

State of Minnesota
Supreme Court

Roque “Rocky” De La Fuente and James Bernard Martin, Jr.

Petitioners,

v.

Steve Simon, Minnesota Secretary of State,

Respondent.

**BRIEF OF
MINNESOTA DEMOCRATIC-FARMER-LABOR PARTY
AS AMICUS CURIAE IN SUPPORT OF RESPONDENT
MINNESOTA SECRETARY OF STATE, STEVE SIMON**

Charles N. Nauen (#121216)
David J. Zoll (#0330681)
Rachel A. Kitze Collins (#0396555)
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Ave. S., Suite 2200
Minneapolis, MN 55401
(612) 339-6900
cnnauen@locklaw.com
djzoll@locklaw.com
rakitzeollins@locklaw.com

*Attorneys for Amicus Curiae Minnesota
Democratic-Farmer-Labor Party*

Erick G. Kaardal (#229647)
MOHRMAN, KAARDAL &
ERICKSON, P.A.
150 South Fifth Street, Suite 3100
Minneapolis, MN 55402
(612) 341-1074
kaardal@mklaw.com

Attorney for Petitioners

Nathan J. Hartshorn (#0320602)
Assistant Attorney General
State of Minnesota
OFFICE OF THE ATTORNEY
GENERAL
Suite 1800
445 Minnesota Street
Saint Paul, MN 55101
(651) 297-2040
Nathan.Hartshorn@ag.state.mn.us

Attorney for Respondent

The Minnesota DFL Party (“DFL” or “the Party”), like all political parties, enjoys a constitutionally protected freedom of association which preserves for the DFL the exclusive right to determine its membership—including the power to define the process by which individuals can seek the nomination to be the Democratic candidate for the Office of President. Consistent with this right, the Minnesota Legislature, in creating the presidential nomination primary, gave the chairs of the major political parties the exclusive right to identify the candidates that will appear on the presidential nomination primary ballot for their respective parties. Petitioners ask the Court to reject the legislature’s approach and allow anyone to appear on the ballot for any party regardless of their political affiliation or adherence to the party’s rules. Such a system for the presidential nomination primary would wrest control of the process for nominating candidates for the Office of President away from the political parties in direct violation of their freedom of association. Accordingly, the DFL submits this amicus brief in support of Respondent Minnesota Secretary of State Steve Simon and respectfully requests that the Court deny the petition insofar as it challenges the constitutionality of Minn. Stat. § 207A.13 subd. 2(a) or would impinge the DFL’s ability to determine which candidates will appear on the Party’s ballot for the presidential nomination primary.¹

¹ No counsel for any party authored this brief either in whole or in part and no person, other than amicus curiae the Minnesota DFL Party, made a monetary contribution to the preparation or submission of the brief.

BACKGROUND

I. THE DEMOCRATIC PARTY’S PROCESS FOR SELECTING A NOMINEE.

Every four years, the Democratic National Committee (“DNC”) holds its National Convention to, among other things, nominate the Democratic Party’s candidate for the Office of President of the United States. Each state party sends delegates to the National Convention to represent the state party in the nomination process. The delegates are selected and pledged to particular candidates based upon rules established by the state parties and approved by the DNC. DFLADD002-003 at ¶¶ 5-7.

In previous years, the Minnesota DFL Party pledged its delegates to the National Convention based on the results of straw polls conducted at local caucuses. However, in 2016, the Minnesota Legislature adopted Minnesota Statutes, Chapter 207A establishing a presidential nomination primary. This primary applies to major political parties “that select[] delegates at the presidential nomination primary to send to a national convention.” Minn. Stat. § 207A.11(d). The results of the primary do not determine who will appear on the General Election ballot as the Democratic candidate for the Office of President, but rather “bind the election of delegates in each party.” Minn. Stat. § 207A.12(d). That is, the results of the presidential nomination primary determine only how the delegates to the Democratic National Convention are pledged to the candidates seeking the Party’s nomination. Therefore, consistent with the requirements of Minnesota law, the DFL’s delegates for the 2020 Democratic National Convention will be allocated to fairly reflect “the expressed presidential preference or uncommitted status of the DFL presidential

primary voters” by allocating the delegates “in proportion to the percentages of the DFL presidential primary vote” in each district. DFLADD004 at ¶ 14, DFLADD146.

