MN HOUSE RESEARCH

State Regulation of Political Parties

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Executive Summary

This publication describes the regulation of political parties in Minnesota law.

Regulation of political activities—including of political parties—requires a careful balancing of the state's constitutional power to regulate elections against the constitutional freedom of association rights that are afforded to individuals and organizations. In general, when assessing a regulation that burdens political association rights, the amount of scrutiny the Supreme Court will apply depends on how severely those rights are burdened, compared to the interests the state asserts to justify the burden.

In Minnesota, a "political party" is a defined term in law. As a party becomes more organized and increases in statewide voter support, it may be recognized with a further classification: as either a "minor" or "major" political party. These classifications come with additional rights, privileges, and obligations in the law.

All political parties, regardless of whether they've achieved a major or minor designation, may advocate for their beliefs and place candidates on the state's partisan general election ballot.

What is a "political party"?

A "political party" is defined in Minnesota election law as an "association of individuals under whose name a candidate files for office." Minn. Stat. § 200.02, subd. 6.

As a political party becomes more organized and increases in statewide voter support, it may become eligible for additional rights, privileges, and duties in the law. Parties that meet the eligibility requirements are classified as "minor" and "major" political parties. The specific requirements for each status, and the additional rights, privileges, and duties that come with that status, are described in more detail later in this publication.

For purposes of state campaign finance law, individual organizational components within a major or minor political party (its state committee, as well its smaller organizations within each house of the legislature, congressional district, county, legislative district, municipality, or precinct) are referred to as "political party units." Collectively, all of these units make up the political party. Minn. Stat. § 10A.01, subds. 29 and 30.

By **Matt Gehring,** 651-296-5052

Regulation of Political Activity: Constitutional Considerations

What authority do states have to regulate the activities of political parties?

States do have authority to regulate some activities of political parties, but those regulations require a delicate balance to ensure the constitutional rights of parties—and of party members—are protected.

The U.S. Constitution's "freedom of association" protects certain activities of partisan political organizations, including political parties, against state interference.

The freedom of association—while not an explicit right contained in the Constitution—has been recognized by the U.S. Supreme Court as a right inherent in the first amendment's freedom of speech, and the fourteenth amendment's due process guarantee. See *Elrod v. Burns*, 427 U.S. 347, 357 (1976); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958).

Associational rights apply both to party organizations, as well as to each individual that makes up the party's membership. According to the Supreme Court:

> the "freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments. … the right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973) (citing *NAACP v. Button,* 371 U.S. 415, 430 (1963)).

The associational rights of parties and party members are not absolute; states retain the authority to regulate elections.

States are empowered through the U.S. Constitution to prescribe the "time, place, and manner" of conducting elections. U.S. Const. Art. 1, sec. 4, cl. (1).

According to the Supreme Court, "[c]ommon sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; 'as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process.' " *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (citing *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

A state's interests that support regulation may include, among other things, "protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364 (1997).

In the context of state laws that regulate the activities of political parties, it's not always clear how these competing constitutional principles work together.

A robust body of caselaw has developed to further interpret and define the rights of both parties, individuals, and states in election and political regulation.

In general, the amount of scrutiny that the Court will apply to a challenged state law depends on how severely the state burdens the political party's associational rights compared to the interests the state asserts to justify the burden:

> "a court … must first consider the character and magnitude of the asserted injury to the rights … [i]t then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the court must not only determine the legitimacy and strength of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights." *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

Examples of challenged state laws, and the resulting Supreme Court cases, include the following:

- **Prohibition on fusion candidacies (ruled constitutional).** *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997).

  In *Timmons*, two Minnesota statutes prohibiting candidates from appearing on the ballot with more than one party designation (also known as a "fusion" candidacy) were upheld as constitutional. The court reasoned that the burden imposed on parties was not severe, and that the state's interests in ballot integrity and political stability were sufficiently weighty to justify the restriction. Minnesota's prohibition on fusion candidacies remains in place today. *See* Minn. Stat. § 204B.04, subds. 1 and 2.

- **Party registration requirement to vote in a partisan primary (ruled unconstitutional).** *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986).

  In *Tashjian*, a Connecticut statute requiring that voters be registered members of a political party in order to vote for candidates of that party in a partisan primary was struck down as unconstitutional. The court reasoned that a state regulation that limits the freedom of a party to attempt to broaden its base of public participation in and support for its activities was an impermissible burden on the associational rights of the party and its members. The state's asserted interests—including concerns about added costs, the potential for "vote raiding" by members of competing parties, the potential for voter confusion, and the protection of the integrity of the two-party system—were insubstantial and, therefore, insufficient to justify the burdens caused by the law.

