan et al., v. Trump*, No. 23-CV-61628, 2023 WL 6627515, at *3 (S.D. Fla. Aug. 31, 2023) (dismissing a Section 3 challenge to Trump's candidacy, holding individuals "lack standing to challenge Defendant's qualifications for seeking the Presidency, as the injuries alleged are not

cognizable and not particular to them."); *Hill v. Mastriano*, No. 22-2464, 2022 WL 16707073, at *1 (3d Cir. Nov. 4, 2022) (dismissing Section 3 challenge to a state senator and gubernatorial candidate because an individual citizen could not "identify a 'particularized' injury"); *Berg v. Obama*, 574 F. Supp. 2d 509, 518 (E.D. Pa. 2008) ("The alleged harm to voters stemming from presidential candidate's failure to satisfy [] eligibility requirements . . . is not concrete or particularized . . . ."); *Const. Ass'n Inc. by Rombach v. Harris*, No. 20-cv-2379, 2021 WL 4442870, at *2-3 (S.D. Cal. Sept. 28, 2021) (finding plaintiffs lacked standing to challenge Vice President Kamala Harris' eligibility for office and dismissing case); *Chapman v. Obama*, 719 F. App'x 13 (D.C. Cir. 2018) (per curiam) ("The district court correctly concluded that appellant lacked standing to challenge President Barack Obama's qualifications for holding office."); *Fischer v. Cruz*, No. 16-cv-1224, 2016 WL 1383493, at *2-3 (E.D.N.Y. Apr. 7, 2016) (finding voter lacked standing to challenge Senator Ted Cruz's eligibility for President); *Hollander v. McCain*, 566 F. Supp. 2d 63, 71 (D.N.H. 2008) ("Because Hollander can show no such injury, this court lacks jurisdiction over his attempt to resolve the question of McCain's eligibility under Art. II, § 1, cl. 4. Whatever the contours of that constitutional provision, Article III has been definitively read by the courts to confer no jurisdiction over this kind of action.").

Clearly, ballot challenges implicate the rights of all voters, not just some. Because of the nature of ballot challenges, a statute is needed to confer standing because without one, no voter would be able to allege a particularized injury. Minnesota statutes section 204B.44 prevents the standing problem – *but only when the challenge falls within the*

purview of the statute. Here, the challenge does not fall into the purview of the statute, therefore, it cannot confer standing. And because the Petitioners do not have a particularized injury, "injury-in-fact" standing is likewise unavailable and does not cure Petitioners' deficiency.

III. Without Congressional action, Section 3 of the Fourteenth Amendment cannot operate to exclude a presidential candidate from a primary or general election ballot.

A. *Section 3 is not self-executing.*

Section 3 is not self-executing—it does not provide affirmative relief absent Congressional action.[4] *Griffin's Case,* 11 F. Cas. 7 (C.C.D. Va. 1869); *Hansen v. Finchem*, Case No. CV 2022-004321 (Ariz. Super. Ct. Apr. 21, 2022); *Rothermel v. Meyerle*, 136 Pa. 250, 254 (1890) (citing *Griffin's Case*, 11 F. Cas. at 26) ("[I]t has also been held that the fourteenth amendment, as indeed is shown by the provision made in its fifth section, did not execute itself."); *Ownbey v Morgan*, 256 US 94, 112 (1921) ("[I]t cannot rightly be said that the Fourteenth Amendment furnishes a universal and self-executing remedy."). This conclusion is directly supported by judicial decisions. *Griffin's Case,* 11 F. Cas.; *Hansen*, Case No. CV 2022-004321.

Griffin's Case, which was decided contemporaneously to the Fourteenth Amendment's passage, shows that Section 3 was understood to require federal legislation

[4] This Section III.A. provides the RPM's position on the self-executing nature of the Fourteenth Amendment as necessary to provide context for Sections III.B. and III.C. To avoid redundancy, the RPM concurs and adopts Respondent Donald Trump's briefing on the Fourteenth Amendment issues, including the self-executing nature of the Fourteenth Amendment, if Section 3 operates to preclude a person from becoming President, and if it applies to a person who has previously taken an oath as the President.

to apply and enforce. *Griffin's Case,* 11 F. Cas. 7. In *Griffin's Case*, Chief Justice Salmon Chase directly confronted the self-executing nature of Section 3 and unequivocally held that Section 3 is not self-executing. *Id.* at 26 ("Now, it is obviously impossible to do this by a simple declaration, whether in the constitution or in an act of congress, that all persons included within a particular description shall not hold office. For, in the very nature of things, it must be ascertained what particular individuals are embraced by the definition, before any sentence of exclusion can be made to operate. To accomplish this ascertainment and ensure effective results, proceedings, evidence decisions, and enforcement of decisions, more or less formal, are indispensable; and these can only be provided for by congress.").

