No. _____

In the Supreme Court of the United States

Michelle MacDonald,
Petitioner,

vs.

Steve Simon, Minnesota Secretary of State,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF MINNESOTA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The questions presented is:

Is an election law, requiring proof that judicial candidates have state law licenses in order to qualify as "learned in the law", pursuant to the Minnesota Constitution, unconstitutional and, therefore, invalid pursuant to Marbury v. Maddison, 5 U.S. 137 (1803) and its prodigy?

PARTIES TO THE PROCEEDINGS

The parties in this action are attorney Michelle MacDonald and the Minnesota Secretary of State, Steve Simon who was represented by the Minnesota Attorney General.

The Minnesota Attorney General also purported to represent the Attorney General, Keith Ellison, who did not intervene, in the Constitutional Challenge to the election law.

RELATED CASES

In the Supreme Court of the United States, In re Petition for Reinstatement of Michelle Macdonald, a Minnesota Attorney, Registration No. 0182370 v. Minnesota Office of Lawyers' Professional Responsibility, Case No. 23-657, Petition for *cert denied*, February 20, 2024, order list 601 US 23-657 (2024).

In the Supreme Court of the United States, Marilin Pierre and Asher Weinberg, attorneys v. Attorney Grievance Commission of Maryland, Case no. 23-747, Petition for cert denied, February 20, 2024, order list 601 US 23-747 (2024)

In the Supreme Court of the United States, Michelle Lowney MacDonald v. Lawyers Board of Professional Responsibility, Case no. 17-1457, petition for cert filed April 17, 2018, petition for *cert denied*, June 25, 2018.

In the Supreme Court of the United States, Michelle MacDonald Shimota v. Bob Wegner, et al, Case no. No.18-1524, Petition for cert filed June 3, 2019, petition for *cert denied*, October 7, 2019.

In the Supreme Court of the United States, Sandra Sue Grazzini-Rucki, individually and on Behalf of her children, NJR, SVR, GJR, NGR and GPR, petitioner v. David Knutson, et al, Case No. 15-220 Pet. For Cert filed August 13, 2015, petition for *cert denied*, October 19, 2015.

In the Supreme Court of the United States, In re the marriage of Sandra Sue Grazzini-Rucki, Petitioner v. David Victor Rucki, Case no 13-7486, Petition for cert filed November 22, 2013, petition denied, January 27, 2024, petition for rehearing denied, March 24, 2014.

In the Supreme Court of the United States, In re the marriage of Sandra Sue Grazzini-Rucki, Petitioner v. David Victor Rucki, Case no. 14-7020, Petition for cert denied 1-12-2015 , and petition for rehearing denied.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Michelle MacDonald, Juris Doctor and attorney at law, respectfully requests this Petition for Writ of Certiorari be granted for a ruling as to the constitutionality of that provision of the Minnesota Election Administration statute, requiring proof an attorney license to run for and be a judge, in contrast to the Minnesota Constitution that denotes the qualification as "learned in the law.

The Minnesota Supreme Court and the State's Attorney General failed to address MacDonald's constitutional challenge in the decision, Michelle MacDonald v. Steve Simon, Minnesota Secretary of State, Case No. A24-1022 (Minn. October 16, 2024). Without addressing the constitutional challenge, the Court denied MacDonald's Petition pursuant to Minn. Stat. § 204B.44 for an Order of the Court correcting errors and omission such that she be placed on the ballot for the general election, November 5, 2024, v. Anne McKeig – Associate Supreme Court Justice- 5.

OPINIONS BELOW, ORDERS, AND JUDGMENTS

The Order denying MacDonald's Petition for Rehearing, October 31, 2024, is attached as Appendix A, p. A-1

The Opinion denying MacDonald's Petition pursuant to Minn. Stat. sec. 204B.44, October 16, 2024, is attached as Appendix A, p. A-2

Order (opinion to follow) denying MacDonald's Petition pursuant to Minn. Stat. sec. 204B.44, August 28, 2024, is attached as Appendix A, p. A-16

Order denying Motion to include Minnesota Attorney General as a party is attached as Appendix

A, p. A-19

Order, July 15, 2024 where the Minnesota Supreme Court Justices recused themselves and appointed substitute justices to consider MacDonald's Petition, July 15, 2024, is attached as Appendix A, p. A-23

OTHER DOCUMENTS TO UNDERSTAND THE PETITION

Notice to Attorney General Asserting the Unconstitutionality of MN Stat. sec. 204 B.06, subd. 8, per Minn. R. Civ. P. 5A, July 28, 2024, is attached as Appendix A, p. A-27

MN Stat. sec. 204B including 204B.06, subd. 8 is attached as Appendix A p. A-32, A-37

Michelle Lowney MacDonald's Curriculum Vitae is attached as Appendix A, p. A-39

Watch Candidate MacDonald's oral argument before the appointed acting justices of the Minnesota Supreme Court, August 27, 2024 is found at the following link:

https://www.mncourts.gov/SupremeCourt/OralArgumentWebcasts/ArgumentDetail.aspx?vid=1729

Listen to Judicial Candidate Michelle MacDonald's radio interview October 3, 2018, resulting her "indefinite" suspension by the Minnesota Supreme Court, in June of 2021on the following link:

https://www.youtube.com/watch?v=Pu3q_pRkPxg

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) which provides that final judgements or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

AMENDMENT I.

Freedom of religion, speech and press; peaceful assemblage; petition of grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or 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. I; accord. Minn. Const. art. I, § 3

AMENDMENT XIV.

§1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. amend XIV; accord. Minn. Const. art. I. § 7

MINNESOTA CONSTITUTION ARTICLE VI, JUDICIARY, § 5 QUALIFICATIONS

Judges of the supreme court, the court of appeals and the district court shall be learned in the law. The qualifications of all other judges and judicial officers shall be prescribed by law. The compensation of all judges shall be prescribed by the legislature and shall not be diminished during their term of office.

MINNESOTA CONSTITUION ARTICLE VII, Elective Franchise, § 6 ELIGIBILITY TO HOLD OFFICE

Every person who by the provisions of this article is entitled to vote at any election and is 21 years of age is eligible for any office elective by the people in the district wherein he has resided 30 days previous to the election, except as otherwise provided in this constitution, or the constitution and law of the United States.

ELECTION ADMINISTRATION LAW, CHAPTER 204 B.06 FILING FOR PRIMARY; AFFIDAVIT OF CANDIDACY, SUBD (8) PROOF OF ELIGIBILITY

A candidate for judicial office or for the office of county attorney shall submit with the affidavit of candidacy proof that the candidate is licensed to

practice law in this state. Proof means providing a copy of a current attorney license.

STATEMENT OF THE CASE AND FACTS

Article VI, Judiciary, § 5 of the Minnesota Constitution expressly provides with respect to constitutional qualifications of judicial officers elected in Minnesota: Sec. 5. Qualifications; compensation.

Judges of the supreme court, the court of appeals and the district court shall be learned in the law. The qualifications of all other judges and judicial officers shall be prescribed by law. The compensation of all judges shall be prescribed by the legislature and shall not be diminished during their term of office.

The Minnesota Constitution provides that judicial officers who are elected to serve on the Supreme Court, Court of Appeals and the District Court be "learned in the law." As to lower level judges who are not elected, the Minnesota Constitution provides that "the qualifications of all other judges and judicial officers shall be prescribed by law."

The Minnesota Constitution was drafted in 1857[1] and approved by vote of the majority on May 11, 1858. In 1971, the constitutional study commission suggested amendments which passed both houses, was approved by the governor, adopt in November 5, 1974, but it was clear that the amendments were not to alter the MN constitution of 1857.[2]

Minnesota election administration law, Chapter 204B.6 (8) expressly alters the Minnesota Constitution by requiring proof of eligibility that the judicial

[1] 30,055 Minnesotans voted for acceptance and 571 for rejection

[2] https://www.revisor.mn.gov/constitution/

candidate is "licensed to practice law in the state." Proof means "a copy of a current attorney license."

Facts of the Case v Steve Simon, Secretary of State

Michelle MacDonald is an attorney at law since 1986, obtaining her Juris doctor in 1986 and practiced law from 1986 to 2021. At the time she attempted to file her Affidavit of Candidacy to run for Minnesota Supreme Court in the 2024 election, she had run statewide for the judicial office of the Minnesota Supreme Court in each election over the course of six years, in each instance, filing an Affidavit of Candidacy with the Secretary of State who administers elections, attesting that she was "learned in the law."

In her elections statewide for Minnesota Supreme Court, MacDonald received 40.61% or 1,016,245 million votes in 2020 v. Paul Thissen; 43.74 % or 825,770 votes in 2018 v. Margaret Chutich; 40.78% or 887,656 votes in 2016 v. Natalie Hudson; and 46.54 % or 680,265 in 2014 v. David Lillehaug.[3]

When her Affidavit of Candidacy was rejected by the Secretary of State, MacDonald filed a Petition pursuant to 204B.44 against the Secretary of State, Steve Simon, to correct errors and omission relating to the general election ballot, along with a Notice of Constitutional Challenge to Keith Ellison, Minnesota's State's Attorney General (A-27) attaching the contested statute. (A-32, specifically at A-37)

[3] MacDonald was endorsed for the Minnesota Supreme Court by the Republican Party in 2014.

MacDonald Asserted She is Constitutionally Qualified as "Learned in the Law"

At the time MacDonald filed her affidavit of candidacy for the 2024 election, MacDonald had been an attorney in private practice for 35 years, assisting thousands of people with legal challenges before hundreds of state and appellate court Judges. Her practice areas included civil rights, constitutional issues, family law, child custody, support, property, child protection, adoption, juvenile, wills, trust & probate, traffic & criminal defense, business, real estate, injury, appeals, dispute resolution, restorative services and more.

MacDonald attached to her Petition her curriculum vitae demonstrating asserting facts supporting that she was constitutionally qualified as learned in the law for the Minnesota Supreme Court (A-39) The Facts of her Petition were undisputed by the State.

Minnesota Supreme Court Recused Itself From MacDonald Election Challenge

Upon the filing of MacDonald's Petition, and the Notice of Constitutional Challenge, the justice of the Minnesota Supreme Court signed an Order that recuse themselves, and in the same Order appointed a substitute justices (A-23).

Upon filing the case against the Secretary of State, Steve Simon, the Minnesota Attorney General, filed an appearance on behalf of the Secretary of State. However, the Minnesota Attorney General, Keith Ellison, failed to intervene pursuant to MacDonald's Notice of Constitutional Challenge to the election law statute or make an appearance.