The DNC and the DFL each have established rules governing the eligibility of candidates for the nomination as the Democratic Party’s candidate for the Office of President and to appear on the ballot for the Minnesota presidential nomination primary. To be eligible for nomination as the Democratic candidate for the Office of President, a candidate must have “accrued delegates in the nominating process and plan[] to seek the nomination, [have] established substantial support for their nomination as the Democratic candidate for the Office of the President of the United States, [be] a bona fide Democrat whose record of public service, accomplishment, public writings and/or public statements affirmatively demonstrates that the candidate is faithful to the interests, welfare and success of the Democratic Party of the United States, and will participate in the Convention in good faith.” DFLADD001-002 at ¶ 3, DFLADD013. Additionally, presidential candidates must submit a written affirmation to the Chairperson of the DNC that they (A) are a member of the Democratic Party; (B) will accept the Democratic nomination; and (C) will run and serve as a member of the Democratic Party. DFLADD002 at ¶ 4, DFLADD013, DFLADD043.

In order to appear on the DFL primary ballot, a presidential candidate first must submit a statement specifying the steps the candidates will take to encourage full participation in the affirmative action, outreach, and inclusion goals of the DFL’s delegate selection process. DFLADD003 at ¶ 8, DFLADD084. This statement must be provided by October 1, 2019 or, if they announce their candidacy after this date, within 30 days of

announcing their candidacy. DFLADD003 at ¶ 9, DFLADD115. Candidates then must “submit[] a letter to the State DFL Chair by 4:30 p.m. Central Standard Time on December 10, 2019” requesting to be included on the DFL primary ballot and to “certify in writing to the State DFL Chair, the name(s) of his or her authorized representative(s) by December 10, 2019.” DFLADD003 at ¶ 10, DFLADD084.

Fifteen candidates provided full participation plans by October 1, 2019 or within 30 days of announcing their candidacy and submitted the letter requesting ballot access and certification of their authorized representative(s) by December 10, 2019. DFLADD003 at ¶ 11. As required in Minn. Stat. § 201A.13, subd. 2, DFL Party Chair Ken Martin submitted a letter to Minnesota Secretary of State Steve Simon on December 17, 2019 identifying the 15 candidates to appear on the presidential primary ballot for the DFL. DFLADD003 at ¶ 12, DFLADD122. One candidate, Rosalind Greene, submitted a full participation plan prior to October 10, 2019 but did not submit a letter requesting ballot access by December 10, 2019 and, therefore, was not included on the list of candidates provided to the Minnesota Secretary of State. DFLADD003-004 at ¶ 13. Two additional candidates announced their candidacy prior to October 1 but did not submit their full participation plans and were not included in the letter to the Secretary of State. DFLADD003-004 at ¶ 13.

ARGUMENT

Minnesota’s law governing which candidates appear on the ballots for the presidential nomination primary properly balances the State’s interest in increasing participation in the process of nominating major party candidates for the Office of President

while preserving the parties' Constitutionally protected freedom of association. The law, which preserves the parties' role in selecting their respective candidates, neither impairs the First and Fourteenth Amendment rights of would-be candidates nor adds qualifications for holding the Office of President. The law is consistent with both the United States and Minnesota Constitutions and De La Fuente's petition should be denied.

I. THE STATUTE PRESERVES THE MAJOR POLITICAL PARTIES' CONSTITUTIONAL RIGHT TO FREEDOM OF ASSOCIATION.

It is well-settled that political parties enjoy a freedom of association protected by the First and Fourteenth Amendments to the Constitution. As the Supreme Court has said:

[T]he freedom to join together in furtherance of common political beliefs necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only. That is to say, a corollary of the right to associate is the right not to associate. Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the associations being. *In no area is the political association's right to exclude more important than in the process of selecting its nominee.*

California Democratic Party v. Jones, 530 U.S. 567, 575 (2000) (citing *Democratic Party of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 (1981) (“*La Follette*”)) (emphasis added). Time and again, the Supreme Court has reaffirmed that the State may not force a political group to associate with particular individuals. For example, *California Democratic Party v. Jones* involved a challenge to California's blanket primary system, in which voters could vote for any candidate regardless of the voter's or candidate's party affiliation. 530 U.S. at 569-70. The Supreme Court held that this violated the parties'

freedom of association because it forced the parties to associate with and to have their nominees determined by those who “at best, have refused to affiliate with the party, and at worst, have expressly affiliated with a rival.” *Id.* at 577. The Court concluded that the law forced the party to “adulterate their candidate-selection process,” and was therefore unconstitutional. *Id.* at 581.

Similarly, in *La Follette*, the Supreme Court struck down a Wisconsin rule that required delegates to a National Convention to vote in accordance with the results of the State’s open primary election. 450 U.S. at 112. The Court concluded that such a rule violated the Party’s freedom of association by forcing it to affiliate with individuals outside of the Party and in violation of the Party’s official rules. *Id.* at 121-24. *See also Cousins v. Wigoda*, 419 U.S. 477 (1975) (finding the state could not compel the seating of particular delegates at the Party’s National Convention).

