**UNITED STATES DISTRICT COURT**
**DISTRICT OF MINNESOTA**

Libertarian Party of Minnesota, Chris Holbrook, Mason McElvain, Chris Dock, and Brian McCormick,

Plaintiffs,

vs.

Steve Simon, in his official capacity as the Minnesota Secretary of State, or his successor,

Defendant.

Civil No. 19-CV-2312 (DSD/DTS)

**SECRETARY'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

The lawsuit filed by Plaintiffs Libertarian Party of Minnesota, Chris Holbrook, Mason McElvain, Chris Dock, and Brian McCormick is founded on misinterpretations of Minnesota law. The most important of these misinterpretations is Plaintiffs' allegation that state law requires voters who sign nominating petitions for minor-party candidates to swear that they will not vote in the state primary. The plain text of Minnesota law refutes Plaintiffs' interpretations, and as a result the Court should dismiss the lawsuit.

## FACTS

Every minor-party or independent candidate seeking to appear on ballots in Minnesota's November general election must complete a nominating petition and submit it to election officials. Minn. Stat. §§ 204B.03, .07, .11 (2018). Each page of the nominating petition must state the candidate's name and address, the office he or she seeks, and the name of the candidate's political party or principle. *Id.* § 204B.07, subd. 1. Each page of the petition must also contain the following printed oath:

> I solemnly swear (or affirm) that I know the contents and purpose of this petition, that I do not intend to vote at the primary election for the office for which this nominating petition is made, and that I signed this petition of my own free will.

*Id.*, subd. 4.

Defendant Minnesota Secretary of State Steve Simon provides copies of nominating-petition forms meeting the above requirements to the public on his Office's website at https://www.sos.state.mn.us/election-administration-campaigns/become-a-candidate/candidate-petitions/. (*See* Compl. Ex. B (Secretary's petition form).) These forms contain the oath that is required by state law. *Compare id. with* Minn. Stat. § 204B.07, subd. 4. Any person who has an Internet connection can access the Secretary's website, download a petition form, print it, fill it out, and send it to a candidate or minor political party that is collecting petition signatures. Alternatively, a candidate or party can provide partially completed petition pages, either electronically or by U.S. Mail, for supporters to sign and return.

To be included on the November ballot, a petitioning candidate must collect a certain number of signatures that varies based on the particular office the petitioner seeks. Minn. Stat. § 204B.08, subd. 3. In an election for state legislative office, a petition must have at least 500 signatures; a petition for U.S. Representative must carry

1,000 signatures; and petitions for President, U.S. Senator, or a statewide office must carry 2,000 signatures. *Id.*[1]

To validly sign a nominating petition, an individual need only be eligible to vote for the petitioning candidate. *Id.*, subd. 2. An individual need not have registered to vote to be an eligible voter. *See id.* § 201.014, subds. 1-2 (providing criteria for voter eligibility in Minnesota). As a result, whether an individual is currently registered to vote is irrelevant to whether his or her signature on a nominating petition is valid.

Finally, Minnesota law contains processes under which individual Minnesota voters' registrations may be challenged. *See, e.g., id.* §§ 201.15, .155, .157(b). When a voter's registration is challenged, an election official changes the status of the voter's record on the statewide registration database from "active" to "challenged." *Id.* §§ 201.15, .155, .157(b). No law, however, provides that any such challenge renders the voter ineligible to vote. Indeed, it does not even invalidate the voter's registration. A challenge to a voter's registration therefore has no effect on the voter's ability to sign a nominating petition.

In August 2019, Plaintiffs filed the instant lawsuit against county attorneys in three Minnesota counties, seeking injunctive relief requiring significant changes to

[1] Section 204B.08 also contemplates calculating each minimum signature requirement based on a particular fraction of the number of individuals who voted in the relevant jurisdiction in the previous state general election, if that fraction is less than the specific number (2,000, 1,000, or 500) that the statute provides. *See* Minn. Stat. § 204B.08, subd. 3. In practice, however, the 2,000-, 1,000-, and 500-signature requirements are always lower than the fractional alternatives. Thus, it is the numbers, and not the fractions, that are relevant to the current litigation. (*See* Compl. ¶¶ 87-91 (listing numerical but not fractional minimum signature requirements in section 204B.08).)

Minnesota election law. (Compl. pp. 84-85.) In December, Plaintiffs amended the complaint to remove all of these defendants and substitute the Secretary. The Secretary now moves to dismiss.

