STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0330
A21-0403

Minnesota Democratic-Farmer-Labor Party by Ken Martin, its Chair,
Appellant,

vs.

Steve Simon, in his official capacity as the Secretary of State of the State of Minnesota,
Respondent

and

Noah J. McCourt,
Appellant,

vs.

Minnesota Secretary of State Steve Simon, in his official capacity,
Respondent.

Filed January 3, 2022
Affirmed
Jesson, Judge

Ramsey County District Court
File Nos. 62-CV-20-4066, 62-CV-20-3913

Charles N. Nauen, David J. Zoll, Kristen G. Marttila, Rachel A. Kitze Collins, Lockridge Grindal Nauen P.L.L.P., Minneapolis, Minnesota (for appellant Minnesota Democratic-Farmer-Labor Party); and

Amarita K. Singh, Simon J. Trautmann, Trautmann Martin Law PLLC, Minneapolis, Minnesota (for appellant Noah J. McCourt)

Keith Ellison, Attorney General, Allen Cook Barr, Stephen D. Melchionne, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Jesson, Judge; and Kirk, Judge.*

SYLLABUS

1. A First Amendment challenge to a statute is not ripe when there is no credible threat of prosecution under that statute.

2. The criminal penalties of Minnesota Statutes sections 201.014 (2020) and 204C.14 (2020), which punish unlawful voting as a felony, do not apply to voting in precinct caucuses.

OPINION

JESSON, Judge

In First Amendment challenges to the Minnesota law that limits who can vote at precinct caucuses to "eligible voters," appellants separately sued the Minnesota Secretary of State. Appellants alleged that the caucus-eligibility statute violates their First Amendment freedom-of-association rights. It does so, they asserted, when it excludes potential caucus attendees, such as "dreamers," minors, and individuals whose civil rights have not been fully restored after a felony, who wish to participate at a caucus but are ineligible to vote in a primary or general election. The district courts dismissed both actions, concluding that the challenges were not justiciable as they were not ripe for review. The appellants filed separate appeals, which we consolidated. Because there is no credible

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

threat of prosecution against the parties for violation of the caucus-eligibility statute—making this action nonjusticiable—we affirm.

FACTS

During every general-election year, members of the Minnesota Democratic-Farmer-Labor Party (the DFL) come together in neighborhood-level gatherings to discuss issues and organize at the local level. At these precinct caucuses, participants may introduce resolutions on issues that they wish to see included in the DFL party platform and the DFL constitution, as well as vote to elect local party leadership. Caucus attendees also vote to elect delegates and alternates to the district conventions, who in turn endorse candidates and select DFL leadership.

But Minnesota law limits which caucus attendees may vote in a precinct caucus, stating "[o]nly those individuals *who are or will be eligible to vote at the time of the next* state general *election*, may vote or be elected a delegate or officer at the precinct caucus." Minn. Stat. § 202A.16, subd. 1 (2020) (emphasis added) (caucus-eligibility statute). Crucial to appellants the DFL and Noah McCourt, Minnesota Statutes section 201.014 (the election-eligibility statute)—the statute that determines voter eligibility at election time—prevents from voting "dreamers" (noncitizens who immigrated to the United States as young children), minors, and individuals who have not been fully restored to their civil rights after a felony conviction. Both these statutes are reproduced on the Minnesota Secretary of State website.

Parties

The DFL is a major political party in Minnesota. McCourt is an active member of the DFL. He is the outreach and inclusion officer for the DFL Disability Caucus and inclusion officer for the Saint Paul Young DFL. But because he was convicted of a felony and is currently serving a five-year sentence on probation, he is ineligible to vote in a primary or general election. Thus, under the caucus-eligibility statute, he is currently ineligible to vote in a precinct caucus.

Secretary of State Steve Simon (Simon or secretary) is responsible for the oversight of elections, which includes promulgating rules governing the eligibility and registration of voters in Minnesota and maintaining the registered voter lists. *See* Minn. Stat. §§ 201.091, subd. 2, (requiring secretary to prepare list of registered voters), .221 (requiring secretary to provide rules for maintaining voter registration records) (2020).

Procedural History

The DFL and McCourt sued Simon in separate actions, alleging that the caucus-eligibility statute is unconstitutional because it violates their freedom-of-association rights under the First Amendment to the United States Constitution.[1] Additionally, McCourt raised a claim that the statute violated his Fourteenth Amendment rights.

