STATE OF MINNESOTA

IN SUPREME COURT

A19-1994

Original Jurisdiction — Per Curiam

Roque "Rocky" De La Fuente, et al.,

Petitioners,

vs.

Steve Simon, Minnesota Secretary of State,

Respondent.

Filed: March 18, 2020
Office of Appellate Courts

Erick G. Kaardal, Mohrman, Kaardal & Erickson, P.A., Minneapolis, Minnesota, for petitioners.

Keith Ellison, Attorney General, Nathan J. Hartshorn, Assistant Attorney General, Saint Paul, Minnesota, for respondent.

Charles N. Nauen, David J. Zoll, Lockridge Grindal Nauen P.L.L.P., Minneapolis, Minnesota, for amicus curiae Minnesota Democratic-Farmer-Labor Party.

S Y L L A B U S

1. Petitioners' constitutional challenges to Minn. Stat. § 207A.13 (2018), are not barred by the doctrine of laches.

2. Minnesota Statutes § 207A.13 does not violate the prohibition against special privileges, Minn. Const. art. XII, § 1, because the Legislature had a rational basis for

classifying political parties based on a party's participation in a national convention to nominate the party's presidential candidate.

3. Minnesota Statutes § 207A.13 does not violate the Presidential Eligibility Clause, U.S. Const. art. II, § 1, cl. 5, because requiring a political party to identify the candidates for the ballot to be used in a presidential nomination primary is not a condition of eligibility to serve as President of the United States.

4. Minnesota Statutes § 207A.13 does not violate petitioners' rights of free association under the First and Fourteenth Amendments to the United States Constitution, because any burden imposed on those rights by the ballot-preparation procedures in the statute is de minimis and outweighed by the associational rights of political parties and the State's regulatory interests.

Petition denied.

O P I N I O N

PER CURIAM.

The Chair of The Republican Party of Minnesota notified the Minnesota Secretary of State on October 24, 2019, that its candidate for the ballot in the presidential nomination primary held in Minnesota on March 3, 2020, is Donald J. Trump. On December 13, 2019, petitioners Roque "Rocky" De La Fuente and James Martin, Jr. filed a petition under Minn. Stat. § 204B.44(a) (2018), asking that we direct respondent Steve Simon, the Minnesota Secretary of State, to include De La Fuente's name as a candidate for The Republican Party

of Minnesota's nomination for United States President on that ballot.[1] Petitioners assert that the procedure established by Minn. Stat. § 207A.13 (2018), which allows a major political party to determine which candidates' names will be on the ballot for a statewide presidential nomination primary, violates: (1) the Minnesota Constitution's prohibition on laws that grant special or exclusive privileges to a private corporation, association, or individual, Minn. Const. art. XII, § 1; (2) the Presidential Eligibility Clause of the United States Constitution, U.S. Const. art. II, § 1, cl. 5; and (3) candidates' and voters' rights of free association under the First and Fourteenth Amendments to the United States Constitution.

We directed the parties to file briefs addressing petitioners' claims. The Minnesota Democratic-Farmer-Labor Party appeared as amicus curiae in support of respondent. We held oral argument on January 9, 2020. In an order filed on January 9, 2020, we denied the petition. This opinion explains the reasons for our decision.

FACTS

Before turning to the facts, some background on Minnesota's electoral processes for presidential nominees and candidates will be helpful to understand the legal issues presented by this case.

At issue here is the ballot for the presidential nomination primary, which was held in Minnesota on March 3, 2020. Generally, in Minnesota, a primary election determines

[1] Martin is a resident of Minnesota who is eligible to vote. He intended to vote, via absentee ballot, in Minnesota's presidential nomination primary, and stated in the petition that he intended to vote for De La Fuente

which candidates will advance to the general-election ballot, including as a nominee of a major political party. *See* Minn. Stat. § 204D.10, subd. 1 (2018) ("The candidate for nomination of a major political party for a partisan office on the state partisan primary ballot who receives the highest number of votes shall be the nominee of that political party for that office."). Most candidates for statewide public office, including congressional and state legislative offices, file an affidavit of candidacy to appear on a primary election ballot. *See* Minn. Stat. § 204B.03 (2018) ("Candidates of a major political party for any partisan office except presidential elector . . . shall apply for a place on the primary ballot by filing an affidavit of candidacy[.]").

State primary elections for presidential nominees and candidates are different. Before 2020, Minnesota last held a presidential nominating primary in 1992. At that time, a candidate's name was listed "on the appropriate major political party presidential ballot" if the person (1) filed an affidavit of candidacy and paid a filing fee, or (2) was nominated by a petition. Minn. Stat. § 207A.02, subd. 1 (1992). In other years, Minnesota voters indicated "their preference for the offices of president of the United States" at statewide caucuses. Minn. Stat. § 202A.18, subd. 2a (2000); *see also* Minn. Stat. § 202A.14, subd. 1 (2018) (requiring "a party caucus" to be held in "every state general election year"). When a caucus was held in presidential election years, candidates for president and vice-president did not "file an affidavit of candidacy for office." Minn. Stat. § 204B.06, subd. 4 (2018).

In 2016, the Minnesota Legislature enacted provisions to re-establish a presidential nomination primary. Act of May 22, 2016, ch. 162, §§ 9–13, 2016 Minn. Laws 605, 609–12 (codified as amended at Minn. Stat. ch. 207A (2018 & Supp. 2019)). This primary is

limited to participation by "a major political party that selects delegates . . . to send to a national convention." Minn. Stat. § 207A.11(d) (Supp. 2019) (excluding from the presidential nomination primary those major political parties that do "not participate in a national convention").

Each political party participating in the presidential nomination primary has a ballot. Minn. Stat. § 207A.13, subd. 1(b). The party "must determine which candidates are to be placed on the presidential nomination primary ballot for that party[,]" submitting the candidate names to the secretary of state "no later than 63 days before the presidential nomination primary." *Id.*, subd. 2(a). "Once submitted, changes must not be made to the candidates that will appear on the ballot." *Id*. But the party chair can ask the secretary of state to include "a blank line printed below the other choices on the ballot so that a voter may write in the name of a person who is not listed on the ballot." *Id.*, subd. 1(c). Seven days before the primary, the party chair must submit "the names of write-in candidates, if any, to be counted for that party." *Id*., subd. 2(b).