MacDonald Asserted a Conflict of Interest as the State Attorney General was Defending the Secretary of State Rejection of Her Affidavit of Candidacy

Recognizing the conflict of interest in the State's Attorney General defending the Secretary of State, Steve Simon, relating to errors and omissions in rejecting MacDonald's Affidavit of Candidacy ---- and the State's attorney general representing Keith Ellison on behalf of the Attorney General's office to address the constitutionality of the statute requiring proof of an attorney license ---- MacDonald filed a motion with the Minnesota Supreme Court to require Keith Ellison to intervene as necessary party. The State's Attorney General, representing the Secretary of State, Steve Simon opposed the motion, stating that because Steve Simon is the "State" Keith Ellison is not required to intervene, and that the State's Attorney General, representing Steve Simon, Secretary of State, would address MacDonald's constitutional challenge to the election law.

The Minnesota Supreme Court sided with the attorney general representing the Secretary of State and denied MacDonald's Motion (A-19).

Court Failed to Address MacDonald's Constitutional Challenge in Its Orders

Following oral arguments, pressed by the State's attorney so ballots could be printed, the Minnesota Supreme Court denied MacDonald's Petition for ballot access in an interim order that did not address MacDonald constitutional challenge regarding the election law as the Opinion was forthcoming (A-16).

The Minnesota Supreme Court Opinion denied MacDonald's Petition for ballot access, and fail to address the constitutional challenge regarding the statutory requirement of licensure in election law (A-2).

MacDonald filed a Petition for Rehearing, asserting the Court overlooked the Constitutional challenge, that was denied. (A-1).

Candidate MacDonald's Campaign for Supreme Court On Media Outlets

When MacDonald was campaigning for Justice of the Minnesota Supreme Court, including in 2018 and 2020, she campaigned to end corruption, stop legal tyranny and restore justice. She appeared on numerous television, radio and media outlets --- mainstream and otherwise, including on WCCO radio, a national affiliate in October 2018, shortly before the 2018 election, where she was answered questions about her candidacy and the Sandra Grazzini-Rucki cases that MacDonald had brought to this Court.[4] MacDonald answered questions and made comments as provided and preserved on the following link: https://www.youtube.com/watch?v=Pu3q_pRkPxg. No client or anyone from the public complained to the Office of Lawyers Responsibility about her comments on WCCO radio. Susan Humiston, the director of the Minnesota Office of Lawyer Professional Responsibility (OLPR) initiated disciplinary proceedings in November 2018. As a candidate for the judiciary, Ms. MacDonald objected to discipline, asserting a First Amendment privilege to offer her opinions on issues and cases with which she disagreed pursuant to the United States Supreme

[4] See related cases, infra

Court decision of Republican Party of Minnesota v. White, 536 U.S. 765, 768 (2002). But Susan Humiston, appointed by the Supreme Court to the OLPR, and her office persisted, and filed an action with the Minnesota Supreme Court, case no.A20-0473, alleging MacDonald violated Minnesota Rules of Professional Conduct 8.2 "(a) providing a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its trust or falsity concerning the qualifications or integrity of a judge…" on the radio.

Candidate MacDonald's Comments on the Radio Addressed Need for Court Reform And Result in Her Suspension by the Minnesota Supreme Court

At the outset of the program, MacDonald told the interviewer that she was speaking out "because courts need reform." She explained, "[C]ourt orders are damaging people and families.... [T]here's a severe failure to follow the rule of law, to follow our constitution and uphold it and, quite frankly, our civil rights are being violated by courts all over the state." The interviewer asked MacDonald if a case involving S.G., a former client of MacDonald, was "one of the cases that you are referring to of civil rights being violated." MacDonald replied that it was. MacDonald asserted that the judge in the S.G. case violated the rights of both parents when he ordered that they "have no contact with their children whatsoever." She further stated, "[T]he judge did that in September of 2012 *without any hearing, without any process*, and in two hours ordered her, she was already divorced, to leave her home, leave her children ... and ordered

her to not return or else she would be arrested." (Emphasis added.)[5]

MacDonald also stated that she was made to handle Sandra Grazzini-Rucki's custody trial in handcuffs "*while under arrest, with no mother, no pen, no paper, no materials.*" This Court may recall in her Petitions for Writ, MacDonald was made to the Sandra Grazzini-Rucki's child custody trial while in handcuffs attached to a belt around her waist, with no shoes, no glasses and in a wheelchair by the presiding Judge, including cross examination of witnesses after her arrest for taking a photo.[6]

The disciplinary proceedings initiated by the Office of Lawyers Professional Responsibility in 2018 went on through her 2020 campaign, resulting in a June 2021 Order where MacDonald was "indefinitely" suspended by the Minnesota Supreme Court for the radio interview. MacDonald appealed her suspension to this Court after the Minnesota Office of Lawyer's Responsibility and Minnesota Supreme Court denied her reinstatement due to lack of remorse.[7]

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[5] See related cases infra, including In re Petition for Disciplinary Action against MacDonald, 962 N.W.2d 451, 458 (Minn. 2021)

[6] See related cases, infra, including In the Supreme Court of the United States, Sandra Sue Grazzini-Rucki, individually and on Behalf of her children, NJR, SVR, GJR, NGR and GPR, petitioner v. David Knutson, et al, Case No. 15-220 Pet. Filed August 13, 2015, petition denied, October 19, 2015

[7] See related cases, infra In the Supreme Court of the United States, In re Petition for Reinstatement of Michelle Macdonald, a Minnesota Attorney, Registration No. 0182370 v. Minnesota Office of Lawyers' Professional Responsibility, Case No. 23-657, Petition for cert denied, February 20, 2024, order list 601 US 23-657 (2024) In re Reinstatement of MacDonald, 994 N.W.2d 547, 553 (Minn. 2023).

Response to Petition for Ballot Access Equates "Learned in the Law" with a Law License

In responding to MacDonald' Petition, the Secretary of State asserted that MacDonald is not "learned in the law" within the meaning of Article VI, section 5 of the Minnesota Constitution "because learned in the law *means* licensed and authorized to practice as an attorney in Minnesota."

The Secretary of State asserted that to "admit MacDonald as a candidate would require the Minnesota Supreme Court to "abandon decades of precedent regarding the meaning of learned in the law. The State cited Daly for the proposition that "for over 100 years this [Minnesota] court has interpreted the phrase "learned in the law" to mean a law license.[8] In *Daly* four individuals—one of whom had never been admitted to practice law, and three of whom were disbarred—sought to be placed on the ballot as candidates for either Minnesota's supreme court or its district courts.[9] The Court held that none of the four individuals were eligible. As for the non-lawyer candidate, the Court's earliest precedents found it "'beyond question'" that the phrase "learned in the law" meant "'attorney[ ] at law.'"[10] MacDonald is an attorney at law.

The Minnesota Supreme Court decision mirrored the arguments of the State, and MacDonald's constitutional challenge, in its Opinion of October 16, 2024 the court held that:

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[8] In re Daly, 200 N.W.2d 913 (Minn. 1972)

[9] Id at 914.

[10] *Id.* at 916 (quoting *State v. Schmahl*, 147 N.W. 425, 426 (Minn. 1914)). Schmahl does not require a "law license."

The Secretary of State does not err in refusing to place on the ballot for judicial office a person whose law license in Minnesota is currently suspended, because an attorney whose license is suspended is not "learned in the law," as Article VI, Section 5 of the Minnesota Constitution requires for judges of the supreme court, the court of appeals, and the district court. (A-2)

ARGUMENT

I. THE MINNESOTA SUPREME COURT AND THE STATE'S ATTORNEY GENERAL WERE OBLIGATED TO ADDRESS THE CONSTITUTIONAL CHALLENGE TO THE ELECTION LAW AND FAILED TO DO SO

The Minnesota Court and State's Attorney General were non-responsive to the constitutional challenge to the election law and ballot access restrictions. In her pleadings, among other arguments, MacDonald asserted that:

- The "Ballot access" regulation found in Minn. Stat. 204B.06, subd §8 violated state constitutional protections to Petitioners.[11]
- Minnesota's Constitution recognizes a fundamental right to candidacy in for those eligible to vote, over 21 years of age, and satisfy a residency requirement. Article VII**,** § 6 of the Minnesota Constitution.

[11] Citing See Anderson v. Celebreeze, 460 U.S. 780, 789 (1983) (quoting Storer v. Brown, 415 U.S. 724, 735 (1974)).

- The Minnesota Supreme Court should conduct a strict scrutiny analysis of all candidate ballot access regulations.
- The State, Secretary of State, Steve Simon and Minnesota Attorney General, Keith Ellison, bear the burden of proving that the challenged statute is the least restrictive, narrowly tailored, means possible to achieve a compelling governmental objective.
- Minn. Stat 204B.06, subd §8 was subject to strict scrutiny and the election law regulation is unable to satisfy this standard and should be declared unconstitutional.

A. Summary of this Courts Ballot Access Cases and Constitutional Rights of Candidates and Voters

For over 50 years, this Court has recognized that access to the election ballot affects fundamental "overlapping" interests (i) "of individuals to associate for the advancement of political beliefs" and (ii) "of qualified voters ... to cast their votes effectively."[12] This Court has summarized the constitutional rights implicated by ballot access restrictions.

The First Amendment not only protects freedom of speech but also the right to participate in the political process. Restricting candidacy to licensed attorneys limits the pool of applicants, potentially excluding qualified individuals who may not have law licenses but possess relevant experience or expertise. Restrictions on ballot access that impose "severe burdens" on these interests are subject to strict scrutiny, necessitating a showing that they are "narrowly tailored and advance a compelling state

[12] Williams v. Rhodes, 393 U.S. 23, 30 (1968)

interest."[13] Ballot-access restrictions affect not only the interests of potential candidates but also have an impact on the interests of voters--limiting their range of choice among candidates.[14] The freedom to associate as a political party, a right we have recognized as fundamental ..., has diminished practical value if the party can be kept off the ballot. Access restrictions also implicate the right to vote because absent recourse to referendums, "voters can assert their preferences only through candidates or parties or both."[15] By limiting the choices available to voters, the State impairs the voters' ability to express their political preferences. And for reasons too self-evident to warrant amplification here, we [this Court] have often reiterated that voting is of the most fundamental significance under our constitutional structure.[16]

When such vital individual rights are at stake, a state must establish that its classification is necessary to serve a compelling interest. *American Party of Texas v. White,* 415 U.S. 767, 780-81 (1974). And the "impact of candidate eligibility requirements on voters implicates basic constitutional rights" of political association and voting rights.[17] Ballot-access

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[13] Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358 (1997); *see* Williams, 393 U.S. at 31 (applying strict scrutiny).

