

**STATE OF MINNESOTA
IN SUPREME COURT**

James Heaney,
Petitioner,

Appellate Case No. _____

vs.

David Hann, Chairman of the Minnesota
Republican Party,

Steve Simon, Minnesota Secretary of
State,

and Donald J. Trump, putative
presidential candidate,
Respondents.

**PETITION PURSUANT TO MINN.
STAT. § 204B.44 TO CHALLENGE
PLACEMENT OF DONALD J.
TRUMP ON THE REPUBLICAN
2024 PRESIDENTIAL PRIMARY
ELECTION BALLOT**

DRAFT - NOT A REAL CASE!!

TO: The Supreme Court of the State of Minnesota:

Pursuant to Minn. Stat. § 204B.44, Petitioner James Heaney petitions the Supreme Court of the State of Minnesota for an Order declaring Respondent Donald J. Trump ineligible to appear on the Republican ballot for the March 5, 2024 presidential nomination primary election; directing Respondent David Hann, the Chair of the Minnesota Republican Party, to exclude the name of Donald J. Trump from his submission of candidate names for that ballot; and directing Respondent Steve Simon, the Minnesota Secretary of State, to exclude the name of Donald J. Trump from that ballot. Petitioner states and alleges as follows:

I. JURISDICTION

1. This Court has original 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 wrongful acts, omissions, or errors "which have occurred or are about to occur", including "the placement of a candidate on the official ballot who is not eligible to hold the office".

2. This action is necessary to prevent the erroneous placement of Respondent Trump's name on the Republican ballot for the March 5, 2024 presidential nomination primary, which, upon information and belief, is "about to occur."

II. PARTIES

3. Petitioner James Heaney ("Heaney") is an individual residing in Minnesota.

4. Respondent David Hann ("Hann") is Chairman of the Republican Party of Minnesota (MNGOP). In his role as "Chair" of a "participating party" in the upcoming March 5, 2024 presidential nomination primary election, Hann has a duty under Minn. Stat. § 207A.13 to "submit to the secretary of state the names of the candidates to appear on the ballot" for the Republican Party no later than January 2, 2024.

5. Respondent Steve Simon ("Simon") is the Minnesota Secretary of State. The Secretary is responsible for the administration of elections in Minnesota, including presidential primaries. Specifically, the Secretary is charged with accepting names submitted by party chairs (including Hann) and overseeing the printing of ballots bearing those names, providing example ballots to county auditors, and canvassing the results.

6. Respondent Donald J. Trump ("Trump") is a putative candidate for the office of President of the United States.

III. FACTUAL CLAIMS

7. From January 20, 2017 until January 20, 2021, Trump was President of the United States.

xx. On November 3, 2020, each state and the District of Columbia held popular elections to seat a total of 538 presidential electors.

xx. Electors pledged to support Joseph R. Biden ("Biden") won a majority of the seats available on November 3. After those results were certified, the electors held the regular presidential election on December 14, 2020. Biden won this election.

xx. Beginning in the early morning on November 4, 2020 and continuing through the events of January 6, 2021 ("Jan. 6"), Trump publicly and repeatedly claimed that the November 3 election was tainted by fraud so widespread that it affirmatively changed the outcome of the election from a Trump victory to a fraudulent Biden victory (the "Stolen Election Claim").

xx. The Stolen Election Claim is factually false.

xx. Trump knew that the Stolen Election Claim was factually false prior to the events of Jan. 6.

xx. Many Americans, who reasonably trusted that the President of the United States would not directly deceive them, came to believe the Stolen Election Claim during the weeks leading up to Jan. 6.

xx. The United States Congress was scheduled to meet in joint session at 1:00 p.m. (ET) on Jan. 6, in order to canvass and certify the results of the December 14, 2020 presidential election (the "Electoral Vote Certification"), pursuant to the Twelfth Amendment of the United States Constitution and the Electoral Count Act of 1887 (Pub. L. 49-90).

xx. In December 2020, Trump, having failed to vindicate the Stolen Election Claim in any court, turned to an unusual legal theory, pressed by law professor John Eastman, in which Vice-President Mike Pence ("Pence") might use his position as presiding officer of the Electoral Vote Certification to unilaterally disregard or contest some of the electoral votes cast for Biden, thereby changing the outcome of the election in Trump's favor (the "Eastman Theory").