After the primary, the secretary of state notifies the party chair of the results, which bind the delegates each party sends to its respective national convention. Minn. Stat. § 207A.12(c)–(d) (Supp. 2019). Thereafter, in accordance with each party's rules and by a date set by the Legislature, the party chair informs the secretary of state of the name of the party's presidential candidate to appear on the general election ballot, *see* Minn. Stat. §§ 208.03–.04 (2018).

With this overview in mind, we turn to the facts, which are undisputed. De La Fuente, a California resident, announced on May 16, 2019, that he would seek the national

Republican Party's nomination for United States President in 2020. On October 24, 2019, the Chair of The Republican Party of Minnesota notified the Secretary of State that the party had determined that Donald J. Trump's name should appear on the ballot for Minnesota's presidential nomination primary; no other announced candidates for the national Republican Party's nomination for president were included in that notice.

On October 25, 2019, De La Fuente wrote to Secretary Simon and Minnesota Attorney General Keith Ellison, stating that Minn. Stat. § 207A.13 was "likely unconstitutional." He asked for a "written guarantee" that his name would "appear on Minnesota's 2020 Republican presidential primary election ballot[.]" There was no response to this letter.

On December 13, 2019, De La Fuente and Martin filed a petition with our court under section 204B.44(a), asserting that the failure to include De La Fuente's name on the ballot as a candidate for The Republican Party of Minnesota's nomination violated the United States and Minnesota Constitutions.[2] We directed the parties to file briefs addressing petitioners' claims and invited amicus participation by Minnesota's major

[2] On November 26, 2019, De La Fuente filed a complaint in federal district court, asserting two as-applied constitutional challenges to Minnesota's presidential primary statute. *De La Fuente v. Simon*, No. 0:19-cv-02995 (D. Minn. Nov. 26, 2019). That action remains pending in the federal district court.

political parties[3] as well as other candidates. The Minnesota Democratic-Farmer-Labor Party filed a brief as amicus curiae in support of respondent.[4]

On December 23, 2019, The Republican Party of Minnesota, through its chair, asked the Secretary of State to place a write-in "option" on the party's ballot for the presidential nomination primary. *See* Minn. Stat. § 207A.13, subd. 1(c) ("If requested by a party chair, the ballot for that party must contain a blank line . . . [to] write in the name of a person who is not listed on the ballot.").

ANALYSIS

Petitioners assert three constitutional challenges to Minnesota's statutory process for candidate placement on the presidential nomination primary ballot: (1) under Article XII, Section 1 of the Minnesota Constitution, (2) under Article II, section 1, clause 5 of the United States Constitution, and (3) under the First and Fourteenth Amendments to the United States Constitution. The Secretary of State, in response, asserts that petitioners' claims are barred by laches and fail as a matter of law.

Statutes are presumed constitutional and "the party that asserts otherwise bears a heavy burden to overcome that presumption." *Kimberly-Clark Corp. v. Comm'r of Revenue*, 880 N.W.2d 844, 848 (Minn. 2016). And petitioners bear the burden of proof to demonstrate that there is an error that requires correction. *See Paquin v. Mack*, 788 N.W.2d

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[3] *See* Minn. Stat. § 200.02, subd. 7 (2018) (defining "major political party").

[4] Petitioners did not name The Republican Party of Minnesota as a respondent in this action, and the Secretary of State does not assert that we cannot proceed in the absence of that entity. *See Schulz v. Town of Duluth*, 936 N.W.2d 334, 339 (Minn. 2019) (noting that the failure to join a necessary party does not deprive a court of jurisdiction over the action).

899, 904 (Minn. 2010) (explaining that the petitioner asserting that a ballot error or omission exists bears the burden of showing that a correction is required).

I.

We begin with the Secretary of State's argument that the petition is barred by laches. He asserts that petitioners knew for 6 weeks before commencing this action that De La Fuente's name would not be on The Republican Party of Minnesota's presidential nomination primary ballot. This was an unreasonable delay, the Secretary asserts, because the process for preparing, printing, and distributing ballots would be well underway while this challenge was pending before the court.

Laches " 'prevent[s] one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay.' " *Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2002) (quoting *Aronovitch v. Levy*, 56 N.W.2d 570, 574 (Minn. 1953)). We have declined to hear a challenge to an election ballot on grounds of laches. *See Trooien v. Simon*, 918 N.W.2d 560, 561 (Minn. 2018) (order) (dismissing a ballot challenge, noting that "millions of ballots were prepared" and early voting had begun before the candidate filed the challenge); *Clark v. Reddick (Reddick)*, 791 N.W.2d 292, 294–96 (Minn. 2010) (declining to hear a challenge to a ballot when the petitioner waited more than 2 months to file the petition, which was 15 days before absentee ballots were to be made available to voters); *Clark v. Pawlenty (Pawlenty)*, 755 N.W.2d 293, 301–03 (Minn. 2008) (declining to hear a challenge to a primary ballot when ballots had already been printed and absentee ballots distributed).

"The first step in a laches analysis is to determine if petitioner unreasonably delayed asserting a known right." *Monaghen v. Simon*, 888 N.W.2d 324, 329 (Minn. 2016). In assessing whether the delay is unreasonable, we look to the information provided by public filings with the secretary of state. For example, in *Reddick*, we looked to the information available in an affidavit of candidacy to conclude that a petitioner's "duty to inquire" was triggered by that public filing. 791 N.W.2d at 294–95. And in *Pawlenty*, we held that a challenge to the designation of a candidate as the "incumbent" "could have been made as soon as" the candidate "filed [an] affidavit of candidacy[.]" 755 N.W.2d at 300. Based on the public availability of these filings and the time constraints associated with elections, we have demanded diligence in asserting known rights. *See, e.g.*, *Trooien*, 918 N.W.2d at 561 ("The orderly administration of elections does not wait for convenience."); *Peterson v. Stafford*, 490 N.W.2d 418, 419 (Minn. 1992) (explaining that the "nature of matters implicating election laws . . . requires expeditious consideration and disposition" given the "time constraints imposed by ballot preparation and distribution" and thus petitioners must "act[] promptly in initiating" challenges).