[14] Anderson v. Celebrezze, 460 U.S. 780, 786 (1983). *Cf.* U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 828-38 (1995) (recognizing significance of limiting ballot access as a vehicle for imposing unconstitutional term limits); Cook v. Gralike, 531 U.S. 510 (2001) (recognizing the same).

[15] *Lubin v. Panish,* 415 U.S. 709, 716 (1974)

[16] *Wesberry v. Sanders,* 376 U.S. 1, 17 (1964); *Reynolds v. Sims,* 377 U.S. 533, 555 (1964); *Dunn v. Blumstein,* 405 U.S. 330, 336 (1972).

[17] *Anderson*, 460 U.S. at 786.

restrictions also cannot be used to achieve impermissible substantive objectives, such as imposing term limits.[18] But states may make use of ballot-access restrictions that "protect the integrity and reliability of the electoral process itself."[19]

Ultimately, courts will apply strict scrutiny and likely invalidate laws that unnecessarily burden core associational rights of both candidates and voters, which MacDonald asserted.

B. The Minnesota Supreme Court Applied A "Litmus-Paper" Test Rather Than The Constitutional Analysis For Ballot Access

The Minnesota Supreme Court rendered its decision in MacDonald's case without addressing her constitutional challenge to the election law, thereby disregarding the guiding principles summarized in *Anderson v. Celebrezze,* 460 U.S. 780 (1983).

In *Anderson*, this Court rejected the idea of a "litmus-paper test" that would separate valid from invalid restrictions, and described the following analytical process: [A court] must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it

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[18] *Term Limits*, 514 U.S. at 828-38.

[19] *Anderson*, 460 U.S. at 788 n.9.

necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.[20]

The Minnesota Supreme Court and State's Attorney General failed to undergo this involved and detailed analytical process to decide whether the election law requiring licensure of Judicial candidates is unconstitutional.

C. Comments and Question By Justice McManus to State Evidences a Litmus-Paper Test as to MacDonald's Constitutional Challenge for Ballot Access

During oral argument, a question to the State was asked by Justice McManus, evidencing a that both the Minnesota Supreme Court and State's Attorney were discerning a quick way to gauge a stance on the issues to be addressed to and determine if they align with the People of Minnesota's standards or expectations.[21] Justice McManus sets forth a concern about conflict of interest, and appearance of impropriety relating to MacDonald's suspension and request for ballot access. The State responds by putting these concerns to rest:

Justice McManus: *"I have a question. Ms. MacDonald has been suspended from the practice of law since 2021. She has met with one of the judges*

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[20] Id at 786.

[21] The exchange can be found at the following link at 37-41 minutes:
https://www.mncourts.gov/SupremeCourt/OralArgumentWebcasts/ArgumentDetail.aspx?vid=1729

that comment was made against. She went through Restorative Justice programming and she reapplied to be practicing in the state of Minnesota, and she was denied saying that she has not demonstrated a change in moral, um character or shown remorse, and that decision was made by the Supreme Court. I believe she ran once before, or tried to, in the Supreme Court, and now here she's trying to be on the ballot for the People of Minnesota to make a decision about who best serves our state.

So here we have a governing body saying, nope you haven't done enough, and by the way you can't run against any of the judges or justices that had made that decision.

So the question is for the average person on the street in the state of Minnesota, should people be concerned that if you're on the wrong side, or you've made trouble for the Supreme Court, by running against one of them, you have now shown that you should be qualified and be reinstated, what would the average person say in that scenario?"

The State responds that Justice McManus should not be concerned about Minnesotan or the voters judging the facts of MacDonald's case:

Secretary of State*: "I suppose your Honor, it would depend on what we consider the average person in the state of Minnesota's knowledge, of the case and the underlying facts to be…The current suspension according to this court's decision, arises from her engaging in similar misconduct on the 2020 campaign trail, so to the extent that the average Minnesotan would be concerned that there appears to be some sort*

of attempt to use attorney discipline to discourage electoral competition, that is a concern that is undercut by the facts of this case, and by the record."

The Minnesota Supreme Court appointed Judge McManus as part of the governing body, that was supposed to decide MacDonald's election law challenge. His question demonstrates the tendency to try to look good and/or avoid looking bad, and reflects a natural human inclination to manage how others perceive you by consciously trying to appear favorable and avoid negative judgments about your appearance or behavior.

In 2018 when MacDonald was campaigning for Supreme Court, the OLPR ---- the director Susan Humiston ----- having been appointed by the Minnesota Supreme Court ----- heard her comments about court reform on the radio, and began disciplinary proceedings with no outside complaints to her office. Humiston filed with the Supreme Court, resulting in MacDonald's "indefinite" suspension, after candidate MacDonald objected to the disciplinary proceedings on First Amendment grounds. The Supreme Court ultimately denied her reinstatement, supported by the OLPR, resulting in continuing her suspension indefinitely.

Justice McManus summarized these facts, and expressed concern about voter opinion if the State is successful in its effort to kept her off the ballot. Justice McManus seems to assert the proposition of allowing MacDonald ballot access and letting the " People of Minnesota" make the decision as to "who best serves our state".

The ultimate question of Justice McManus as to whether the People should be concerned that you are on the "wrong side" or "you've made trouble for

the Supreme Court by running against them", and "you have *now* shown that you should be qualified and be reinstated," ---- here asserting that she is qualified----he asks the State "what would the average person say in that scenario?"

The States answers by spaciously putting Justice McManus' concerns to rest, saying that "to the extent the average Minnesota would be concerned that there appears to be some sort of attempt to use attorney discipline to discourage electoral competition" he should not be concerned. The State goes on to assert that the Justice's concerns are "*undercut by the facts of this case, and by the record."*

Therein lies the paper-litmus test as the State and Minnesota Supreme Court ultimately disregarded the threshold issue of the constitutional challenge to the licensure requirement as written--- and as applied to MacDonald in denying MacDonald is constitutionally qualified as "learned in the law" when a decision should be left to the voters to equate --- or not equate--- learned in the law with licensure.

Implicit in the State's response is not only does the State *know* the facts, and the state can judge the facts for the voters, but the state "knows" and the state knows "best".

The state also tells Justice McManus that MacDonald was "engaging in similar misconduct on the 2020 trail," but her discipline was for comments on WCCO radio during her 2018 campaign --- not her 2020 campaign. "Nothing to see here." The State not only knows the facts but knows what is best in its decision to reject MacDonald's Affidavit of Candidacy and keep her off the ballot.

D. Most States Have Non Lawyer Judges in Lower Level Courts

Most states have non lawyer judges in low level state courts who are not lawyers or and/or do not have a license to practice law. "Judging Without a J.D." is a law review that explores the prevalence and implications of nonlawyer judges in low-level state courts across the United States.[22] The survey in the Law Review found that the upper-level courts of each state are fairly consistent, at least in name (most states have district courts, for example), but particularly among low-level courts, each state integrates its own unique court system with different names, jurisdictions, and procedures. The essay is critical of non-lawyer judges, and concludes that judges who are lawyers would better serve in that role, without regard to licensure. Thirty-two states have non-lawyer judges who are not law school graduates or have their juris doctorate, and 17 states permit nonlawyer judges to handle eviction cases.[23] These states include Alabama , Alaska, Arizona, Colorado, Delaware, Georgia, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, Wyoming.[24] Connecticut, Idaho, Indiana, Iowa, New Hampshire, and Washington are not included in this count, even though they technically allow lay judges in certain

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[22] "Judging without a J.D", essay by Sara Sternberg Greene and Kirsten M. Renberg, Columbia Law Review Volume 122: 1287-1388 Columbia Law Review (2022)

[23] Id at 1345 – 1378.

[24] Id.

circumstances.[25] Throughout the twentieth century, the issue of the constitutionality of lay judges came before courts numerous times. All of the legal cases challenging lay judges involved criminal issues, rather than civil issues, and courts at all levels almost uniformly upheld the constitutionality of lay judges.[26]

There are state constitutions that prohibit requiring a license, such as West Virginia's state constitution which prohibits requiring magistrates to be attorneys, stating:

> [T]he Legislature shall not have the power to require that a magistrate be a person licensed to practice the profession of law, nor shall any justice or judge of any higher court establish any rules which by their nature would dictate or mandate that a magistrate be a person licensed to practice the process of law.[27]

Doris Marie Provine took up the issue of nonlawyer judges in the book *Judging Credentials*, arguing against requiring judges to have law degrees.[28] In Provine's study of the place of the

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[25] Id. 1296-1310

[26] Id. The most notable was North v. Russell, 427 US 328 (1976) which held that an accused, who is charged with a misdemeanor for which he is subject to possible imprisonment, is not denied due process when tried before a nonlawyer police court judge in one of the smaller cities, when a later trial *de novo* is available in the circuit court.

[27] W. Va. Const. art. VIII, § 10.

[28] See Doris Marie Provine, Judging Credentials: Nonlawyer Judges and the Politics of Professionalism 168–70, 177–81 (1986).

nonlawyer judge in the American legal system that concluded that nonlawyer judges are as competent as lawyers in carrying out judicial duties in courts of limited jurisdiction, after a comprehensive survey of nonlawyer and lawyer judges, with court observations and interviews of judges.[29] Id. Essay 1291-1302 citing Provine.

II. THIS COURT CAN ADDRESS THE CONSTITUTIONALITY BY PROPER ANALYSIS TO DISCERN THE LEVEL OF SCRUTINY OF THE ELECTION LAW, IN KEEPING WITH MARBURY v. MADDISON

It is impossible for a law which violates the Constitution to be valid. This is succinctly stated in Marbury v. Madisson that all laws which are repugnant to the constitution are void"[30]

The Minnesota Supreme Court had a duty to examine the burden on Petitioners' rights of expression and association and then decided the appropriate scrutiny to apply. The rights at stake could trigger all three of the tests for heightened judicial scrutiny.[31] Because the Minnesota Court indicates no level of scrutiny, the Court has flexibility to determine how best to protect candidates' and voters' First and Fourth Amendment freedoms as concerns Judicial candidates.

The distinction between a government with limited and unlimited powers is abolished if those

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[29] Id at 1291-1302 citing Provine

[30] Marbury v. Maddison, 5 US 137, 174,176 (1803)

[31] See footnote in United States v. Carolene Products Company, 304 U.S. 144, 152-153 n.4 (1938), cited in Anderson at 460 U.S. 793, n.16.

limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.[32] The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written Constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable.[33]

Certainly, all those who have framed written Constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the Legislature repugnant to the Constitution is void.[34] Id at 178 So, if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty. Id.