## ARGUMENT

Plaintiffs' lawsuit is based on inaccurate premises about Minnesota law that are disproved by the plain text of the relevant statutes. Most notably, Plaintiffs repeatedly allege that individuals signing nominating petitions for minor-party candidates are required to "swear, under penalty of felony persecution, that they will not vote in the upcoming primary election." (Compl. p. 3.) This allegation is false: the statutory oath provided by Minn. Stat. § 204B.07 and printed on the petition forms on the Secretary's website contains no such pledge. In simple terms, an individual swearing or affirming that he or she does not "*intend* to" vote in the primary election for a particular office is not thereby swearing or affirming that she *will* not vote in that election. Further, though both nominating petitions and primary elections have the effect of placing names on the November general election ballot, they are not equivalent procedures, and no law requires state governments to treat petition signatures as precise analogs to primary-election votes. Finally, Minnesota law governing the timing for gathering nominating-petition signatures is clearly constitutional under the standards provided by federal precedent. For these reasons, Plaintiffs' complaint should be dismissed.

### I. LEGAL STANDARDS.

In reviewing a motion to dismiss for failure to state a claim upon which relief can be granted, the Court accepts as true all factual allegations in the complaint. *Schaller Tel.*

*Co. v. Golden Sky Sys., Inc.*, 298 F.3d 736, 740 (8th Cir. 2002). It need not, however, accept as true conclusory allegations or legal conclusions drawn by the pleader. *Hanten v. Sch. Dist. of Riverview Gardens*, 183 F.3d 799, 805 (8th Cir. 1999); *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990). The court must grant a motion to dismiss when the complaint does not allege enough facts to state a claim to relief that is plausible on its face rather than merely conceivable. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). In addition, Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law. *Nietzke v. Williams*, 409 U.S. 319, 326 (1989). Whether a complaint states a claim is a question of law. *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986).

Plaintiffs' lawsuit alleges that various requirements of Minnesota election law are unconstitutional. The U.S. Constitution guarantees to states the power to regulate their own elections. U.S. Const. Art. I, § 4; *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). State election regulations inevitably impose some burdens on individuals' rights to vote and to associate with others for political purposes. *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). States are permitted to impose reasonable procedural limitations on who can appear on a state election ballot. *Lubin v. Panish*, 415 U.S. 709, 718-19 (1974). The Supreme Court has held that, as a practical matter, substantial regulation of elections is necessary "if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Anderson*, 460 U.S. at 788. A state's "important regulatory interests" are "generally sufficient to justify reasonable, nondiscriminatory restrictions." *Id.* Finally, state governments "have important interests

in protecting the integrity of their political processes from frivolous or fraudulent candidacies, in ensuring that their election processes are efficient, in avoiding voter confusion caused by an overcrowded ballot, and in avoiding the expense and burden of run-off elections." *Clements v. Fashing*, 457 U.S. 957, 964-65 (U.S. 1982). In pursuit of these interests, a state may constitutionally impose restrictions such as requiring a candidate to make a showing of substantial support before being allowed on the ballot. *Anderson*, 460 U.S. at 788 n.9.

Plaintiffs' complaint focuses on Minnesota's requirements for nominating petitions. The *Lubin* Court held that nominating-petition requirements substantially identical to Minnesota's are constitutional:

> [W]e note that there are obvious and well-known means of testing the 'seriousness' of a candidacy which do not measure the probability of attracting significant voter support solely by the neutral fact of payment of a filing fee. States may, for example, impose on minor political parties the precondition of demonstrating the existence of some reasonable quantum of voter support by requiring such parties to file petitions for a place on the ballot signed by a percentage of those who voted in a prior election.

*Lubin*, 415 U.S. at 718-19; *see also Clements*, 457 U.S. at 964-65 (collecting cases "involv[ing] requirements that an independent candidate or minor party demonstrate a certain level of support among the electorate before the minor party or candidate may obtain a place on the ballot").

When reviewing challenges to ballot-access requirements involving nominating petitions, federal courts apply a "reasonableness" test to determine whether (a) the challenged laws "freeze the status quo by effectively barring all candidates other than those of major parties," or, instead, (b) a "reasonably diligent" minor-party candidate can

be expected to satisfy the requirements. *McLain v. Meier*, 851 F.2d 1045, 1050 (8th Cir. 1988). Under this test, "for a ballot access restriction to be found unconstitutional, a challenger first must establish that the law imposes a substantial burden" on minor-party candidates. *Libertarian Party of N.D. v. Jaeger*, 659 F.3d 687, 694 (8th Cir. 2011). A restriction that imposes a substantial burden is nonetheless constitutional if it is narrowly drawn to serve a compelling state interest. *Id.* at 693.