In both cases Simon moved to dismiss for lack of subject-matter jurisdiction and for failing to state a claim upon which relief can be granted. Minn. R. Civ. Pro. 12.02(a), (e). The DFL and McCourt separately also moved for summary judgment. The district courts

[1] While the DFL is the involved political party here, the caucus-eligibility statute applies to all political parties that hold caucuses.

dismissed for failure to state a claim, concluding that there is no threat of the caucus-eligibility statute being enforced by Simon, and that Simon does not have the power to enforce it. Because the district court addressing the DFL's lawsuit found the case should be dismissed, it did not reach the DFL's motion for summary judgment.

The DFL and McCourt appeal.

ISSUE

Are appellants' challenges to Minnesota Statutes section 202A.16 (2020) (the caucus-eligibility statute) justiciable?

ANALYSIS

Under the Minnesota Constitution, courts do not issue advisory opinions. *State v. Arens*, 586 N.W.2d 131, 132 (Minn. 1998) (noting that we "only decide actual controversies"). Nor do we "decide cases merely to establish precedent." *Schowalter v. State*, 822 N.W.2d 292, 298 (Minn. 2012) (quotation omitted). Instead, we require "the presence of a justiciable controversy" to our exercise of jurisdiction. *Id.* One aspect of justiciability is ripeness, which is a doctrine designed to prevent the courts "from entangling themselves in abstract disagreements over administrative policies" through avoidance of premature adjudication. *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 807 (2003) (quotation omitted). Justiciability requires that a case be ripe which, in the context of a statutory challenge like this one, means the law "is, or is about to be, applied to [the plaintiff's] disadvantage." *Baertsch v. Minn. Dep't of Revenue*, 518 N.W.2d 21, 25 (Minn. 1994) (quoting *St. Paul Area Chamber of Com. v. Marzitelli*, 258 N.W.2d 585, 587 (Minn. 1977)).

The DFL and McCourt argue that the district courts erred in concluding that they failed to state claims on which relief could be granted because their challenges to the caucus-eligibility statute were not ripe for review. We review de novo a case, like this one, dismissed for failure to state a claim on which relief can be granted. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). In doing so, we consider only the facts alleged in the complaint, accepting those facts as true and construing all reasonable inferences in favor of the nonmoving party. *Id.*

In their complaints, the DFL and McCourt challenged the caucus-eligibility statute as violating their First Amendment freedom-of-association rights due to a threat of enforcement from the secretary should ineligible voters vote or be elected at the caucus. Part of their fear of reprisal is premised on the punishments in the election-eligibility statute and Minnesota Statutes section 204C.14 (unlawful-voting statute). Because the DFL and McCourt argue that the felony penalties contained in the election-eligibility and unlawful-voting statutes apply to the caucus-eligibility statute—and because the ripeness analysis here requires us to determine whether a credible threat of prosecution exists—we begin with interpreting these statutes. Then, with those interpretations in mind, we consider whether the challenge to the caucus-eligibility statute is ripe for review.

Statutory Interpretation

Our interpretation of whether the felony punishments in two statutes apply to the third turns on the interplay (or lack thereof) among three statutes: the caucus-eligibility, election-eligibility, and unlawful-voting statutes. We begin with the caucus-eligibility statute, which states in part that "[o]nly those individuals who are or will be eligible to vote

at the time of the next state general election, may vote or be elected a delegate or officer at the precinct caucus."[2] Minn. Stat. § 202A.16, subd. 1. But the only enforcement mechanism in this caucus statute lies with the other caucus participants, stating that "[i]n case the right of a person to participate at the caucus is challenged, *the question of the right to participate shall be decided by a vote of the whole caucus*. A person so challenged may not vote on the question of the person's right to participate." *Id.*, subd. 3 (emphasis added).[3]

Because voter eligibility for caucuses turns on the election-eligibility statute, we look next at Minnesota Statutes section 201.014, which explains the requirements for who is eligible to vote:

> Subdivision 1. Requirements. Except as provided in subdivision 2, an individual who meets the following requirements at the time of an election is eligible to vote. The individual must:
>
> (1) be 18 years of age or older;
> (2) be a citizen of the United States; and
> (3) maintain residence in Minnesota for 20 days immediately preceding the election.
>
> Subd. 2. Not eligible. The following individuals are not eligible to vote. Any individual:
>
> (1) convicted of treason or any felony whose civil rights have not been restored;
> (2) under a guardianship in which the court order revokes the ward's right to vote; or
> (3) found by a court of law to be legally incompetent.

