No. 20-612

IN THE
SUPREME COURT OF THE UNITED STATES

Roque "Rocky" De La Fuente
and James Bernard Martin, Jr.,

Petitioners,

v.

Minnesota Secretary of State Steve Simon,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

FEDERAL CASES

STATE CASES

FEDERAL CONSTITUTIONAL PROVISIONS AND RULES

STATE STATUTES

BRIEF IN OPPOSITION

Respondent Minnesota Secretary of State Steve Simon respectfully requests that the Court deny Petitioners Roque De La Fuente and James Martin, Jr.'s petition for a writ of certiorari seeking review of the decision of the Minnesota Supreme Court in *De La Fuente v. Simon*, 940 N.W.2d 477 (Minn. 2020). The court's opinion is reproduced in Petitioners' appendix. (App. 5a-45a.)

PARTIES TO THE PROCEEDINGS

De La Fuente is a California resident who ran for President in Minnesota's 2020 presidential nomination primary and its 2020 general election. *De La Fuente*, 940 N.W.2d at 483. Martin is a voter who asserted that he wished to vote for De La Fuente in the primary. (Pet. 7.) Simon is Minnesota's Secretary of State and was sued in his official capacity. (*Id.* at ii.)

STATEMENT OF THE CASE

Minnesota law provides for a presidential nomination primary to be held in each presidential election year. Minn. Stat. § 207A.11(a), (b) (2020). Each major political party participating in the nomination primary determines the names of the candidates for its presidential nomination that will be printed on primary ballots. *Id*. § 207A.13, subd. 2(a). The party may also determine whether its primary ballot will include a space for voters to cast votes for write-in candidates. *Id.*, subd. 1(c). No later than 63 days before the primary, the chair of each participating party must send the Secretary the names of all candidates who the party selected to appear on its primary ballot and the party's determination regarding write-in candidates. *Id.*, subds. 1(c), 2(a). Once the party submits its list of candidate names to the Secretary, state law prohibits changes to the list. *Id.*, subd. 2(a).

Minnesota held a presidential nomination primary on March 3, 2020. *De La Fuente*, 940 N.W.2d at 481. In October 2019, the Republican Party of Minnesota sent the Secretary its

authorized list of candidates to be listed on the ballot for the primary. *Id.* at 483. The only name on the list was Donald J. Trump. *Id.* Two months later, the party asked the Secretary to add a space for write-in candidates on its primary ballot. *Id.* The party then notified the Secretary that he should count write-in votes for De La Fuente. *Id.* at 496 n.20. Although De La Fuente repeatedly deems himself a "party-chosen" candidate (*e.g.*, Pet. i, 2, 4), the Republican Party never identified him as a candidate to be named on the ballot; it only authorized the State to count write-in votes for him.

In December 2019, Petitioners petitioned the Minnesota Supreme Court under Minnesota's election-error statute, Minn. Stat. § 204B.44, to require the Secretary to include De La Fuente as a presidential candidate on the Republican primary ballot. *Id.* at 483. They argued, among other things, that the Minnesota statute allowing the state Republican Party to keep De La Fuente's name off the primary ballot violated their rights under the First and Fourteenth Amendments. *Id.* at 484. The court denied the petition, rejecting Petitioners' constitutional claims in light of the de minimis burden the challenged statue placed on Petitioners' rights and the state's regulatory interest in protecting Minnesota political parties' right of free association. *Id.* at 496-97.

In the nomination primary held on March 3, Minnesota voters cast 137,275 votes for Donald J. Trump. State Canvassing Board Certificate—2020 Presidential Nomination Primary at 2, available at https://officialdocuments.sos.state.mn.us/Files/GetDocument/122591 (last visited Jan. 4, 2021). De La Fuente received 16 of the 3,280 write-in votes that voters cast. *Id*.

Section 207A.13 applies only to major political parties. *See* Minn. Stat. §§ 200.02, subd. 7 (defining "major political party"); 207A.11(d) (stating that Minn. Stat. ch. 207A "only applies to a major political party that selects delegates at the presidential nomination primary to send to a national convention"). A person seeking to run for President as a candidate for a non-major party can appear on the general election ballot by following the nominating-petition process required by

state law. Minn. Stat. § 204B.07, subds. 1-2 (2020) (providing requirements for nominating petitions for "presidential electors or alternates … nominated by petition" rather than certified by a major political party). De La Fuente followed this process and appeared on the November ballot as the presidential candidate of the Independence-Alliance party. Candidate Filings—2020 State General Election, available at https://tinyurl.com/y8gskq9w (last visited Jan. 4, 2021). He received 5,611 votes. 2020 State Canvassing Board Report at 4-6, available at https://officialdocuments.sos.state.mn.us/Files/GetDocument/125081 (last visited Jan. 4, 2021).