Griffin's Case illustrates that Congressional action is needed to create an affirmative cause of action under the Fourteenth Amendment—the Fourteenth Amendment cannot be wielded as a sword absent Congress first forging the sword. [5] *See Alexander v. Sandoval*, 532 U.S. 275, 286 (2001) ("Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress."); Josh Blackman & Seth Barrett Tillman, *Sweeping and Forcing the President into Section 3: A Response to William Baude and Michael Stokes Paulsen*, 28 TEX. REV. L. & POL. at 12

[5] For a more in-depth discussion regarding the "sword and shield" reasoning—that the Fourteenth Amendment can only be asserted affirmatively with authorizing legislation, but that it can be asserted defensively without authorizing legislation—see Josh Blackman & Seth Barrett Tillman, *Sweeping and Forcing the President into Section 3: A Response to William Baude and Michael Stokes Paulsen*, 28 TEX. REV. L. & POL. at 13-34 (forth. circa 2023-2024) ("In our American constitutional tradition there are two distinct senses of self-execution. First, as a *shield*—or *a defense*. And second, as a *sword*—or *a theory of liability* or *cause of action supporting affirmative relief*.").

(forth. circa 2023-2024) ("Constitutional provisions are not automatically self-executing when used offensively by an applicant seeking affirmative relief. Nor is there any presumption that constitutional provisions are self-executing.").

Petitioners attempt to paint *Griffin's Case* as an outlier, asserting that it is "bonkers" and stating it must be "limited to its usual context: a state without a fully functional government." Pet. Br. at 21, 26. Petitioners assert that *Griffin's Case* should be ignored because of the historical context surrounding its holding. Pet. Br. at 26. At the same time, Petitioners rely on other authorities, that do not directly confront the self-executing nature of Section 3, made during the same time period as *Griffin's Case* to support their self-executing argument. *See e.g.,* Pet. Br. at 21 ("The practice of multiple state courts during the Reconstruction era demonstrates that they enforced Section 3 without federal legislation, as well.").

So, according to Petitioners, contemporaneous understandings of the Fourteenth Amendment only apply when it supports their theory. *See Cale v. Covington*, 586 F.2d 311 (4th Cir. 1978) (relying on *Griffin's Case,* stating that "contemporaneous understanding of the meaning of the Fourteenth Amendment, which we think coincided with the understanding of Congress, should be given consideration."). Yet, Petitioners' hyperbole is not enough to carry their strained legal theory.[6]

Instead, *Griffin's Case* has been cited favorably by courts. *E.g., Ex parte Ward*, 173 U.S. 452, 455 (1899); *Cale v. Covington*, 586 F.2d 31, 316 (4th Cir. 1978) (citing

[6] Blackman & Tillman, *supra*, at 72 ("We criticize Baude and Paulsen's critique of *Griffin's Case.* Their assertion[s] [are] . . . at best, hyperbole.").

Griffin's Case for its sword and shield reasoning); *In re Brosnahan*, 18 F. 62, 81 n.73 (C.C.W.D. Mo. 1883) (McCrary, J., concurring); *State v. Buckley*, 54 Ala. 599, 616 (1875); *Edye v. Robertson*, 18 F. 135, 143 n.26 (C.C.E.D. N.Y. 1883) (citing *Griffin's Case* in regard to constitutional construction), *aff'd.* U.S. 1884; *Duane v. Philadelphia*, 185 A. 401, 403 (Pa. 1936) (same); *Coyle v. Smith*, 113 P. 944, 948 (Okla. 1911) (same).[7]

