STATE OF MINNESOTA
IN SUPREME COURT
A23-1354

Joan Growe, et al.,

Petitioners,

v.

Steve Simon, Minnesota Secretary of State, et al.

Respondents.

DONALD J. TRUMP'S BRIEF REGARDING *OINES V. RITCHIE*

Charles N. Nauen (#121216)
David J. Zoll (#0330681)
Kristen G. Marttila (#0346007)
Rachel A. Kitze Collins (#0396555)
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401, (612) 339-6900
cnnauen@locklaw.com
djzoll@locklaw.com
kgmarttila@locklaw.com
rakitzecollins@locklaw.com

Ronald Fein (pro hac vice)
Amira Mattar (pro hac vice)
Courtney Hostetler (pro hac vice)
John Bonifaz (pro hac vice)
Ben Clements (pro hac vice)
FREE SPEECH FOR PEOPLE
1320 Centre St. #405
Newton, MA 02459, (617) 244-0234
rfein@freespeechforpeople.org
amattar@freespeechforpeople.org
chostetlet@freespeechforpeople.org
jbonifaz@freespeechforpeople.org
bclements@freespeechforpeople.org

Attorneys for Petitioners

KEITH ELLISON
Attorney General
State of Minnesota

Nathan J. Hartshorn
Assistant Attorney General
Atty. Reg. No. 0320602
Allen Cook Barr
Assistant Attorney General
445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1252 (Voice)
nathan.hartshorn@ag.state.mn.us
allen.barr@ag.state.mn.us

Attorneys for Respondent Steve Simon, Minnesota Secretary of State

Nicholas J. Nelson (#391984)
Samuel W. Diehl (#388371)
CROSSCASTLE PLLC
333 Washington Avenue N.
Ste 300-9078
Minneapolis, MN 55401
T: (612) 429-8100
F: (612) 234-4766
E: nicholas.nelson@crosscastle.com
sam.diehl@crosscastle.com

R. Reid LeBeau II (#347504)
JACOBSON, MAGNUSON, ANDERSON & HALLORAN, P.C.
180 E. Fifth St. Ste. 940
St. Paul, MN 55101
(651) 644-4710
rlebeau@thejacobsonlawgroup.com

Attorneys for Respondent Republican Party of Minnesota

DHILLON LAW GROUP, INC.
David A. Warrington (VSB No. 72293)
2121 Eisenhower Avenue, Suite 608
Alexandria, VA 22314
T: (703) 574-1206
F: (415) 520-6593
E: dwarrington@dhillonlaw.com

Mark P. Meuser (CA Bar No. 231335)
Christopher M. Halbohn (TX Bar No. 24109967)
177 Post Street, Suite 700
San Francisco, CA 94108
T: (703) 415.433.1700
F: (415) 520.6593
E: mmeuser@dhillonlaw.com
chalbohn@dhillonlaw.com

Attorneys for Respondent Donald J. Trump

The Court has requested supplemental briefing "addressing the impact, if any, *Oines* has on this matter." Order of Oct. 20 at 2. In *Oines v. Ritchie*, this Court dismissed a "petition filed under Minn. Stat. § 204B.44 seeking to remove the name of a candidate for President of the United States from a ballot because he was allegedly not eligible to serve." No. A12-1765 (Minn. Oct. 18, 2012). The Petition in this matter is brought under the same statute, Section 204B.44, and just like the petition did in *Oines*, it challenges a presidential candidate's constitutional qualification to hold office. The Petition in this matter should be dismissed for the same reasons as the petition in *Oines*.

1. The *Oines* decision.

As the Court has recognized, *Oines* involved a petition under Minn. Stat. 204B.44, "seek[ing] to remove President Obama from the November 2012 general election ballot" on the ground that he was "not eligible to serve" as president because he allegedly was "not a 'natural born citizen' of the United States," in violation of the U.S. Constitution. *Oines* op. at 1-2. Although the respondents contended that the petition was barred by laches, the Secretary of State's initial argument against the *Oines* petition was nearly identical to President Trump's here: that "this Court lacks subject matter jurisdiction to rule on challenges to the qualifications of a presidential candidate" because such challenges are committed to the political branches of the federal government. Respondent Mark Ritchie's Mem., *Oines*, No. A12-1765 (filed Oct. 10, 2012).

