

STATE OF MINNESOTA
IN SUPREME COURT

FILED

September 8, 2016

OFFICE OF
APPELLATE COURTS

Ken Martin,

Appellate Case No. _____

Petitioner,

vs.

Steve Simon, Minnesota Secretary of
State,

**PETITION PURSUANT TO MINN.
STAT. § 204B.44 TO CHALLENGE
PLACEMENT OF DONALD J. TRUMP
AND MICHAEL R. PENCE ON THE 2016
GENERAL ELECTION BALLOT**

Respondent.

TO: The Supreme Court of the State of Minnesota:

Pursuant to Minn. Stat. § 204B.44, Petitioner Ken Martin petitions the Supreme Court of the State of Minnesota for an Order directing the Respondent Steve Simon, the Minnesota Secretary of State, to remove the names of Donald J. Trump and Michael R. Pence from the ballot for the November 8, 2016, general election as the Republican Party of Minnesota's candidates for the offices of the President and Vice President of the United States, respectively. Petitioner states and alleges as follows:

I. JURISDICTION

1. This Court has jurisdiction over this matter pursuant to Minn. Stat. § 204B.44, which allows any individual to file a petition directly with this Court asking it to correct any wrongful act, omission, or error of the Secretary of State or any other individual charged with any duty concerning an election.

2. This action is necessary to correct errors made by the Secretary of State by accepting a Certificate of Nomination filed by the Republican Party of Minnesota on or

about August 25, 2016, and thereafter certifying Donald J. Trump (“Trump”) and Michael R. Pence (“Pence”) to appear on the ballot for the November 8, 2016, general election.

II. PARTIES

3. Petitioner Ken Martin (“Martin”) is Chair of the Democratic-Farmer-Labor (“DFL”) Party. In his role as Chair of the DFL Party, Martin oversees all operations of the Party including the endorsement of candidates and campaign activities to support the election of DFL Party candidates to various offices including the offices of President of the United States (“President”) and Vice President of the United States (“Vice President”).

4. Respondent Steve Simon (“Simon”) is the Minnesota Secretary of State (“Secretary of State”). The Secretary of State is responsible for the administration of elections in the State of Minnesota including the November 8, 2016, general election. Specifically, the Secretary of State is charged with accepting presidential candidate filings and reviewing their compliance with applicable legal requirements, and certifying only those candidates to the county auditors of the state as to whom all statutory requirements have been met.

III. BACKGROUND

5. On May 20 and May 21, 2016, the State Republican Party held its 2016 State Convention (“State Convention”) in Duluth, Minnesota. The State Convention was attended by at least three delegates from each of Minnesota’s congressional districts, as well as a number of “at-large” delegates. During the convention, delegates to the State

Convention nominated delegates to attend the 2016 Republican National Convention, as well as ten presidential electors for the November 8, 2016, general election. During the State Convention, however, delegates did *not* nominate ten alternate presidential electors as required by Minn. Stat. § 208.03.

6. On August 3, 2016, the Secretary of State's Office informed the Chair of the State Republican Party, Keith Downey ("Downey"), that the State Republican Party had not submitted names of alternate presidential electors to the Secretary of State's Office.

7. At no time thereafter did the State Republican Party hold a "convention" called and held under the supervision of the State Republican Central Committee during which delegates nominated alternate presidential electors. Instead, the State Republican Party's leadership *ignored* state law. Specifically, on August 24, 2016, the State Republican Party Executive Committee met to select and approve alternate presidential electors *itself*. This process, however, did not occur at a State Convention.

8. On August 25, 2016, Downey submitted a "Certificate of Nomination" to the Secretary of State which purported to certify that, "[p]ursuant to Minn. Stat. Ann. § 208.03[.]" the individuals listed on the certification were "duly nominated and elected as Presidential Electors and Alternate Electors of the Republican Party of Minnesota[.]" A copy of the Certificate of Nomination is attached as Exhibit A. The Secretary of State accepted the certification and agreed to list Trump and Pence on the ballot despite the fact that Downey's certification was untrue; the Republican Party's alternate presidential electors were *not* nominated by the State Republican Party's delegate convention called

and held under the supervision of the State Republican Party Central Committee as required by Minn. Stat. § 208.03.