Indeed, modern courts have recognized the validity of *Griffin's Case* and adopted its holding. *Hansen v. Finchem*, Case No. CV 2022-004321, (Ariz. Super. Ct. Apr. 21, 2022) *aff'd Hansen v. Finchem*, No. CV-22-0099-AP/EL, 2022 WL 1468157, at *1 (Ariz. May 9, 2022). In *Hansen*, the Superior Court of Arizona held that Section 3 is not self-executing.[8] *Id.* In reaching its holding, the court first relies on the rationale in *Griffin's Case* and holds that Section 5's delegation of authority to Congress clearly illustrates that Congressional action is needed to enforce Section 3. *Id.* at 6 ("[T]he United States Congress, and not individual states, [is] responsible for creating legislation to enforce the terms of the Fourteenth Amendment."); *see Griffin's Case* ("[I]t seems to put beyond reasonable question the conclusion that the intention of the people of the United States, in adopting the fourteenth amendment, was to create a disability, to be removed in proper cases by a two-thirds vote, and *to be made operative in other cases by the legislation of congress in its ordinary course*.") (emphasis added).

---

[7] *See also* Blackman & Tillman, *supra* n. 6 at 73*,* n. 178-187 (collecting cases).
[8] The Arizona Supreme Court affirmed the Superior Court's holding. *Hansen v. Finchem*, No. CV-22-0099-AP/EL, 2022 WL 1468157 (Ariz. May 9, 2022).

Second, the *Hansen* court relies on the fact that Congress has created legislation that authorizes private rights of action under the Fourteenth Amendment. *Hansen,* Case No. CV 2022-004321, at 6-7 (Ariz. Super. Ct. Apr. 21, 2022). If the Fourteenth Amendment was self-executing, Congress would not need to create a private right of action.

But, "Congress has acted to create a private right of action to enforce other provisions of the Fourteenth Amendment" by creating 42 U.S.C. § 1983. *Id.* at 6. Indeed, Congress previously created Section 3 enforcing legislation. 16 Stat. 140 (May 31, 1870).[9] None of these legislative enactments would be necessary if Section 3 is self-executing.

B. *The Fourteenth Amendment should not be interpreted to conflict with the First Amendment.*

Implicit in the Petitioners' assertion that the Fourteenth Amendment is self-executing is the notion that political parties' First Amendment rights can automatically and inconsistently be stripped away based on state-by-state determinations. The Constitution should not be interpreted to give a right on one hand—the right to free association—and automatically take away that right on the other hand through a self-executing Section 3.

Constitutional provisions should be interpreted harmoniously—Section 3 must not be interpreted to "bring it into conflict or disaccord with the other provisions of the

[9] This legislation was repealed in the 1940s. Gerard N. Magliocca, *Amnesty and Section Three of the Fourteenth Amendment*, 365 Const. Comment. 87, 108 n.112 (2021).

constitution." *Griffin's Case,* 11 F. Cas. at 25 ("Of two constructions, either of which is warranted by the words of an amendment of a public act, that is to be preferred which best harmonizes the amendment with the general terms and spirit of the act amended. This principle forbids a construction of the amendment, not clearly required by its terms, which will bring it into conflict or disaccord with the other provisions of the constitution."); *Martin v. Hunter's Lessee*, 14 U.S. 304, 329 (1816) (The Constitution does not "defeat the constitution itself; a construction which would lead to such a result cannot be sound."); *see e.g.*, *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 113 (2001) ("Our cases express a deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment.") (internal quotations and citation omitted).

As stated in its Response, the RPM undoubtably enjoys First Amendment rights of association. *E.g.*, *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 Amendments."). The U.S. Supreme Court has cautioned against states indirectly taking away constitutional rights through the guise of purported constitutional compliance. *U.S. Term Limits Inc*, 514 U.S. at 829-31 ("As we have often noted, '[c]onstitutional rights would be of little value if they could be . . . indirectly denied.'").

Yet, Petitioners request that this Court interpret Section 3 in a way that renders the First Amendment superfluous. Petitioners request that Section 3 be read to indirectly and automatically take away the rights of the RPM to "'select a standard bearer who best

represents the party's ideologies and preferences.'" *California Democratic Party*, 530 U.S. at 575 (quoting *Eu*, 489 U.S. at 224). They ask that the Constitution be read in conflict instead of harmony—an interpretative framework that Courts should avoid. *See Griffin's Case,* 11 F. Cas. at 25 ("Of two constructions, either of which is warranted by the words of an amendment of a public act, that is to be preferred which best harmonizes the amendment with the general terms and spirit of the act amended. This principle forbids a construction of the amendment, not clearly required by its terms, which will bring it into conflict or disaccord with the other provisions of the constitution.").