[2] "Eligible voter means an individual who is eligible to vote under [the election-eligibility statute]." Minn. Stat. § 200.02, subd. 15 (2020).

[3] We note that "participate" in subdivision 3 could be read as broader than voting or being elected as a delegate at a caucus. But because this challenge is about whether the felony punishments of other election-related statutes apply specifically to the first subdivision of the caucus-eligibility statute, which deals only with participation by voting, we do not need to reach that question.

> Subd. 3. Penalty. Any individual who votes who knowingly is not eligible to vote is guilty of a felony.

Minn. Stat. § 201.014.

Finally, the unlawful-voting statute criminalizes certain activities, stating:

> Subdivision 1. Violations; penalty. No individual shall intentionally:
>
> (a) misrepresent the individual's identity in applying for a ballot, depositing a ballot in a ballot box or attempting to vote by means of a voting machine or electronic voting system;
> (b) vote more than once at the same election;
> (c) put a ballot in a ballot box for any illegal purpose;
> (d) give more than one ballot of the same kind to an election judge to be placed in a ballot box;
> (e) aid, abet, counsel or procure another to go into any precinct for the purpose of voting in that precinct, knowing that the other individual is not eligible to vote in that precinct; or
> (f) aid, abet, counsel or procure another to do any act in violation of this section.
>
> A violation of this section is a felony.

Minn. Stat. § 204C.14, subd. 1.

With these three statutes in mind, we turn to our standard of review. We review issues of statutory interpretation de novo. *Christianson v. Henke*, 831 N.W.2d 532, 535 (Minn. 2013). The objective of statutory interpretation is to "effectuate the intention of the legislature," reading the statute as a whole. *Id.* at 536; *see also* Minn. Stat. § 645.16 (2020). Our first step in statutory interpretation is to determine whether the statute's language, on its face, is ambiguous. *Christianson*, 831 N.W.2d at 536. A statute is only ambiguous if its language is "subject to more than one reasonable interpretation." *Id.* at 537. To

determine whether a statute is ambiguous, we analyze "the statute's text, structure, and punctuation." *State v. Pakhnyuk*, 926 N.W.2d 914, 921 (Minn. 2019). We may also consider the canons of interpretation, including the ordinary-meaning canon, where we construe the words of the statute according to their plain meaning. *State v. Riggs*, 865 N.W.2d 679, 682 (2015); Minn. Stat. § 645.08(1) (2020).

As our standard of review dictates, when deciding whether the penalties in the election-eligibility and unlawful-voting statutes apply to caucus voting, we begin with the plain language of these laws. That language references only elections. *See, e.g.*, Minn. Stat. § 201.014, subd. 1 (stating that an individual must "maintain residence in Minnesota for 20 days immediately preceding the *election*." (emphasis added)). And the unlawful-voting statute is housed in the chapter of the Minnesota code title "*Election* Day Activities." Minn. Stat. ch. 204C (2020) (emphasis added). There is no mention of caucuses in either statute. This is critical because, looking to their ordinary meanings, there is a notable difference between "elections" and "caucuses."[4] A caucus is defined as "a meeting of the local members of a political party especially to select delegates to a convention or register preferences for candidates running for office," whereas an election is defined as "the act or process of electing someone to fill an office or position." *The American Heritage Dictionary of the English Language* 295, 575 (5th ed. 2011).[5] While the caucus system

[4] The Minnesota Statutes do not define either "caucus" or "election." *See* Minn. Stat. § 200.02 (2020) (providing definitions for Minnesota election law).

[5] Black's Law Dictionary reflects these same definitions. A caucus is defined as "a private meeting of representatives from a political party who assemble to nominate candidates and decide party policy." *Black's Law Dictionary* 272 (11th ed. 2019). And election is defined

may constitute a key ingredient in Minnesota's political process, these definitions highlight the considerable weight and consequences of elections compared to caucuses—with punishments that reflect that weight. Given the ordinary accepted meanings of the words "election" and "caucus," we conclude that the penalties in these election statutes unambiguously apply to elections, not caucuses.