IV. RESPONDENT'S ERRORS

9. Presidential electors and alternates are chosen at the state general election held in the year preceding the expiration of the President's term in office. Minn. Stat. § 208.02. "When presidential electors and alternates are to be voted for, a vote cast for the party candidates for president and vice president shall be deemed a vote for that party's electors and alternates as filed with the secretary of state." Minn. Stat. § 208.04(1). Prior to the election, the Secretary of State is responsible for certifying to the county auditors of the state only those presidential and vice presidential candidates who have been "duly nominated" under state law. Minn. Stat. § 208.04. In turn, the county auditors are responsible for putting the names of presidential and vice presidential candidates certified by the Secretary of State on the ballot. *Id.*

10. Minnesota election law contains specific, mandatory requirements for major political parties to nominate presidential electors and alternate presidential electors:

Presidential electors *and alternates* for the major political parties of this state *shall* be nominated by *delegate conventions* called and held under the supervision of the respective state central committees of the parties of this state.

Minn. Stat. § 208.03 (emphasis added). This language is clear and unequivocal: Alternates "shall" be nominated—not unilaterally by party leaders—but by "delegate conventions." After the convention, the chair of each major political party must then certify the names of the persons nominated as presidential electors and alternates at the

convention, as well as the names of the party candidates for president and vice president, to the Secretary of State at least 71 days before the general election. *Id.* That means, for the 2016 election cycle, party chairs were required to certify those names with the Secretary of State by August 29, 2016.

11. The State Republican Party held its State Convention on May 20 and May 21, 2016, which was called and held under the supervision of the State Republican Party Central Committee. The State Convention failed, however, to nominate alternate presidential electors in accordance with state law. Nor did the State Republican Party Executive Committee comply with the requirements of Minn. Stat. § 208.03 when *it* selected individuals to serve as the State Republican Party’s alternate presidential electors. Under the plain language of Minn. Stat. § 208.03, the Executive Committee is obviously not a “delegate convention.”

12. Accordingly, Downey’s subsequent “certification” that the process used to select the alternate presidential electors complied with Minn. Stat. § 208.03 is objectively untrue. The State Republican Party has missed the deadline to comply with Minn. Stat. § 208.03, and, thus, it has failed to properly “nominate” its presidential and vice presidential electors within the meaning of Minn. Stat. § 208.03. Because “a vote cast for the party candidates for president and vice president shall be deemed a vote for that party’s electors and alternates as filed with the secretary of state[,]” and the party’s alternate presidential electors were not properly nominated, the Secretary of State had no authority to certify Trump and Pence to the county auditors of the state, thereby causing their names to be placed on the general election ballot in Minnesota.

V. CLAIM FOR RELIEF

WHEREFORE, Petitioner respectfully pray for an Order of the Court as follows:

1. Directing the Secretary of State to decertify Trump and Pence from appearing on the ballot for the November 8, 2016, general election as candidates for President and Vice President, respectively;
2. Directing the Secretary of State to notify the county auditors that Trump and Pence should not appear on the ballot for the November 8, 2016, general election as candidates for President and Vice President, respectively;
3. Granting Petitioner such other relief as the Court deems just and appropriate.

Dated: September 8, 2016

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

s/David J. Zoll

David J. Zoll (#0330681)
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
(612) 339-6900
djzoll@locklaw.com

Marc E. Elias
PERKINS COIE LLP
700 Thirteenth Street NW
Suite 600
Washington, D.C. 2005-3960
(202) 654-6200
MElias@perkinscoie.com
Pro Hac Vice Application Pending

Kevin J. Hamilton
PERKINS COIE LLP
1201 Third Avenue
Suite 4900
Seattle, WA 98101-3099
(206) 359-8000
KHamilton@perkinscoie.com
Pro Hac Vice Application Pending

ATTORNEYS FOR PETITIONER KEN MARTIN

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under
Minn. Stat. § 549.211.

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

s/David J. Zoll

David J. Zoll (#0330681)