xx. Pence disagreed with the Eastman Theory and believed he had little discretion over which putative electoral votes Congress would canvass and certify.

xx. Prior to Jan. 6, Trump harangued Pence, in public and private, to adopt the Eastman Theory, expecting it would give Trump a second term.

xx. On December 19, 2020, Trump tweeted, "Big protest in D.C. on January 6th. Be there, will be wild!"

xx. Many Trump supporters interpreted above tweet as a calling forth of his supporters for violent action, and began composing detailed plans for concerted, violent resistance to Congress's lawful Electoral Vote Certification on Jan. 6.

xx. Before noon on Jan. 6, Trump and his staff were aware that an armed force (composed partially, but by no means exclusively, of unofficial militias like the Oath

Keepers and Proud Boys), motivated by the Stolen Election Claim, had entered the District of Columbia to support Trump. Trump and his staff had reasonable, actionable indications that the armed force intended to use violence against the U.S. Government at Trump's direction, and that it had activated detailed plans to that end.

xx. Before noon on Jan. 6, multiple people advised Trump to call for this armed force to limit its activity to peaceful, lawful protest.

xx. At 11:57 a.m. (ET) on Jan. 6, Trump began addressing a crowd which he knew included both peaceful protesters and the armed force he had called forth.

xx. During his address, Trump insisted to his forces that, if Pence failed to execute the Eastman Theory, Pence would not be "uphold[ing] our Constitution," that Pence would demonstrate a lack of "courage," that Pence would be guilty of "listen[ing] to RINOs and... stupid people," that Pence would not be "do[ing] the right thing," and that Pence's manifold betrayals would cause Trump to unfairly lose the presidential election. Trump made these claims over the express objections of Trump's senior advisor.

xx. During his address, Trump called on his forces (which he referred to as his "movement") to "confront" this "egregious assault on our democracy" by "demand[ing] that Congress do the right thing and only count the electors who have been lawfully slated" (Trump's implication that some electors were about to be unlawfully counted was, again, false, and he knew that). Trump insisted, "You'll never take back our country with weakness. You have to show strength and you have to be strong." He said, "Republicans are constantly fighting like a boxer with his hands tied behind his back... [W]e're going to have to fight much harder."

xx. During his address, Trump called on his forces to "walk down to the Capitol" to "see whether or not we have great and courageous leaders, or whether or not we have leaders that should be ashamed of themselves throughout history."

xx. Trump's 73-minute address to the crowd ran for over ten thousand words. Just one of those words, at the 16-minute mark, inserted by a speechwriter, mentioned an ideal of acting "peacefully." (Trump used "fight" twenty times, nearly all of them extemporaneous.)

xx. Considering the full address in context, many observers (including many members of the armed force present) believed Trump was directing them to act in concert to prevent, by force, Congress's lawful certification of electoral votes.

xx. Considering the full address in context, this interpretation was reasonable.

xx. Considering the full address in context, there is sufficient evidence that Trump intended his remarks to be interpreted that way.

xx. At 12:53 p.m., while Trump was still speaking, elements of his armed forces in Washington, which believed themselves to be acting at his direction, initiated concerted, violent resistance to the Electoral Vote Certification by overrunning the barricades at the U.S. Capitol, attacking U.S. Capitol Police sent to respond, and entering restricted grounds. This occurred at the Peace Circle, which lies on the shortest-line path from the Ellipse (where Trump was addressing his forces) to the U.S. Capitol.

xx. At 1:02 p.m., Pence publicly declined to adopt the Eastman Theory and (at 1:05 p.m.) formally convened the Electoral Vote Certification.

xx. At approximately 1:07 p.m., Trump, concluding his remarks, told his assembled force, "[W]e fight. We fight like hell. And if you don't fight like hell, you're not going to have a country anymore."

xx. Trump attempted to personally lead his remaining forces to the Capitol. He was prevented from doing so only by his staff's refusal to obey his demands.

xx. During and after Trump's address on Jan. 6, Trump's forces violently approached, forcibly entered, and illegally occupied the United States Capitol building with the purpose of preventing Congress from carrying out the constitutionally mandated Electoral Vote Certification, including by causing bodily harm to law enforcement and other public officials (especially Pence) who opposed them.

