

SUPREME COURT
OF THE
STATE OF NORTH DAKOTA

Rick Berg, individually in his capacity as a)
resident and elector of the State of North)
Dakota, and as Chairman of the North Dakota)
Republican Party,)

Petitioner,)

vs.)

Alvin Jaeger, in his capacity as North)
Dakota's Secretary of State,)

Respondent.)

Supreme Court Case No. 20200184

PETITION FOR PREROGATIVE WRIT OF MANDAMUS COMPELLING
RESPONDENT TO REMOVE NORTH DAKOTA INSURANCE COMMISSIONER
CANDIDATE TRAVISIA MARTIN FROM GENERAL ELECTION BALLOT

RESPONSE ON INDISPENSABLE PARTIES

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INTRODUCTION AND SCOPE

[1] On July 9, 2020, Petitioner Rick Berg (hereinafter “Petitioner”) filed a Petition for Prerogative Writ of Mandamus Compelling Respondent to Remove North Dakota Insurance Commissioner Candidate Travisia Martin from General Election Ballot (hereinafter “Petition”). On July 16, 2020 this Court directed the parties to prepare a response addressing whether there are any persons, including the candidate who would be removed from the ballot if the petition were granted, who may be necessary to join as a party in order to reach a full and proper resolution of this matter. That same day, Respondent Alvin Jaeger (hereinafter “Respondent”) filed Alvin Jaeger’s Motion Requesting the Court Consider Travisia Jonette Minor, a/k/a Travisia Martin as a Necessary Party to the Petition. This response by Petitioner shall serve as a response to both the Court’s directive and Respondent’s motion in addressing the issue of joinder.

LAW AND ARGUMENT

[2] The North Dakota Rules of Civil Procedure state the following with regard to who may be a necessary party:

(1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

- (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

N.D.R.Civ.P. 19(a). Here, the Court has asked the parties to examine the necessity of joining a candidate whose placement on a ballot is being put into question, and the Respondent has subsequently asked that Travia Jonette Minor a/k/a Travia Martin (hereinafter “Martin”) be considered a necessary party to the Petition. Though Petitioner acknowledges that Martin may fit the Rule 19 definition of an interested party, Martin herself has not filed any intervening documents claiming interest or desire to be joined to this action. Should Martin do so, Petitioner does not intend to oppose the same. However, Petitioner urges this Court to consider the feasibility of Martin’s involvement given the time constraints in this matter. Martin’s involvement does not and should not expand on the narrow issue before the court and the matter should proceed as scheduled.

[3] Though Petitioner will defer to this Court’s judgment regarding Martin being joined as an interested party, any such joinder is not essential to this matter. This Court has proceeded without such third-party involvement in past actions where removal of a candidate from a ballot was contemplated. In Riemers v. Jaeger, Petitioner Roland Riemers argued, albeit unsuccessfully, that the Secretary of State should remove the Republican and Democratic candidates for governor and lieutenant governor from the general election ballot for failing to comply with N.D.C.C. § 16.1-11-06(2). Riemers v. Jaeger, 2013 ND 30, 827 N.W.2d 330. This Court noted in Riemers that the subject candidates were not included in the action but did not explicitly take issue with their lack of inclusion. Id. at 337-8. Rather, the Court focused on the inadequacy of the record to establish a factual basis requiring the Secretary of State to remove the candidates. Id. at 338.

[4] In the present action, the record is such that Martin's involvement is inconsequential to this Court reaching a full and proper resolution of the matter. This is not a case where there are factual disputes which need to be resolved prior to the Court being able to reach a conclusion. The Petition is based on public record admissions by Martin which are not in dispute. Martin admits she voted in Nevada on November 8, 2016. (Petitioner's Appendix, p. 10; App. 19-20). Martin also admits she owned a home in Nevada during the subject time. (App. 19-20). Finally, Martin admits she was regularly seeing a physician in Nevada during the five-year period in question. (App. 19-20). It is hard to foresee what relevance Martin's involvement will bring to the action unless she intends to refute her public record admissions, which seems unlikely and ill-fated.

CONCLUSION

[5] Martin does not need to be joined for this Court to reach a full and proper resolution of this matter. Nevertheless, Petitioner only opposes to her joinder and involvement to the extent that the same might hinder this Court's ability to make an expedited ruling as is necessary and prayed for in the Petition.

Dated this 20th day of July, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2020, the **RESPONSE ON INDISPENSABLE PARTIES** was filed electronically with the Supreme Court through the E-filing Portal and was served on the following persons; and was also served via direct email to the following persons:

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