Petitioners assert that they did not delay unreasonably because De La Fuente did not know (nor did voters) whether any write-in votes for his candidacy would be counted. The deadline for The Republican Party of Minnesota to ask for a specific write-in candidate's votes to be counted was February 25. *See* Minn. Stat. § 207A.13, subd. 2(b) (requiring the party to "submit . . . the names of write-in candidates, if any, to be counted for that party" by "the seventh day before the presidential nomination primary"). Thus, petitioners assert, when the petition was filed they did not finally know whether De La Fuente's candidacy

would be before voters because The Republican Party of Minnesota had not yet notified the Secretary of State which write-in candidates' votes should be counted.

But petitioners' claims do not rest solely on the write-in option; they also challenge the ballot process that began on October 24, when The Republican Party of Minnesota notified the Secretary of State of its candidate decision. Further, it appears that De La Fuente was aware of his legal claims as of October 25 because, on that date, he notified state officials—the Secretary of State and the Attorney General—of a potential constitutional infirmity in section 207A.13, and asked for a "written guarantee" that his name would be on the ballot or that the statute would not be enforced. Then, he filed a federal lawsuit asserting some of the same constitutional claims that are asserted here.

De La Fuente correctly notes, however, that the political parties that participate in the presidential nomination primary continue to exercise control over the election processes, to some degree, up until a week before the election. And neither the Secretary of State nor the Attorney General responded to De La Fuente's letter to address his assertion that section 207A.13 imposes an unconstitutional ballot-access restriction or his request for a remedy. Finally, almost 5 weeks remained between the time De La Fuente filed this action and when ballots were to be made available for early voting. *See* Minn. Stat. § 204B.35, subd. 4 (2018) (ballots for absentee voting).

Laches is an equitable doctrine, so we must balance the important interests of voters in using an accurate ballot against the prejudice to election officials and other candidates if the orderly administration of elections is impaired. *See Martin v. Dicklich*, 823 N.W.2d 336, 342 (Minn. 2012) (noting that "some prejudice" would result "due to the expense

incurred in reprinting ballots" but the "paramount interest of voters, who are entitled to a ballot that accurately identifies the candidates actually running for office," outweighed that result); *Pawlenty*, 755 N.W.2d at 303 (considering "the significant potential prejudice to respondents, to other election officials, to [the candidate] and potentially to other candidates, and to the electorate" if relief is granted). Ultimately, in this case, that balance tips in petitioners' favor.

We have said before and we reiterate here again, in the clearest terms possible: potential challengers and candidates who assert that an error or omission exists on a ballot cannot tarry. *See Martin*, 823 N.W.2d at 342 (stating that candidates "must judge carefully whether they can afford to wait even a few days before acting upon a known right"). Here, we conclude that petitioners' delay does not appear to have imposed substantial burdens or prejudice on ballot preparation or other candidates. Voter interests in a ballot that accurately identifies the candidates for whom a vote can be cast in the presidential nomination primary, at least in this case, outweigh the uncertainty caused by petitioners' delay. We therefore hold that petitioners' claims are not barred by the doctrine of laches.

II.

Turning to the merits, we begin with petitioners' claim under the Minnesota Constitution. Article 12, Section 1 of the Minnesota Constitution states that "when a general law can be made applicable, a special law shall not be enacted except as" otherwise provided. This provision also prohibits the Legislature from "granting to any private

corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever[.]" *Id.*[5]

Petitioners assert that Minn. Stat. § 207A.13 gives certain political parties special privileges, in violation of the special-privileges clause in the Minnesota Constitution. Specifically, petitioners contend that the Legislature has given certain political parties—those that use a national convention to determine the party's nominee for president—the right to arbitrarily create classes of primary-election presidential candidates. This special privilege exists, petitioners contend, in the parties' right to identify the candidates that will be placed on the presidential nomination primary ballot, decide whether a write-in option will be available on the ballot, and if so, decide which write-in candidates' votes will be counted for that party. *See* Minn. Stat. § 207A.13, subd. 2(a)–(b).

The Secretary of State disagrees. He argues that "Article XII, section 1 is . . . facially inapplicable" here because it only "bars the legislature from granting special privileges to a *specific* 'private corporation, association, or individual.' " Then, he contends that section 207A.13 does not run afoul of this constitutional provision because the legislation does not apply to a specific association; rather, it "grants the right to

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[5] Before the reorganization of the Minnesota Constitution in 1974, the prohibition on special laws and the granting of special or exclusive privileges was found in Article 4, Section 33 of the Minnesota Constitution, which was added in 1881, *see* Minn. Const. of 1857, art. IV, § 33 (1881) (prohibiting the Legislature from "granting to any individual, association, or corporation, except municipal, any special or exclusive privilege, immunity or franchise whatever."). This provision was amended in 1958 by inserting the word "private" into the clause. *See* Minn. Const. of 1857, art. IV, § 33 (1958) (prohibiting the Legislature from "granting to any *private* corporation, association or individual any special or exclusive privilege" (emphasis added)).

participate in the presidential nomination primary, and thus to determine the names of the candidates authorized to run in that primary, to *any and every* major political party in Minnesota that conducts a national convention."[6]

The Legislature has the power to classify, and the "constitutional prohibition against special legislation on a particular subject does not deprive the legislature of the power to divide [the subject] into classes, and apply different rules to the different classes[.]"[7] *State ex rel. Bd. of Courthouse & City Hall Comm'rs v. Cooley*, 58 N.W. 150, 152 (Minn. 1893). "A law is general, in the constitutional sense, which applies to and operates uniformly upon all members of any class of persons, places, or things requiring legislation peculiar to itself

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[6] The Secretary of State also contends that even if Minn. Stat § 207A.13 violates Article XII, Section 1 of the Minnesota Constitution, he still must comply with federal law. He explains that the major political parties have a First Amendment right "not to be forced to associate unwillingly with individuals who run for President[,]" and thus, he could not "lawfully require" The Republican Party of Minnesota to include the name of a candidate on its ballot that the party had not decided to associate with in the primary election. Because we conclude that Minn. Stat. § 207A.13 does not violate Article XII, Section 1, of the Minnesota Constitution, we need not consider the Secretary of State's conflict argument.