For the reasons explained below, as a matter of law, none of the requirements at issue in this litigation impose a substantial burden on minor-party candidates. As a result, Plaintiffs' complaint should be dismissed.

## II. THE OATH REQUIRED BY MINN. STAT. § 204B.07 IS CONSTITUTIONAL.

The central contention in Plaintiffs' lawsuit is that Minnesota law requires individuals signing nominating petitions to "swear, under penalty of felony perjury prosecution, that they will not vote in [an] upcoming primary election." (Compl. ¶ 80.) This allegation, which Plaintiffs state more than thirty times in their pleading, is both conclusory and false. (*See, e.g.*, *id.* pp. 2, 3, 5, ¶¶ 77, 80, 82, 93, 111, 133, 134, 138, 170, 181, 193, 196, 214, 216, 219, 239, 242, 264, 284, 287-88, 292, 306, 310-12, 332, 334, 358.) At least seven of the eight Counts in the complaint are founded to some degree on Plaintiffs' misinterpretation of the statutory oath, but four of them—Counts I, III, IV, and V—are entirely founded on the notion that the oath, as Plaintiffs misinterpret it, violates Plaintiffs' constitutional rights. (*Id.* ¶¶ 198-228, 258-324.) The Court should reject Plaintiffs' allegation about the oath requirement and dismiss all of Plaintiffs' claims that are founded on it. *See Carlson v. Ritchie*, 960 F. Supp. 2d 943, 953 (D. Minn. 2013)

(dismissing constitutional claim on grounds that plaintiff's "assumptions . . . are both speculative and conclusory" and thus failed to meet *Twombly* standard).

### A. The Plain Terms of the Petition Oath Pertain to the Signer's Present Intent to Vote, Not to His or Her Subsequent Actions.

As noted above, every page of a nominating petition submitted for the purpose of placing a candidate on Minnesota's general election ballot must carry a specific printed oath. Minn. Stat. § 204B.07, subd. 4. In the oath, each individual signing the petition swears or affirms, among other things, that he or she "do[es] not intend to vote at the primary election for the office for which this nominating petition is made." *Id.* The petition forms on the Secretary's website contain the wording required by the statute. (Compl. Ex. B.)

The plain terms of the challenged portion of the oath only pertain to the signer's *intent*: the signer is stating nothing more than that, at the time he or she signs the petition, he or she does not *intend* to vote in the future primary election for a specific office. *See* Minn. Stat. § 204B.07, subd. 4. A person who swears only that he or she does not currently intend to do a thing is not swearing that he or she will not later do that thing. *Cf. id.* § 645.08(1) (stating words and phrases in Minnesota statutes are to be "construed according to rules of grammar and according to their common and approved usage").

For the same reasons, Plaintiffs' assertions that Minnesota law bars petition signers from "chang[ing] their mind" about voting in a primary (*see, e.g.*, Compl. ¶¶ 95, 133, 135, 144) or threatens signers with criminal prosecution if they do vote in a primary (*see, e.g.*, *id*. ¶¶ 154, 174, 195, 214) have no legal basis. First, a person who swears, in

May, that she does not then intend to vote in an August primary for a particular office has not committed perjury if she subsequently changes her mind and decides to cast a vote in August after all. And second, such a person would not be subject to criminal prosecution unless there were actual evidence that she misrepresented her present intent in May.

Finally, Plaintiffs note that the state's presidential nomination primary occurs in March, before the May-to-June period during which minor-party candidates are permitted to collect petition signatures. (*Id.* ¶ 96.) Plaintiffs admit, however, that the plain language of the oath provided by section 204B.07 does not apply to an election that was conducted months earlier. (*Id.* ¶¶ 146, 359.) This admission is both correct and dispositive: as Plaintiffs concede, the plain language of the oath in section 204B.07 ("I do not intend to vote") can only apply to a future primary. As a result, the oath requirement, on its face, does nothing to prevent anyone who voted in a March presidential nomination primary from signing a nominating petition in May.

Because Minnesota law never requires an individual to swear or affirm that he or she will not vote in a primary election, Plaintiffs' attempt to challenge such a requirement fails as a matter of law and must be dismissed.

**B. The Oath Requirement is Constitutional**.

Even if Plaintiffs were challenging the actual nominating-petition oath, the Court should dismiss the claim because the oath is constitutional.

Longstanding federal case law holds that states may constitutionally enact policies for the purpose of preventing "party raiding," which is "the organized switching of blocks of voters from one party to another in order to manipulate the outcome of the other

party's primary election." *Anderson*, 460 U.S. at 789 n.9. One purpose of the intent portion of the petition oath in section 204B.07 is to discourage a particular form of party raiding—that is, a scheme in which supporters of a particular major-party candidate conspire to place a minor-party candidate on the general election ballot with the intent of drawing votes away from an opponent of the candidate that they actually support. Minnesota's petition oath discourages such a scheme by making it unlawful for persons who intend to vote for a particular candidate in the primary to carry it out.

