

No. _____

In the
Supreme Court of the United States

Independence-Alliance Party of Minnesota
and Hugh McTavish,
Petitioners,

v.

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

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The oath of Minnesota Statutes § 204B.07, subd. 4 is unnecessarily confusing because it requires an intent not to vote in the primary, and because it does not contain the words “at the present time;” some people will not sign because they think, if they sign, they can’t vote in the primary, “I solemnly swear (or affirm) ... that I do not intend to vote at the primary election for the office for which this nominating petition is made...” *Id.* The question presented is:

Whether an unnecessarily confusing oath requirement in a minor political party candidate’s nominating petition to gain access to the ballot is subject to strict scrutiny analysis under the First Amendment despite the *Anderson-Burdick* framework because the State’s interest is only in the requisite number of petition signatories and because the unnecessarily confusing oath has limited political participation.

PARTIES TO THE PROCEEDINGS

The Petitioner is the Independence-Alliance Party of Minnesota, the plaintiff-appellant below. Hugh McTavish, also a plaintiff-appellant below, is not participating in this petition.

The Respondent Steve Simon, the Minnesota Secretary of State, is defendant-appellee below.

CORPORATE DISCLOSURE STATEMENT

The Independence-Alliance Party of Minnesota is a minor political party in Minnesota. It has no stock. There is no parent public or private corporation that

has any interest in the Independence-Alliance Party of Minnesota.

LIST OF RELATED CASES

The citation of the district court case
Indep-All. Party of Minnesota v. Simon,
603 F. Supp. 3d 684 (D. Minn. 2022) A-12

The citation of the appellate court is
Indep-All. Party of Minnesota v. Simon,
87 F.4th 872 (8th Cir. 2023) A-11

TABLE OF CONTENTS

QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDINGS.....	i
CORPORATE DISCLOSURE STATEMENT	i
LIST OF RELATED CASES	ii
TABLE OF AUTHORITIES	iv
PETITION FOR A WRIT OF CERTORARI.....	1
OPINIONS BELOW.....	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED.....	1
STATEMENT OF THE CASE.....	2

Some people won't sign the minor political party candidate nomination petition because, under

the unnecessarily confusing oath, they think, if they sign, they can't vote in the primary.....2

Lower courts conclude the oath does not violate the right to association under the First Amendment without applying strict scrutiny analysis under *Anderson-Burdick* framework.....4

REASONS FOR GRANTING THE PETITION7

CONCLUSION 11

APPENDIX TABLE OF CONTENTS

Opinion, *Independence-Alliance Party of Minnesota, Hugh McTavish v. Steve Simon*, U.S. Court of Appeals for the Eighth Circuit, Case No. 23-1074, dated December 1, 2023..... A-1

Judgment, *Independence-Alliance Party of Minnesota, Hugh McTavish v. Steve Simon*, U.S. Court of Appeals for the Eighth Circuit, Case No. 23-1074, dated December 1, 2023..... A-11

Opinion and Order, *Independence-Alliance Party of Minnesota, Hugh McTavish v. Steve Simon*, U.S. District Court for the District of Minnesota, Case No. 0:22-cv-01231-ECT/JFD), dated December 19, 2022 A-12

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Anderson v. Celebrezze</i> , 460 U.S. 780 (1983)	5
<i>Burdick v. Takushi</i> , 504 U.S. 428 (1992)	3, 4, 5, 7, 8, 9, 11
<i>Clingman v. Beaver</i> , 544 U.S. 581 (2005)	10
<i>Eu v. San Francisco County Democratic Cent. Comm.</i> , 489 U.S. 214 (1989)	11
<i>Indep-All. Party of Minnesota v. Simon</i> , 87 F.4th 872 (8th Cir. 2023)	i, 1
<i>Indep-AllParty of Minnesota v. Simon</i> , 603 F. Supp. 3d 684 (D. Minn. 2022)	i, 1
<i>Libertarian Party of Minnesota v. Simon</i> , 463 F. Supp. 3d 936 (D. Minn. 2020)	6
<i>Storer v. Brown</i> , 415 U.S. 724 (1974)	8
<i>Thomas v. Andino</i> , 613 F. Supp. 3d 926 (D.S.C. 2020)	3, 6
<i>Timmons v. Twin Cities Area New Party</i> , 520 U.S. 351 (1997)	8, 11
<i>Williams v. Rhodes</i> , 393 U.S. 23 (1968)	10
Statutes	
28 U.S.C. § 1254(1).....	1

