No. A25-0017

STATE OF MINNESOTA
IN SUPREME COURT

Minnesota Voters Alliance; Greg Ryan; Chris Bakeman, Petitioners, Republican Party of Minnesota, Petitioner, v. Timothy Walz, in his official capacity as Governor of the State of Minnesota; Steve Simon, in his official capacity as Secretary of State of the State of Minnesota; Tracy West, in her official capacity as County Auditor of Ramsey County, Minnesota; David Triplett, in his official capacity as county election official of Ramsey County, Minnesota; Ramsey County. Respondents.	**PETITIONERS' REPLY BRIEF**

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ARGUMENT

Governor Walz cannot call a special election unless he is authorized to do so by the Minnesota Constitution and statutes:

> An election may be held only under constitutional or statutory authorization. An election held without authority of law is void although it is fairly and honestly conducted. *State ex rel. Windom v. Prince*, 131 Minn. 399, 155 N.W. 628; 18 Am.Jur., Elections, §100.

Howard v. Holm, 296 N.W. 30, 32 (Minn. 1940). The Governor has the constitutional duty to call special elections *when vacancies occur* in the House. Minn. Const. art. IV, §4 ("The governor shall call elections to fill vacancies in either house of the legislature."). But that constitutional power and duty does not arise ***until there is a vacancy***.

> The 'power to fill does not confer power to declare a vacancy.' Throop, Public Officers, p. 422, §437; 'and a vacancy must exist before an election to fill it can be ordered and an election to fill an anticipated vacancy is not valid unless expressly authorized by the charter or statute.' 1 Dillon, Mun.Corp., 5th Ed., p. 721, §414.

State ex rel. Dosland v. Holm, 279 N.W. 218, 220 (Minn. 1938).

At the time the Governor issued his writ, there was no vacancy in House District 40B. A potential future officeholder's attempted resignation before "possess[ing]" the office does not create a vacancy. *State ex rel. Loring v. Benedict*, 15 Minn. 198, 201 (1870). Likewise, because Johnson never "possess[ed]" the office he sought, he never became an incumbent. *Id.*

Furthermore, no statute authorizes the Governor to issue a writ of special

election to fill a "future" vacancy like the one at issue here. Section 351.055, on which Respondents so heavily rely, says nothing about writs. Thus, Governor Walz's December 27, 2024, writ was void *ab initio*. And where a declaration, or writ, of election is void, the election is void. *See, e.g.*, *State ex rel. Harvey v. Piper*, 24 N.W. 204, 206 (Neb. 1885) ("The proclamation of 1872, of acting Governor James, was unauthorized and of no validity, and the elections held thereunder void."). Further, the Governor's writ was invalid because it ordered a special election the terms of which were on their face in violation of mandatory election notice laws. That failure of notice prejudiced at least one prospective candidate and Petitioner Republican Party of Minnesota. Shen Decl.; Bergstrom Decl.

Because there was no vacancy when Walz issued the writ of special election to fill the seat still held by Jamie Becker-Finn, the writ was invalid, and so an election cannot be held until the Governor complies with the law. Laches also clearly does not apply here. The Court should therefore quash or order the recall of the writ, and cancel or enjoin the holding of the election.

I. House District 40B was not vacant when Governor Walz issued the writ, and Curtis Johnson's letter is a nullity.

The Minnesota Constitution requires the Governor to issue a writ for a vacancy in the legislature, Minn. Const. art. IV, §4, and he must do so as prescribed by statute. The Governor has no power to call an election for which

there is no vacancy, and a vacancy cannot be created by a resignation from an office not held.[1]

The legislature has expressly detailed what causes a vacancy. Minn. Stat. §351.02. All the possibly applicable events causing a vacancy (except one not applicable here) only apply to *incumbents*.[2] There is no provision in the resignation and vacancy statutes creating a "future incumbent."