Moreover, the intent portion of the petition oath upholds the constitutional "one person, one vote" principle, *see Reynolds v. Sims*, 377 U.S. 533, 562-63 (1964), by barring individual voters from intentionally endeavoring to multiply their influence over the names to be placed on Minnesota's November general-election ballot. While the intent element of the oath permits an eligible voter to support a minor-party or independent candidate for an office in May but then honestly change his or her mind and support a major-party candidate in the August primary election, any *intentional* attempt to double an individual voter's electoral influence in this manner is properly illegal. *See also* Minn. Stat. § 204B.08, subd. 2 (barring individual from signing more than one nominating petition for candidates for same single office).

Finally, as noted above, it is settled law that states are constitutionally permitted to require minor political parties to "demonstrat[e] the existence of some reasonable quantum of voter support by requiring such parties to file petitions" signed by a number of the state's voters. *Lubin*, 415 U.S. at 718-19. It is inherent in any such demonstration-by-petition that the individuals signing a candidate's petition are their actual supporters.

A Minnesota voter who signs a Libertarian Party candidate's nominating petition while actually intending to vote for a different candidate at the next election is not, in the sense the *Lubin* Court contemplates, a "supporter" of the Libertarian Party candidate. In other words, if Plaintiffs cannot find a sufficient number of eligible Minnesotans who honestly intend to vote for them, in light of the basic purpose of nominating petitions it is within Minnesota's constitutional authority to deny them a place on the general election ballot. *See id.*; *see also Clements*, 457 U.S. at 964-65.

In sum, the intent portion of the oath set forth in Minn. Stat. § 204B.07 does nothing more than ensure that individuals signing nominating petitions are actual supporters of the petitioning candidate. In light of the fundamental and legitimate purpose of nominating petitions (that is, to require minor-party candidates to "demonstrate the existence of some reasonable quantum of voter support," *Lubin*, 415 U.S. at 718-19), this portion of the oath does not impose a substantial burden on Plaintiffs or their supporters. As a result, their claim fails.

For the above reasons, the four claims in Plaintiffs' complaint that consist solely of challenges to the petition oath provided by Minn. Stat. § 204B.07 fail as a matter of law and should be dismissed. Specifically, Count I of the complaint alleges that the temporal restrictions that Minnesota law places on petition-signature gathering violate Plaintiff's equal protection and due process rights because the oath provided by section 204B.07 requires petition signers to decide whether to vote in the August primary 65 days before it is held. (Am. Comp. ¶¶ 198-228.) But, as explained above, the oath

imposes no such requirement, and as a result Count I fails to state a claim for which relief can be granted.

Moreover, Counts III, IV, and V allege that the oath requirement violates petition signers' constitutional rights to free speech, due process, and equal protection, respectively, because the oath allegedly bars them from changing their minds and voting in the state primary. (*Id.* ¶ 258-324.) But, as explained above, the statutory oath contains no such restriction, and as a result Counts III, IV, and V fail to state viable legal claims.

## III. MINNESOTA IS NOT CONSTITUTIONALLY REQUIRED TO TREAT NOMINATING-PETITION SIGNATURES AS EQUIVALENT TO PRIMARY-ELECTION VOTES.

Plaintiffs assert a second group of claims based on their allegations that signing a nominating petition is legally equivalent to casting a vote in a primary election. (*See* Compl. ¶¶ 229-57, 367-414 (describing Counts II, VII, and VIII).) But these allegations are wholly conclusory and based on further misinterpretations of Minnesota law. As a result, they should be dismissed.

### A. Plaintiffs' Contention that Minnesota Law Governing Nominating Petitions Violates Equal Protection has No Basis in Law.

In Counts II, VII, and VIII, Plaintiffs allege that the differential treatment of nominating-petition signatures and primary-election votes violates the equal protection clause of the Fourteenth Amendment. (*Id.* ¶¶ 233-34, 368, 393-94.) In order to state such a claim, a plaintiff must show that he or she was treated differently than others who were similarly situated to him or her. *In re Kemp*, 894 F.3d 900, 909-10 (8th Cir. 2018).