The principles established by these Supreme Court precedents suggest that the political parties, not the states, must control the candidate nomination process including determining which individuals may carry the party’s name on a primary ballot. Indeed, the Eleventh Circuit reached precisely that conclusion in *Duke v. Cleland*, 954 F.2d 1526 (11th Cir. 1992). In that case, David Duke challenged the constitutionality of the Republican Party’s decision to exclude him from the presidential primary ballot asserting that this decision infringed his right of association. *Id.* at 1528-30. The court rejected this claim, finding that “the Republican Party enjoys a constitutionally protected freedom which includes the right to identify the people who constitute this association ... and to limit the association to those people only.” *Id.* at 1531 (citing *La Follette*, 450 U.S. at 122). That

is to say, the court concluded that Duke’s freedom of association was not infringed by the Party exercising its own right to determine its own membership—including who may seek the Party’s nomination.

With respect to the Minnesota presidential nomination primary, the DNC and the DFL have established a process for determining which candidates are eligible for nomination as the Democratic candidate for the Office of President and which candidates may appear on the DFL ballot in the primary. The DNC determines eligibility for nomination as the Democratic candidate for the Office of President based on the candidate’s demonstrated past commitment to the Party’s principles and agreement to participate in the nominating convention in good faith. The DFL allows all such candidates to appear on the DFL primary ballot provided that the candidates timely submit a plan for how they will carry-out the requirements of the DFL’s Delegate Selection Plan and provide a letter requesting to appear on the ballot and certify the names of their authorized representatives by December 10, 2019. Fifteen candidates completed this process and, on December 17, 2019, DFL Party Chair Ken Martin notified Minnesota Secretary of State Steve Simon that these candidates would appear on the DFL’s primary ballot.

Minn. Stat. § 207A.13 properly protects the DNC’s and the DFL’s right to determine who may associate with the Party by allowing the DFL Party Chair to determine which candidates will appear under on the Party’s primary ballot.² Overriding the DFL’s process

² In so arguing, the DFL in no way sanctions or supports the Minnesota Republican Party’s choice to exclude potential challengers to the incumbent President from the primary process. As laid out in the Factual Background, 15 candidates will appear on the DFL’s presidential primary ballot after having satisfied the relatively simple, straight-forward, and

and forcing it to accept all-comers as its own candidate, regardless of the candidate's views or compliance with the Party's process, would have the unacceptable result of forcing the DFL to associate with potentially unwanted individuals in violation of the Party's freedom of association.

The Court in *Duke v. Cleland* also considered a claim that the decision to exclude Duke from the primary ballot burdened the right to vote. *Id.* at 1531. The court rejected this claim finding that it did not concern the "absolute" right to vote—that is, the right to cast a ballot for the Office of President—but rather the right to vote for a particular candidate as a Republican in the presidential primary. *Id.* The court found that even if the inability to vote for a particular individual as a Republican on the primary ballot burdened a citizen's right to vote, the state's countervailing interest in preserving the Republican Party's freedom of association justified any such burden. *Id.* at 1532-33.

Similarly, here, Petitioner James Martin, Jr.'s right to vote is burdened only to the extent that he cannot vote for a particular person as a Republican candidate in the presidential primary. Nothing prevents De La Fuente from appearing on the General Election ballot in November nor does it prevent Petitioner Martin from exercising his right to vote for De La Fuente at that time. *See* Minn. Stat. §§ 204B.07 – .09.

Pursuant to clear Supreme Court precedent, the major political parties' freedom of association necessarily includes a right *not* to associate. Minnesota's presidential

neutrally applicable criteria for securing a place on the primary ballot. To the extent De La Fuente has an issue with the Republican Party's internal process for selecting which candidates will appear on the primary ballot, his claim, if any, lies against the Party, and not against the State.

nomination primary law, Minn. Stat. § 207A.13, preserves this freedom of association and De La Fuente’s challenge fails as a result.

II. THE STATUTE DOES NOT VIOLATE THE MINNESOTA CONSTITUTION.

Article 12, Section 1 of the Minnesota Constitution prohibits the legislature from enacting special legislation, including legislation that grants an association a special or exclusive privilege. However, the Minnesota Supreme Court has held that the legislature may lawfully “create different classes and apply different rules to them, so long as the classification is based on substantial distinctions.” *In re Tveten*, 402 N.W.2d 551, 558 (Minn. 1987). To determine whether an appropriate classification has been made, the Court applies a three-part rational basis test:

(a) The classification applies to and embraces all who are similarly situated with respect to conditions or wants justifying appropriate legislation; (b) the distinctions are not manifestly arbitrary or fanciful but are genuine and substantial so as to provide a natural and reasonable basis justifying the distinction; and (c) there is an evident connection between the distinctive needs peculiar to the class and the remedy or regulations therefore which the law purports to provide.