REASONS FOR DENYING THE PETITION

No compelling reasons warrant review in this case. *See* Sup. Ct. R. 10. The Minnesota court's decision is entirely consistent with all apposite federal precedent, including several decisions of this Court. The decision below correctly concluded that Petitioners' claim under the First and Fourteenth Amendments was without merit. There is no basis for further review.

I. THE MINNESOTA SUPREME COURT CORRECTLY APPLIED THIS COURT'S PRECEDENT TO REJECT PETITIONERS' CONSTITUTIONAL CLAIMS.

The Court should deny the petition because the decision below correctly applied the principles this Court has established for evaluating election-law claims under the First and Fourteenth Amendment. There is therefore no conflict between the Minnesota court's decision and any relevant decision of this Court. *See* Sup. Ct. R. 10(c).

As the Minnesota court held, the core right implicated by this case is the Republican Party of Minnesota's First Amendment right to freedom of association. The constitution does not grant Petitioners (or anyone else) the authority to force the Republican Party to associate with them in the manner Petitioners prefer by placing De La Fuente's name on the party's presidential nomination primary ballot. The challenged Minnesota election statute exists to protect political parties' fundamental right to freedom of association; it is therefore constitutional.

A. Section 207A.13 is Constitutional Because the State's Important Regulatory Interests Far Outweigh the Burden on Petitioners' Rights.

Petitioners challenge Minn. Stat. § 207A.13, subd. 2, which states:

> **Candidates on the ballot.** (a) Each party must determine which candidates are to be placed on the presidential nomination primary ballot for that party. The chair of each party must submit to the secretary of state the names of the candidates to appear on the ballot for that party no later than 63 days before the presidential nomination primary. Once submitted, changes must not be made to the candidates that will appear on the ballot.
>
> (b) No later than the seventh day before the presidential nomination primary, the chair of each party must submit to the secretary of state the names of write-in candidates, if any, to be counted for that party.

For the 2020 primary, the Minnesota Republican Party notified the Secretary that the only candidate to appear on the party's ballot would be the incumbent President. The party later asked the Secretary to count write-in votes for De La Fuente and other candidates.

The U.S. Constitution authorizes states to prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. Art. I, § 4. States therefore retain the power to regulate their own elections. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). State election regulations inevitably impose burdens on individuals' rights to vote and to associate with others for political purposes. *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). As a result, this Court does not broadly subject election regulations to strict scrutiny; doing so "would tie the hands of States seeking to assure that elections are operated equitably and efficiently." *Burdick*, 504 U.S. at 433. Instead, the Court tailors the level of scrutiny applied to each case according to the particular details of the private rights and government interests that are implicated:

> [A] court considering a challenge to a state election law must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate against the precise interest put forward by the state as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's right.

Id. at 434 (internal quotation marks omitted). The Court applies strict scrutiny only when a state law subjects First and Fourteenth Amendment rights to "severe" restrictions. *Id.* But when the law merely imposes reasonable and nondiscriminatory restrictions on constitutional rights, "the State's important regulatory interests are generally sufficient to justify the restrictions." *Id.* (internal quotation marks omitted).[1]

1. The burden on Petitioners' rights is de minimis.

In this case, the Minnesota court correctly determined that the *Burdick* balancing test mandates a limited standard of review. *De La Fuente*, 940 N.W.2d at 495-96. This Court's precedent makes clear that (1) an individual has no unmitigated constitutional right to appear on a ballot in a partisan presidential nomination primary and (2) a voter has no unmitigated constitutional right to vote for a particular candidate in such a primary. *See, e.g.*, *N.Y. State Bd. of Elections v. López Torres*, 552 U.S. 196, 205 (2008) (rejecting constitutional claim on grounds that candidate has no "constitutional right to have a 'fair shot' at winning the party's nomination"); *Burdick*, 504 U.S. at 438 (holding that purpose of elections is choosing candidates for public office, not some "more generalized expressive function[, which] would undermine the ability of States to operate elections fairly and efficiently").