"Dissimilar treatment of dissimilarly situated persons does not violate equal protection." *Klinger v. Dep't of Corr.*, 31 F.3d 727, 731 (8th Cir. 1994).[2]

On the most basic level, Plaintiffs' claims regarding the supposed disparate treatment of nominating petition signers and primary election voters fail because these two groups of persons are not similarly situated. Individuals signing nominating petitions are taking part in a process that exists so that an independent or minor-party candidate may demonstrate a certain minimum level of support among the electorate before being allowed a place on the general-election ballot. *See Clements*, 457 U.S. at 964-65. Primary-election voters, meanwhile, are casting ballots to determine *which* of a list of major-party candidates the electorate prefers to advance to the general election. These two functions are fundamentally different, and as a result no law requires petition signatures to be treated precisely identically to primary election votes.

It appears that the central reason that Plaintiffs believe petition signatures and primary votes are functionally equivalent is their misinterpretation of the petition oath requirement in Minn. Stat. § 204B.07. Plaintiffs assert that because individuals signing nominating petitions cannot vote in a primary election, a petition signature is equivalent to a primary vote. (*See, e.g.*, Compl. ¶ 239.) But, as explained above, Plaintiffs' premise is wrong: neither Minn. Stat. § 204B.07 nor any other Minnesota law bars an individual

[2] Plaintiffs vaguely assert that Counts II, VII, and VIII are also founded in the First Amendment and in the due process clause of the Fourteenth. They provide no non-conclusory explanation, however, of how the supposed differences in treatment discussed here violate these constitutional provisions. In any case, as explained in the text, the supposed violations Plaintiffs allege demonstrate nothing more than Plaintiffs' own misinterpretations of Minnesota law.

from both signing a nominating petition and voting in a primary election for the same office, as long as the individual does not take that series of actions as part of an intentional scheme. As a result, Plaintiffs' argument fails.

For these reasons, Plaintiffs' contention that Minnesota is constitutionally required to protect the identities of nominating-petition signers as if they were casting "secret ballots" (*see* Compl. ¶¶ 236-52 (describing Count II)) has no basis in law. Plaintiffs cite no case law, and the Secretary is aware of none, under which any state or local government has ever been required to keep confidential the names of individuals signing nominating petitions for ballot access. *Cf. Doe v. Reed*, 561 U.S. 186, 228 (2010) (Scalia, J., concurring) ("Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed."). Along similar lines, Plaintiffs' suggestion that it is unconstitutional for Minnesota to require individuals to sign nominating petitions before they have "complete information" regarding other candidates who may run for the same office (*see* Compl. ¶ 243-44) has no basis in law. Plaintiffs cite no precedent, and the Secretary is aware of none, holding that the statutory deadline for minor-party nominating petitions cannot be set weeks or months earlier than a primary election. For these reasons, Count II should be dismissed.

### B. Plaintiffs' Claims Regarding Absentee Processes and Registration Challenges Are Both Unfounded in Federal Case Law and Contradicted by Minnesota Statute.

Plaintiffs attempt to state two further claims regarding alleged disparate treatment of petition signers. First, they contend that the lack of "an absentee ballot type process, or something similar," for petition signers violates their constitutional rights. (*Id.* ¶¶ 107,

367-90 (describing Count VII).) Second, they assert that petition signers can have their signatures rejected based on registration challenges and have no recourse to dispute such disqualifications. (*Id.* ¶¶ 391-414 (describing Count VIII).) These claims suffer from the same defects as Claim II, discussed above: primary voters and nominating-petition signers are not similarly situated, and Plaintiffs cite no law (and the Secretary is unaware of any) requiring states to treat nominating petitions in the way Plaintiffs demand.

But further, Counts VII and VIII suffer from an additional fatal defect: both are based on foundational misinterpretations of Minnesota law. Specifically, individuals signing nomination petitions *can* use "an absentee ballot type process, or something similar," and challenges to the registrations of individuals who have signed nominating petitions have no impact whatsoever on the petition process.

**1. State law permits Minnesotans to provide signatures on nominating petitions on an absentee basis.**

Eligible Minnesota voters are permitted to vote by applying for, filling out, and submitting absentee ballots from anywhere in the world. *See* Minn. Stat. § 203B.04-.08, .16-.227. Plaintiffs declare, without supplying supporting facts or reasoning, that no such process is available to individuals signing minor-party nominating petitions. (*See, e.g.*, Compl. ¶ 107.) Contrary to these conclusory declarations, it is even easier for eligible Minnesotans to submit signatures on nominating petitions in an "absentee ballot type" manner than it is for the same individuals to cast actual absentee ballots in an election.