The Court agreed with the Secretary on both points. It initially concluded that the petitioner had unduly delayed bringing his claims. *Id.* 2-3. But it went on to hold that the petition also must be dismissed on more substantive grounds.[1]

First, the Court held that "Minnesota election law" does not "give[state officials] any discretion in" placing presidential candidate names on the ballot, because "candidates for president or vice president of the United States are specifically exempted from the requirement of filing an affidavit of candidacy that demonstrates their eligibility for the office sought." *Id.* at 4 (underscoring added); Minn. Stat. 204B.06, subd. 4 ("Candidates for president or vice president of the United States are not required to file an affidavit of candidacy for office.").

Second, the Court held that "under federal law it is Congress that decides challenges to the qualifications of an individual to serve as president." *Oines* op. at 4. In this regard, the Court cited two authorities. One was the Electoral Count Act, 3 U.S.C. 15, which prescribes how Congress meets in joint session to count electoral votes for president, and how Congress shall consider any objections to electors' votes. The other was *Keyes v. Bowen*, a decision of the California Court of Appeal. In *Keyes* the court held that California "statutes do not impose a … duty on the Secretary of State to determine whether the presidential candidate meets the eligibility criteria of the United States Constitution," 117 Cal. Rptr. 3d 207, 215-15 (Cal. Ct. App. 201). Moreover, the *Keyes* court held that "[t]he presidential nominating process is not subject to each of the 50 states' election officials

[1] The *Oines* Court did not question the general proposition that § 204B.44 allows the removal of ineligible candidates' names from the ballot. *See Moe v. Alsop*, 180 N.W. 255, 330-31 (Minn. 1970) (establishing that power under the predecessor statute). The only question was whether that power extended to presidential qualifications in particular.

independently deciding whether a presidential nominee is qualified," *id.* at 215, and that a "challenge [to a presidential candidate's qualifications] is committed under the Constitution to the electors and the legislative branch, at least in the first instance," *id.* at 216 (quoting *Robinson v. Bowen*, 567 F.Supp.2d 1144, 1147 (N.D. Cal. 2008).

2. *Oines*'s holding under Minnesota law applies equally here.

This case is indistinguishable from *Oines* and the Petition here should be dismissed for the same reasons as the petition in *Oines*: (A) Minnesota law does not authorize the use of a Section 204B.44 petition to challenge a presidential candidate's qualifications; and (B) such challenges are reserved for resolution by the electors and Congress.

Like the petitioners in *Oines*, Petitioners here filed a Section 204B.44 petition. In that petition, they claim that a presidential candidate's name should be removed from the ballot based on the candidate's alleged ineligibility to be president according to the U.S. Constitution. According to *Oines*, the dispositive issue then becomes whether Section 204B.06 requires the candidate to demonstrate his or her eligibility in an affidavit. Although *Oines* involved a general election, the affidavit of candidacy applies equally (or even more) to primary elections like this one: Minn. Stat. 204B.03 specifies that "filing an affidavit of candidacy as provided in section 204B.06" is how "[c]andidates … apply for a place on the primary ballot." Just as it did in *Oines*, the current version of Section 204B.04, subd. 4 still specifically exempts candidates for president from any requirement to file an affidavit of candidacy. Accordingly, for this reason alone, the Petition must be dismissed.

Oines's reliance on Minnesota's affidavit-of-candidacy requirement disposes of this case in yet another way. Section 204B.06 specifically prescribes which eligibility criteria must be addressed in an affidavit of candidacy. Candidates must attest that they are eligible to vote, that they are not running for any other office, and that they meet various office-specific age and residency requirements. *Id.* subds. 1, 4, 4a. (Candidates for certain offices must additionally attest that they are learned in the law, licensed to practice law in Minnesota, or licensed Minnesota peace officers. *Id.* subds. 6, 8.) But Petitioners here are not seeking to enforce any of those eligibility requirements. Rather, Petitioners claim that President Trump is ineligible under Section Three of the Fourteenth Amendment because he allegedly "engaged in insurrection." Minnesota law does not require any candidates to address that criterion in any way in their affidavits.