This Court should act to prevent the Minnesota Supreme Court's approach from spreading. If the decision stands, the constitutionality of the statute is never addressed and election law is not subject to any scrutiny for judicial candidacy qualification. If States and Courts

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[32] Id at 177

[33] Id at 175

[34] Id at 178

continue to refuse to address Constitutional challenges, and continue to refuse to analyze and apply any constitutional review, there is no end to what might be imagined. If States and Courts fail to support and uphold the constitution and fundamental and constitutional rights, as implied and set forth in Marbury v. Maddison, the system is a farce.

CONCLUSION

The Court should grant the Petition for the forgoing reasons.

Dated: January 29, 2025

Michelle MacDonald
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Attorney for Petitioner

STATE OF MINNESOTA
IN SUPREME COURT

A24-1022

Michelle MacDonald,

Petitioner,

vs.

Steve Simon, Minnesota Secretary of State,

Respondent.

O R D E R

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Michelle MacDonald for rehearing pursuant to Minn. R. Civ. App. P. 140.01 is denied.

Dated: October 31, 2024 BY THE COURT[1]:

s/
Francis J. Connolly
Acting Chief Justice

[1] Considered and decided by Francis J. Connolly, Acting Chief Justice, Leslie E. Beiers, John H. Guthmann, Timothy J. McManus, and Laurie J. Miller, Acting Associate Justices, appointed pursuant to Minn. Const. art. VI, § 2, and Minn. Stat. § 2.724, subd. 2 (2022).

STATE OF MINNESOTA
IN SUPREME COURT

A24-1022

Original Jurisdiction Connolly, Acting C.J.

Michelle MacDonald,
Petitioner,

vs. Filed: October 16, 2024
Office of Appellate Courts

Steve Simon, Minnesota Secretary of State,
Respondent.

Eric Bond Anunobi, Eric Bond Law Office, PLLC, West Saint Paul, Minnesota, for petitioner.

Keith Ellison, Attorney General, Peter J. Farrell, Deputy Solicitor General, Nathan J. Hartshorn, Frank E. Langan, Assistant Attorneys General, Saint Paul, Minnesota, for respondent.

SYLLABUS

The Secretary of State does not err in refusing to place on the ballot for judicial office a person whose law license in Minnesota is currently suspended, because an attorney whose license is suspended is not "learned in the law," as Article VI, Section 5 of the Minnesota Constitution requires for judges of the supreme court, the court of appeals, and the district court.

Petition denied.

Heard, considered, and decided by FRANCIS J.

CONNOLLY, Acting Chief Justice; LESLIE E. BEIERS, JOHN H. GUTHMANN, TIMOTHY J. MCMANUS, and LAURIE J. MILLER, Acting Associate Justices.[1]

OPINION

CONNOLLY, Acting Chief Justice.

Michelle MacDonald—whose law license in Minnesota is currently suspended— filed a petition under Minn. Stat. § 204B.44 (2022), asking this court to: (1) declare that she is "learned in the law" and therefore qualified to be a judge of the supreme court pursuant to Minn. Const. art. VI, § 5; (2) determine that Minn. Stat. § 204B.06, subd. 8 (2022), which requires a judicial candidate to "submit with the affidavit of candidacy proof that the candidate is licensed to practice law in this state" and which defines proof as "providing a copy of a current attorney license," is unconstitutional on its face and as applied; and (3) direct respondent Steve Simon, Minnesota Secretary of State, to allow MacDonald "to appear on the ballot for the 2024 state general election for Associate Justice, Supreme Court 5 opposing Anne McKeig."

Following briefing and oral argument, we issued an order on August 28, 2024, denying the petition. This opinion explains the reasons for our decision. Because MacDonald's law license in Minnesota is currently suspended, she is not "learned in the law" as Article VI, Section 5 of the Minnesota Constitution requires for judges of the supreme court,

[1] Appointed pursuant to Minn. Const. art. VI, § 2, and Minn. Stat. § 2.724, subd. 2 (2022).

and thus is not constitutionally qualified to be a judge of the supreme court. As a result, the Secretary of State did not err by excluding MacDonald from the 2024 general election ballot as a candidate for supreme court justice.

FACTS[2]

MacDonald, a Minnesota resident and registered voter, sought to appear on Minnesota's 2024 general election ballot for Associate Justice – Supreme Court 5.[3] During the candidate filing period for the 2024 election, MacDonald went to the Office of the Minnesota Secretary of State and attempted to file an affidavit of candidacy. Although she stated in her affidavit of candidacy that "I am learned in the law," the printout from the Lawyer Registration Office website she included with her filing indicated that she is "Not Authorized" to practice law and that her current disciplinary status is "SUSPENDED." The Secretary of State's office rejected MacDonald's affidavit of candidacy.

MacDonald has been an attorney at law since 1986 and practiced law in Minnesota from 1986 to

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[2] The facts are based on what was alleged in MacDonald's petition under Minn. Stat. § 204B.44. No evidentiary hearing was held; respondent represented that he "does not believe that the material facts of this matter are in dispute."

[3] The only candidate on the 2024 general election ballot for this office is Associate Justice Anne McKeig. To avoid any possible appearance of bias, all members of the court recused, and this case was instead considered and decided by a panel of five acting members, who are "court of appeals and district court judges, all of whom, based upon their term of office and by operation of the mandatory judicial retirement law, Minn. Stat. §§ 490.121, subd. 21d, and 490.125, subd. 1 (2022), will never stand again for judicial election in the State of Minnesota." *MacDonald v. Simon*, No. A24-1022, Order at 2 (Minn. filed July 15, 2024).

2021. But her law license in Minnesota was suspended in June 2021. *In re MacDonald*, 962 N.W.2d 451, 466, 470 (Minn. 2021) (per curiam) (indefinitely suspending MacDonald with no right to petition for reinstatement for four months for making knowingly false statements about the integrity of a judge and failing to obtain a client's written consent to a fee-splitting arrangement). MacDonald remains suspended,[4] and currently she is not authorized to practice law in Minnesota.

MacDonald filed a petition with this court under Minn. Stat. § 204B.44, seeking to correct alleged errors and omissions by having her name placed on the ballot as a judicial candidate.[5] The petition recognized that Article VI, Section 5 of the Minnesota Constitution requires that "[j]udges of the supreme court, the court of appeals, and the district court shall be learned in the law." But MacDonald maintained that being "learned in the law" does not require that the candidate for judicial office be licensed to practice law in Minnesota. MacDonald further claimed that, subject only to the constitutional limitation in Article VI, Section 5, the Minnesota Constitution otherwise recognizes a fundamental right to candidacy for those who, like her, are eligible to vote, are at least 21 years of age, and satisfy a

[4] In December 2021, MacDonald filed a petition for reinstatement to the practice of law, which this court denied. *In re MacDonald*, 994 N.W.2d 547, 549 (Minn. 2023) (per curiam).

[5] The petition also named as a petitioner Eric Anunobi, an attorney with an active law license who sought to appear on the ballot for a district court judgeship. After the petition was filed, Anunobi and respondent Steve Simon, Minnesota Secretary of State, filed a stipulation for voluntary dismissal, with prejudice, as to all of Anunobi's claims in the petition. Shortly thereafter, Anunobi filed a notice and appeared as MacDonald's attorney in this case.

residency requirement. *See* Minn. Const. art. VII, § 6. Finally, MacDonald alleged that Minn. Stat. § 204B.06, subd. 8, which requires proof of eligibility that a judicial candidate is "licensed to practice law in this state"—meaning "a current attorney license"—is unconstitutional both as written and as applied to her.

The petition thus sought a declaration that MacDonald is learned in the law and qualifies to be a judge of the supreme court under Article VI, Section 5 of the Minnesota Constitution; a declaration that Minn. Stat. § 204B.06, subd. 8, is unconstitutional as written and as applied; and an order directing the Secretary of State to have MacDonald appear on the ballot for Associate Justice, Supreme Court 5.[6]

Following briefing and oral argument, we issued an order on August 28, 2024, denying the petition, with this opinion to follow.

ANALYSIS

A.

MacDonald brought her petition under Minn. Stat. § 204B.44. In the case of an election for state office, a person may file—directly with the supreme court—a petition to correct certain "errors, omissions, or wrongful acts which have occurred or are about to occur." Minn. Stat. § 204B.44(a). Included among those defects is "an error or omission in the placement or printing of the name . . . of any candidate . . . on any official ballot." Minn. Stat. § 204B.44(a)(1). The petitioner has the burden to prove by a preponderance of the evidence that an error, omission, or wrongful act

[6] Justice Anne McKeig, as the only candidate for this office, was invited to participate but did not appear or otherwise participate in this case.

of an election official must be corrected. *Weiler v. Ritchie*, 788 N.W.2d 879, 882–83 (Minn. 2010) (per curiam).

B.

MacDonald's petition is rooted in the argument that under Article VII, Section 6 of the Minnesota Constitution (Eligibility Clause), which governs general eligibility to hold office, every person who meets the requirements in that section to hold office is eligible to do so, subject only to other constitutional requirements.[7] In other words, she contends that the Legislature cannot impose any greater restrictions or requirements on who may hold office and appear on the ballot. MacDonald takes issue with Minn. Stat. § 204B.06, subd. 8, which states that "[a] candidate for judicial office . . . shall submit with the affidavit of candidacy proof that the candidate is licensed to practice law in this state," and that "[p]roof means providing a copy of a current attorney license." She argues this provision violates the Eligibility Clause by imposing additional requirements that are not found within the Minnesota Constitution.

MacDonald concedes, however, that—consistent with the Eligibility Clause—"the additional constitutional qualifications for the office of Judge set forth in Article VI Judiciary, Section 5, Qualifications,

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[7] Article VII, Section 6 of the Minnesota Constitution provides:

> Every person who by the provisions of this article is entitled to vote at any election and is 21 years of age is eligible for any office elective by the people in the district wherein he has resided 30 days previous to the election, except as otherwise provided in this constitution, or the constitution and law of the United States.

Minn. Const. art. VII, § 6.

are applicable" to her. That constitutional provision requires the following:

> *Judges of the supreme court*, the court of appeals and the district court *shall be learned in the law*. The qualifications of all other judges and judicial officers shall be prescribed by law. The compensation of all judges shall be prescribed by the legislature and shall not be diminished during their term of office.