As Plaintiffs recognize, the Secretary provides the public with sample forms for nominating petitions on his website. (*See* Compl. Exs. B, C.) Nothing prevents an eligible

Minnesotan from downloading the sample form from the Secretary's site, filling it out with a minor-party candidate's name and other required information, signing the form, and sending it to the party or candidate, who can then submit it to election officials. *See* Minn. Stat. § 204B.07, subd. 1 (stating requirements for petition pages). Alternatively, minor-party candidates can make an absentee petition signer's task even easier by providing partially completed petition pages, either electronically or by U.S. Mail, for their absentee supporters to sign and return.

Either one of these solutions indisputably constitutes "an absentee ballot type process, or something similar." Indeed, the processes described above place substantially *less* of a burden on absentee petition signers than absentee voters face, because persons who vote absentee are generally required to apply for an absentee ballot, have their completed ballot witnessed by a fellow Minnesota voter, and use various ballot envelopes properly. *See id.* §§ 203B.04, subds. 1-6, .08, subd. 1. As a result, even if Minnesota did have a constitutional obligation to permit nominating-petition signers to make use of an absentee process, such a process is easily available to petitioning candidates and petition signers alike. As a result, Count VII of Plaintiffs' complaint fails.

**2. Minnesota law does not permit petition signatures to be rejected on the grounds of registration challenges.**

Minnesota law contains processes under which individual Minnesota voters' registrations may be challenged. *See, e.g., id.* §§ 201.12, subd. 4, .145, subds. 2(d), 3(d). Plaintiffs claim that nominating-petition signatures can be rejected on the basis of such challenges, and in Count VIII of the complaint they allege that it is unconstitutional for

Minnesota to impose such a sanction without permitting the petition signer to contest the challenge. (Compl. ¶¶ 391-414.)

Count VIII fails because the circumstances Plaintiffs describe do not and cannot happen in Minnesota. Contrary to Plaintiffs' conclusory allegations, no provision of Minnesota law permits an election official to reject a signature from a nominating petition on the grounds that the signing individual's registration has been challenged. Indeed, state law does not even require a petition signer to be registered to vote at all; instead, he or she need only be *eligible* to vote. Minn. Stat. § 204B.08, subd. 2. Neither registration nor a challenge to registration has any effect on a petition signer's eligibility. *See id.* § 201.014, subds. 1-2 (stating criteria for voter eligibility).

Moreover, Plaintiffs lack standing to state the claim in Count VIII, because they allege no facts suggesting that there is any actual risk that a petition signer will have his or her signature invalidated on the basis of a registration challenge. A party invoking federal jurisdiction has the burden of establishing that he or she has the right to assert his or her claim in federal court. *281 Care Comm. v. Arneson*, 638 F.3d 621, 627 (8th Cir. 2011). This requires the party to establish, among other things, that the party suffered or will suffer an injury in fact that is actual or imminent, not conjectural or hypothetical. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-61 (1992).

Even if, contrary to fact, it were possible for a nominating petition signature to be invalidated because of a registration challenge, the complaint does not allege that any Plaintiff—or, indeed, anyone at all—has been subjected to such an invalidation. Moreover, Plaintiffs do not assert a factual basis to expect that election officials will

invalidate a signature on the basis of a registration challenge in the future. Because the complaint alleges no facts to lift the alleged injury above the "conjectural or hypothetical" level, Count VIII must be dismissed.

For the above reasons, Plaintiffs cannot establish that the statutory provisions they challenge in Counts II, VII, and VIII impose a substantial burden on Plaintiffs or their supporters. These claims should therefore be dismissed. *See Libertarian Party of N.D.*, 659 F.3d at 694.

## IV. MINNESOTA'S TEMPORAL REQUIREMENTS FOR NOMINATING PETITIONS ARE CONSTITUTIONAL UNDER GOVERNING CASE LAW.

Plaintiffs' remaining claim asserts that Minnesota law governing the time period during which minor-party candidates are permitted to collect signatures on nominating petitions is unconstitutional. (*See* Compl. ¶¶ 325-66 (describing Count VI).) This claim fails because the restriction in question, like all of the provisions examined above, does not impose a substantial burden on the constitutional rights of Plaintiffs or their supporters. Moreover, even if the temporal restriction did present a substantial burden, that burden is well justified by the state's compelling interests in regulating elections.

In order to appear on the general-election ballot, minor-party and independent candidates are required to collect signatures on nominating petitions during the fourteen-day period during which petitions may be filed. Minn. Stat. § 204B.08, subd. 1. That period begins 84 days before the August state primary and ends 70 days before the primary. *Id.* § 204B.09, subd. 1; *see also id.* § 204D.03, subd. 1 (setting date for state

primary as second Tuesday in August of each even-numbered year). In 2020, the period for signature collection will run from May 19 to June 2.