Curtis Johnson's December 27, 2024, letter did not create a vacancy that day. His letter stated in part:

> After much reflection, and with sincere gratitude to the DFL Party and the people of District 40B, I have made the difficult decision not to accept my seat in the Minnesota House of Representatives and to resign from the Office of State Representative effective immediately and irrevocably.

Dickey Decl. Ex. B.

But Johnson could not "resign from the Office of State Representative effective immediately" because he was not an incumbent. Section 351.01 defines resignations for purposes of creating vacancies in section 351.02 (which if other conditions are met, the governor can then issue a writ to fill). First, the statute only contemplates a "resigning officer" as one who can resign. One

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[1] This is obvious: the undersigned cannot resign from the office of Justice of the Supreme Court of Minnesota, because we do not hold the office.

[2] Provision 8 of Minn. Stat. §351.02 only applies upon the death of a person elected or appointed, as discussed below. No death has occurred and thus it has no application here.

cannot resign an office not possessed. *Cf. Benedict,* 15 Minn. 201 (a death of an officeholder-elect prior to taking office did not create a vacancy because "having deceased before the commencement of his term, (section 42, c. 1, Gen. St.,) [the officeholder-elect] was not in possession of said office, and therefore not an incumbent of the same"). The statutory text further supports this by listing two types of officeholders that can resign: "incumbents to elected office" and "appointive officers." Minn. Stat. §351.01, subd. 1. At the time the writ was issued, Curtis Johnson was neither.

On December 27, 2024, the date the letter was written and the writ was issued—in amazingly quick succession—Jamie Becker-Finn was the incumbent in House District 40B.[3] Curtis Johnson was not the incumbent. Thus, whatever effect Johnson's letter might have, it did not create a vacancy under section 351.02.

Thus, when Governor Walz issued the Writ of Special Election on December 27, 2024, there was no vacancy in the office of House District 40B, and Johnson's letter has no legal effect. At that time, the office was occupied by Representative Jamie Becker-Finn. Two people cannot simultaneously occupy the same office. Representative Becker-Finn's term of office ended on January 6, 2025. Curtis Johnson could not have possessed the office of House District

[3] This Court has defined an incumbent as a "person *in possession* of an office." *Benedict*, 15 Minn. at 201 (citing dictionary definitions) (emphasis original).

40B until after her term of office ended on January 6, 2025 (not that he did at that time, either, as discussed more below), so his letter of resignation was a nullity—a shouting into the wind.

II. Curtis Johnson was not capable of creating a "future vacancy" under Minnesota law by "resigning."

When the Governor issued the writ on December 27, 2024, no current vacancy existed in House District 40B. And State Respondents admit Johnson could not have held the office before—at the earliest—January 6, 2025. State Resp. Br. at 6-7. State Respondents instead argue that Johnson's letter "withdraw[ing] his claim to the House seat," *id.* at 6, created a future vacancy, and therefore the Governor could issue a writ on December 27, 2024, calling for an election for a still-occupied seat. But this Court's enduring, 155-year-old precedent on how vacancies arise, and the plain language of the vacancy laws, show that Johnson, as a non-incumbent, was incapable of creating a "future vacancy" by his purported resignation.

One-hundred fifty-five years ago, this Court held that vacancies cannot be created by the failure of an officeholder-*elect* to take possession of office. *Benedict*, 15 Minn. at 201. In *Benedict*, Charles Goddard won election to the office of Winona County Register of Deeds in November 1868, but sadly died in December before he could take office on January 1, 1869. *Id.* at 200. The Court had before it a vacancy statute substantively identical to today's Minn. Stat.