Minnesota Statutes § 204B.03	3
Minnesota Statutes § 204B.07	3
Minnesota Statutes § 204B.08	3
Minnesota Statutes § 204B.07, subd. 4	i, 2, 3, 4, 6
Minnesota Statutes § 204B.07, subd. 6	2, 3, 4
Minnesota Statutes § 204B.09, subd. 1	4
Minnesota Statutes § 204B.08, subd. 3(a)	9-10
Minnesota Statutes § 609.48	2, 3, 5
U.S. Const. amend. I	2

PETITION FOR A WRIT OF CERTORARI

Petitioners Independence-Alliance Party respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in *Indep.-All. Party of Minnesota v. Simon*, 87 F.4th 872 (8th Cir. 2023).

OPINIONS BELOW

The United States Court of Appeals for the Eighth Circuit is reported at *Indep.-All. Party of Minnesota v. Simon*, 87 F.4th 872 (8th Cir. 2023), and reproduced at A1–10. The Eighth Circuit affirmed the opinion and order of the district court. The U.S. District Court for the District of Minnesota granting the Respondent’s motion to dismiss is reported at *Indep.-All. Party of Minnesota v. Simon*, 603 F. Supp. 3d 684 (D. Minn. 2022), reproduced at A12–33.

JURISDICTION

The United States Court of Appeals for the Eighth Circuit entered final judgment on December 1, 2023. A11.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The right of individuals to associate for the advancement of political beliefs is protected under the First Amendment:

Congress shall make no law...abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

Minnesota Statutes § 204B.07, subd. 4 requires the following oath prior to signing a minor political party candidate nominating petition:

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.

A person who falsely swears to the oath is guilty of perjury. Perjury is punishable by up to five-years in prison or a \$10,000 fine, or both. *Id.* 204B.07, subd. 6; *see also id.*, § 609.48.

STATEMENT OF THE CASE

Some people won't sign the minor political party candidate nomination petition because, under the unnecessarily confusing oath, they think, if they sign, they can't vote in the primary.

1. The oath of Minnesota Statutes § 204B.07, subd. 4 is unnecessarily confusing because it requires an intent not to vote in the primary, and because it does not contain the words "at the present time," people won't sign because they think, if they sign, they can't vote in the primary:

I solemnly swear (or affirm) ... that I do not intend to vote at the primary election for the office for which this nominating petition is made....

A person who falsely swears to the oath is guilty of perjury. Perjury is punishable by up to five-years in prison or a \$10,000 fine, or both. Minn. Stat. 204B.07, subd. 6; *see also id.*, § 609.48.

The complaint alleged that potential signatories often ask volunteers about the oath; that potential signatories are sometimes reluctant or even unwilling to sign a nominating petition because of the oath requirement; and that there appears to be concern by some potential signatories that signing the oath means giving up the right to vote in the primary election. A-2, 3.

2. In response, the court of appeals held that the oath “is expressly limited to the present intent at the time of signature” and voters are “presumed to know the law.” A–28 citing *Thomas v. Andino*, 613 F. Supp. 3d 926, 957 n.25 (D.S.C. 2020). Hence, voters would understand the meaning of the provision “I do not intend to vote at the primary election for the office for which this nominating petition is made...” only pertains to the time of signing the petition, allowing signator-voters to immediately change their mind and vote in an election primary. A–26, 28.

Lower courts conclude the oath does not violate the right to association under the First Amendment without applying strict scrutiny analysis under *Anderson-Burdick* framework.

3. The Independence-Alliance Party of Minnesota is a minor political party under Minnesota governing statutory laws. Hence, the conditions and processes for nominating candidates is different from that of identified major-political parties in Minnesota. Major-political parties nominate a candidate through primary elections, while a minor-political party candidate must submit a nominating petition with the requisite number of signatures to appear on the general election ballot. *See* Minn. Stat. §§ 204B.03, 204B.07, 204B.08. The Party's candidate has a fourteen-day window to collect those requisite number of signatures on a nominating petition and to submit the petition to the Secretary of State. *Id.* § 204B.09, subd. 1. In order to sign the petition, an eligible voter must also swear to an 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.