During those fourteen days, petitioning candidates who are seeking state legislative office must collect petition pages totaling 500 signatures of eligible Minnesota voters. *Id.* § 204B.08, subd. 3(c). Candidates seeking U.S. House seats must collect 1,000 signatures, and candidates seeking offices voted on statewide (including U.S. Senator and President) must collect 2,000. *Id.* subd. 3(a)-(b). Crucially, these numbers constitute an extremely small fraction of the number of potential petition signers—that is, the number of eligible voters—within the relevant jurisdictions:

| **Office jurisdiction** | **2018 voting-eligible population (approx.)**[3] | **Signature requirement (Minn. Stat. § 204B.08, subd. 3)** | **Percent** |
|---|---|---|---|
| State House district | 30,378 | 500 | 1.646% |
| State Senate district | 60,755 | 500 | 0.823% |
| Congressional district | 508,826 | 1,000 | 0.196% |
| Statewide | 4,070,605 | 2,000 | 0.049% |

Constitutional challenges to specific petition-signature requirements are not subject to a simple "'litmus-paper test' that will separate valid from invalid restrictions."

[3] The voting-eligible population (VEP) estimates in this table were computed by taking the United States Elections Project's estimate of Minnesota's 2018 statewide VEP (4,070,605) and dividing it by the number of districts in the state—134 Minnesota House districts, 67 Minnesota Senate districts, and 8 Congressional districts. *See* U.S. Elections Project statistics, available online at http://www.electproject.org/2018g.

*Anderson*, 460 U.S. at 789. Instead, a court must consider the character and magnitude of the alleged injury to the plaintiff's constitutional rights and the interests put forward by the state as justifications for any burden imposed on those rights. *Id.* If the plaintiff cannot establish that the burden is substantial, the inquiry ends and the restrictions are upheld. *Libertarian Party of N.D.*, 659 F.3d at 694. If the plaintiff demonstrates that the restrictions impose a substantial burden on his or her rights, the restrictions should be upheld if they are narrowly drawn to serve a compelling state interest. *Id.* at 693.

Under this standard, federal courts have upheld as constitutional state petition-signature requirements that require signed petitions to be submitted to election officials weeks or months earlier than the early-June deadline in Minnesota law. *See, e.g.*, *Moore v. Thurston*, 928 F.3d 753, 757 (8th Cir. 2019) (holding that statutory amendment moving petition deadline from March 1 to May 1 "addresses the current . . . statute's infirmity"); *McLain*, 851 F.2d at 1050-51 (upholding statute requiring petition carrying 7,000 signatures to be submitted 55 days before June primary). Courts have also upheld state laws requiring candidate petitions to carry signatures from far greater fractions of the population than the 0.05% to 1.65% of eligible voters that Minn. Stat. § 204B.08 requires. *See, e.g.*, *Jenness v. Fortson*, 403 U.S. 431, 432 (1971) (upholding 5% signature requirement because it "in no way freezes the status quo"); *Langguth v. McCuen*, No. 93-3413, 1994 WL 411736, at *2 (8th Cir. Aug. 9, 1994) (upholding signature requirement of lesser of 3% of registered voters or 10,000 signatures as "not . . . overly burdensome"). Indeed, the Secretary has been unable to find a single case in which a petition requirement with a June or later deadline, or a requirement that a petition carry signatures

from as small a fraction as 1.65% of the relevant population, has ever been held unconstitutional.

The precedent that most closely mirrors the instant case is *American Party of Texas v. White*, a U.S. Supreme Court decision examining a Texas statute that required minor parties seeking ballot access to submit petition signatures from approximately 22,000 voters within 55 days after the statewide primary election in May. 415 U.S. 767, 777-78 (1974). The Court rejected the plaintiffs' contention that 55 days was "an unduly short time for circulating supplemental petitions":

> Given that time span, signatures would have to be obtained only at the rate of 400 per day to secure the entire 22,000, or four signatures per day for each 100 canvassers . . . . A petition procedure may not always be a completely precise or satisfactory barometer of actual community support for a political party, but the Constitution has never required the States to do the impossible. Hard work and sacrifice by dedicated volunteers are the lifeblood of any political organization. Constitutional adjudication and common sense are not at war with each other, and we are thus unimpressed with arguments that burdens like those imposed by Texas are too onerous, especially where two of the original party plaintiffs themselves satisfied these requirements.