Our plain-language interpretation is bolstered by the enforcement provision in the caucus-eligibility statute. The enforcement identified in that provision, albeit not criminal, enables the caucus members to vote to preclude someone from participating in the caucus if there is a violation. Minn. Stat. § 202A.16, subd. 3. And while the caucus-eligibility statute does reference the election-eligibility statute when discussing voter eligibility, the parties do not point to—nor do we find—how the punishments for election-related activity apply to caucuses, in contrast to the explicit enforcement measure given to caucus participants.

In sum, we conclude that by the plain language of the statutes, the criminal penalties in the election-eligibility statute and the unlawful-voting statute do not apply to the caucus-eligibility statute.

Ripeness

With the interpretation of these statutes in mind, we next consider whether the DFL and McCourt's claims are ripe for review.

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as "the process of selecting a person to occupy an office . . . , membership, award, or other title or status." *Id.* at 654.

Ripeness is based on the principle that courts will consider only redressable injuries. *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. App. 2007). To establish a justiciable controversy in a declaratory judgment action challenging the constitutionality of a law, a plaintiff "must show *a direct and imminent injury*" stemming from the allegedly unconstitutional provision. *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011) (emphasis added) (quotation omitted). Stated another way, one must establish that a law "is, or *is about to be, applied to [their] disadvantage*." *Baertsch*, 518 N.W.2d at 25 (emphasis added) (quoting *Marzitelli*, 258 N.W.2d at 588).

Minnesota caselaw provides guidance regarding when a statute is "about to be applied" to a party. For example, in *Baertsch*, the supreme court held that a statute providing a tax scheme for health care providers was "about to be applied" to the appellants' disadvantage when the Minnesota Department of Revenue sent a letter expressing its intent to enforce that statute. 518 N.W.2d at 25. And similarly in *McCaughtry*, the supreme court reasoned that an administrative-warrant statute was "about to be applied" against the appellants because the city had already filed three applications for administrative warrants and presumably would act upon them if granted. 808 N.W.2d at 339-40. But Minnesota caselaw is silent as to the application of this "about to be applied to [their] disadvantage" test for ripeness when it comes to assessing a First Amendment, pre-enforcement challenge.

And that is just the challenge we have here—appellants fear the enforcement of the statute that limits caucus participation to eligible voters but acknowledge that no one has been charged with a felony for voting in a caucus. Accordingly, we have a pre-enforcement

challenge. The DFL asserts that this fear chills their freedom to associate with minors, dreamers, and individuals, including McCourt, whose civil rights have not been fully restored—groups of people the party would otherwise allow to vote or be elected during caucuses. This amounts, appellants claim, to an unconstitutional interference with their First Amendment rights.

While Minnesota has yet to explicitly address ripeness in this First Amendment context, we observe that in federal law the standard ripeness showing is relaxed in cases involving the chilling of First Amendment rights. *See, e.g.*, *Kansas Jud. Rev. v. Stout*, 519 F.3d 1107, 1116 (10th Cir. 2008) ("Our ripeness analysis is relaxed somewhat in the context of a First Amendment facial challenge, however, because an unconstitutional law may chill free speech." (quotation omitted)); *Sullivan v. City of Augusta*, 511 F.3d 16, 31 (1st Cir. 2007) (stating that when free speech is at issue ripeness requirements are relaxed); Wm. Grayson Lambert, *Toward A Better Understanding of Ripeness and Free Speech Claims*, 65 S.C. L. Rev. 411, 463 (2013) ("[T]he normal ripeness test is relaxed in these cases because of the importance of free speech rights and the need to protect speech from any potential chilling effect."). Accordingly, where First Amendment rights are at stake, "a plaintiff need not have been actually prosecuted or threatened with prosecution" to establish ripeness. *281 Care Comm. v. Arneson*, 638 F.3d 621, 627 (8th Cir. 2011). Rather, speech is "reasonably chilled"—at least enough to render a case "ripe"—when a plaintiff shows "an intention to engage in a course of conduct arguably affected with a constitutional

interest, but proscribed by [the] statute, and there exists *a credible threat of prosecution*."[6] *Id.* (emphasis added) (*quoting Babbit v. United Farm Workers Nat'l Union*, 442 U.S. 289, 299 (1979)). When analyzing whether a "credible threat of prosecution" exists, federal courts have considered the history of the statute's enforcement, as well as how recently it was enacted. *See, e.g.*, *id.*; *St. Paul Area Chamber of Com. v. Gaertner*, 439 F.3d 481, 486 (8th Cir. 2006).