[7] We have used essentially the same test for claims that assert a violation of the general prohibition on special legislation, which is found in the first sentence of Article XII, Section 1 (or its predecessor, Article 4, Section 33), of the Minnesota Constitution and for claims that assert a violation of the special-privileges clause, in the second sentence of that section of the Minnesota Constitution. *Compare In re Tveten*, 402 N.W.2d 551, 558–59 (Minn. 1987) (addressing a claim that a statute violated the general prohibition on special legislation), *and Visina v. Freeman*, 89 N.W.2d 635, 650–51 (Minn. 1958) (same), *with Fabio v. City of Saint Paul*, 126 N.W.2d 259, 261–63 (Minn. 1964) (addressing a claim that a statute was a special law granting special or exclusive privileges to a corporation, association, or individual), *Minneapolis Gas Co. v. Zimmerman*, 91 N.W.2d 642, 654–65 (Minn. 1958) (same), *Wichelman v. Messner*, 83 W.2d 800, 823–25 (Minn. 1957) (same), and *State ex rel. Bd. of Courthouse & City Hall Comm'rs v. Cooley*, 58 N.W. 150, 152–54 (Minn. 1893) (addressing a claim that a statute was a special law regulating the affairs of any county or city).

in matters covered by the law . . . ." *Id*. at 153; *see also State ex rel. Oblinger v. Spaude*, 34 N.W. 164, 165 (Minn. 1887) (stating that a law may be general even though it does "not operate alike upon all the inhabitants of the state"). On the other hand, "a special law is one which relates and applies to particular members of a class, either particularized by the express terms of the act, or separated by any method of selection from the whole class to which the law might, but for such limitation, be applicable." *Cooley*, 58 N.W. at 153.

The power to classify is not, however, limitless; the Legislature must "adopt[] a proper basis of classification." *Id*. at 152. When the Legislature does so, we "will not interfere with" that "classification unless it is so manifestly arbitrary as to evince a purpose of evading the constitution." *Minneapolis Gas Co. v. Zimmerman*, 91 N.W.2d 642, 654 (Minn. 1958); *see also Kaljuste v. Hennepin Cty. Sanatorium Comm'n*, 61 N.W.2d 757, 764 (Minn. 1953) (stating that we will not "speculate upon the considerations which motivate the legislature" and noting that the question of classification "is primarily for the legislature"). The burden of proving that a classification is unreasonable and arbitrary is on the person challenging the law. *George Benz Sons, Inc. v. Ericson*, 34 N.W.2d 725, 731 (Minn. 1948).[8]

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[8] We reject petitioners' proposal to apply strict scrutiny to this claim. Petitioners do not cite a case in which we have applied that standard, and our case law does not suggest that we will use a strict-scrutiny standard simply because the claims involve elections, *see, e.g.*, *Tveten*, 402 N.W.2d at 559 (applying a rational-basis standard to debtors' claims in a bankruptcy proceeding). We also reject the Secretary of State's argument that the constitutional prohibition on granting special privileges applies only when a special privilege has been granted to one private corporation, association, or person. The plain language of the constitution prohibits the Legislature from passing special laws "granting to *any* private corporation, association, or individual *any* special or exclusive privilege, immunity or franchise whatever[,]" Minn. Const. art. XII, § 1 (emphasis added), and we

We have used a deferential "three point 'rational basis' test" to assess the constitutionality of a legislative classification. *In re Tveten*, 402 N.W.2d 551, 558 (Minn. 1987). A classification is constitutional if:

> (a) the classification applies to and embraces all who are similarly situated with respect to conditions or wants justifying appropriate legislation; (b) the distinctions are not manifestly arbitrary or fanciful but are genuine and substantial so as to provide a natural and reasonable basis justifying the distinction; and (c) there is an evident connection between the distinctive needs peculiar to the class and the remedy or regulations therefor which the law purports to provide.

Id. at 558–59 (quoting *Wichelman v. Messner*, 83 N.W.2d 800, 824 (Minn. 1957)).

First, we identify the classification at issue. The plain language of section 207A.11 establishes a classification between major political parties that use a national convention to determine the national party's nominee for president, and all other political parties. *See* Minn. Stat. § 207A.11(d). The statute applies to all who are similarly situated at the time of a state presidential nomination primary: major political parties that participate in a national nominating convention.[9] *See, e.g.*, *State ex rel. Flaten v. Indep. Sch. Dist. of*

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have invalidated laws that improperly granted a special privilege to more than one person, *see In re Humphrey*, 227 N.W. 179, 179–80 (Minn. 1929) (finding that a statute allowing a person, who had served in World War I, been honorably discharged, and received a disability rating of a certain level, to be admitted to the practice of law without passing the bar exam was a special law granting a special privilege, in violation of the constitution); *see also Tveten*, 402 N.W.2d at 560 (holding that statutes granting a limitless exemption to debtors who had purchased annuities or unmatured life insurance from a fraternal benefit society violated the constitution's general prohibition on special laws).

[9] Minnesota distinguishes between major and minor political parties based on, among other criteria, recent election results. *See* Minn. Stat. § 200.02, subd. 7 (2018) (defining "major" political parties based in part on vote totals in recent elections); *id.*, subd. 23 (2018) (defining "minor" political parties based in part on the same). Two of Minnesota's major political parties, the Legal Marijuana Now Party and the Grassroots-Legalize Cannabis

Granite Falls, 174 N.W. 414, 415 (Minn. 1919) (noting that a classification is general if the statute is framed so as to apply to others "as they may acquire the characteristics of the class").