C. *The right of association cannot be taken away on a state-by-state basis.*

The Constitution requires Congressional action to apply and enforce Section 3 to prevent inconsistent restrictions on First Amendment rights. The Supreme Court has made clear that the states' role in federal elections is procedural, not substantive. *U.S. Term Limits, Inc.*, 514 U.S. at 802. Placed in the context of Section 3, Section 3 cannot be self-executing because states would be permitted to inconsistently strip state political parties' rights of association.

In *U.S. Term Limits*, the Supreme Court struck down a State Constitution Amendment that attempted to place term limits on candidates for Congress, holding that states cannot impose substantive requirements on federal candidates. 514 U.S. at 802. In its holding, the Supreme Court closely examined the state's role in federal elections, holding that the Constitution provides "States but a limited role in federal elections" because the states are exercising constitutional powers delegated to them.

Federal elections "'exclusively spring out of the existence of the national government,'" and where the Constitution has not delegated federal election powers, "[n]o state can say, that it has reserved, what it never possessed.'" *Id.* (quoting 1 Story § 627). Likewise, the Court held that "state-imposed restrictions, unlike the congressionally imposed restrictions" violate the "fundamental principle of our representative democracy" because "the right to choose [federal] representatives belongs not to the States, but to the people." *Id.* at 820-821. The Supreme Court makes clear that setting additional qualifications for federal elections equates to a substantive determination outside the scope of state-delegated regulatory power.

Petitioners attempt to frame the issue as a procedural matter. Pet. Br. 14-16. They assert that because Section 3 is self-executing, a state may simply remove a name from a ballot. At the same time, Petitioners ask this Court to make factual determinations and novel legal conclusions that implicate the rights of the nation.

These issues have been and could be decided differently by each state—clearly crossing the line from procedural regulation to a substantive determination about the ability of a presidential candidate to run for and hold office. *See Caplan et al., v. Trump,* No. 23-CV-61628, 2023 WL 6627515, at *3 (S.D. Fla. Aug. 31, 2023) (dismissing a complaint requesting that Donald Trump be barred from seeking presidential office under the Fourteenth Amendment); *Anderson et al., v. Griswold*, 23-CV-32577 (Colo. Dist. Ct. filed Sept. 6, 2023) (pending case asserting Donald J. Trump should be barred from seeking presidential office under the Fourteenth Amendment); *LaBrant et al, v. Benson et*

al., Case 23-000137-MZ (Mich. Ct. Cl. filed Sept. 29, 2023) (same); *Castro v. Warner et al.*, 23-CV-00598 (S.D.W. Va. filed Sept. 7, 2023) (same).

Indeed, if the Petitioners' requested relief was granted, the RPM could not send Donald J. Trump delegates to the national convention, but the Florida delegates *could* be sent. *See Caplan*, 2023 WL 6627515. Moreover, if the relief was granted, Minnesota would remove Donald J. Trump from the ballot, and South Dakota could remove President Biden from a ballot based on mere allegations. States could control the whole by restricting the rights of the part, a flagrant violation of the "fundamental principle of our representative democracy." *U.S. Term Limits*, 514 U.S. at 820.

In this context, Petitioners' self-executing argument must fail. When each state is left to make their own Section 3 determination, the result is that some state political parties will enjoy rights of association, whereas others will be left with that right treated as an afterthought or, worse, simply stripped away. Certainly, the fact that Section 3 exists indicates that rights of association may be limited after Congressional action. Likewise, it is recognized that at times states may have a compelling interest in restricting rights of association. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997). However, what *U.S. Term Limits* makes clear is that a state's role and interest in federal elections is subservient to a national interest. Federal elections implicate the rights of the people—not the rights of the state. *Id.* at 820; *see Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983) ("[T]he State has a less important interest in regulating Presidential elections than state-wide or local elections, because the outcome of the former will be largely determined by voters beyond the State's boundaries.").

Additionally, the infringement on political parties' rights necessarily infringes on individual voters' rights. *Wigoda*, 419 U.S. at 487 ("'Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.'") (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957)). State-by-state determinations would permit some voters to vote for Donald J. Trump, while prohibiting others from doing the exact same thing. This can only be construed as inconsistent limitations of voters' rights— centralized authority over federal elections in one national body prevents this absurd result. *See Wesberry v. Sanders*, 376 U.S. 1, 17-18 (1964) ("'No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.'").