Notably, Minnesota's presidential nomination primary is like no other election proceeding created by its law. In every other election in the state, the candidate who receives the most votes

[1] Though the Minnesota court rejected Petitioners' First and Fourteenth Amendment claims by applying the balancing test provided by this Court in *Burdick*, Petitioners now assert that they were entitled to a separate examination of their equal protection claim. (Pet. 25-32.) Petitioners are incorrect: the *Burdick* balancing test is the determinative standard for *all* claims that "a challenged [election] regulation burdens First and Fourteenth Amendment rights." *Burdick*, 504 U.S. at 434. Even if this were not the case, the notion that President Trump and De La Fuente were similarly situated—specifically, regarding the degree to which the Minnesota Republican Party desired to associate with each of them for the purposes of the 2020 presidential primary—is facially absurd. *See Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (holding that Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike").

is entitled to either (1) take office or (2) be listed ballots in a later Minnesota election. But winning a presidential nomination primary carries with it no such direct consequence. Instead, that primary merely yields a particular variety of *information*—specifically, numbers of votes received by the respective candidates—that the major parties then use within their private nominating processes. *Compare Belluso v. Poythress*, 485 F. Supp. 904, 912 (N.D. Ga. 1980) (noting that presidential primary is "a preferential primary that has dubious effect as opposed to a general election that has finality"). In other words, even if De La Fuente had received the most votes in the March primary, that would not have guaranteed him a place on the November ballot; the national Republican Party would first have to nominate him at its national convention. As a federal court hearing a constitutional lawsuit substantially identical to the current one noted,

> there is much truth in the [State's] characterization of [its] Presidential Preference Primary as a "beauty contest." The balloting merely effects a recommendation to the parties, which are free to accept or ignore the results. The plaintiffs' constitutional interest in [the would-be-candidate plaintiff's] inclusion is decreased because the importance of the primary lies within the discretion of the party.

Id. The same logic applies to the instant case, and as a result the Minnesota court correctly concluded that the burden on Petitioners' constitutional rights is de minimis. *See De La Fuente*, 940 N.W.2d at 495-96.

Moreover, De La Fuente was not denied the right to run for President in Minnesota: he exercised his right under state law to run in the November 2020 general election as the on-ballot presidential candidate of the Independence-Alliance party. In turn, voters like Martin retained the right to vote for De La Fuente for President in the general election. Thus, this case does not involve the question of whether De La Fuente was permitted to run for President; instead, the question before the Minnesota court was only whether Petitioners had the right to force their way into the Republican Party's presidential nominating process. The court correctly concluded that they did not.

2. The state has a compelling interest in protecting political parties' right to free association.

For the above reasons, the actual burden that the challenged statute imposes on Petitioners' constitutional rights is severely limited, if not nonexistent. Under these circumstances, Minnesota need not establish a compelling interest to tip the constitutional scales in its direction. *Burdick*, 504 U.S. at 434. Instead, the state need only establish that its legitimate interests are sufficient to outweigh the limited burden that the challenged statute imposes on Petitioners. *Id*.; *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 206 (1999). This standard is easily met in this case: Minnesota's interest in limiting the candidates on the March 3 ballot to those named by the major political parties is more than sufficient, because the state has a compelling interest in protecting major parties' constitutional freedom of association.

A political party is a private association that holds a First Amendment right to identify the people who constitute the association and to limit its membership to those people alone. *Democratic Party of U.S. v. Wisconsin*, 450 U.S. 107, 121-22 (1981). As such, parties have the right to choose their party leaders without interference from federal or state governments. *Id.* at 121-26; *see also Kucinich v. Texas Democratic Party*, 563 F.3d 161, 166-68 (5th Cir. 2009) (rejecting constitutional challenge to loyalty oath required by state party for place on party's presidential nomination primary ballot). Further, the First Amendment grants political parties the right to determine their own membership, which includes the right to disregard other individuals' electoral preferences. *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 215 n. 6 (1986) (holding that a "nonmember's desire to vote in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications").

"In no area is the political association's right to exclude more important than in the process of selecting its nominee." *Cal. Democratic Party v. Jones*, 530 U.S. 567, 575 (2000). Moreover,

states have a compelling interest in protecting its political parties' associational rights, not least within the context of determining the names to be printed on ballots in a presidential nomination primary. *Duke v. Massey*, 87 F.3d 1226, 1234 (11th Cir. 1996) ("*Duke III*").