xx. Trump's forces failed to achieve their aims, but not for lack of trying.

xx. Trump's forces did bring about an unlawful delay in certification of the electoral votes unprecedented in the history of United States presidential elections; came within forty feet of its principal target, Pence; and caused such fear of bodily harm that some of Pence's security detail, anticipating their deaths, phoned family members to say good-bye.

xx. Trump was made aware of the violence at the Capitol by 1:25 p.m. and remained continuously informed of developments for the next several hours.

xx. Throughout this period, many people close to Trump implored him to direct his forces to disperse. He repeatedly refused.

xx. At 1:49 p.m., the D.C. Metropolitan Police Department declared a riot at the Capitol. Trump was aware of this, but refused to direct his forces to disperse.

xx. At 2:13 p.m., Trump's forces penetrated all exterior defenses and entered the Capitol. Trump was aware of this, but refused to direct his forces to disperse.

xx. At 2:16 p.m., the Vice President was evacuated to a safer location. Trump was aware of this, but refused to direct his forces to disperse.

xx. At 2:24 p.m., Trump tweeted: "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!"

xx. The 2:24 p.m. tweet immediately precipitated further violence, as crowds both inside and outside the Capitol surged. Within ten minutes, the armed force overran the Metropolitan Police C.D.U.'s line of defense. Trump was aware of this, but refused to direct his forces to disperse.

xx. Trump believed, at this time, that Pence and others in the Capitol deserved what was happening to them, and did not believe his forces were doing anything wrong.

xx. Between 2:24 p.m. and 2:38 p.m., Trump's daughter, Ivanka, attempted to persuade Trump to send a tweet to stop the violence, but, according to Deputy Press Secretary Kayleigh McEnany, "did not want to include any sort of mention of peace" in a tweet, leading to a colloquy "going over different phrases to find something he was comfortable with."

xx. Finally, at 2:38 p.m., Ivanka prevailed upon Trump to send a tweet directing rioters to "stay peaceful." Trump did so, but refused to direct his forces to disperse or to allow Congress to resume the Electoral Vote Certification.

xx. At 3:13 p.m., Trump again directed his forces to "remain peaceful. No violence!"

xx. It was widely and reasonably understood at the time, by White House staff, by law enforcement, by Trump's forces, and by Trump himself, that, if Trump gave his forces anything less than a clear directive to disperse, his affirmative inaction would prolong the occupation of the Capitol and the concomitant violence.

xx. Trump's affirmative inaction did indeed prolong the occupation of the Capitol and the concomitant violence.

xx. At last, at 4:17 p.m., *after* National Guard and other additional law enforcement had begun to arrive to combat Trump's forces, Trump broadcast a message (the "Video Message") directing his now-outmatched forces to disperse.

xx. In response, many of Trump's forces, recognizing the Video Message as a directive from their commander, retired from the battlefield and dispersed.

xx. At 6:01 p.m., Trump tweeted a justification for the actions he and his forces had taken throughout the day. It was the Stolen Election Claim, which Trump still knew was false.

xx. Hostilities between federal forces and Trump's forces concluded no sooner than 6:14 p.m., when federal forces successfully re-established a perimeter on the Capitol's west side.

xx. At no time on Jan. 6 did Trump acknowledge or condemn the violence that had already been committed by his forces, though he was aware of it.

xx. Trump has offered no reasonable, mitigating justification for his own behavior described herein.

xx. On April 12, 1861, P.G.T. Beauregard ordered an attack on Fort Sumter. At no time during the ensuing bombardment did Beauregard personally take up arms against American military forces. He fired no weapon, lit no fuse, and harmed no Union soldier. His activity was limited to directing the bombardment and, eventually, ordering its end at the conclusion of the battle.