The drafters of the Fourteenth Amendment understood these problems, which is why Section 3's application and enforcement was delegated to Congress—a "uniform National Legislature representing the people of the United States." *U.S. Term Limits*, 514 U.S. at 783. And when one considers that the states only regulate elections based on delegated authority, the assertion that a state could expand delegated authority outside its bounds, make a substantive determination under Section 3, and infringe on First Amendment rights can only be viewed as usurpation of constitutional authority. *See U.S. Term Limits*, 514 U.S. at 810 ("In light of the Framers' evident concern that States would try to undermine the National Government, they could not have intended States to have the power to set qualifications."); Blackman & Tillman, *supra* at 47 ("But the Fourteenth Amendment and enforcement legislation were enacted precisely because state

institutions, state officials, and state courts were *not* considered trustworthy by the national government.") (emphasis in original).

IV. This Court should exercise judicial restraint and decline to intervene in this political controversy.

Judicial restraint cautions against a court's interference with an issue better suited for another branch of government and, as then-Justice and now-Petitioner Anderson explained, requires that at times the court "stand down so that the other two branches—the executive and the legislative—can attempt to resolve a particular issue." *Limmer v. Swanson*, 806 N.W.2d 838, 841 (Minn. 2011) (Anderson, J., concurring). This Court should not "wade into an issue that involves the opposition between the constitution, the law, the power of the judiciary, and the power of the other two branches of government." *Id.* at 840. "[P]rinciples of judicial restraint dictate that [courts] defer to the constitutional remedies that are available to the other branches." *Ninetieth Minnesota State Senate v. Dayton*, 903 N.W.2d 609, 625 (Minn. 2017).

This petition presents an issue—a presidential candidate's potential disability from holding office under Section 3 of the Fourteenth Amendment—that is required to be resolved by Congress and voters. As Petitioners concede, Congress can provide a remedy to this situation through Section 5. Pet. Br. at 17. And Congress has proposed enforcement legislation—a clear indication that this is an issue for Congress to address. H.R. 1405, 117th Cong. 2021.

Importantly, judicial interference here would have far broader implications than the borders of this State. *See* The Federalist No. 59 (Alexander Hamilton) ("Nothing can

be more evident than that an exclusive power of regulating elections for the national government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy."); *Wigoda*, 419 U.S. at 490 (A state's interference in the presidential nomination 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."); *Keyes v. Bowen*, 189 Cal. App. 4th 647, 660 (2010) ("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.").

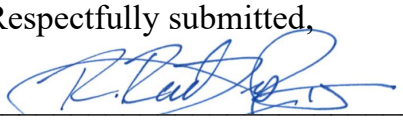
The need for uniform federal elections is essential to the smooth operations of the United States as a whole—this case requires one unified body to decide the issue, not fifty states individually deciding what they deem is best for the country. *See* President Andrew Jackson, Proclamation (Dec. 10, 1832), *reprinted in* 11 Stat. 776 (1856-1857) ("We are *one people* in the choice of the President and Vice President . . . . Here the States have no other agency than to direct the mode in which the vote shall be given.") (emphasis in original). This is a time where the Court "must pause a bit, stand back, carefully view the landscape" and let Congress and the voters decide. *Limmer*, 806 N.W.2d at 841.

CONCLUSION

For the foregoing reasons, the Republican Party of Minnesota respectfully requests that this Court protect the constitutional rights of the Republican Party of Minnesota and voters and dismiss this Petition.

Dated: October 18, 2023

Respectfully submitted,



R. Reid LeBeau II (MN# 347504)
JACOBSON, MAGNUSON,
ANDERSON & HALLORAN P.C.
180 E. Fifth St. Ste. 940
Saint Paul, MN 55101
(T): 651-644-4710
(F): 651-644-5904
(E): rlebeau@thejacobsonlawgroup.com

Attorney for Respondent Republican Party of Minnesota

CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the typeface requirements of Minn. R. Civ. App. P. 132.01 for a principal brief and contains 8,811 words. This brief was prepared using Microsoft Word for Mac version 16.77.1.

R. Reid LeBeau II, MN # 347504