Second, the distinction drawn between major political parties that use a national convention to determine their party's nominee for president and other political parties is genuine and substantial and has a reasonable basis. *See General Mills, Inc. v. Div. of Emp't & Sec. for Minn.*, 28 N.W.2d 847, 850 (Minn. 1947) (stating that a classification will not be unconstitutional if the persons within the class are similarly treated and "the distinctions between the classes bear a reasonable relationship to the objects of the legislation"). Political parties that use a national convention to nominate a candidate for president may also use state presidential primaries to gather voter input for the decision to be made at the national convention: the national party's candidate for a general-election ballot. *See, e.g.*, *Belluso v. Poythress*, 485 F. Supp. 904, 912 (N.D. Ga. 1980) (explaining that a presidential primary "merely effects a recommendation to the [political] parties" and "the importance of the primary lies within the discretion of the party"). The candidates of political parties, major or minor, that do not use national nominating conventions have access to the ballot for the general election through nominating petitions. *See* Minn. Stat. § 204B.07, subds. 1–2 (2018) (identifying the requirements for nominating petitions including for "presidential

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Party, notified the Secretary of State that they do not hold or participate in national nominating conventions. Thus, these major political parties were not eligible to participate in the 2020 presidential nomination primary. *See* Minn. Stat. § 207A.11(d) ("A major political party that does not participate in a national convention is not eligible to participate in the presidential nomination primary.").

electors or alternates . . . nominated by petition" rather than certified by a major political party). And, candidates that are not nominated at a national convention or by nominating petition have access to the general-election ballot through a write-in process. *See* Minn. Stat. § 204B.09, subd. 3(b) (2018) (establishing the requirements for write-in candidates for president).

In other words, different processes are needed for different avenues to the general-election ballot; but in the end, any presidential candidate who satisfies statutory requirements has access to the general-election ballot, regardless of the candidate's access to the presidential nomination primary ballot. *See* Minn. Stat. § 208.04, subd. 1 (requiring the general election ballot to include "the names of the candidates of each major political party and the candidates nominated by petition"); *see also LaRouche v. Sheehan*, 591 F. Supp. 917, 927 (D. Md. 1984) (rejecting an equal-protection challenge to a state law regulating access to a primary election ballot, because the statute applies only to major political parties who " 'use a primary election' as a device to nominate a candidate for president," and thus does not "freeze[] the status quo to the detriment of minority parties" (citation omitted)); *Belluso*, 485 F. Supp. at 912 ("Denied the chance to claim the Republican nomination, [a candidate] may nevertheless seek the Presidency in the general election independently or as the candidate of a smaller political party." (footnote omitted)). Thus, the distinction drawn in section 207A.13 is substantial and is reasonably related to the needs of a specific class of political parties, those whose presidential candidates for the general election are determined by events that occur outside of Minnesota.

Third, an evident connection exists between the needs of major political parties who use a national convention to determine the national party's nominee for president and the statutory requirements for the ballot to be used in Minnesota's presidential nomination primary. These political parties are governed both by national party rules that address the selection of the national party's nominee at a national convention,[10] and state law requirements for candidate placement on the general-election ballot, *see, e.g.*, Minn. Stat. § 208.03 (requiring the state party chair to "certify to the secretary of state . . . the names of the party candidates for president and vice president"). The national framework and Minnesota's statutory processes for the general election make it reasonable to provide a measure of control to the parties in deciding which names will be on the ballot for Minnesota's presidential nomination primary as candidates for the national party's nomination. Section 207A.13 thus strikes a balance between political parties' national nomination processes, and the State's need to prepare and make available a ballot for only one election, a presidential nomination primary.

Petitioners contend that section 207A.13 fails the rational-basis test because the legislation is not intended to avoid ballot clutter, provide voters with a more manageable ballot, or require candidates to demonstrate some minimum level of public or party support to gain access to the ballot. This argument misapprehends our rational-basis test. We do

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[10] *See, e.g.*, 2016 Republican National Convention, The Rules of the Republican Party Rule Nos. 16 (describing the delegate process in states that permit a "statewide presidential preference vote" in a primary, caucus, or convention), 40(d) (requiring the "candidates nominated by the [national] Republican Party" to be declared before the national convention "adjourns sine die") (2016) (amended 2018).

not inquire under this test whether an alleged prohibition on special laws or privileges furthers some specific interest; rather, we ask whether there is a rational reason for making the classification at issue. We conclude that there is a rational reason here, and that ends our inquiry. *See Kaljuste*, 61 N.W.2d at 764 ("The courts are not at liberty . . . to declare void legislative classification where there is *some reason* therefor . . . ." (emphasis added)); *Arens v. Vill. of Rogers*, 61 N.W.2d 508, 516 (Minn. 1953) ("Our task is not to appraise the desirability of what the legislature has done nor decide what classification, if any, is the best, but is rather to determine whether there is *any reasonable basis or justification* for the classification adopted by the legislature." (emphasis added)). We therefore hold that petitioners' claim under the special-privileges clause in Article XII of the Minnesota Constitution fails as a matter of law.

III.

Next, we consider petitioners' claim under the Presidential Eligibility Clause of the United States Constitution. There are essentially three criteria to serve as President of the United States: citizenship, an age of 35 years or older, and residency in the United States.

> No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

U.S. Const. art. II, § 1, cl. 5.

Petitioners contend that section 207A.13 imposes an additional eligibility requirement on candidates for president: party approval. Because the Presidential Eligibility Clause in the federal Constitution provides the exclusive requirements for the

President, they assert that state law cannot impose additional requirements. They also contend that there are no state interests in this requirement because the statute imposes no limit on the number of candidates, nor any standards related to a showing of public support for any candidate.[11]

The Presidential Eligibility Clause serves as the exclusive source for the qualifications to serve as President. *LaRouche v. Hannah*, 822 S.W.2d 632, 633 (Tex. 1992) (acknowledging election official's statement that "the United States Constitution establishes the exclusive requirements for the office of the President" and thus state law could not exclude a candidate from a presidential primary ballot based on a prior felony conviction); *see U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 806 (1995) (stating that "the Qualification Clauses" in Article I "were intended to . . . fix as exclusive the qualifications in the Constitution");[12] *Danielson v. Fitzsimmons*, 44 N.W.2d 484, 486 (Minn. 1950) (noting that the qualifications for election to Congress "are prescribed by the United States constitution, and the state may not enlarge or modify such qualifications"); *State ex rel. Eaton v. Schmahl*, 167 N.W. 481, 481 (Minn. 1918) (stating that the

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[11] The Secretary of State did not specifically address this claim in his brief. The DFL Party, as amicus, argues that section 207A.13 guides the State's process in preparing the ballot for the primary, rather than establishing an officeholder-eligibility standard.