*Id.* at 786-87 (citation omitted); *see also* Compl. ¶¶ 35, 46 (stating that Plaintiffs Dock and McCormick have successfully gained ballot access to run for lieutenant governor, state auditor, and Minnesota House of Representatives as Libertarian Party candidates). The Court upheld the challenged Texas statute on the grounds that it furthered the compelling state interests of preserving the integrity of the electoral process and regulating the number of candidates on the ballot in order to avoid undue voter confusion. *Id*. at 782-83 & n.14.

In light of the comparatively tiny number of signatures that Minnesota law requires minor-party candidates to collect on nominating petitions and the late-in-the-year deadline that state law provides for candidates to do so, the requirement that candidates collect these signatures within a 14-day period does not constitute a substantial burden on Plaintiffs' rights. This is especially clear under the *American Party of Texas* Court's mathematical analysis. The Court in that case upheld a state statute that required a minor party to collect signatures at a rate of 400 per day, "or four signatures per day for each 100 canvassers." *Id.* at 786. The challenged requirements in Minn. Stat. § 204B.08, subd. 3, are far less onerous than even those:

| **Race** | **Signature requirement** | **Required rate** | **Required rate per 100 canvassers** |
|---|---|---|---|
| State legislature | 500 in 14 days | 35.7 signatures per day | 0.36 signatures per day |
| U.S. House | 1,000 in 14 days | 71.4 signatures per day | 0.71 signatures per day |
| Office elected statewide | 2,000 in 14 days | 142.8 signatures per day | 1.43 signatures per day |

Finally, even if this Court holds that the signature requirements in the challenged Minnesota statute impose a substantial burden on Plaintiffs' constitutional rights, it should follow *American Party of Texas* and uphold the statute on the grounds that the burdens are justified by the state's compelling interests. Minnesota's interests in applying the petition requirements in Minn. Stat. § 204B.08 are the same as Texas's interests in applying the 22,000-signature requirement in that case. Specifically, Minnesota's petition requirements exist to preserve the integrity of the electoral process and regulate the

number of candidates on the ballot to avoid voter confusion. *Cf. American Party of Texas,* 415 U.S. at 782-83 & n.14. These are indisputably compelling state interests. *Id.*

As the Supreme Court held in *Jenness v. Fortson*, states have an important interest in mandating a "preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot." 403 U.S. at 442; *see also Lubin*, 415 U.S. at 718-19. Requiring Minnesota to make its petition requirements even easier to satisfy by giving petitioning parties and candidates more than 14 days to collect the small numbers of signatures specified by law would erode the state's ability to protect this interest; a political organization that cannot gather a mere 143 petition signatures in a day (or far fewer, in a state-legislative race) cannot reasonably claim to have a significant modicum of support within the voting public.

For these reasons, the petition requirements that Plaintiffs challenge are constitutional, and Count VI of their complaint should be dismissed.

## V. THE MONETARY RELIEF PLAINTIFFS SEEK IS BARRED BY THE ELEVENTH AMENDMENT.

Finally, Plaintiffs demand monetary relief from the Secretary. (Compl. p. 85 ¶ 6.) This demand is barred by the Eleventh Amendment. States are generally immune from suits brought by their own citizens. *Hans v. Louisiana*, 134 U.S. 1, 21 (1890). One exception to this immunity permits federal courts to order injunctive relief against a state official who threatens to enforce an unconstitutional policy against the plaintiff. *Ex parte Young*, 209 U.S. 123, 155-56 (1908). But monetary damages are subject to no such exception; they are barred by the Eleventh Amendment. *Edelman v. Jordan*, 415 U.S.

651, 666-67 (1974); *Hankins v. Finnel*, 964 F.2d 853, 859 (8th Cir. 1992). Plaintiffs' request for monetary relief must therefore be rejected.

## CONCLUSION

For the foregoing reasons, all of Plaintiffs' claims fail. Counts I, III, IV, and V of the complaint are entirely founded on Plaintiffs' misinterpretation of the petition oath provided by Minn. Stat. § 204B.07, subd. 4, and cannot survive the application of the plain language of the oath. Counts II, VII, and VIII rely to a substantial degree on the same misinterpretation, as well as on the false conclusion that Plaintiffs draw from it that Minnesota is constitutionally required to treat nominating-petition signatures in exactly the same way it treats votes in primary elections. Counts VII and VIII rely on further conclusory and incorrect assertions about Minnesota law—regarding (a) the availability of an absentee-style process for signing nominating petitions and (b) the relevance of registration challenges to nominating-petition signatures, respectively. Finally, Count VI fails because the temporal restrictions Minnesota law places on nominating petition signatures are constitutional under prevailing federal case law. The Secretary therefore respectfully requests that the Court grant his motion and dismiss Plaintiffs' complaint pursuant to Fed. R. Civ. P. 12(b)(6).

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