Minn. Const. art. VI, § 5 (emphasis added).[8]

Accordingly, there is a threshold issue before us: whether MacDonald is "learned in the law" and thus qualified to be a judge of the supreme court under Article VI, Section 5 of the Minnesota Constitution. If MacDonald cannot satisfy what she herself concedes to be the constitutional requirement for eligibility to be a judge of the supreme court, there is no need to reach her argument that the requirements in Minn. Stat. § 204B.06, subd. 8, unconstitutionally impose greater requirements than those within the Minnesota Constitution. And MacDonald concedes

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[8] This constitutional requirement that judges of the supreme court be "learned in the law" is mirrored in Minn. Stat. § 204B.06, subd. 4a(2) (2022), which provides:

> Candidates who seek nomination for the following offices shall state the following additional information on the affidavit:
>
> . . . .
>
> (2) *for supreme court justice*, court of appeals judge, or district court judge, *that the candidate is learned in the law* and will not turn 70 years of age before the first Monday in January of the following year . . . .

Minn. Stat. § 204B.06, subd. 4a(2) (2022) (emphasis added.)

that at present, "[h]er Minnesota law license is suspended." Thus, the threshold—and here dispositive—question is whether an attorney whose Minnesota law license is suspended is "learned in the law" as that term is used in the Minnesota Constitution.

C.

1.

MacDonald argues that the phrase "learned in the law," as used in Article VI, Section 5 of the Minnesota Constitution, means being an attorney at law. As support, she cites *State ex rel. Boedigheimer v. Welter*, 293 N.W. 914 (Minn. 1940). MacDonald's reliance on *Boedigheimer* is misplaced.

Boedigheimer is distinct from this case because it concerned the eligibility requirements to be a "*municipal judge*." *Boedigheimer*, 293 N.W. at 914 (emphasis added). The relevant statute creating the municipal court that was at issue in *Boedigheimer* included the requirement that "[t]he Judge of the Municipal Court shall be . . . a person learned in the law and duly admitted to practice as an attorney in this State." *Id.* (quoting Minn. Gen. Stat. ch. 5, § 3 (1923)). The "only question" presented in *Boedigheimer* was the constitutionality of this requirement in the statute. *Id.*

Boedigheimer began its analysis by recognizing, as MacDonald now highlights, that this court had construed the phrase "learned in the law" as "mean[ing] 'attorneys at law.' " *Id.* (citing *State ex rel. Jack v. Schmahl*, 147 N.W. 425, 426 (Minn. 1914) (per curiam)). This court also drew attention to the two related constitutional provisions at issue here, that "[t]he judges of the *supreme and district courts* shall

be men learned in the law," as well as the general Eligibility Clause.[9] 293 N.W. at 914–15 (emphasis added) (citation omitted)(internal quotation marks omitted). This court then looked to its prior decision in *State ex rel. Froehlich v. Ries*, 209 N.W. 327 (Minn. 1926), as "dispos[ing] of the question involved" and "controlling." *Boedigheimer*, 293 N.W. at 915. In *Froehlich*, this court held that a statute requiring that court commissioners be "learned in the law" was unconstitutional. 209 N.W. at 328. This court in *Boedigheimer* observed that even though court commissioners could "exercise the judicial powers of a judge of the district court," the Legislature "cannot impose greater restrictions or exact other qualifications for eligibility to constitutional offices than are prescribed in the Constitution." 293 N.W. at 915. Thus, *Boedigheimer* affirmed that "[w]hile it is important that judges of all courts of record be persons 'learned in the law,' we are nevertheless without power to increase the qualifications prescribed by the Constitution." *Id.*

Despite holding that it was unconstitutional for the Legislature to require a *municipal judge* to have a Minnesota law license, *Boedigheimer* did not determine, as MacDonald argues, what the phrase "learned in the law," as used in the Minnesota Constitution, means. *Boedigheimer* only ruled that the constitutional requirement to be "learned in the law" did not apply to municipal judges.

Nor does *Boedigheimer* answer the question as to whether "learned in the law" meant something

[9] Importantly, at the time *Boedigheimer* was decided, the Minnesota Constitution did not contain the provision in the current constitution that "[t]he qualifications of all other judges and judicial officers shall be prescribed by law." Minn. Const. art. VI, § 5.

distinct from the statutory requirement of being "duly admitted to practice as an attorney in the State." *Boedigheimer* held that this entire requirement contained within the statute at issue for municipal judges was unconstitutional. And while *Boedigheimer* explained that the court had previously construed persons "learned in the law" to mean "attorneys at law," *Boedigheimer* did not answer whether either phrase meant only attorneys licensed to practice law in the State of Minnesota. The case *Boedigheimer* relied upon in this regard was *Schmahl*, which only had to determine whether "a layman" was "learned in the law." *Schmahl*, 147 N.W. at 426. In *Schmahl*, that the phrase "learned in the law" was used "in the sense of attorneys at law" was so "[b]eyond question" and dispositive of the issue in that case that the "[t]he matter d[id] not merit further discussion." *Id.* In other words, neither in *Schmahl* nor in *Boedigheimer* was there any need for this court to address whether being "learned in the law" meant being an *actively licensed* attorney at law in the State of Minnesota.

2.

The question of what is meant by the requirement in the Minnesota Constitution that a judge be "learned in the law" is instead controlled by *In re Daly*, 200 N.W.2d 913 (Minn. 1972) (per curiam).[10] In *Daly*, four individuals filed the equivalent of a section 204B.44 petition seeking to have their names appear on the ballot as candidates for the supreme court or district court. *Id.* at 914. Three of the individuals were "admitted to practice law in this

[10] Tellingly, while the Secretary of State appropriately recognized *Daly* as "the leading case," MacDonald, for her part, never cited to or addressed *Daly* in her petition, brief, or any other filings.

state" and later "disbarred." *Id.* The fourth, Charles Thibodeau, had "never been admitted to practice law in this state." *Id.* At issue was the four individuals' eligibility to hold the judicial office being sought. *See id.* at 914–15.

This court recognized that in *Schmahl*—and then followed by *Froehlich* and *Boedigheimer*—the constitutional requirement that judges be "learned in the law" required that they be attorneys at law. *Daly*, 200 N.W.2d at 916. *Daly* acknowledged that this definition was "controlling as to Charles Thibodeau," who had never been admitted to practice in the state. *Id.* But contrary to MacDonald's argument that the definition of "learned in the law" in those cases is both the starting and ending place for the analysis of whether she is "learned in the law," *Daly* recognized that further analysis was required for someone who has been admitted to practice law and then subject to attorney discipline.

Daly first credited the constitutional convention debates where it was voiced that "the legal construction of the term" "learned in the law" required that the person "has been admitted to the bar." *Id.* at 917 (citation omitted). *Daly* then turned to the heart of the question in that case: "whether a person once admitted to practice law and later disbarred is 'learned in the law.'" *Id.* at 918. This court answered this question in the negative after canvassing other authorities. It concluded:

> It thus seems clear that a disbarred attorney is no more qualified to hold the office of justice of the supreme court or judge of the district court than any other lay person. By his disbarment he is reduced to the status of a layman. The term "learned in the law," which prescribes the

> qualifications for these judicial positions, clearly prevents a layman from filing for or holding the office; and it must therefore follow that a disbarred attorney is in no better position to file for the office, or to hold it if he is elected, than any other layman.

Id. at 920.

Significantly, the authorities relied upon in reaching this holding applied the same rule to *suspended* attorneys as to disbarred attorneys. *Daly* quoted favorably to the *American Jurisprudence* treatise for the principle that "[a] disbarred attorney can appear in court only under circumstances entitling a layman to appear," and which also highlighted that "[a] like rule applies, during the period of suspension, to one who has been suspended." *Daly*, 200 N.W.2d at 919 (quoting 7 Am. Jur. 2d, *Attorneys at Law* § 19). *Daly* likewise quoted a Wisconsin opinion for the principle that "[w]hen a member of the Bar is *suspended or disbarred* it is from the practice of law, not only from appearing in court." *Id.* (emphasis added) (quoting *In re Integration of the Bar*, 93 N.W.2d 601, 605 (Wis. 1958) (per curiam)). And *Daly* followed the reasoning of the Washington Supreme Court, which rejected the contention "that a person who had been admitted to practice was eligible to hold the judicial office even though he had been suspended." *Id.* at 919–20 (summarizing *State ex rel. Willis v. Monfort*, 159 P. 889, 890 (Wash. 1916)).

Given this court's reliance in *Daly* upon authorities treating both suspended and disbarred attorneys as effectively being laypersons, and the distinction drawn in *Daly* that those who are laypersons are not "learned in the law," *Daly* is both

on point and controlling. Just like a disbarred lawyer, a suspended lawyer is not authorized to practice law in Minnesota. *In re Mollin*, 940 N.W.2d 470, 473 (Minn. 2020) (per curiam) ("A lawyer cannot practice law when he is not authorized to do so (for instance, if he is suspended)."). Furthermore, subsequent decisions by this court have characterized the holding of *Daly* in a manner precluding suspended attorneys from being eligible to serve as judges.[11] In *Sylvestre v. State*—a case concerning judicial retirements—the constitutional requirement that judges be "learned in the law" was referenced, and citing *Daly*, it was explained that the "term means that in order to hold a judicial position a person must be admitted to practice law *and in good standing*." 214 N.W.2d 658, 663 (Minn. 1973) (emphasis added). Similarly, in *In re Scarrella*, this court—in again holding that individuals not admitted or entitled to practice law in the State must be omitted from the ballots for judicial office—further advised that "[a]mendment of the form of affidavit to be subscribed by persons seeking judicial office, specifying that to be 'learned in the law' is to be *admitted to practice* in the courts of the State of Minnesota as a lawyer, should make resort to the courts in cases so clearly controlled by precedent as this one unnecessary." 221 N.W.2d 562, 563 (Minn. 1974) (per curiam) (emphasis added).

We find *Daly* and its progeny controlling as to

[11] This court also reaffirmed that *Daly* "was clearly right as a matter of law and fact" in *Peterson v. Knutson*, 233 N.W.2d 716, 720–21 (Minn. 1975). The posture of that case was unique—one of the parties in *Daly* brought an action against those members of the court who had heard and decided *Daly*. *Peterson*, 233 N.W.2d at 717. But *Peterson* squarely reaffirmed *Daly*, with reliance again upon other jurisdictions that reached the same result as to suspended attorneys. *Peterson*, 233 N.W.2d at 722.

the question here. Those cases dictate that to be qualified under Article VI, Section 5 of the Minnesota Constitution to serve as a judge of the supreme court, court of appeals, or district court, a person must be admitted to practice law and not be suspended or disbarred. Because MacDonald is currently suspended from practicing law in Minnesota, she is constitutionally ineligible to serve as a supreme court justice. Accordingly, there was no error or omission by the Secretary of State in excluding MacDonald from that ballot, and her petition fails.