§351.02(1)-(7). *Compare* Gen. St. ch. 9, §2 (1866),[4] *with* Minn. Stat. §351.02 (2024). The 1866 law provided for vacancy upon "[t]he death of the incumbent." Gen St. ch. 9, §2 (1866). This Court held:

> The death of Goddard did not occasion a vacancy in the office. Section 2, *c.* 9, Gen. St., has reference to an "*incumbent*" of an office; that is to say, to a person *in possession* of an office. Bouv. Law Dict. tit. "Incumbent;" Worcest. Dict.; Webst. Dict. Goddard, not having qualified or entered upon the duties of the office, and having deceased before the commencement of his term, (section 42, *c.* 1, Gen. St.,) was not *in possession* of said office, and therefore not an *incumbent* of the same.

Benedict, 15 Minn. at 201 (emphasis original).

Apparently almost simultaneous with the Court's consideration and decision in the case, the legislature changed the law to add subsection 8. Minn. Stat. Supp. 1873, ch. VIII, §1 (subsection 8 "added by Act of March 3, 1869").[5] New subsection 8 provided, upon the death of the officeholder-elect, for a vacancy effective "when the term of office of the predecessor…would have expired." *Id.* The legislature knew how to create a "future vacancy" and did so. *See* Minn. Stat. §351.02(8). The legislature has not yet created a statutory vacancy resulting from *attempted future resignations* by officeholder-elects.

The logic of *Benedict* applies here. There is no "subsection 9" to section

[4] https://www.revisor.mn.gov/statutes/1866/cite/9/pdf.

[5] https://www.revisor.mn.gov/statutes/1873/cite/8/pdf.

351.02 which creates a vacancy upon resignations of officeholder-elects.[6] A vacancy cannot arise where an officeholder-elect resigns before "enter[ing] upon the duties of the office." *Benedict*, 15 Minn. at 201. And a person cannot constitutionally enter upon the duties of the office before being sworn to uphold them. Minn. Const. art. IV, §8. That only happens upon the organization of the legislative "session," not at the beginning of the "term." Minn. Stat. §3.05. Johnson was not in possession of the office, so he was not an incumbent capable of resigning to create a vacancy.

Petitioners acknowledge that Minnesota law allows current officeholders—*i.e.*, *incumbents*—to resign at future dates. Minn. Stat. §351.01, subd. 3(b). But as noted above, Johnson was not an "incumbent." Moreover, that law allows for "[a] resignation…made expressly to take effect at a stated future date." *Id.* Even if Johnson could make use of this provision, it still does not save his attempt to resign because, for that to work, Johnson had to "expressly" identify a "stated future date." He did not. Dickey Decl. Ex. B. The legislature created subdivision 3(b) as an "exception" to what is otherwise "prohibited," and outlaws resignations based on a "future contingency." This narrow exception to the general prohibition must be strictly construed "to exclude all others."

[6] The legislature could, and maybe should, create that subsection, but it hasn't. The Court "say[s] what the law is"; it does not say how it ought to be. *See Cruz-Guzman v. State*, 916 N.W.2d 1, 9 (Minn. 2018) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)).

Minn. Stat. §645.19. Johnson failed to meet the statutory requirements.

The duty to call an election is an important one assigned to the Governor by the Constitution. If an election is improperly called, it could create issues of competing claims to the office, especially if an incumbent should change their mind about resignation.[7] No statutory authority exists allowing a writ calling for a special election for a future vacancy caused by an officeholder-*elect's* purported "resignation." *Benedict*, 15 Minn. at 201.

III. Respondent Walz did not have the authority to call for a special election when he did.

Since no current or future vacancy existed when Governor Walz issued the December 27, 2024, writ, it was invalid, so no special election can be held. *See Dosland*, 279 N.W. at 220 ("[A]n election to fill an anticipated vacancy is not valid unless expressly authorized by the charter or statute." (internal citations and quotations omitted)). But State Respondents press on, searching for that authority where there is none in Minn. Stat. §351.055. Section 351.055 says nothing about the *Governor's* power to issue *writs of election*, which is otherwise expressly drawn in statute:

> Preparations for Special Elections. If a future vacancy becomes

[7] In fact, in *Benedict*, there were two competing claimants to the office because an invalid election was held. *Benedict*, 15 Minn. at 204("It follows that the election of Loring, the relator, in November, 1869, was unauthorized, and gave him no right to the office of register of deeds.").