Thus, under the statutory interpretation of *Oines*, a 204B.44 petition cannot be used to challenge a presidential candidate's qualifications and the Petition should be dismissed.

3. *Oines's* holding under federal law applies equally here.

The constitutional assignment of authority for deciding who may or may not serve as president is the same today as it was when *Oines* was decided in 2012. *Oines* held that challenges to the qualifications of an individual to serve as president are to be decided by Congress, not Minnesota state agencies or state courts. *Oines* op. at 4. But, just like the unsuccessful petition in *Oines*, the Petition in this case asks state agencies and courts to intrude on that constitutionally prescribed assignment of authority in order to decide who may serve as president. *Oines*'s holding is the same as President Trump's primary argument in this case:

adjudication of who is qualified to serve as president is a quintessential political question that the U.S. Constitution does not commit to individual state agencies or state courts. *See* Br. Pt. I. Indeed, the California Court of Appeal decision relied on by the *Oines* Court, *Keyes*, is one of the principal authorities relied on by President Trump on the political-question issue. *Id.* § I.C.2.

The statutory assignment of authority to decide presidential qualifications is also the same today as when *Oines* was decided. *Oines* cited the Electoral Count Act, 3 U.S.C. 15. While this statute was amended in 2022, the amendments did not substantively change the relevant portions of the statute. The previous version of the Act allowed the House and Senate to consider "objections" to electoral votes, but specified that "no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified … shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified." *See* 3 U.S.C. 15 (effective through Dec. 28, 2022.). The amended version simply reorganizes these provisions without changing their substance. *See* 3 U.S.C. 15 (d)(2), (e).[2] Most importantly for purposes of following *Oines*, there is no indication that the 2022 amendments were meant to transfer any enforcement authority from Congress to the States.[3]

---

[2] The amendments did change the previous Act's provisions for addressing the possibility that Congress would be presented with competing slates of electors from a single State, *see id.*—but that was not at issue in *Oines* and is not at issue here.

[3] Petitioners' reliance on a recent Colorado trial court decision, *Anderson v. Griswold*, No. 2023cv32577, is unavailing because the *Anderson* court misapprehended

Thus, the federal statutory provisions for Congress to assess who may or may not serve as president remain the same as they were when *Oines* was decided. As this court held in *Oines*, challenges to presidential candidate qualifications cannot be decided by Minnesota state agencies and courts and, therefore, this case should be dismissed.

* * *

In sum, based on Minnesota statutes, the *Oines* Court held that a Section 204B.44 petition cannot be used to challenge a presidential candidate's qualifications, as Petitioners seek to do in this case. Moreover, this Court in *Oines* held that under the U.S. Constitution, challenges to presidential candidate qualification cannot be resolved by Minnesota state agencies and courts.

Pursuant to this Court's reasoning in *Oines*, the Petition should be dismissed.

---

these points. *Anderson* order at 17. More relevant here, the Colorado court noted "that the weight of cases have held that challenges to an individual's qualifications to be President are barred by the political question doctrine." *Id.* at 10. Although the Colorado court did not specifically mention this Court's decision in *Oines*, as explained herein, *Oines* is consistent with that weight of authority. This Court should follow its own decision in *Oines* and that weight of authority from other jurisdictions.

Dated: October 25, 2023

CROSSCASTLE PLLC

s/ *Nicholas J. Nelson*
Nicholas J. Nelson (#391984)
Samuel W. Diehl (#388371)
333 Washington Avenue N.
Ste 300-9078
Minneapolis, MN 55401
T: (612) 429-8100
F: (612) 234-4766
E: nicholas.nelson@crosscastle.com
sam.diehl@crosscastle.com

DHILLON LAW GROUP, INC.

David A. Warrington (VSB No. 72293)
2121 Eisenhower Avenue, Suite 608
Alexandria, VA 22314
T: (703) 574-1206
F: (415) 520-6593
E: dwarrington@dhillonlaw.com

Mark P. Meuser (CA Bar No. 231335)
Christopher M. Halbohn (TX Bar No. 24109967)
177 Post Street, Suite 700
San Francisco, CA 94108
T: (703) 415.433.1700
F: (415) 520.6593
E: mmeuser@dhillonlaw.com
chalbohn@dhillonlaw.com

Attorneys for Respondent Donald J. Trump