- **Prohibition on party endorsements and other regulation of internal party affairs (ruled unconstitutional).** *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989).

  In *Eu*, a series of California election laws directing the organization and operation of political parties was challenged. Among other things, the laws prohibited party governing bodies from endorsing candidates in a primary election, provided term limits and geographic rotation requirements for state party chairs, directed procedures for selection of committee members, and limited the amount of dues a party could charge its members. The laws were all struck down as unconstitutional. The court reasoned that the limitation on party endorsements impermissibly burdened both the free speech and free associational rights of parties, with no compelling governmental interest to justify those restrictions. Similarly, the regulation of internal party organization and procedure was not sufficiently necessary to ensure an orderly and fair election in a manner that restricted the party's constitutional rights.

- **Prohibition on write-in candidates (ruled constitutional).** *Burdick v. Takushi*, 504 U.S. 428 (1992).

In *Takushi*, a Hawaii law prohibiting write-in voting was upheld as constitutional. The court reasoned that voters' rights to associate with a political party were subject only to a limited burden—and then only for those voters making decisions to associate at the last minute—since the Hawaii law also provided adequate allowances for candidates to file for office and appear on the ballot. The court held that this limited burden was justified by the state's asserted interest in preventing "unrestrained factionalism at the general election" and to prevent the "raiding" of votes at a primary (along with other maneuvering at a general election) by write-in candidates not otherwise associated with the party.

- **Requirement that open primary results bind the votes of party delegates at a national convention (ruled unconstitutional).** *Democratic Party of the United States v. Wisconsin ex. rel. La Follette*, 450 U.S. 107 (1981).

  In *LaFollette*, a Wisconsin law requiring the state's delegates at the national party convention to vote in a manner consistent with the state's primary was struck down as unconstitutional. In this case, Wisconsin's "open primary" (which allows all voters to vote in any party's primary election, regardless of their actual party preference) was in conflict with the national Democratic party's rules, which require that delegates be chosen through a selection process that includes only voters who publicly declare their preference for the Democratic party and have that preference publicly recorded. The Supreme Court reasoned that the state's asserted interests—including the integrity of the electoral process, ballot secrecy, increasing voter participation in primaries, and preventing harassment of voters—may be sufficient to support its open primary system, but were not sufficient to justify the state's further intrusion into a party's procedure for final delegate selection.

  The court addressed a challenge to a similar Illinois law in *Cousins v. Wigoda*, 419 U.S. 477 (1975).

Major and Minor Political Parties in Minnesota

Which parties are recognized as "major" and "minor" parties in Minnesota?

In Minnesota, the following political parties have "major party" status:

- Democratic-Farmer-Labor Party
- Grassroots-Legalize Cannabis Party[1]
- Legal Marijuana Now Party[2]
- Republican Party of Minnesota

The following political parties have "minor party" status:

- Green Party of Minnesota
- Independence Party of Minnesota
- Libertarian Party of Minnesota

[1] Effective January 1, 2019.

[2] Effective January 1, 2019.

Is a "major" or "minor" party status required for a party to operate in the state or place candidates on the state general election ballot?

A political party is not required to have a "major" or "minor" designation in order to operate in the state, advocate for its political beliefs, or place candidates for partisan office on Minnesota's general election ballot. Any party that does not meet the threshold for a "major" or "minor" designation is recognized simply as "political party" under the law.

How does a party become a major political party?

A party can achieve major party status by maintaining a party organization in the state, political subdivision, or precinct in question, and satisfying one of these additional requirements:

- Present at least one candidate for (1) governor-lieutenant governor, secretary of state, state auditor, or attorney general at the last state general election, or (2) presidential elector or U.S. senator at the last presidential election. At least one such candidate must earn votes in each county in that election, and earn votes from not less than 5 percent of the total number of individuals who voted in that election.

- Present at least 45 candidates for state representative, 23 for state senator, four for representative in Congress, and one each for the constitutional offices, with no minimum vote requirement for any of these candidates.

- File with the secretary by the close of state primary filings, a nominating petition containing the signatures of party members in a number equal to at least 5 percent of the total vote at the last state general election. Minn. Stat. § 200.02, subd. 7.

How does a party become a minor political party?

A party becomes a minor political party by having a state constitution and party chair, holding a state convention within the past two years, and certifying these facts to the secretary of state. It also must do one of the following:

- Present at least one candidate for (1) governor-lieutenant governor, secretary of state, state auditor, or attorney general at the last general election for these offices, or (2) presidential elector or U.S. senator at the last presidential election. This candidate must earn votes in each county that in the aggregate equal at least 1 percent of the total number of individuals who voted.