> certain to occur and the vacancy must be filled by a special election, the appropriate authorities may begin *procedures leading to the special election* so that a successor may be elected at the earliest possible time. For prospective vacancies that will occur as a result of a resignation, *preparations for the special election* may begin immediately after the written resignation is received by the official provided in section 351.01, subdivision 1.

(emphasis added).

To Petitioners' knowledge, this purportedly crucial provision has not been cited by this Court or any court in Minnesota. Nevertheless, State Respondents argue that this statute—which makes no mention of a power to issue a writ—somehow vested governors with a new power to call for special elections before vacancies have actually occurred. State Resp. Br. 8 (stating that "[e]very Minnesota governor in office since section 351.055 was enacted in 1987 has used the authority the statute granted them to issue writs of special election to fill vacancies in office that were inevitable but not current"). This assertion is faulty for *at least* five reasons.

First, State Respondents dramatically overstate *their own* citations. In all three examples of governors citing section 351.055 in writs of election, the governors cite upwards of a dozen statutes supporting their purported authority to call for the writ. Erickson Decl. ¶4, Exs. 1-3. Governor Tim Pawlenty relied on "the Minnesota Constitution, Article IV, Section 4, Minnesota Statutes, Sections 204D.17 through 204D.27, 351.01, 351.02, 351.055, and other relevant statutes," Ex. 1 at 1, as did Governor Mark Dayton,

Ex. 2 at 1, and Respondent Walz, Ex. 3 at 1. The regular use of boilerplate language doesn't support the premise that governors are relying on *section 351.055* for the writ power. Because "writ" is totally absent from the statutory text, section 351.055 was likely included in the governor's lists to ensure readiness.

Second, section 351.055 is inapplicable where a non-incumbent purports to resign. Every example cited by State Respondents was for the *effective* resignation of an *incumbent* legislator. As discussed above, sections 351.01 and 351.02 create "vacancies" that can be filled by special election after an "incumbent" resigns. *See* Minn. Stat. §351.01, subds. 1(1) (resignations "[b]y incumbents"); *id.* §351.02(2) (vacancy caused by "the incumbent's resignation"). There is no support for the notion that governors "used the authority" of section 351.055 to issue writs of special election for non-incumbent "resignations."

Third, the plain language of the statute undermines State Respondents' position. *See* State Resp. Br. at 6-7. They attempt to transform a special-election-preparation statute into a plenary power to determine future vacancies and issue writs at a timing unbound by law. But the statute only allows "appropriate authorities" to begin "procedures leading to the special election" or "preparations for the special election." This allows "authorities" (the governor isn't mentioned) to undertake activities they know must occur at

some point, such as entering into contracts with ballot vendors. *See* Minn. Stat. §204D.04 (regulating ballot printing contracts). The fact that there allegedly is "little, if any, preparation that can be done without a writ of election," is beside the point. Erickson Decl. ¶5. Whatever preparation *can* be done is *all* the statute authorizes. *See Axelberg v. Comm'r of Pub. Safety*, 848 N.W.2d 206, 212 (Minn. 2014) ("[W]e must read this state's laws as they are, not as some argue they should be.").

Fourth, State Respondents' argument would cause this vague housekeeping bill to override the legislature's clear special-election instructions in Chapter 204D. Throughout the chapter, the legislature enumerates when special elections occur and when they may be called. For example, the legislature has determined that if it "will not be in session before the expiration of the vacant term no special election is required." Minn. Stat. 204D.17, subd. 1. Other parts of chapter 204D expressly authorize and regulate when the writ shall issue. *See, e.g.*, Minn. Stat. §204D.19, subd. 2 ("[T]he governor shall issue within five days...a writ calling for a special election."); *id.* subd. 4 ("[T]he governor shall issue 22 days after the first day of legislative session a writ calling for a special election..."); Minn. Stat. §204D.29, subd. 2(a) ("[T]he governor must issue a writ within three days….").