CONCLUSION

For the foregoing reasons, we deny the petition.

Petition denied.

STATE OF MINNESOTA
IN SUPREME COURT

A24-1022

Michelle MacDonald,

Petitioner,

vs.

Steve Simon, Minnesota Secretary of State,

Respondent.

ORDER

Michelle MacDonald—whose law license in Minnesota is currently suspended— filed a petition under Minn. Stat. § 204B.44 (2022), asking this court to: (1) declare that she is "learned in the law" and therefore qualified to be a judicial officer pursuant to Minn. Const. art. VI, § 5; (2) determine that Minn. Stat. § 204B.06, subd. 8 (2022), which requires a judicial candidate to "submit with the affidavit of candidacy proof that the candidate is licensed to practice law in this state" and which defines proof as "providing a copy of a current attorney license," is unconstitutional on its face and as applied; and (3) direct respondent Steve Simon, the Minnesota Secretary of State, to allow MacDonald "to appear on the ballot for the 2024 state general election for Associate Justice, Supreme Court 5 opposing Anne McKeig."

The petition was served on the Secretary of State and Justice Anne McKeig. We directed the parties to file briefs addressing the claims asserted in

the petition and the relief requested on those claims. We held oral argument on August 27, 2024.

Article VI, Section 5 of the Minnesota Constitution requires that "[j]udges of the supreme court . . . shall be learned in the law." Because MacDonald's law license in Minnesota is currently suspended, she is not "learned in the law" and thus is not constitutionally qualified to be a justice of the supreme court. This case is controlled by *In re Candidacy of Daly*, 200 N.W.2d 913, 919–20 (Minn. 1972) (relying upon authorities treating both suspended and disbarred attorneys as effectively being laypersons in holding that disbarred attorneys were constitutionally ineligible to appear on the ballot for supreme court justice), *cert. denied*, 409 U.S. 1041 (1972). *Accord In re Candidacies of Scarrella*, 221 N.W.2d 562, 563 (Minn. 1974) (per curiam); *Sylvestre v. State*, 214 N.W.2d 658, 663 (Minn. 1973).

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The petition of Michelle MacDonald under Minnesota Statutes section 204B.44 is denied.

2. So as not to impair the orderly election process, this order is issued with an opinion to follow.

Dated: August 28, 2024 BY THE COURT[1]:

s/
Francis J. Connolly
Acting Chief Justice

[1] Considered and decided by Francis J. Connolly, Acting Chief Justice; Leslie E. Beiers, John H. Guthmann, Timothy J. McManus, and Laurie J. Miller, Acting Associate Justices; appointed pursuant to Minn. Const. art. VI, § 2, and Minn. Stat. § 2.724, subd. 2 (2022).

STATE OF MINNESOTA

IN SUPREME COURT

A24-1022

Michelle MacDonald,

Petitioner,

vs.

Steve Simon, Minnesota Secretary of State,

Respondent.

ORDER

Petitioner Michelle MacDonald filed a motion asking the court to: (1) require Keith Ellison, the Minnesota Attorney General, to appear as a necessary party; (2) amend the scheduling order, filed July 16, 2024, to extend the time for Justice Anne McKeig, a candidate in the election at issue, to participate in this matter; and (3) schedule this case for oral argument. Respondent Steve Simon, Minnesota Secretary of State, opposes the motion, except for the issue of oral argument, on which he takes no position.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Petitioner's motion is granted in part with respect to the request for oral argument. Oral argument will be held on Tuesday, August 27, 2024, at 10:00 a.m. in courtroom 300 of the Minnesota Judicial Center. Counsel for petitioner will be limited

to 35 minutes of argument. Counsel for respondent will be limited to 25 minutes of argument. Counsel for petitioner should inform the marshal in the courtroom before argument of how much time they would like to reserve for rebuttal. Counsel for both parties will be given 3 minutes of uninterrupted time at the start of their argument before being stopped for questions from the court.

2. Petitioner's motion is denied in part with respect to the request to require the Minnesota Attorney General to appear as a necessary party and to amend the scheduling order to extend the time.

Dated: July 30, 2024 BY THE COURT[1]:

s/
Francis J. Connolly
Acting Chief Justice

[1] Considered and decided by Francis J. Connolly, Acting Chief Justice, Leslie E. Beiers, John H. Guthmann, Timothy J. McManus, and Laurie J. Miller, Acting Associate Justices, appointed pursuant to Minn. Const. art. VI, § 2, and Minn. Stat. § 2.724, subd. 2 (2022).

STATE OF MINNESOTA

IN SUPREME COURT

A24-1022

Michelle MacDonald,

Petitioner,

vs.

Steve Simon, Minnesota Secretary of State,

Respondent.

ORDER

Petitioner Michelle MacDonald filed a motion asking the court to: (1) require Keith Ellison, the Minnesota Attorney General, to appear as a necessary party; (2) amend the scheduling order, filed July 16, 2024, to extend the time for Justice Anne McKeig, a candidate in the election at issue, to participate in this matter; and (3) schedule this case for oral argument. Respondent Steve Simon, Minnesota Secretary of State, opposes the motion, except for the issue of oral argument, on which he takes no position.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Petitioner's motion is granted in part with respect to the request for oral argument. Oral argument will be held on Tuesday, August 27, 2024, at 10:00 a.m. in courtroom 300 of the Minnesota Judicial Center. Counsel for petitioner will be limited

to 35 minutes of argument. Counsel for respondent will be limited to 25 minutes of argument. Counsel for petitioner should inform the marshal in the courtroom before argument of how much time they would like to reserve for rebuttal. Counsel for both parties will be given 3 minutes of uninterrupted time at the start of their argument before being stopped for questions from the court.

2. Petitioner's motion is denied in part with respect to the request to require the Minnesota Attorney General to appear as a necessary party and to amend the scheduling order to extend the time.

Dated: July 30, 2024 BY THE COURT[1]:

s/
Francis J. Connolly
Acting Chief Justice

[1] Considered and decided by Francis J. Connolly, Acting Chief Justice, Leslie E. Beiers, John H. Guthmann, Timothy J. McManus, and Laurie J. Miller, Acting Associate Justices, appointed pursuant to Minn. Const. art. VI, § 2, and Minn. Stat. § 2.724, subd. 2 (2022).

STATE OF MINNESOTA

IN SUPREME COURT

A24-1022

Michelle MacDonald and Eric Anunobi,

Petitioners,

vs.
Steve Simon, Minnesota Secretary of State,

Respondent.

ORDER

Michelle MacDonald and Eric Anunobi filed a petition under Minn. Stat. § 204B.44 (2022), asking this court to: (1) declare that they are "learned in the law" and therefore qualified to be judicial officers pursuant to Minn. Const. art. VI, § 5 and Minn. Stat. § 204B.06, subd. 4a (2022); (2) determine that Minn. Stat. § 204B.06, subd. 8 (2022), which requires a judicial candidate to "submit with the affidavit of candidacy proof that the candidate is licensed to practice law in this state" and which defines proof as "providing a copy of a current attorney license," is unconstitutional on its face and as applied to both candidates; and (3) direct the Secretary of State to allow the petitioners to appear as judicial candidates in the 2024 state general election. MacDonald seeks "to appear on the ballot for the 2024 state general election for Associate Justice, Supreme Court 5 opposing Anne McKeig." Anunobi sought to appear on the ballot for a judgeship in the Tenth Judicial

District.[1]

To avoid any possible appearance of bias, the undersigned members of this court will recuse themselves effective on the filing of this order and will not participate in the consideration or determination of the merits of this case.

There being no members of this court who have not recused, it is necessary to appoint a neutral and disinterested panel of acting justices to constitute the court for consideration and determination of this case. This court is authorized to assign retired or active members of the judiciary temporarily to hear and consider a case in place of justices who have recused under Minn. Const. art. VI, § 2, and Minn. Stat. § 2.724, subd. 2 (2022), and it has done so when necessary in the past. *See, e.g.*, *Page v. Carlson*, No. CX-92-1291, Order (Minn. filed July 22, 1992); *Clark v. Pawlenty*, No. A08-1385, Order (Minn. filed Aug. 21, 2008). Given the nature of the claims being raised in the petition, this case will be considered and determined by a court of five acting members, composed of court of appeals and district court judges, all of whom, based upon their term of office and by operation of the mandatory judicial retirement law, Minn. Stat §§ 490.121, subd. 21d and 490.125, subd. 1 (2022), will never stand again for judicial election in the State of Minnesota. *See Peterson v. Stafford*, 490 N.W.2d 418, 418 n.1 (Minn. 1992).

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

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[1] After the petition was filed, Anunobi and respondent Steve Simon, Minnesota Secretary of State, filed a stipulation for voluntary dismissal, with prejudice, as to all of Anunobi's claims in the petition.

1. Pursuant to Minn. Const. art. VI, § 2, and Minn. Stat. § 2.724, subd. 2, the following court of appeals and district court judges are appointed as acting justices of this court to consider and determine the petition herein:

A. The Honorable Francis J. Connolly, Court of Appeals

B. The Honorable Leslie E. Beiers, Chief Judge, Sixth Judicial District

C. The Honorable John H. Guthmann, Second Judicial District

D. The Honorable Timothy J. McManus, First Judicial District

E. The Honorable Laurie J. Miller, Fourth Judicial District

2. Judge Francis J. Connolly is designated to sit as the Acting Chief Justice of the court for the purposes of carrying out the terms of this order.

3. All acting members of the court appointed herein will be provided with necessary staff and resources, and will exercise all the powers and authority of a member of this court necessary to consider and determine all matters presented to the court in the above- entitled case.

Dated: July 15, 2024 BY THE COURT:

s/
Natalie E. Hudson
Chief Justice

s/

Margaret H. Chutich
Associate Justice

s/
Paul C. Thissen
Associate Justice

s/
Gordon L. Moore, III
Associate Justice

s/
Karl C. Procaccini
Associate Justice

s/
Sarah E. Hennesy
Associate Justice

MCKEIG, J., took no part in the consideration or decision of this case.

STATE OF MINNESOTA
IN SUPREME COURT
Case File No. A24-1022

Michelle MacDonald and
Eric Anunobi,
Petitioners,

vs.

Steve Simon,
Minnesota Secretary of State,
Respondent.