IV. LEGAL CLAIMS

xx. Amendment XIV, Section Three of the United States Constitution ("Section Three") provides that "No person shall... hold any office, civil or military, under the United States... who, having previously taken an oath... as an officer of the United States... to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability."

xx. Although Section Five allows Congress to pass "appropriate legislation" to *assist in the enforcement* of Section Three, Section Three is self-executing. Just as Congress may not, by action or reservation, use Section Five to exclude "persons born... in the United States" from citizenship (per Section One of the amendment), so, too, Congress may not use Section Five to shield persons who have "engaged in insurrection or rebellion" from the disqualification and rehabilitation prescribed by Section Three.

xx. As President, Trump was an "officer of the United States," within the meaning of Section Three.

xx. As President, Trump took an oath "to support the Constitution of the United States."

xx. The meaning of "insurrection" within Section Three is concerted, forcible resistance to the authority of the United States government to execute the laws in at least some significant respect.

xx. Insurrection exists, for constitutional purposes, even if it has not yet been recognized by executives seeking to exercise their powers under the Insurrection Act by issuing a proclamation to that effect. (An insurrection directed *by the executive* would never lead to an executive proclamation, yet would still plainly be an insurrection for Section Three purposes.)

xx. Insurrection exists, for constitutional purposes, even if the insurrection has not yet reached such a size and extent that it cannot "be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals" (c.f. the Militia Acts of 1792 and 1795). The *intention* to create a concerted, violent, ongoing resistance that cannot be suppressed by these ordinary powers, combined with actions (and/or affirmative inaction) to advance these ends, is sufficient. Bank robbers and murderers do not intend to establish concerted, ongoing resistance to laws against bank robbery and murder. (They just want to get away with *their own* crimes.) Only insurrectionists have this public-minded purpose.

xx. Those who engage in insurrection are, from the moment hostilities commence until they conclude, "enemies" of the United States for the purposes of Section Three.

xx. Speech that is otherwise protected by the First Amendment, to the extent that said speech constitutes an act of insurrection, or an act of "aid and comfort," is not protected from the disqualifying reach of Section Three, which was ratified subsequent to the First Amendment and thus (to the extent that a true conflict between them exists) supersedes the First Amendment.

xx. Trump knowingly and voluntarily assembled, encouraged, and incited an armed force to attack the national Capitol. They complied. He then fell silent, which (as he anticipated) his forces reasonably construed as a directive to press their attack. They complied. As they were being defeated, Trump ordered them to retreat. They complied. These are the acts, not of a bystander or even a rabble-rouser, but of a commander.

xx. At Fort Sumter, P.G.T. Beauregard directed a "concerted, forcible resistance to the authority of the United States government to execute the laws." Although he did not personally take up arms, and his direction of the attack was technically a speech act, he nevertheless engaged in insurrection, within the meaning of Section Three.

xx. On Jan. 6, Trump directed a "concerted, violent resistance to the authority of the United States government to execute the laws." Although he did not personally take up arms, and his direction of the attack was technically a speech act, Trump

nevertheless willfully engaged in insurrection, within the meaning of Section Three. That Trump's attack was less organized and less successful than Beauregard's changes nothing.

xx. After the attack began at 12:53 p.m., the remaining seventeen minutes of Trump's address took place *during* an insurrection committed by the armed force he had called forth, whether or not Trump was aware of it. Those seventeen minutes of speech were no longer arguments to *incite* insurrection (which might, under different facts, imaginably be cast as mere opinion); they were "aid and comfort" to an armed, violent force that was *engaged* in insurrection, thus "enemies" of the Constitution.

xx. Trump's attempt to take the lead of the forces actively attacking the Capitol was an act of insurrection, although defeated by his staff.

xx. Trump's culpable refusal to take even the minimal actions any reasonable person in his position would have taken to end the insurrection, in light of his constitutional duty to "faithfully execute the laws" (U.S. Cons., Art. II), was itself a meaningful, voluntary act of direct assistance to the insurrection, and constituted engaging in insurrection, or, in the alternative, providing aid and comfort to the insurrectionists.

xx. Trump's further words of encouragement and justification for his forces after 4:00 p.m. constituted aid and comfort to those insurrectionists still engaged in hostilities at that time.

xx. To the extent (if any) that Trump's 2:38 p.m. tweet reluctantly directing his forces to "stay peaceful" represented a renunciation of the insurrection, it did not cure Trump's decision to that point to engage in insurrection and to aid insurrectionists.

xx. On Jan. 6, Section Three disqualified Trump from "any office, civil or military, under the United States," including the office of President of the United States.

xx. To date, Congress has not voted to remove Trump's disability under Section Three.

xx. Congress could not, and has not ever attempted to, *prospectively* remove Trump's disability under Section Three *prior to* his Jan. 6 participation in an insurrection.

xx. Trump is currently ineligible for the office of President of the United States, and therefore ineligible to appear on any presidential ballot in Minnesota.