Fifth, and finally, while section 351.055 was enacted in 1987, governors issued writs of special election in the exact same circumstances long before

then, including when future vacancies were announced.[8] Whether a governor can actually issue such a writ for a future vacancy caused by an incumbent is unnecessary to decide here because Curtis Johnson was not an incumbent. But the fact that governors' pre-1987 actions were no different than their post-1987 actions shows that section 351.055 has had zero impact on the writ power, and it helps explain why section 351.055 has only ever been known in the legislature as a mere "housekeeping" bill.[9]

State Respondents ask the Court to find a broad implied power to call elections before vacancies exist despite the special-elections chapter clearly

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[8] *See, e.g.*, Writ and Proclamation of Special Election to Fill Vacancy in the Office of State Representative from the Seventh Judicial District (Dec. 16, 1942), https://www.lrl.mn.gov/archive/elections/writs/writ_of_special_election_19430106_07.pdf (announcing "a vacancy will exist" and calling for a special election to fill it "for the term commencing January 4, 1943"); *Perrizo, Jr., Mitchell,* Minn. Leg. Reference Library, https://www.lrl.mn.gov/legdb/fulldetail?id=14293 (explaining that the incumbent was reelected for a second term but then resigned during his first); Writ of Special Election (Aug. 18, 1983), https://www.lrl.mn.gov/archive/elections/writs/writ_of_special_election_19831108_08b.pdf ("a vacancy will exist"); *Berkelman, Thomas R.*, Minn. Leg. Reference Library, https://www.lrl.mn.gov/legdb/fulldetail?id=10050 (listing the incumbent's date of resignation as September 12, 1983).

[9] *See* The Session Weekly for Feb. 27, 1987, p. 7, https://www.lrl.mn.gov/docs/pre2003/other/P615/1987/v4n8.pdf (describing the bill as "housekeeping"); Briefly: The Minnesota Senate Week in Review for Apr. 24, 1987 ("the Secretary of State's housekeeping bill"), available at https://www.lrl.mn.gov/docs/pre2003/other/P248/brief1987.pdf (PDF page 156).

defining when writs may issue. The Court should decline that invitation and stick to the plain language of the law: section 351.055—a "housekeeping bill" from the start—merely allows for preparations to begin so that when an election is called, it can proceed expeditiously.

IV. The Governor issued the writ prematurely, thus usurping the power of the House to regulate its own members.

Minnesota Statutes section 204D.19, titled "SPECIAL ELECTIONS; WHEN HELD" directs when the special election at issue here should have been called. Subdivision 4, titled "Writ when vacancy results from election contest" is a "specific" statute directly on point. *See Connexus Energy v. Comm'r of Revenue*, 868 N.W.2d 234, 242 (Minn. 2015). Subdivision 4 states:

> If a vacancy results from a successful election contest, the governor shall issue 22 days after the first day of the legislative session a writ calling for a special election unless the house in which the contest may be tried has passed a resolution which states that it will or will not review the court's determination of the contest. If the resolution states that the house will not review the court's determination, the writ shall be issued within five days of the passage of the resolution.

In turn, a "successful election contest" is an "election contest," *see* Minn. Stat. ch. 209 ("ELECTION CONTESTS"),[10] in which the contestant "succeeds," *see* Minn. Stat. §209.07, subd. 1. For legislative election contests, a judge must "decide the contest, issue appropriate orders, and make written findings of fact

[10] https://www.revisor.mn.gov/statutes/cite/209.

and conclusions of law" and, if the matter is not appealed, transmit all records to the legislative body. Minn. Stat. §209.10, subd. 3. So, while the court first determines if the election contest is successful, it is ultimately up to the legislature to determine "the eligibility of their own members." *Id.* subd. 6. That triggers section 204D.19, subdivision 4, to allow for a special election if a vacancy does in fact, exist.