[12] The *U.S. Term Limits* decision addressed the constitutional qualifications for members of Congress. *See* 514 U.S. at 782–83; *see also* U.S. Const. art. I, § 2, cl. 2 (House); U.S. Const. art. I, § 3, cl. 3 (Senate). The Presidential Eligibility Clause is "nearly identical to the congressional clauses[,]" and thus the rationale of the *U.S. Term Limits* decision has been applied to challenges brought under the Presidential Eligibility Clause. *De La Fuente v. Merrill*, 214 F. Supp. 3d 1241, 1253 n.11 (M.D. Ala. 2016).

qualifications for "those aspiring to or holding" congressional office are "prescribed by the federal Constitution, which the state is without authority to modify or enlarge in any way").

There is a difference between constitutional qualifications for the office and procedural ballot-access or election requirements. *See Cook v. Gralike*, 531 U.S. 510, 523–24 (2001) (noting that states have the authority "to prescribe the procedural mechanisms for holding congressional elections," within certain constitutional limits); *Cartwright v. Barnes*, 304 F.3d 1138, 1143–44 (11th Cir. 2002) (distinguishing between "ballot access restrictions that are election procedures and not substantive qualifications," and concluding that a state law requiring a candidate to present a minimum number of signatures to appear on the ballot "is not a 'qualification,' but a permissible procedural regulation of the manner in which candidates may obtain ballot placement"); *cf. Storer v. Brown*, 415 U.S. 724, 746 n.16 (1974) (noting that a state law prohibiting a candidate's disaffiliation with the party that previously supported the candidate was not "an additional qualification" for Congress because it is not unlike "the requirement that the candidate win the primary to secure a place on the general ballot or otherwise demonstrate substantial community support").[13]

[13] The Minnesota Constitution has provisions that describe "eligibility" requirements for office and "qualifications" for office. *See* Minn. Const. art. VII, § 6 (describing "eligibility" to hold office); Minn. Const. art. XII, § 3 (describing "qualifications" for local office). We have said that "a 'qualification' for office" is "an element of performance requiring a particular ability on the part of the person seeking the position, such as physical agility or the attainment of a particular level of education[,]" while "an 'eligibility requirement' for office" has "nothing to do with one's ability to perform the duties of the office in question[.]" *Minneapolis Term Limits Coal. v. Keefe*, 535 N.W.2d 306, 309 (Minn. 1995).

In *Cook*, the Supreme Court concluded that a state-law requirement to note on a ballot whether a candidate for congressional office supports term limits "is not a procedural regulation[,]" because it did not ensure election integrity, regularity, and fairness; rather, it was "plainly designed to favor candidates who are willing to support the" State's position on term limits. 531 U.S. at 523–24; *see also Schaefer v. Townsend*, 215 F.3d 1031, 1039 (9th Cir. 2000) (holding that a state-imposed residency requirement for candidates for election to the U.S. House of Representatives violated the Qualifications Clause). Thus, state laws that condition access to the ballot on procedural, as opposed to substantive, requirements do not violate constitutional eligibility or qualification clauses. *See Cartwright*, 304 F.3d at 1144 (holding that a state-law requirement for independent candidates to submit a petition with a minimum level of voter support is not a qualification, but is used to " 'demonstrate substantial community support' before obtaining a place on the ballot"); *Libertarian Party of Ill. v. Rednour*, 108 F.3d 768, 777 (7th Cir. 1997) (upholding a voter-signature requirement because it "assure[s] that candidates meet a minimum threshold of voter support" and does not "systematically exclude[] the Libertarian candidates from office").

Minnesota Statutes § 207A.13 directs political parties to determine which names will be on the ballot as the party's candidate(s), and then submit those names to the secretary of state as the candidates "for that party." Minn. Stat. § 207A.13, subd. 2(a). This directive is not a substantive eligibility requirement that reflects a personal characteristic of a candidate; it is a process that allows political parties to obtain voter input in advance of a nomination decision made at a national convention. *See, e.g.*, *Belluso*,

485 F. Supp. at 912 (noting that a presidential preference primary "merely effects a recommendation" to political parties, which the party is free to accept or ignore). The directive also allows the secretary of state to prepare, print, and distribute ballots that comply with state and federal election laws. These procedural ballot-preparation steps cannot be equated to the constitutional citizenship, age, or residency qualifications to serve as President of the United States.

We therefore hold that petitioners' claim under the Presidential Eligibility Clause, U.S. Const. art. II, cl. 5, fails as a matter of law.

IV.

Last, we consider petitioners' claim under the First and Fourteenth Amendments to the United States Constitution. Petitioners assert that including De La Fuente's name on the primary election ballot is "crucial" to Minnesota voters' ability to exercise their fundamental right to vote. They contend that a statute that allows a political party to decide whether a candidate's name will appear on the ballot or whether any write-in votes for a candidate will be counted unreasonably burdens voters' and candidates' First Amendment associational rights.[14] They further argue that Minnesota Statutes § 207A.13 does not serve a valid state interest because the statute places no limits on the number of candidates who can be on the ballot, nor does it require the party or the candidate to show any measure of

[14] The United States Supreme Court has said that "the mechanism" of primary elections "is the creature of state legislative choice," and thus is "state action" for purposes of the Fourteenth Amendment. *Bullock v. Carter*, 405 U.S. 134, 140 (1972) (internal quotation marks omitted).

public support to secure access to the ballot. Petitioners also argue that the State's interests in regulating candidate access to a ballot for a presidential nomination primary are "diminished" because the outcome of such an election is "ultimately determined beyond the state's borders at national political party conventions." Finally, petitioners assert that the possibility of a write-in candidacy is an "illusory" remedy because section 207A.13 confers on political parties the authority to decide whether to allow write-in votes, and if so, which write-in candidates' votes will be counted.

The Secretary of State responds that states have the authority to regulate the manner in which elections are conducted, and in particular have a compelling interest in avoiding a "laundry list" ballot.[15] The Secretary also asserts that states have an interest in providing a ballot process that protects political parties' freedom of association under the First Amendment, particularly in the context of a state presidential nomination primary, which yields information but not necessarily the party's candidate for the general-election ballot.

A.