Minn. Stat. § 204B.07, subd. 4. A person who falsely swears to the oath is guilty of perjury. Perjury is punishable by up to five-years in prison or a \$10,000 fine, or both. *Id.* 204B.07, subd. 6; *see also id.*, § 609.48.

Because the Independence-Alliance Party is a minor-political party in Minnesota, Party candidates must use the nominating petition process to appear on

the general election ballot for partisan offices, whether for federal or state elected office. Besides the candidate himself or herself, the Party will also use volunteers to solicit petition signatories. The Party's petitioning process has been met with varied results of meeting the requisite number of signatories, dependent on the office sought—sometimes successful, sometimes not. A-2. In seeking to obtain signatures on the petition, the Party alleged that potential signatories often ask about the oath; that potential signatories are reluctant or unwilling to sign the petition because of the oath's requirement; and that potential signatories unwillingness to sign the petition is because it means to them giving up a right to vote in a major-political party's primary election. A-3.

The Party sued the Minnesota Secretary of State under the First Amendment. The Party contended that the petition's oath requirement burdens the right of expressive association of minor-political parties, their members, and their candidates by deterring potential signatories from signing a candidate's nominating petition.

In the underlying complaint, the Party alleged that the oath requirement deterred voters from signing nominating petitions thus making it difficult for candidates to obtain the requisite number of signatures for nomination. A-18. The Party sought injunctive relief to enjoin the Secretary from enforcing the offending statutory provision regarding the oath requirement. *Id.* While citing to the *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992) framework to evaluate the election regulation, the district court declined to apply strict scrutiny to the Party's allegation of the

oath violating the right to associate under the First Amendment. A-24 n.2.

4. The district court opined that the oath triggers a lesser burden because of the State's regulatory interests: "At most, the Complaint's allegations plausibly show that the challenged statute imposes insubstantial burdens that trigger less exacting review." A-24. The court concluded, citing dicta from a previous district court decision in *Libertarian Party of Minnesota v. Simon*, 463 F. Supp. 3d 936, 941 (D. Minn. 2020), *aff'd*, No. 20-2244, 2021 WL 4026159 (8th Cir. Sept. 3, 2021), that because the oath "is expressly limited to the present intent at the time of signature," voters are "presumed to know the law." A-28 citing *Thomas v. Andino*, 613 F. Supp. 3d 926, 957 n.25 (D.S.C. 2020). Hence, voters would understand the meaning of the provision "I do not intend to vote at the primary election for the office for which this nominating petition is made..." only pertains to the time of signing the petition, allowing signator-voters to immediately change their mind and vote in an election primary. A-26, 28.

5. The appellate court, like the district court, did not apply a strict scrutiny analysis instead relying on the *Anderson-Burdick* framework. A-5. The court opined that the oath "requires a would-be signatory to pledge that he does 'not intend to vote at the primary election for which the office for which this nominating petition is made.' Minn. Stat. § 204B.07, subd. 4. The Party offers no meaningful support for the proposition that swearing one's intent at a particular time renders that intent immutable...ambiguous or uncertain meaning...served as a prohibition on changing one's intended course of action in the future." A-6. The court rejected one of the Party's arguments

that the oath is “a legally-required hindrance to achieve the only requirement to appear on the ballot—a certain number of signatures on the petition.” A–7. The Party also argued that it found through would-be signatories, the oath requirement resulted in the loss of signatories because they thought it would mean giving up the right to vote in a primary election while others refused to sign because of fear of criminal prosecution under the perjury provision. *Id.* The appellate court concluded the burden as not severe and affirmed the district court decision. *Id.*; A–10.

REASONS FOR GRANTING THE PETITION

The U.S. Supreme Court has never addressed the application of strict scrutiny, despite the *Anderson-Burdick* framework, to minor political party nominating petition oaths. The legal issue is of nationwide importance. The court of appeals has erred by refusing to apply strict scrutiny. And, it is an important legal issue upon which this Court should opine.

When the State’s only interest in minor-political party access to the general election ballot is the requisite number of signatories on a nominating candidate petition and a petition’s oath is unnecessarily confusing limiting political participation, a strict scrutiny analysis is to be applied despite the *Anderson-Burdick* framework.

If the oath, as here, is unnecessarily confusing requiring the intent not to vote for the same office in a primary election but allowing the signatory to immediately change his or her mind, then the oath is meaningless. The oath serves no other purpose than to deter voters from engaging in the nomination process

of minor-political parties. The oath limits political participation. The oath produces chaos in the democratic election processes to the detriment of the minor-political party candidate and voters.