NOTICE TO ATTORNEY GENERAL ASSERTING THE UNCONSTITUIONAL OF A MINNESOTA STATUTE

((Minn. Stat. § 204 B. 06, subd. 8)

TO: THE MINNESOTA SUPREME COURT, THE RESPONDENT, SECRETARY OF STATE, STEVE SIMON, AND THE ATTORNEY GENERAL OF MINNESOTA, KEITH ELLISON, MINNESOTA ATTORNEY GENERAL'S OFFICE, SUITE 1400, 110 BREMER TOWER, 445 MINNESOTA STREET, ST. PAUL, MN 55101 AND RESPONDENT, THE SECRETARY OF STATE, STEVE SIMON

Petitioner/Judicial Candidates, Michelle MacDonald and Eric Anunobi hereby give notice to Keith Ellison, Attorney General of Minnesota, pursuant to Minn. R. Civ. P. 5A, that Petitioners assert the unconstitutionality of Minn. Stat. § 204 B. 06 FILING FOR PRIMARY, AFFIDAVIT OF CANDIDACY, specifically Minn. Stat. § 204 B. 06 subd. 8 Proof of Eligibility which reads:

A candidate for judicial office or for the office of county attorney shall submit with the affidavit of candidacy proof that the candidate is licensed to practice law in this state. Proof means providing a copy of a current attorney license.

Said notice is served to afford the Attorney General an opportunity to intervene, and accompanied by the attached copy of Minn. Stat. § 204 B. 06, including subdivision 8.

This notice is also accompanied by a copy of the Petition of Michelle MacDonald and Eric Anunobi pursuant to MN Stat. 204B.44 to Correct Errors and Omission by Placing Petitioners on the 2024 General Election Ballot as Judicial Candidates.

MINNESOTA'S CONSTITUTION REQUIRES THAT JUDGES BE "LEARNED IN THE LAW"

Minn. Stat. § 204 B. 06 subd. 8 is unconstitutional as the Minnesota Constitution only provides that candidates for the judicial offices be "*learned in the law*." Article VI, Judiciary, section 5 of the Minnesota Constitution provides:

> Sec. 5. Qualifications; compensation.
>
> Judges of the supreme court, the court of appeals and the district court shall be learned in the law. The qualifications of all other judges and judicial officers shall be prescribed by law. The compensation of all judges shall be prescribed by the legislature and shall not be diminished during their term of office.

The Minnesota Constitution further recognizes a fundamental state constitutional right to candidacy as found in Article VII, Sec. 6 of the Minnesota Constitution, Eligibility to hold office which provides that "*Every person who by the provisions of this article is entitled to vote at any election and is 21 years of age is eligible for any office elective by the people in the district wherein he has resided 30 days previous to the election, except as otherwise provided in this constitution, or the constitution and law of the United States.*" Ballot access qualification can include education or experience requirements, as well as minimum age, residency, geographical residency, durational residency citizenship and qualified elector requirements.

Ballot access requirements must comport with principles of equal protection under the Fourteenth Amendment.

The Fourteenth Amendment, Section 1 provides that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

However, it has been held by the Minnesota Supreme Court that the requirement of being "duly admitted to practice law in the state of Minnesota" , the equivalent of Minn. Stat. 204B.06 subd 8, requiring a "copy of a current law license" or being a

licensed attorney, is unconstitutional. See State ex rel Boedigheimer v. Welter, 208 Minn. 338, 293 NW 914 (Minn. 1940) In Boedigheimer, the Minnesota Supreme Court held:[1]

> **The Supreme Court is without power to increase the qualifications of judges prescribed by the Constitution, notwithstanding that it is important that judges of all courts of record be persons "learned in the law." Const. art. 6, § 6; art. 7, §7.**
>
> ***Syllabus by the Court.***
>
> **To be eligible to the office of municipal judge of the village of Perham a person need not be an attorney at law. That part of Ex.Sess.Laws, 1933-1934, c. 35, § 3, requiring the municipal judge to be 'a person learned in the law and duly admitted to practice as an attorney in this State', is violative of Article 7, § 7, of the State Constitution, and therefore unconstitutional.**

Petitioners were unconstitutionally denied ballot access as they satisfied all ballot requirements. Minn. Stat. § 204 B. 06, subd. 8, Proof of Eligibility, is unconstitutional as written and as applied.

As such, the Court must order Respondent,

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[1] NOTE: Article 6, section 6 is now article VI, sec 5, of the Minnesota Constitution, JUDICIARY and QUALIFICATIONS.

NOTE: Article 7, section 7 is now Article VII, Sec. 6 of the Minnesota Constitution, ELIGIBILTY TO HOLD OFFICE.

Secretary of State, to place their names on the 2024 general election ballot, Michelle MacDonald opposing Supreme Court Justice, Anne McKeig and Eric Anunobi opposing District Court Judge, Siv Mianger.

Dated: June 28, 2024

/s/Michelle MacDonald
Michelle MacDonald
Offices of Michelle MacDonald
1069 South Robert Street
West St. Paul, MN 55118
651-222-4400
Email: Michelle@MacDonaldLawFirm.com
for Petitioner Michelle MacDonald

Dated: June 28, 2024

/s/Eric Bond Anunobi
Eric Bond Anunobi
(Atty # 0388986)
Eric Bond Law
1069 South Robert Street
West St. Paul, MN 55118
612-812-8160
Email: Eric@ericbondlaw.com
for Petitioner Eric Bond Anunobi

204B.06 FILING FOR PRIMARY; AFFIDAVIT OF CANDIDACY.

Subdivision 1. **Form of affidavit.** An affidavit of candidacy shall state the name of the office sought and, except as provided in subdivision 4, shall state that the candidate:

(1) is an eligible voter;

(2) has no other affidavit on file as a candidate for any office at the same primary or next ensuing general election, except as authorized by subdivision 9; and

(3) is, or will be on assuming the office, 21 years of age or more, and will have maintained residence in the district from which the candidate seeks election for 30 days before the general election.

An affidavit of candidacy must include a statement that the candidate's name as written on the affidavit for ballot designation is the candidate's true name or the name by which the candidate is commonly and generally known in the community.

An affidavit of candidacy for partisan office shall also state the name of the candidate's political party or political principle, stated in three words or less.

Subd. 1a. [Repealed, 1Sp2001 c 10 art 18 s 44]

Subd. 1b. **Address, electronic mail address, and telephone number.** (a) An affidavit of candidacy must state a telephone number where the candidate can be contacted. An affidavit must also state the candidate's or campaign's nongovernment issued electronic mail address or an attestation that the candidate and the candidate's campaign do not possess an electronic mail address. An affidavit must

also state the candidate's current address of residence as determined under section 200.031, or at the candidate's request in accordance with paragraph (c), the candidate's campaign contact address. When filing the affidavit, the candidate must present the filing officer with the candidate's valid driver's license or state identification card that contains the candidate's current address of residence, or documentation of proof of residence authorized for election day registration in section 201.061, subdivision 3, paragraph (a), clause (2); clause (3), item (ii); or paragraph (d). If the address on the affidavit and the documentation do not match, the filing officer must not accept the affidavit. The form for the affidavit of candidacy must allow the candidate to request, if eligible, that the candidate's address of residence be classified as private data, and to provide the certification required under paragraph (c) for classification of that address.

(b) If an affidavit for an office where a residency requirement must be satisfied by the close of the filing period is filed as provided by paragraph (c), the filing officer must, within one business day of receiving the filing, determine whether the address provided in the affidavit of candidacy is within the area represented by the office the candidate is seeking. For all other candidates who filed for an office whose residency requirement must be satisfied by the close of the filing period, a registered voter in this state may request in writing that the filing officer receiving the affidavit of candidacy review the address as provided in this paragraph, at any time up to one day after the last day for filing for office. If requested, the filing officer must determine whether the address provided in the affidavit of candidacy is within the area represented by the office the candidate is seeking. If the filing

officer determines that the address is not within the area represented by the office, the filing officer must immediately notify the candidate and the candidate's name must be removed from the ballot for that office. A determination made by a filing officer under this paragraph is subject to judicial review under section 204B.44.

(c) If the candidate requests that the candidate's address of residence be classified as private data, the candidate must list the candidate's address of residence on a separate form to be attached to the affidavit. The candidate must also certify on the affidavit that either: (1) a police report has been submitted, an order for protection has been issued, or the candidate has a reasonable fear in regard to the safety of the candidate or the candidate's family; or (2) the candidate's address is otherwise private pursuant to Minnesota law. The address of residence provided by a candidate who makes a request for classification on the candidate's affidavit of candidacy and provides the certification required by this paragraph is classified as private data, as defined in section 13.02, subdivision 12, but may be reviewed by the filing officer as provided in this subdivision.

(d) The requirements of this subdivision do not apply to affidavits of candidacy for a candidate for: (1) judicial office; (2) the office of county attorney; or (3) county sheriff.

Subd. 2. **Major party candidates.** A candidate who seeks the nomination of a major political party for a partisan office shall state on the affidavit of candidacy that the candidate either participated in that party's most recent precinct caucus or intends to vote for a majority of that party's candidates at the next ensuing general election.

Subd. 3. [Repealed, 1983 c 253 s 26]

Subd. 4. **Federal offices.** Candidates for president or vice president of the United States are not required to file an affidavit of candidacy for office. Candidates who seek nomination for the office of United States senator or representative shall state the following information on the affidavit:

(1) for United States senator, that the candidate will be an inhabitant of this state when elected and will be 30 years of age or older and a citizen of the United States for not less than nine years on the next January 3 or, in the case of an election to fill a vacancy, within 21 days after the special election; and

(2) for United States representative, that the candidate will be an inhabitant of this state when elected and will be 25 years of age or older and a citizen of the United States for not less than seven years on the next January 3 or, in the case of an election to fill a vacancy, within 21 days after the special election.

Subd. 4a. **State and local offices.** Candidates who seek nomination for the following offices shall state the following additional information on the affidavit:

(1) for governor or lieutenant governor, that on the first Monday of the next January the candidate will be 25 years of age or older and, on the day of the state general election, a resident of Minnesota for not less than one year;

(2) for supreme court justice, court of appeals judge, or district court judge, that the candidate is learned in the law and will not turn 70 years of age before the first Monday in January of the following year;

(3) for county, municipal, school district, or special district office, that the candidate meets any other qualifications for that office prescribed by law;

(4) for senator or representative in the legislature, that on the day of the general or special election to fill the office the candidate will have maintained residence not less than one year in the state and not less than six months in the legislative district from which the candidate seeks election.