Several features of Minnesota's statutory ballot-preparation process for a presidential nomination primary are relevant to this claim. First, there are "separate

[15] The Secretary notes that the State has the "power to regulate [its] own elections[,]" relying on the constitutional authority for states to regulate "[t]he Times, Places and Manner of holding Elections for Senators and Representatives," U.S. Const. art. I, § 4, a provision that governs state authority over elections for congressional offices. Article II of the United States Constitution governs presidential elections, distributing authority between the states and Congress. U.S. Const. art. II, § 1, cls. 2, 4 (stating that states appoint presidential electors and Congress determines the timing of the election and the day of electoral voting). Still, states have "important regulatory interests" in fair, honest, and orderly elections. *See Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

ballots" for each political party. Minn. Stat. § 207A.13, subd. 1(b). The political party must "determine which candidates are to be placed on the . . . ballot for that party[,]" and the party chair must submit the names of those candidates to the secretary of state. *Id.*, subd. 2(a). "Once submitted, changes must not be made to the candidates that will appear on the ballot." *Id.*

Second, "[i]f requested by a party chair," the ballot for that party "must contain a blank line printed below the other choices . . . so that a voter may write in the name of a person who is not listed on the ballot." *Id.*, subd. 1(c). Third, the party chair "must submit to the secretary of state the names of write-in candidates, if any, to be counted for that party." *Id.*, subd. 2(b) (requiring that submission to be made no "later than the seventh day before" the primary). When the results of the election are declared, "the secretary of state must notify the chair of each party of the results." Minn. Stat. § 207A.12(c).

The right to associate with others in advancement of political viewpoints is protected by the First Amendment. *See Williams v. Rhodes*, 393 U.S. 23, 30 (1968); *see also Democratic Party of the U.S. v. Wis. ex rel. La Follette*, 450 U.S. 107, 121 (1981) (explaining that political parties have a constitutional right "to gather in association for the purpose of advancing shared beliefs"). The associational rights and interests of voters, candidates, and political parties are often intertwined. *See, e.g.*, *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (noting that "comprehensive and sometimes complex election" laws will "inevitably" impact "the individual's right to vote" and the "right to associate with others for political ends"); *Bullock v. Carter*, 405 U.S. 134, 143 (1972) (explaining that "laws that affect candidates" will have "some theoretical, correlative effect on voters").

But "the right to vote in any manner and the right to associate for political purposes through the ballot are [not] absolute," *Burdick v. Takushi*, 504 U.S. 428, 433 (1992), because states have a legitimate interest in regulating "parties, elections, and ballots to reduce election- and campaign-related disorder[,]" *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997); *see Bullock*, 405 U.S. at 145 (recognizing states' interests in avoiding cluttered ballots, voter confusion, and maintaining integrity in election processes).

To balance these competing interests, the Supreme Court uses a "flexible standard" of review for First Amendment challenges to state election laws. *Burdick*, 504 U.S. at 433–34 (rejecting a close-scrutiny review and applying "a more flexible standard"). In *Burdick*, the Court considered "the extent to which a challenged [state] regulation burdens First and Fourteenth Amendment rights." *Id.* at 434. If those rights are severely restricted, "the regulation must be narrowly drawn to advance a state interest of compelling importance." *Id*. (citation omitted) (internal quotation marks omitted). If the challenged state law "imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions." *Id*. (citations omitted) (internal quotation marks omitted); *see also Timmons*, 520 U.S. at 358 (noting that state regulations regarding who can appear on the ballot will be upheld if they impose a lesser burden on First Amendment interests and are reasonably related to the state's regulatory interests).

B.

Petitioners assert that their associational rights—to appear as a candidate on the ballot for Minnesota's presidential nomination primary and to vote for De La Fuente as the

candidate for The Republican Party of Minnesota's nomination—are impermissibly burdened by a statute that allows the political parties to decide whether a candidate's name will be on a presidential primary ballot.[16] States cannot keep candidates "off the election ballot," effectively "den[ying them] an equal opportunity to win votes." *Williams*, 393 U.S. at 31. And the right to vote may be burdened unreasonably if candidate choice is restricted. *See Lubin v. Panish*, 415 U.S. 709, 716 (1974) (noting that the right to vote may be burdened if a vote "may be cast only for one of two candidates in a primary election at a time when other candidates are clamoring for a place on the ballot").

Minnesota Statutes § 207A.13 appears to sit uneasily within these principles.[17] The road for any candidate's access to the ballot for Minnesota's presidential nomination primary runs only through the participating political parties, who alone determine which

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[16] Petitioners also appear to assert an equal-protection claim, based on the argument that De La Fuente is treated differently from the other "qualified" presidential candidate (Donald Trump), and Martin's absentee vote is treated differently from the vote of a person who casts a ballot on March 3 "at the polling place." This claim is not supported by any case law; mixes constitutional eligibility standards with a ballot-access requirement; and because Martin can cast a vote, either by absentee ballot or at a polling place, does not demonstrate a difference in treatment between his vote and the votes of other citizens.

[17] A few other states also allow the political parties to determine which candidates will appear on a presidential primary ballot. *See, e.g.*, Fla. Stat. § 103.101(2)–(3) (2019) (requiring "each political party" to submit "a list of its presidential candidates" to the Secretary of State for placement on the "presidential preference primary ballot" and requiring the candidate's name to be on the ballot unless the candidate withdraws); Ga. Code Ann. § 21-2-193 (2019) (directing the parties to provide "a list of the names of the candidates of such party to appear on the presidential preference primary ballot"); Wash. Rev. Code § 29A.56.031 (2019) (requiring the parties to "determine which candidates are to be placed on the" ballot, and stating that once names are "submitted, changes must not be made to the candidates that will appear on the ballot").

candidates will be on the party's ballot. Minn. Stat. § 207A.13, subd. 2(a). The political parties also control the decision on the availability of an option for write-in candidacies. *See id.*, subd. 1(c). Finally, once the political parties make their decisions and notify the secretary of state, "changes must not be made to the candidates that will appear on the ballot." *Id.*