To evaluate the appropriateness of the "credible threat of prosecution" ripeness test, we turn to Minnesota caselaw which addresses the right at issue here: the First Amendment right of freedom of association. Courts in Minnesota have emphasized the importance of this right, including where owners of several Twin Cities gyms denied employment and promotions to people who did not share their religious faith. *State by McClure v. Sports & Health Club, Inc.*, 370 N.W.2d 844, 846 (Minn. 1985). This right was upheld when the supreme court declared a statute unconstitutional because it required that any candidate who filed for a partisan municipal office as an "Independent" declare that they would not accept any other party's support for their candidacy. *Minnesota Fifth Cong. Dist. Indep.-Republican Party v. State ex rel. Spannaus*, 295 N.W.2d 650, 652 (Minn. 1980). There, the court explained that a political party enjoys the "precious associational freedoms" to further its common political goals, and that the freedom of association is "at the heart of the rights protected by the First Amendment." *Id.* at 652.

[6] All parties agree that this test, as set out in *281 Care Comm.*, is the appropriate test, but no Minnesota case has adopted it as such.

Given the Minnesota Supreme Court's deference to "precious associational freedoms," we are persuaded that the standard ripeness showing should be relaxed in cases involving the chilling of First Amendment rights. Accordingly, a plaintiff who chooses to self-censor based on a statute in this context must demonstrate that their choice was objectively reasonable. To do so, they need to establish a credible threat of prosecution.[7]

Were appellants faced with that credible threat here? To consider this question, we turn to the constellation of factors courts consider in assessing that threat—or lack thereof. First, we consider the history of the statute's enforcement, including the time since the statute was enacted or amended. *Gaertner*, 439 F.3d at 486. Here, it is uncontested that the caucus-eligibility statute has never been enforced in the 40-plus years since enactment. This is unlike cases such as *Gaertner* or *281 Care Comm.* where the enforcement statutes in question were enacted or amended only a handful of years before the threat of enforcement was brought to a court. *Gaertner*, 439 F.3d at 484 (addressing statute enacted in 1988); *281 Care Comm.*, 638 F.3d at 628 (addressing statute amended in 2004).

[7] Our decision to apply this more relaxed ripeness test for pre-enforcement challenges to statutes abridging First Amendment rights is bolstered by the Minnesota Supreme Court's decision to follow federal law in the related justiciability doctrine of standing and apply an "injury-in-fact" analysis. *Enright v. Lehmann*, 735 N.W.2d 326, 329 (Minn. 2007) ("An injury-in-fact is a concrete and particularized invasion of a legally protected interest." (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992))). Although we note that the injury-in-fact federal cases are from the related justiciability doctrine of standing, and not the ripeness doctrine, Minnesota requires an injury-in-fact for both doctrines. *See, e.g.*, *State ex rel. Smith v. Haveland*, 25 N.W.2d 474, 478 (1946) ("The party who invokes the power [of the court] must be able to show not only that the statute is invalid but that he has sustained or is *immediately in danger of sustaining some direct injury* as the result of its enforcement." (emphasis added)); *McCaughtry*, 808 N.W.2d at 337-38 (requiring direct and imminent injury to establish ripeness).

Next, we assess whether prosecution has been threatened. Once again, here the parties agree that there has never been even a *threat* of enforcement from any past secretaries of state for a violation of the caucus-eligibility statute. *Cf. Mangual v. Rotger-Sabat*, 317 F.3d 54, 59-60 (1st Cir. 2003) (finding a credible threat of enforcement when an officer threatened to file suit against a newspaper and a reporter). Nor does the secretary's website constitute a threat of enforcement—it merely recites the current law. It does not threaten to enforce it.