The *Burdick* balancing test thus indicates that the challenged Minnesota statute is subject only to limited scrutiny. First, the burden placed on Petitioners' constitutional rights is at best attenuated and at worst nonexistent, given that there is no evident basis for Petitioners' contention that they have a constitutional right to participate in the presidential nomination primary in the manner they desire. Second, the state's countervailing interest in preserving political parties' freedom of association is clear and compelling.[2]

B. Section 207A.13 is a Reasonable and Nondiscriminatory Provision that is Justified by the State's Important Regulatory Interests.

For the reasons explained above, the candidate restrictions imposed by Minn. Stat. § 207A.13, subd. 2, must be upheld if they are reasonable, nondiscriminatory, and justified by an important regulatory interest of the state. *See Burdick*, 504 U.S. at 434. The Minnesota court correctly applied this Court's precedent and concluded that the challenged restrictions easily pass constitutional muster.

The restrictions are reasonable, in large part, because they did not bar De La Fuente from running for President or prevent Martin from voting for him. *See* Minn. Stat. §§ 204B.07, subd. 2

[2] Though it was not a basis of the state-court decision below, Minnesota also has a relevant interest in avoiding a "laundry list" ballot that contains the name of every would-be candidate, no matter how frivolous her candidacy. *See Clements v. Fashing*, 457 U.S. 957, 964-65 (U.S. 1982) (holding that states "have important interests in protecting the integrity of their political processes from frivolous or fraudulent candidacies, in ensuring that their election processes are efficient, [and] in avoiding voter confusion caused by an overcrowded ballot"). Presuming, as is reasonable, that a major political party is unlikely to dilute the value of the information it derives from a presidential nomination primary by placing an extremely large number of candidates' names on its primary ballot, the challenged Minnesota statute serves the state's interest in avoiding "laundry list" ballots.

(requirements for minor-party and independent candidates for President to appear on ballots); .09, subd. 3(b) (requirements for individuals running for President as write-in candidates). De La Fuente appeared on the 2020 general election ballot as a candidate for President and received more than 5,600 votes. *Compare López Torres*, 552 U.S. at 207 (holding that candidates' and voters' associational rights are "well enough protected" if there is "an adequate opportunity to appear on the general-election ballot"). The challenged provisions of section 207A.13 are also nondiscriminatory because, by directly granting each political party the authority to determine the list of candidates it agrees to associate with on its presidential nomination primary ballot, they are precisely tailored to serve the state's compelling interest in protecting the parties' right to free association. Finally, the state's need to protect that right constitutes an important regulatory interest.

C. The Republican Party's Decision to Accept Write-In Votes for De La Fuente Does Not Affect the Outcome of the Case.

Petitioners now contend that Republican Party of Minnesota's request that Minnesota election officials count write-in votes for De La Fuente proves that the party and the State were obligated to print his name on the ballot. They claim that the party's decision regarding write-in votes was an admission that "De La Fuente was always associated with the Republican Party"[3] and that the party therefore could not conceal that association from the public by leaving De La Fuente off its primary ballot. (Pet. 13-14.)

[3] De La Fuente has not "always [been] associated with the Republican Party." He ran for President in the 2020 general election as a candidate of the Independence-Alliance Party. In previous elections, he ran for President as a Democrat and as an independent. *See, e.g.*, *De La Fuente Guerra v. Toulouse-Oliver*, 752 Fed. App'x 579, 580 (10th Cir. 2018); *De La Fuente v. Cortés*, 751 F. App'x 269, 270 (3rd Cir. 2018); *De La Fuente v. Cal.*, 278 F. Supp. 3d 1146, 1149 (C.D. Cal. 2017); *De La Fuente v. Merrill*, 214 F.Supp.3d 1241, 1247 (N. D. Ala. 2016).

Petitioners are incorrect. A political party's right to define its association with an individual is not a binary yes-or-no determination. By necessity, the right to free association includes the right to decide *how*, if at all, the party will associate with the individual—whether as a donor, a petition signer, a convention delegate, a write-in candidate, an on-ballot candidate, or none of these. *See, e.g.*, *Cousins v. Wigoda*, 419 U.S. 477, 488-89 (1975) (holding party's free-association rights barred state from compelling seating of one slate of party's delegates rather than another at party's national convention). Petitioners' contention that the Republican Party forfeits its constitutional right to select candidates for its primary ballot by allowing any degree of association with an additional candidate—even by merely allowing his write-in votes to be counted—is absurd. Counting 16 write-in primary votes for De La Fuente did not make him the Republican Party of Minnesota's chosen candidate.