xx. These claims are neither baseless, nor partisan, nor fringe. A bipartisan majority of the U.S. House voted on January 21, 2021, and a bipartisan majority of the U.S. Senate voted on February 13, 2021 that President Trump had committed "incitement of insurrection" and was disqualified from public office under Section Three. Petitioner has never voted for a Democrat for federal office.

xx. As this court held in *Moe v. Alsop*, 180 N.W.2d 255 (1970), a candidate for office who "would not be constitutionally eligible to hold that office if nominated in the primary election and elected in the general election may be denied placement upon the primary election ballot."

xx. Trump is ineligible for placement on the Republican ballot for the presidential nomination primary on March 5, 2024.

xx. However, sincerely adopting and executing a legal theory in good faith—even a patently silly one like the Eastman Theory—does not constitute insurrection or rebellion.

IV. BURDEN OF PROOF

xx. As this court held in *Moe v. Alsop*, 180 N.W.2d 255 (1970), a clear evidence standard before declaring a candidate ineligible for office is "appropriate in the case of candidacy for legislative office, in view of the safeguard of ultimate determination by the legislature if the court declines to act," but "[O]ther considerations may be present in the situation of candidacy for other offices where the power of corrective action is vested solely in the courts." The presidency is just such an office: the lack of further recourse makes a clear evidence standard too heavy a burden.

xx. The other principal factors which led this court to require a clear evidence standard in *Moe*, namely the absence of clear statutory authorization under then-current law and the court's severely compressed timeline for deliberations, do not apply in this case.

xx. As this court said in *Weiler v. Ritchie*, 788 N.W.2d 879 (2010), "Where the legislature does not provide a standard of proof for 'statutorily-created causes of action,' this silence reflects 'a signal that the legislature intended the preponderance of evidence standard to apply'," holding that the preponderance of evidence standard applied to the §204B.44 claim before it.

xx. The burden of proof to convict Trump for the crime of insurrection under 18 U.S. Code § 2383 would be proof beyond a reasonable doubt, since a criminal conviction incurs grave loss of liberty and demands the most rigorous due process. However, recognizing Trump's ineligibility under Section Three merely denies him the

august privilege of serving the People of the United States, so it carries a lower burden of proof.

xx. The burden of proof Petitioner must carry in this case is the preponderance of the evidence.

V. RESPONDENTS' ERRORS AND OMISSIONS

xx. Respondent Trump erroneously holds himself out as a candidate for President, but is not eligible for that office.

xx. Upon information and belief, Respondent Hann is "about to" submit "names of the candidates to appear on the ballot" for the Republican Party's presidential nomination primary election scheduled for March 5, 2024, pursuant to Minn. Stat. § 207A.13.

xx. Upon information and belief, Hann intends to erroneously submit the name of Trump, who is ineligible.

xx. According to published statements, Respondent Simon intends to erroneously accept the candidacy of Trump, if timely submitted by Hann, and to print Trump's name on the ballot for that primary election.

xx. This action is timely filed today, without *certain* knowledge that Hann will in fact submit Trump's name, because this court has held repeatedly that "potential challengers and candidates who assert that an error or omission exists on a ballot cannot tarry" (*De La Fuente v. Simon*, 940 N.W.2d 477 (2020)) due to the "potential prejudicial

impact on election processes and the electorate's right to vote" (*DFL v. Simon*, 970 N.W.2d 689 (2016)).

xx. However, since Hann has not yet submitted names, Petitioner does not yet have a "known right" to vindicate (*Martin v. Dicklich*, 823 N.W.2d 336 (2012)), and the tolling of laches has not begun.

xx. No sane court wishes to interfere with the People's democratic decision-making process. However, this is a republic, not a democracy. It is the Constitution that has intervened, not this court. It remains to this court only to enforce this unhappy provision against Respondents.

VI. CLAIM FOR RELIEF

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

1. Declaring Respondent Trump ineligible for the office of President of the United States.
2. Directing Respondent Hann to exclude Trump's name from the list of names he submits to Simon for the 2024 Republican presidential nomination primary.
3. Directing Respondent Simon to exclude Trump's name from the Republican presidential nomination primary ballot, even if his name is erroneously submitted.

Dated:

ACKNOWLEDGMENT

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