- File with the secretary by the close of filings, a nominating petition containing signatures of party members in a number equal to at least 1 percent of the total vote at the last state general election. Minn. Stat. § 200.02, subd. 23.

The law also allows a party to qualify for minor party status within an individual legislative district if a candidate for a legislative office in that district earned at least 10 percent of the total number of votes cast for that office in the election, or if the party's members submit a nominating petition to the secretary of state containing signatures of party members in a number equal to at least 10 percent of the total vote at the last state general election for that office. Minn. Stat., § 200.02, subd. 23, para. (e).

When does major or minor party status take effect?

A party qualifying for either major or minor status begins that status on January 1 after the election in which the qualifications are met. A party remains a major or minor party for at least two state general elections. After that time, the party must meet the qualifications again in order maintain its status. Minn. Stat. § 200.02, subds. 7 and 23.

What rights, privileges, and duties does the law provide to major and minor parties?

All major *and* minor parties are entitled or obligated to:

- **Public campaign subsidies.** Campaign subsidies are provided under the state income tax checkoff, if certain filing agreements are met. Minn. Stat. § 10A.31, subds. 3 and 3a.
- **Political contribution refunds.** A major or minor party, or its candidates, may issue political contribution refund receipts to contributors. Minn. Stat. § 290.06, subd. 23.
- **Campaign finance reporting.** Major and minor political parties, including individual units of the party, are subject to certain financial reporting requirements related to campaign contributions and expenditures. These reports must be submitted to the Campaign Finance and Public Disclosure Board and are public information. See generally, Minn. Stat. ch. 10A.

In addition, *major* parties are entitled or obligated to:

- **Control of party affairs.** Control of a major party must be directed through a state central committee and state executive committee, subject to the control of the party's state convention. A state party convention must occur at least once every state general election year. Minn. Stat. § 202A.12.
- **Precinct caucuses.** Notice and accessibility requirements, including a requirement for interpreter services, and minimum procedures and eligibility requirements for a voter's participation in a major party's precinct caucuses are contained in law. Minn. Stat. §§ 202A.14-202A.18.
- **Protection of party name.** A major party's name is protected by law from being used by another party. Minn. Stat. § 202A.11, subd. 2.
- **Access to subsidies through the general state elections campaign account.** Eligible candidates of a major party are entitled to a share of the general state elections campaign account (the "general" account includes an allocation provided by law, in addition to income tax checkoffs that are designated for the "general account" rather than a specific party).
- **Access to the state partisan primary.** Candidates of a major party are nominated at the state partisan primary election (minor party candidates must be nominated by petition). Minn. Stat. § 204B.03.
- **Access to the presidential nomination primary.** A major party and its candidates may participate in the presidential nomination primary. The results of the primary must bind the election of delegates to the party's national convention. Minn. Stat. ch. 207A.
- **Designation of election judges.** A major party must prepare a list of eligible voters to act as election judges in each precinct. Minn. Stat. § 204B.21, subd. 1.
- **Designation of polling place challengers.** A major party may place challengers in the polling place. Minn. Stat. § 204C.07, subd. 1.

- **Designated ballot placement.** Major party candidates are listed on the general election ballot in reverse order of their average vote in the last election. Minn. Stat. § 204D.13, subd. 2.
- **Time off from work.** A member of a major party must be given time off from work to participate in certain party activities if written notice is provided to the employer at least ten days in advance. An employer may deduct from the employee's salary or wages for the actual time of away from the employment, but otherwise may not penalize the employee for their absence. Minn. Stat. § 202A.135.
- **Pre-emption of public meetings and activities.** State and local government meetings, and certain school-sponsored activities, are pre-empted after 6 p.m. on a date designated by law for conducting major party precinct caucuses. Minn. Stat. § 202A.19.
- **Access to public facilities for party activities.** Certain public facilities, including school buildings and other local government facilitates, must be made available for the purpose of conducting a major party's precinct caucus and conventions, with certain restrictions. Minn. Stat. §§ 202A.19, subd. 4; 202A.192.

How does a party lose major or minor party status?

A party loses its major or minor party status if fails to meet the qualifications for maintaining that status after the second state general election after its status was achieved. Additionally, a minor party loses its "minor" status if it meets the qualifications to become a "major" party.

Does a party's major or minor status affect the signature requirements for a candidate nominating petition?

The option for a party to establish itself as major or minor by filing a petition is separate from the requirement that some candidates file nominating petitions in order to appear on the general election ballot.

Major party candidates do not file nominating petitions. Minor party candidates always must gather signatures and file nominating petitions as their alternative to the state partisan primary. This is true even if their party chooses to submit petitions to establish the party's status.

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