The question presented is important because the meaningless oath is not a fair and honest election regulation and when election regulations have the effect of creating chaos among voters, affecting the rights of voters and candidates, it is a “severe burden;” and, a strict scrutiny analysis must be applied. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974).

This Court has not opined on the meaning of ‘chaos’ as applied to the State’s implementation of its own election laws, notably as it pertains to minor-political parties. Indeed, as to the meaning of chaos causing confusion among voters, there appears to be “no bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (holding “that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election-and campaign-related disorder.”).

To begin, the court of appeals decision asserts that “citizens are presumed to know the law.” A-7. Setting aside for the moment that the Eighth Circuit only recently determined what it opined as to what the law is—the meaning of “I do not intend to vote at the primary election for the office for which this nominating petition is made,”—the Party identified in its complaint how citizens *did* and *do* interpret the confusing oath. A-3. From the perspective of the

minor-political party candidate, the oath, by the citizens' own decisions not to sign a nominating petition because of the confusing oath, created chaos in the election process in which the candidate only has fourteen days to acquire the requisite number of eligible voter signatures—the *only* requirement necessary to appear on the general election ballot in Minnesota.

The Party did not challenge the requisite signature number because that is a “fair and honest election regulation.” But, the oath is meaningless, and, hence, a particularized regulation which serves to impede and limit voter participation in the election process. The oath is not a “fair and honest election regulation.”

Indeed, the Eighth Circuit questioned whether a voter would understand the meaning of the oath as the court interpreted it, even after presuming the voter is “presumed to know the law.” A–7. As the court opined, “[a]nd *if* [voters] understand the oath, then they understand that, if they change their mind after signing, they will still be entitled to vote in the primary and would not face prosecution.” A–8 (emphasis added). If *voters* fail to understand the meaning of an oath, preventing or impeding them from participating in the election process, is that the type of “chaos” this Court speaks to when it opined that government regulation is to ensure fairness and honesty in the order of democratic processes? *Burdick*, 504 U.S. at 433.

Here, the issue relates to the effect of the confusing oath upon voters purposefully limiting a candidate's access to the ballot, when the only requirement is to achieve the requisite number of

petition signatories. *See e.g.*, Minn. Stat. § 204B.08, subd. 3(a).¹ The importance of the question presented lies within the State’s regulations imposed upon minor-political parties. Instead of avoiding chaos, the State’s meaningless oath *creates chaos among voters* and deters eligible voters unnecessarily from signing minor-political party petitions.

Long ago, this Court recognized that “the State is itself controlled by the political party or parties in power, which presumably have an incentive to shape the rules of the electoral game to their own benefit. *Clingman v. Beaver*, 544 U.S. 581, 603 (2005). While this alone would not render every electoral regulation suspect, it does require the State to impose “only reasonable and genuinely neutral restrictions on associational rights.” *Id.* But, “there is increasing cause for concern that those in power may be using electoral rules to erect barriers to electoral competition.” *Id.*

Thus, when an oath has no meaningful purpose, causes unnecessary confusion among voters and serves as an impediment or barrier to political participation, it is a severe burden on associational rights. *Williams v. Rhodes*, 393 U.S. 23, 30 (1968) (holding that the right to freedom of political association “rank[s] among our most precious freedoms”).

¹ The number of signatures required on a nominating petition shall be as follows:

- (a) for a federal or state office voted on statewide, one percent of the total number of individuals voting in the state at the last preceding state general election, or 2,000, whichever is less....

And as a minor-political party, the Party's ability to affirm its standard bearer is exclusively limited to the nominating petitioning process. Hence, regulatory impediments creating chaos among would-be signatories is a severe burden on the parties, voters and everyone. Freedom of association means not only that an individual voter has the right to associate with the political party of her choice, ... but also that a political party has a right to "identify the people who constitute the association," ... and to select a "standard bearer who best represents the party's ideologies and preferences." *See Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 222 (1989).

Thus, when a state regulation creates chaos among voters, as Minnesota's unnecessarily confusing oath does, that regulation should be subject to a strict scrutiny analysis despite the *Anderson-Burdick* framework.²

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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² If an election regulation imposes a "severe" burden, the State regulation must be narrowly drawn to serve a compelling state interest. *Timmons*, 520 U.S. at 358–60.