Id. at 558-59. Importantly, in evaluating a challenge to the constitutionality of a statute, the Court must start with the premise that a “duly enacted statute carries with it a presumption in favor of its constitutionality,” and this presumption prevails unless the party challenging the statute “has demonstrated beyond a reasonable doubt that it violates a constitutional provision.” *Id.* at 556 (citations omitted).

Here, Minn. Stat. § 207A.13 undoubtedly meets the rational basis test. The Minnesota Legislature chose to replace the local caucuses with a state-wide primary, and

to limit participation in the primary to the major political parties that send delegates to a national nominating convention. The State has permissibly determined that the major political parties are similarly situated and that there is a reasonable basis for singling out this group for inclusion in the presidential nomination primary. De La Fuente does not challenge this decision.

Accordingly, the question in this case is whether the State has a rational basis for giving this particular “class,” namely, the major political parties in Minnesota, the discretion to choose which candidates will appear on the presidential primary ballot. For all of the reasons already discussed above, the answer to this question is yes. Each major political party participating in the primary process enjoys a freedom of association, which would be eviscerated if the Parties were required to surrender control over which candidates could appear under the party’s name on the primary ballot to the State. *See Cousins*, 419 U.S. at 487 (finding the freedom of association is protected against encroachment by the states through the Fourteenth Amendment). The Minnesota Legislature did not grant any special privilege to the major political parties when it enacted Minn. Stat. § 207A.13 but rather preserved their Constitutionally protected freedom of association. The statute does not violate the Minnesota Constitution, and Count I of De La Fuente’s petition should be denied.

III. THE STATUE DOES NOT ADD QUALIFICATIONS TO HOLD THE OFFICE OF PRESIDENT.

Finally, De La Fuente’s argument that the statute adds qualifications to hold the office of President should be dismissed outright. The statute merely guides the State’s

process for determining who will appear on the primary ballots of the major political parties in Minnesota. As De La Fuente himself acknowledges, a different process applies for a candidate who wishes to run in the General Election, and the statute in no way prevents De La Fuente from running in that election, winning, and becoming President of the United States. De La Fuente's claim that the statute violates the Presidential Qualifications Clause is baseless and should be dismissed.

CONCLUSION

For these reasons, the DFL respectfully requests the Court deny De La Fuente's petition insofar as it challenges the constitutionality of Minn. Stat. § 207A.13 subd. 2(a) or would otherwise impinge the DFL's ability to determine which candidates will appear on the Party's ballot for the presidential nomination primary.

Dated: December 31, 2019

Respectfully submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

s/Charles N. Nauen

Charles N. Nauen (#121216)

David J. Zoll (#0330681)

Rachel A. Kitze Collins (#0396555)

100 Washington Ave. S., Suite 2200

Minneapolis, MN 55401

(612) 339-6900

cnauen@locklaw.com

djzoll@locklaw.com

rakitzeollins@locklaw.com

*Attorneys for Amicus Curiae Minnesota
Democratic-Farmer-Labor Party*

CERTIFICATION OF BRIEF LENGTH

I hereby certify that this petition conforms to the requirements of Minn. R. Civ. App. P. 132.01, subd. 3(c), for an amicus brief produced with a proportional 13-point font. The length of this brief is 2,926 words. This brief was prepared using Microsoft Word 2016.

s/Charles N. Nauen

Charles N. Nauen (#121216)

CERTIFICATE OF SERVICE

Charles N. Nauen hereby certifies that on the 31st day of December, 2019, the Brief of the Minnesota Democratic-Farmer-Labor Party as Amicus Curiae In Support Of Respondent Minnesota Secretary Of State, Steve Simon was served on the following counsel via the E-Macs Court system and by U.S. mail:

Erick G. Kaardal
MOHRMAN, KAARDAL &
ERICKSON, P.A.
150 South Fifth Street, Suite 3100
Minneapolis, MN 55402

Nathan J. Hartshorn
Assistant Attorney General
State of Minnesota
OFFICE OF THE ATTORNEY
GENERAL
Suite 1800
445 Minnesota Street
Saint Paul, MN 55101

s/Charles N. Nauen
Charles N. Nauen