Still the DFL argues that the secretary could file an injunction or start a civil investigation against a political party. However, this secretary has firmly announced that he will not do so. He goes so far as to assert that he does not have the authority to enforce the caucus-eligibility statute.[8] Which leads us to an additional consideration—a firm disavowal of any intent to prosecute (or take civil action which arguably might constitute enforcement) by the secretary. *Babbitt*, 442 U.S. at 302 (explaining that the threat of prosecution may exist when a state has not disavowed any intention of invoking a criminal penalty); *see also Holder v. Humanitarian L. Project*, 561 U.S. 1, 16 (2010) (citing this statement in *Babbit*).

Finally, we note that chilled speech is more likely if there is criminal enforcement as opposed to civil enforcement. *See, e.g.*, *281 Care Comm.*, 638 F.3d at 631 (concluding

[8] We do not reach the question of whether any secretary of state could use their general powers to enforce the statute or otherwise punish a caucus-goer or political party. Nor do we reach the issue of whether civil actions might constitute "prosecution" for ripeness purposes. The important point here is that there is no threat of enforcement now—in either a criminal or civil context—from the current secretary. We are not closing the door on future challenges to this statute based on a different factual scenario.

that a challenge to a criminal statute implicating First Amendment rights was ripe for chilled-speech challenge); *Gaertner*, 439 F.3d at 487 (same); *United Food & Com. Workers Int'l Union v. IBP, Inc.*, 857 F.2d 422, 430 (8th Cir. 1988) (same); *Epperson v. State of Arkansas*, 393 U.S. 97, 101-02 (1968) (same). But because we interpret the statutes criminalizing certain election-related activity as not applying to the caucus-eligibility statute, there are no criminal ramifications for a violation.

In sum, considering the history of enforcement, the threat of enforcement, the secretary's view of their enforcement authority, and the lack of criminal penalties, the enforcement void surrounding the caucus-eligibility statute is a far cry from cases where a credible threat of prosecution has been found.[9] *Gaertner*, 439 F.3d at 487. And without a

[9] As a matter of public policy, McCourt highlights many racial disparities in the economy, education, and incarceration, including felony disenfranchisement, but fails to connect these to the caucus-eligibility statute. Disenfranchisement at the general election level, and how it affects democracy, is not at issue here.

Additionally, McCourt alleges that his Fourteenth Amendment rights were violated because he was unaware (and thus did not have notice) that a felony would affect his First Amendment right to association. *Rew v. Bergstrom*, 845 N.W.2d 764, 786 (Minn. 2014) ("The fundamental requirements of due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner."). But the secretary had no obligation to inform McCourt at his criminal hearing of his rights to participate in caucuses. And not only does McCourt agree that the disenfranchisement of someone who is convicted of a felony is constitutional, he also agrees that his criminal proceeding satisfied the notice and hearing requirements for procedural due process with regard to depriving him of his right to vote in a general election. McCourt does not explain why the notice of the deprivation of one right would be satisfied through his criminal proceeding but the other would not.

Also, McCourt contends that if he violated the caucus-eligibility statute, he would by default violate his probation, which he asserts is another way that his freedom of association is impermissibly chilled. But since the founding of the state someone who commits a felony loses certain civil rights—including the right to vote—until restored through other means. *See Schroeder v. Simon*, 962 N.W.2d 471 (Minn. App. 2021)

showing of past, present or threatened enforcement, the DFL and McCourt did not establish that there was a credible threat of prosecution should they violate the caucus-eligibility statute. Without this showing, this pre-enforcement challenge is not ripe for review. To hold otherwise would violate the principles of justiciability, as we would be issuing an advisory opinion addressing hypothetical harms.

DECISION

For this First Amendment, pre-enforcement challenge to be properly before the district court, it must be ripe for review. To be ripe in this context, a plaintiff needs to establish that its decision to chill their freedom-of-association right is based a credible threat of prosecution. The criminal penalties of Minnesota Statutes sections 201.014 and 204C.14, which by their plain language do not apply to voting in precinct caucuses, do not contribute to a credible threat. And this lack of criminal penalties, combined with an enforcement void across 45 years, leads us to conclude that there is no credible threat of prosecution should appellants violate the caucus-eligibility statute. As a result, the appellants' challenges to the caucus-eligibility statute are not ripe, and the district court properly dismissed these lawsuits.

Affirmed.

(explaining the history of voter disenfranchisement in Minnesota), *rev. granted* (Aug. 10, 2021). That McCourt's probation could limit his ability to participate in a caucus is not constitutionally impermissible.