Subd. 5. **United States senator; two candidates at same election.** When two candidates are to be elected United States senators from this state at the same election, each individual filing for the nomination shall state in the affidavit of candidacy the term for which the individual desires to be a candidate, by stating the date of the expiration of the term.

Subd. 6. **Judicial candidates; designation of term.** An individual who files as a candidate for the office of chief justice or associate justice of the supreme court, judge of the court of appeals, or judge of the district court shall state in the affidavit of candidacy the office of the particular justice or judge for which the individual is a candidate. The individual shall be a candidate only for the office identified in the affidavit. Each justice of the supreme court and each court of appeals and district court judge is deemed to hold a separate nonpartisan office.

Subd. 7. **Governor and lieutenant governor.** An individual who files as a candidate for governor or lieutenant governor shall file the affidavit of candidacy jointly with the affidavit of another individual who seeks nomination as a candidate for the other office.

Subd. 8. **Proof of eligibility.** A candidate for judicial office or for the office of county attorney shall submit with the affidavit of candidacy proof that the candidate is licensed to practice law in this state. Proof means providing a copy of a current attorney license.

A candidate for county sheriff shall submit with the affidavit of candidacy proof of licensure as a peace officer in this state. Proof means providing a copy of a current Peace Officer Standards and Training Board license.

Subd. 9. **Multiple affidavits of candidacy.** Notwithstanding subdivision 1, clause (2):

(1) a candidate for soil and water conservation district supervisor in a district not located in whole or in part in Anoka, Hennepin, Ramsey, or Washington County may also have on file an affidavit of candidacy for:

(i) mayor or council member of a statutory or home rule charter city of not more than 2,500 population contained in whole or in part in the soil and water conservation district; or

(ii) town supervisor in a town of not more than 2,500 population contained in whole or in part in the soil and water conservation district; and

(2) a candidate for school board member may also have on file an affidavit of candidacy for town board supervisor, unless that town board is exercising the powers of a statutory city under section 368.01 or an applicable special law.

History: *1981 c 29 art 4 s 6; 1982 c 501 s 14; 1983 c 247 s 83,84; 1986 c 444; 1986 c 475 s 8; 1990 c 603 s 2; 1993 c 223 s 7,8; 1995 c 222 s 2; 1996 c 419 s 6,10;*

1997 c 147 s 26; 1Sp2001 c 10 art 18 s 16; 2004 c 293 art 2 s 14; 2005 c 156 art 6 s 31,32; 2008 c 244 art 2 s 16; 2010 c 314 s 2; 2015 c 70 art 1 s 20; 2023 c 62 art 4 s 69-72; 2024 c 112 art 2 s 16

Michelle MacDonald
Michelle@MacDonaldLawFirm.com
Direct: 612.554.0932

A. Describe your employment history.

2011-present

Founder, Volunteer, President/Administrator, Restorative Justice Circle & Mediation Facilitator, Trainer	Family Innocence, a nonprofit dedicated to keeping families out of court

Headquarters: Minnesota/Massachusetts

2004-2021

Lawyer/Member/ Administrator	MacDonald Law Firm

West St. Paul and Minneapolis, Minnesota

1999-2014

Adjunct Conciliation Court Referee/Small Claims Court Judge	Hennepin County

Minneapolis, Minnesota

1992-2011

Adjunct Referee and Arbitrator (Family and Civil)	Hennepin County
Minneapolis, Minnesota	
1994-June 2004	
Attorney and Shareholder	Kallas & MacDonald, Ltd.
Minneapolis, Minnesota	
1986-1994	
Attorney	Wilkerson, Lang & Hegna* formerly Steffens & Wilkerson
Edina, Minnesota	
1984-1986	
Law Clerk	Balliro, Mondano & Balliro
Boston, Massachusetts	

B. Describe your education.

Undergraduate:	Boston College, Chestnut Hill, MA Bachelor of Arts, Majors: Communication and English Graduated Cum Laude, 1983
Law School:	Suffolk University Law School, Boston, MA Juris Doctorate, 1986

C. Describe your background.

- 35 years of experience as an attorney in private practice assisting thousands of people with legal challenges before hundreds of state and appellate court Judges.

- Since joining the Rule 114 ADR Neutral roster in 1997, Ms. MacDonald has maintained a mediation/dispute resolution division of the law firm, bringing countless cases to resolution.

- 22 years of experience serving as an Adjunct Referee in Family Court and a Conciliation (Small Claims) Court Judge, deciding hundreds of small claims court civil matters, receiving a Years of Service Award. Rule 114 Qualified Neutral since 1996.

    - Judge, Conciliation/Small Claims Court, Hennepin County (1999 to 2014)
    - Adjunct Referee/Arbitrator, family and civil court (1992-2011)

- Lead counsel on over Sixty (60) appellate decisions, researching and writing memorandums and briefs, which include amicus ("friend of the court") briefs for the Minnesota Supreme Court, appearances before the Appellate Court and Supreme Court, and Petitions to the United States Supreme Court.

- Leadership activities include *Family Innocence*, a nonprofit dedicated to keeping families out of court, resolving conflicts and injustices peacefully, Founder/Volunteer President/Mediator/Restorative Justice Circle Facilitator/Trainer.

- Candidate, statewide for Minnesota Supreme Court: 40.61% or 1,016,245 votes for Minnesota Supreme Court in 2020;

- Author/Editor of The World's Last Custody Trial (2016) by Michelle MacDonald and Michael Volpe;

Bullied to Death: Chris Mackney's Kafkaesque Divorce by Michael Volpe (2015); The Long Version (2017) by Fletcher Long

D. List and describe all charitable endeavors, community work, and other activities in which you have engaged

Ms. MacDonald's pro bono legal activities involved representing individuals in family and juvenile matters in district and appellate courts; and working with Family Innocence, the Cooperative Private Divorce Project, and Custody/Parenting Time Dialogue group.

As an advocate, circle facilitator, and educator for Family Innocence, her volunteer work centers around educating herself and others about dispute resolution, and ways to keep family members out of the court adversary process. Ms. MacDonald advocates a unitive system of justice that is equal and voluntary, and integrates restorative justice practices, where those in conflict meet in a safe space, hear each other out, and decide what to do about their conflict.

Her work with Family Innocence promotes the concept of *family innocence*, and early intervention by advocates who assist family members. Ms. MacDonald works with advocates, circle facilitators, mediators, professionals, attorneys and judges, receptive to transforming our family justice system, including its response to couples with children breaking up (or not together in the first place).

LAW/ RESTORATIVE

Family Innocence, a nonprofit dedicated to keeping families out of court, founder, volunteer president/board member 2011 – present

JUSTICE ACTIVITIES

Cooperative Private Divorce Project, formerly Divorce without courts. Regular meetings upon

inception, 2013. Our group of developed proposed legislation Cooperative Private Divorce Bill, HF 1348, which creates an administrative pathway to divorce that skips the court adversarial system, additional hearings in 2018-2019.

Family Law Reform/ Child Custody/Parenting Time Dialogue Group. Regular meetings upon inception, 2013. The dialogue group is comprised of stakeholders who, despite having different philosophies, were able to reach compromise and consensus agreements on numerous legislative proposals in 2014 and 2015.

Member, Minnesota State Bar Association --- Family Law, Alternative Dispute Resolution, Children and the Law sections; MSBA Professionalism Committee (Past Chair); MSBA Mock Trial Program, Minnesota State Bar Association, active participation, 2005-present; Hennepin County and Dakota County Bar Associations.

Active member, National Association for Community & Restorative Justice (NACRJ); National committee/Exhibitor, 2019 "Elevating Justice" Conference; and, Exhibitor, 2022 Conference. 2018 – present

Restorative Practices International, 2018 International Conference on Restorative Practices.

Recognized Minnesota Pro Bono Lawyer, MSBA North Star Lawyers Program, 2013 to 2019.

Amdahl Inn of Court, 2012 to 2021

Christian Legal Society, 2019 to present

Northstar Law and Policy Forum, 2018 to present

Juris Divas, social group of women lawyers, judges, legal professionals, who raise money for various causes, since inception, 2005 to present

Rosemount Police Department's Citizen's Police Academy , Rosemount, MN 2010

Rosemount/Eagan Hockey Associations 1998-2007

Council on International Education Exchange, exchange student program Active involvement in hosting high school exchange students from Brazil, Russia, Germany, Romania for the duration of the school year. One student supported through graduation from Augsburg College. Organized other host families and events. 1998-2007.

E. Describe any teaching you have done, continuing legal education, or other professional education programs.

TEACHINGS Developed and presented numerous Family Innocence advocacy and restorative circle and mediation trainings. The organization has been listed on the Supreme Court ADR Rule 114 roster for neutrals, and is listed as a frequent Sponsor.

Developed and presented restorative justice circle courses, including a 46 hour Restorative Justice Circle Mediation Training, certified by the Alternative Dispute Resolution, Supreme Court, that qualifies for 42 Continuing Legal Education credits for attorneys. MacDonald recently produced *Enjoy the Ride: Restorative Justice Circle Mediation Training; the movie series*, a 6 season edu-film designed to certify participants in restorative justice in order to keep families of court by use of restorative practices and peacemaking.

www.Familycourt.com

Presenter/Exhibitor, 2024 National Association of Community and Restorative Justice (NACRJ), " A case for abolishing Family court: Enjoy the Ride: restorative justice circle training: the movie series, Washington, DC, July 2024 (forthcoming).

Planning Committee/Exhibitor, 2019 National Association of Community & Restorative Justice Conference: the theme of the 2019 NACRJ Conference is "Elevating Justice: Widening the Circle, " Denver Colorado, June 14-16, 2019

Planning Committee/Exhibitor, 2018 International Conference on Restorative Practices, Metropolitan State University, St. Paul, MN August 9-11, 2018

Presenter, 2018 Whistleblower Summit, Washington, DC; numerous other presentations on Family Law Reform including DivorceCorp conference and Pro se America events, Washington, D.C. (2014 - 2018)

Presented at the National Association of Relationships and Marriage Education (NARME), Restorative Justice & Family Circles, Fresno, Texas. (2014, 2015)

Conducted/presented continuing legal education seminars on behalf of the Minnesota State Bar, Professionalism Committee and Amdahl Inn of Court for ethics/bias credits to attorneys at the State Bar Convention, Collaborative Law, and other continuing legal education and alternative dispute resolution trainings on behalf of Family Innocence presenting restorative justice circles.

Seminars to individuals and organizations on Estate and Tax Planning – wills, trusts and related documents, including probate court avoidance and revocable living trusts