Finally, Petitioners assert that the decision below was premised on "the falsehood that the Minnesota Republican Party chose not to politically associate with De La Fuente," because the party asked the Secretary to count write-in votes for him. (Pet. 13.) This is incorrect; the court acknowledged the party's request. *De La Fuente*, 940 N.W.2d at 496 n.20. And the court correctly concluded that that fact had no impact on the party's free-association right to determine which candidates would be listed on its primary election ballot. *See id.* at 496 (following *López Torres*, 552 U.S. at 202, and holding that a political party "ha[s] a First Amendment right to choose a candidate-selection process that will in its view produce the nominee who best represents its political platform") (internal quotation marks omitted). Indeed, that the party asked the state to count write-in votes for De La Fuente defeats Martin's claim completely: because Minnesota permitted him to cast a primary vote for De La Fuente and have that vote counted, Martin's constitutional rights were not burdened in this case at all. *Compare Smith v. Winter*, 717 F.2d 191,

198 (5th Cir. 1983) ("[T]he right to vote does not entail the right to have a [particular] candidate elected.").

For these reasons, the Minnesota Supreme Court's determination that Petitioners' constitutional claims were meritless was plainly correct under the standards this Court has provided. There is no need for further review.

II. NO CIRCUIT SPLIT EXISTS FOR THIS COURT TO RESOLVE.

The Minnesota court's resolution of Petitioners' constitutional claims finds strong and unanimous support in the decisions of federal courts that have reviewed similar lawsuits pertaining to presidential primary ballots. As a result, there is no split in lower-court authority that this Court is needed to resolve, and the Court should deny the petition. *See* Sup. Ct. R. 10(b).

A. The Minnesota Court Decision is Consistent with All Relevant Federal Precedent.

Though they claim a split in authority exists, Petitioners cite no apposite case in which a court issued a contrary ruling. To the contrary, federal courts have decided two prior lawsuits involving facts and constitutional claims that are functionally identical to those in the case at bar. Both courts reached the same result as the Minnesota court did. There is therefore no split in lower-court precedent regarding the proper determination of Petitioners' claims.

In 1992, self-declared Republican presidential candidate David Duke and three voters who supported him challenged a Georgia statute that denied Duke a place as a Republican candidate on Georgia's presidential nomination primary ballot. *Duke v. Cleland*, 954 F.2d 1526, 1527-28 (11th Cir. 1992) ("*Duke I*"). The Eleventh Circuit applied *Burdick* and rejected Duke's constitutional claims, holding that any interests the candidate might theoretically have under the First and Fourteenth Amendments "do not trump the Republican Party's right to identify its membership based on political beliefs nor the state's interests in protecting the Republican Party's right to

define itself." *Duke III*, 87 F.3d at 1231-33. The court also rejected the voters' claims, noting that any burden on their rights was "considerably attenuated and possibly nonexistent" and that they cited no authority giving them a right to vote for their preferred candidate in a nonbinding primary. *Id.* at 1233. Finally, the court held that any interest the plaintiffs had were outweighed by the state's "compelling interest in protecting political parties' right to define their membership" and "significant interest in structuring and regulating elections in order to facilitate order, honesty and fairness." *Id*. at 1234; *see also Haase v. Silver*, 140 Fed. App'x 274, 277 (2nd Cir. 2005) (holding that "an individual who does not fit within the parameters determined by a party does not have an absolute right to participate in that party's primary election").

An earlier Georgia federal decision reached the same result as *Duke*. In *Belluso v. Poythress*, the court rejected claims by a would-be candidate and two individuals wishing to vote for him in Georgia's 1980 Republican presidential nomination primary. 485 F. Supp. at 906, 914. The court held that the candidate had no constitutional right to associate with the Republican Party as his "unwilling partner," that "the right of [the candidate's] supporters to vote for him in the general election stands unaffected," and that Georgia's interest in protecting the party's rights justified excluding the candidate from the primary. *Id.* at 911-13.

The instant petition is indistinguishable from *Duke* and *Belluso*. The Minnesota court correctly followed federal decisions in both. *See De La Fuente*, 940 N.W.2d at 489, 92, 95 (following *Belluso*, 485 F. Supp. at 912), 495-96 (following *Duke III*, 87 F.3d at 1233).

