

STATE OF MINNESOTA
IN SUPREME COURT
A23-1354

FILED

September 27, 2023

**OFFICE OF
APPELLATE COURTS**

Joan Growe et al.,

Petitioners,

**Request of Professor Ackerman
for Leave to Participate as
*Amicus Curiae***

vs.

Steve Simon, Minnesota Secretary of
State,

Respondent.

TO: The Minnesota Supreme Court and to all counsel of record:

Pursuant to Minnesota Rule of Civil Appellate Procedure 129.01, Professor Bruce Ackerman, Sterling Professor of Law and Political Science at Yale Law School, hereby requests leave to participate in this action as *amicus curiae* in support of Petitioners.

I. Professor Ackerman's interest.

Professor Ackerman's interest is public in nature. One of the nation's leading constitutional-law scholars, Professor Ackerman is the author of nineteen books and dozens of articles on political philosophy, constitutional law, and public policy. Professor Ackerman's research and scholarship has touched on many issues related to the Petition, including (but not limited to) the political question doctrine, which is one aspect of the justiciability question on which this Court has requested briefing. *See* Order dated

September 20, 2023, *Grove v. Simon*, A23-1354 (directing briefing on “justiciability, including standing and ripeness”). Professor Ackerman wishes to see this case decided in a way that comports with the understanding of justiciability that he has developed after decades of study.

II. The party supported and position taken.

If this Court grants Professor Ackerman’s request to participate as *amicus curiae*, Professor Ackerman will argue that the Petition is justiciable by this Court at this time. Specifically, Professor Ackerman will explain why this Court’s resolution of the Petition is not a political question—and therefore is justiciable—under the six-factor test articulated by the U.S. Supreme Court for assessing justiciability in cases that touch on political issues. *See Baker v. Carr*, 369 U.S. 186 (1962). Because Professor Ackerman believes and will argue that the Petition presents a justiciable controversy, his *amicus* brief will support the relief sought by Petitioners.

III. Why Professor Ackerman’s participation is desirable.

The Petition raises unprecedented issues of constitutional law, including “the legal construction of Section 3 of the Fourteenth Amendment.” Order dated September 20, 2023, *Grove v. Simon*, A23-1354. But before this Court even reaches the complex Fourteenth Amendment questions that are at the heart of the Petition, it must first grapple with whether the Petition is justiciable—an inquiry that may include, but may not be limited to, an assessment of whether the political question doctrine permits or requires this Court to decline to answer the questions the Petition raises. As a longtime scholar of the U.S. Constitution and political philosophy, Professor Ackerman can aid the Court in

understanding why, despite its obviously political trappings, the Petition does not present a political question that this Court should decline to adjudicate under longstanding U.S. Supreme Court precedent.

CONCLUSION

For all the foregoing reasons, Professor Ackerman respectfully requests that this Court grant his request for leave to participate as *amicus curiae*.

Dated: September 27, 2023

**FORSGREN FISHER MCCALMONT
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CERTIFICATE OF COMPLIANCE

I certify that this request and response contains 442 words (exclusive of caption, signature block, and certificate) and complies with Minnesota Rule of Appellate Procedure 129.01(c). This request was prepared using a proportional font size of 12 pt. This document was prepared on, and word count provided by, Microsoft Word 2021.

Dated: September 27, 2023

s/Virginia R. McCalmont
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