The interests advanced by the Secretary of State do not necessarily address these features. The asserted interest in avoiding ballot clutter is a legitimate state interest, *see Bullock*, 405 U.S. at 145, but nothing in the plain language of section 207A.13 serves that purpose. To the contrary, a political party could (in theory) submit the names of *every* announced candidate for president, and because "changes must not be made" once the party does so, Minn. Stat. § 207A.13, subd. 2(a), the secretary of state would be required to use a ballot that includes every submitted name.[18] Nor is the other interest identified by the Secretary—protecting political parties' associational rights—helpful here. The State cannot "completely insulate" political parties from competitive candidates or other parties, nor protect the "parties from the consequences of their own internal disagreements[.]" *Timmons*, 520 U.S. at 366. Further, "when the State gives [a political] party a role in the election process," the party's rights are "circumscribed" and the State's interest in "ensuring the fairness of the party's nominating process" is elevated. *N.Y. State Bd. of Elections v. López Torres*, 552 U.S. 196, 203 (2008). Having allowed the parties a role in determining which candidates have access to the ballot for the presidential nomination

[18] At oral argument, counsel for the Secretary of State conceded that if a political party did so, the Legislature may decide to amend the statute to limit the number of candidates.

primary, nothing in section 207A.13 suggests that the State intends to ensure the fairness of that process. When asked at oral argument what authority the Secretary of State has to inquire into a party's candidate decisions for the ballot, counsel conceded that "[u]nder these statutes, none."

Nonetheless, in the context of this particular election, we conclude that petitioners have not demonstrated that Minnesota's process for preparing the ballot for a presidential nomination primary imposes an unconstitutional burden on their associational rights.

To begin, De La Fuente does not have a constitutional right to be on this ballot. *See López Torres*, 552 U.S. at 205 (stating, in rejecting a potential candidate's objection to decisions made by party leadership, that a candidate does not have a "constitutional right to have a 'fair shot' at winning the party's nomination"); *Belluso*, 485 F. Supp. at 912 (noting that a candidate's claimed right to associate with an unwilling political party "is not a first amendment right"). Similarly, while Martin's right to vote is among the "most precious freedoms[,]" *Williams*, 393 U.S. at 30, elections are not understood "to provide a means of giving vent" to political disputes, *Burdick*, 504 U.S. at 438. This is particularly true in presidential preference primaries.[19] *See Duke v. Massey*, 87 F.3d 1226, 1233 (11th

[19] Contrary to petitioners' argument, the right to vote in a state primary on a presidential nominee is not integral to our republican form of government. The U.S. Constitution mentions neither political parties, nor the presidential nominating process. *But see* Leonard P. Stark, *The Presidential Primary and Caucus Schedule: A Role for Federal Regulation?*, 15 Yale L. & Pol'y Rev. 331, 393 n.180 (1996) (citing to arguments that the electoral college was intended to serve as a presidential nomination process). After George Washington declined to seek a third term as President, and after the disorganized 1796 election in which 13 candidates received presidential nominations, the parties realized the need for a process to nominate their own candidates. Joanne B. Freeman, *The Election of 1800: A Study in the Logic of Political Change*, 108 Yale L.J. 1959, 1967, 1981 (1999).

Cir. 1996) (noting the lack of authority suggesting that voters "have a right to vote for their candidate of choice . . . in a nonbinding primary"). Section 207A.13 says nothing about Martin's right to *cast* a vote for the candidate of his choice because the write-in option is available to him on the primary ballot.[20] Further, the statute poses no bar to De La Fuente's right to be a presidential candidate on the general election ballot, as a party's nominee or a write-in candidate. *See López Torres*, 552 U.S. at 207–08 (recognizing that candidates' and voters' associational rights are "well enough protected" if there is "an adequate opportunity to appear on the general-election ballot"). Thus, any burden on petitioners' asserted associational rights is at best de minimis.

In contrast to this de minimis burden, the associational rights of political parties to choose a candidate are well-established. *See Cal. Democratic Party v. Jones*, 530 U.S. 567, 575 (2000) (noting a political party's "important" right to select the party's nominee). The associational rights of political parties includes "the right not to associate." *Id*. at 574 (noting that "a corollary of the right to associate is the right not to associate"). Political parties also have a First Amendment right "to choose a candidate-selection process that

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For the next three decades, the presidential nomination would be determined by a congressional caucus. *See* Zachary M. Bluestone, Note, *The Unscripted Evolution of Presidential Nominations: From Founding-Era Idealism to the Dominance of Party Primaries*, 39 Harv. J.L. & Pub. Pol'y 963, 978 (2016). It was not until the 1830s that state caucuses began to emerge, *id.*, and state presidential primaries do not appear on the scene in any significant way until the 1900s, *id.* at 981.

[20] The presidential nomination primary ballot included a line for write-in candidates on The Republican Party of Minnesota's ballot, and The Republican Party of Minnesota notified the Secretary of State to count write-in votes for De La Fuente. Thus, this case does not present a constitutional challenge to a ballot that does not include a write-in option or does not count a candidate's write-in votes.

will in its view produce the nominee who best represents its political platform." *López Torres*, 552 U.S. at 202. Similarly, the State has an interest, though perhaps limited, *see Jones*, 530 U.S. at 572–73 (noting that "the processes by which political parties select their nominees are . . . [not] wholly public affairs that States may regulate freely"), in regulating the ballot used for this election. *Cf. Democratic Party of the U.S.*, 450 U.S. at 125–26 (recognizing that states' limited interests in political parties' national conventions for nominating presidential candidates does "not justify [a] substantial intrusion into the associational freedoms" of a national political party).

When we consider the de minimis burden on petitioners' associational rights against the legitimate associational interests of the political parties and the State's limited regulatory interest, we conclude that petitioners have not demonstrated that Minnesota Statutes § 207A.13 unconstitutionally burdens their associational rights under the First and Fourteenth Amendments to the United States Constitution. *See Carlson v. Simon*, 888 N.W.2d 467, 474 (Minn. 2016) (rejecting a First Amendment challenge to a statutory requirement for a write-in presidential candidate to name a vice-presidential candidate); *Kahn v. Griffin*, 701 N.W.2d 815, 833 (Minn. 2005) (concluding that challengers "failed to provide any principled basis" for the court to declare a statute unconstitutional). We therefore hold that petitioners' First Amendment claim fails as a matter of law.

CONCLUSION

For the foregoing reasons, the petition of Roque "Rocky" De La Fuente and James Martin, Jr. under Minn. Stat. § 204B.44(a), to correct the ballot for the Minnesota presidential nomination primary election on March 3, 2020, is denied.

Petition denied.