B. The Eighth Circuit Decision Petitioners Cite is Inapposite.

Petitioners assert that the Minnesota court's decision creates a split in authority that this Court is needed to resolve. In support of this assertion, they cite the following sentence from a 1995 decision from the Eighth Circuit in *Republican Party of Arkansas v. Faulker County*:

> [The Supreme Court's ballot access cases] make clear that where a statutory burden, such as a filing fee, operates to exclude a given candidate from the ballot, an alternative means of access must be provided absent a sufficiently strong state interest.

Republican Party of Ark. v. Faulkner Cnty., 49 F.3d 1289, 1293-94 (8th Cir. 1995); Pet. 22-23. Without any context or further analysis of the case, Petitioners declare that the sentence summarizes Eighth Circuit precedent regarding the relationships between voters, candidates, and parties and that it conflicts with the line of federal case law exemplified by the Eleventh Circuit's decisions in *Duke*. (Pet. 24-25.)

Petitioners are wrong. First, the facts of *Faulkner County* demonstrate that it has no relevance to this litigation, to the *Duke* line of cases, or to any dispute involving a candidate's right to participate in a primary election. Second, the lone sentence that Petitioners pluck from the *Faulkner County* decision does not even state the rule of that case: instead, it is dicta.

Faulkner County involved the Republican Party of Arkansas's challenge to state statutes that required political parties to conduct and pay for the state's primary elections as a condition of accessing the general election ballot. 49 F.3d at 1291. The only ballot-access rights addressed in the case were a *party's* right to access the *general* election ballot, and the only role that primary elections played in the case were as the financial and administrative burden that the state law required parties to bear to run their candidates in the general. *Id.* at 1296. Thus, in context, the Eighth Circuit's reference to "exclud[ing] a given candidate from the ballot" refers to excluding her from the ballot in a general election, not a primary. More broadly, the fact pattern at issue in *Faulkner County* bears no resemblance to this case, to *Duke*, or to *Belluso*, all of which examined the rights of a candidate to access a party's primary ballot notwithstanding the party's preference that he be excluded.

Notably, the sole plaintiff in the *Faulkner County* case was a political party, not a candidate or voter. The Eighth Circuit's central holding was that the challenged Arkansas statutes impermissibly burdened the party's constitutional right to free association—the same right that the statute challenged in this case exists to protect. *Id.* at 1301. Thus, the sentence that Petitioners rely on was not the court's holding; instead, it was a portion of the court's paraphrase of *this* Court's rulings in unrelated ballot-access cases. *Id.* at 1293-94 (examining, e.g., *Williams v. Rhodes*, 393 U.S. 23, 25 (1968); *Lubin v. Panish*, 415 U.S. 709, 718 (1972)). The sentence is therefore dicta. As a result, even if *Faulkner County* were apposite to the facts of this case, the sentence Petitioners quote would not create a circuit split.[4]

Finally, even if the quoted statement applied to the current case, it would not conflict with the Minnesota court's decision. Under Minnesota law, De La Fuente was provided two "alternative means of access" to presidential-election ballots in 2020: first, the Republican Party authorized Minnesota election officials to count write-in primary votes for him; and second, state law gave him access to the general election ballot.

For these reasons, the Minnesota Supreme Court's decision in *De La Fuente* is in agreement with the unanimous determination of the federal courts that (1) a state law barring individuals from appearing on the presidential nomination primary ballot of an unwilling political party imposes little if any burden on any individual's constitutional rights and (2) states have important regulatory interests in protecting political parties' right to freedom of association and in

[4] Petitioners also mistakenly assert that the Minnesota Supreme Court should have given *Faulkner County* precedence over *Duke III* and *Belluso*, because the Eighth Circuit is Minnesota's "own federal circuit." (Pet. 24.) To the contrary, as a matter of basic federalism, the rulings of the Eighth Circuit Court of Appeals have no more binding or persuasive power over Minnesota state courts than the rulings of the Eleventh Circuit or any other lower federal court do. This Court is the only federal judicial body with binding authority over any state's highest court.

restricting ballot access to legitimate and non-frivolous candidates. There is no split in authority among lower courts on the determination of these issues, and the Minnesota court's decision does not create one. Certiorari review is therefore unnecessary.

CONCLUSION

Because this case does not present any legal questions that warrant this Court's review, the Secretary respectfully requests that the Court deny the petition.

Dated: January 13, 2021

Respectfully submitted,

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