

STATE OF MINNESOTA

IN SUPREME COURT

A09-950

Minnesota Majority, Jeffrey Davis,
Daniel McGrath, Tom Emmer,
Mark Buesgens, David Fitzsimmons,
Jean Sanford, Cindy Pugh and Matt Dean,

Petitioners,

vs.

Mark Ritchie, in his official capacity as
Secretary of State for the State of Minnesota,
or his successor, et al.,

Respondents.

ORDER

Petitioners Minnesota Majority, et al., have filed a petition seeking to invoke this court's original jurisdiction under Minn. Stat. § 204B.44(d) (2008) to pursue a declaratory judgment against respondents Minnesota Secretary of State and 31 county auditors. Petitioners allege that respondents violated Minn. Stat. § 201.171 (2008), stating three claims: (1) that "[t]he Respondent Counties and their respective Auditors failed to timely post the voting history of voters and to comply with applicable election laws"; (2) that "[t]he Respondent Mark Ritchie, as Minnesota's Secretary of State[,] failed to timely ensure only all registered voters are in the Statewide Voter Registration System"; and (3) that "[t]he Respondent Mark Ritchie, as Minnesota's Secretary of State, failed to perform

list maintenance regarding voters on the statewide registration.” Petitioners seek an order directing respondents to comply with Minn. Stat. § 201.171 and an award of attorney fees.

Minnesota Statutes §§ 201.01-.275 (2008) govern registration and eligibility of voters. An eligible voter must be registered in order to cast a vote that will count. Minn. Stat. § 201.018. The county auditor is chief registrar of voters and the chief custodian of the official registration records in each county. Minn. Stat. § 201.021. The Secretary of State is responsible for maintaining Minnesota’s statewide voter registration system (SVRS) “to facilitate voter registration and to provide a central database containing voter registration information from around the state.” Minn. Stat. § 201.022. The voter registration laws provide various means for updating the SVRS, including list maintenance:

Within six weeks after every election, the county auditor shall post the voting history for every person who voted in the election. After the close of the calendar year, the secretary of state shall determine if any registrants have not voted during the preceding four years. The secretary of state shall perform list maintenance by changing the status of those registrants to “inactive” in the statewide registration system. The list maintenance performed must be conducted in a manner that ensures that the name of each registered voter appears in the official list of eligible voters in the statewide registration system. A voter must not be removed from the official list of eligible voters unless the voter is not eligible or is not registered to vote. List maintenance must include procedures for eliminating duplicate names from the official list of eligible voters.

The secretary of state shall also prepare a report to the county auditor containing the names of all registrants whose status was changed to “inactive.”

Registrants whose status was changed to “inactive” must register in the manner specified in section 201.054 before voting in any primary, special primary, general, school district, or special election, as required by section 201.018.

Although not counted in an election, a late or rejected absentee or mail ballot must be considered a vote for the purpose of continuing registration.

Minn. Stat. § 201.171.¹

Minnesota Statutes §§ 204B.01-.48 (2008) govern elections. Petitioners have applied directly to this court for relief under Minn. Stat. § 204B.44(d).² The principal

¹ The legislature provided for review of complaints about the SVRS. Minn. Stat. § 200.04 (1) (2008) (“The secretary of state shall establish a procedure for the review of complaints regarding the administration of Title III of the Help America Vote Act of 2002, Public Law 107-252, including complaints about voting system standards, computerized statewide registration lists and equipment, voter registration requirements, and other features of state implementation of that act.”).

² Minnesota Statutes § 204B.44 provides:

Any individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions, or wrongful acts which have occurred or are about to occur:

- (a) an error or omission in the placement or printing of the name or description of any candidate or any question on any official ballot;
- (b) any other error in preparing or printing any official ballot;
- (c) failure of the chair or secretary of the proper committee of a major political party to execute or file a certificate of nomination;
- (d) any wrongful act, omission, or error of any election judge, municipal clerk, county auditor, canvassing board or any of its members, the secretary of state, or any other individual charged with any duty concerning an election.

The petition shall describe the error, omission, or wrongful act and the correction sought by the petitioner. The petition shall be filed with any judge of the Supreme Court in the case of an election for state or federal office or any judge of the district court in that county in the case of an election for county, municipal, or school district office. The petitioner shall serve a copy of the petition on the officer, board or individual charged with

(Footnote continued on next page.)

purpose of section 204B.44 “is to provide a mechanism for correcting errors alleged to have occurred before the election, such as errors and omissions ‘in the placement or printing of the name or description of any candidate or any question’ on the ballot and errors in preparing or printing the official ballot.” *Coleman v. Ritchie*, 762 N.W.2d 218, 231 n.13 (Minn. 2009).

Minnesota Statutes § 204B.44(d) allows the correction of “any wrongful act, omission, or error of any election judge, municipal clerk, county auditor, canvassing board or any of its members, the secretary of state, or any other individual charged with any duty concerning *an election*.” (Emphasis added.) Proper jurisdiction of a dispute brought under Minn. Stat. § 204B.44 depends on the nature of the election that is implicated: “The petition shall be filed with any judge of the Supreme Court in the case of *an election for state or federal office* or any judge of the district court in that county in the case of *an election for county, municipal, or school district office*.” (Emphasis added.)

By order filed June 5, 2009, we directed petitioners to show cause why their petition should not be dismissed as an action that is outside the scope of Minn. Stat. § 204B.44(d) or this court’s jurisdiction under that statute. In response, petitioners state the following

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the error, omission, or wrongful act, and on any other party as required by the court. Upon receipt of the petition the court shall immediately set a time for a hearing on the matter and order the officer, board or individual charged with the error, omission or wrongful act to correct the error or wrongful act or perform the duty or show cause for not doing so. The court shall issue its findings and a final order for appropriate relief as soon as possible after the hearing. Failure to obey the order is contempt of court.

grounds for jurisdiction in this court: (1) “[s]tate and federal elections were held in the 2008 elections”; (2) “[a]n error, omission, or wrongful act (the secretary of state failed to follow the obligations of state law) occurred”; (3) “[a]n error, omission, or wrongful act continues to occur”; and (4) “[t]he allegations – charges – of the petition identify the error, omission, or wrongdoing.”

Petitioners’ allegations of violations of Minn. Stat. § 201.171 concern removing ineligible voters from the registration system and ensuring that eligible voters are included. Improving the accuracy of the voter registration database is a laudable goal. But our jurisdiction under section 204B.44(d) is limited to ordering the correction of “any wrongful act, omission, or error” of election officials or others “charged with any duty concerning *an* election.” (Emphasis added.) We have therefore exercised that jurisdiction to address claims about an election official’s duty concerning a specific election, especially where expeditious resolution of the controversy is required. *E.g.*, *Coleman*, 762 N.W.2d at 232-33 (Minn. 2009) (addressing authority to order correction of erroneous rejection of absentee ballots in general election); *Clark v. Pawlenty*, 755 N.W.2d 293, 303 (Minn. 2008) (addressing ballot challenge in election for state supreme court justice); *Breza v. Kiffmeyer*, 723 N.W.2d 633, 635 (Minn. 2006) (addressing challenge to ballot question, for general election, on proposed constitutional amendment). We do not understand section 204B.44(d) to authorize claims and establish original jurisdiction in this court for any and all disputes concerning official conduct that relates to or may affect elections in general. At a minimum, the plain language of the statute requires that the claim relate to a duty concerning a specific election.