Here, as decided by the district court, there was a successful election contest and Johnson did not appeal. But Johnson's unsuccessful attempt to resign from the future seat does not "moot[]," State Resp. Br. 6, the election contest. Although he is enjoined from "taking the oath of office and acting as a member," Dickey Aff. Ex. C, there is no guarantee that Johnson will not still "claim[]" to be a member, "present [his] election certificate," and attempt to "be sworn" on the first day of legislative session, Minn. Stat. §3.05. As discussed above, there is no statutory provision for an officeholder-elect to abandon his claim to the office such that that abandonment is binding. Perhaps the legislature should consider these scenarios, but it has not.

What the legislature *has* specifically provided for is the timing of special elections when a vacancy results from a successful election contest, which is the case here. The power to determine whether the judge was right, and a vacancy does in fact exist, resides with the House to act next. *See* Minn. Stat. §204D.19, subd. 4; Minn. Const. art. IV, §6 (The House is "judge of the election

returns and eligibility of its own members").

According to section 204D.19, subdivision 4, the House has three options. First, it may "review the court's determination of the contest," Minn. Stat. §204D.19, subd. 4, and hold a legislative hearing, Minn. Stat. §209.10, subd. 5. This option seems unlikely considering Johnson's purported resignation, but it is still the House's prerogative. Second, the House may "pass[] a resolution" stating that it "will not review the court's determination of the contest." Minn. Stat. §204D.19, subd. 4. Since the election contest was successful, a vacancy results from such a resolution, and a "writ shall be issued [by the governor] within five days of the passage of the resolution." *Id.* Finally, the House may also do nothing. In which case, again because the election contest was successful, the governor shall issue the writ "22 days after the first day of the legislative session." *Id.*

In sum, the House is entitled to 22 days to determine its own course of action, and it is in their sole power to decide whether to issue a resolution to allow the Governor to issue a writ calling for a special election before those 22 days pass. Respondent Walz's decision to call for a special election on December 27 deprived the House of that authority. *See* Minn. Const. art. IV, §6; *Scheibel v. Pavlak*, 282 N.W.2d 843, 847 (Minn. 1979) ("[T]here is no question of the Legislature's final authority in this matter.").

V. The Governor cannot issue a writ that violates the timing requirements of special elections.

The default rule for elections is that "*before an election is held*, statutory provisions regulating the conduct of the election will usually be treated as mandatory and their observance may be insisted upon and enforced." *Walters v. Common Sch. Dist.*, 121 N.W.2d 605, 610 (Minn. 1963) (quotation omitted) (emphasis original). No circumstances are present here that prevented Respondents' compliance with the timing requirements of Minnesota Statutes section 204D.22, subdivision 2. Thus, there is no reason to get into hypotheticals about a future writ.

Nonetheless, State Respondents go to great lengths to present a hypothetical future vacancy that results in a writ being issued on December 26, 2026, and how if they were to comply with the five-day posting requirement in Minnesota Statutes section 204D.22, subdivision 2, it would create a legal impossibility to complete the election within the required 35 days. To State Respondents, this "impossibility" must be resolved by the Court erasing the notice requirements of section 204D.22 and prejudicing all putative candidates across the state.

State Respondents invoke Minnesota Statutes section 645.17(1): "the legislature does not intend a result that is absurd, impossible of execution, or unreasonable." But where the Court finds *actual*, *not hypothetical* statutory

conflicts that make compliance with timing mandates impossible, it can resolve those conflicts by holding that the statute is directory in situations where it is impossible to comply with, but mandatory when it can be complied with. *See Beson v. Carleton Coll.*, 136 N.W.2d 82, 88 (Minn. 1965) (holding a statute directory rather than mandatory in limited fact specific application). There is no actual conflict *here*, so there is no reason for the Court to jump through Respondents' hoops.

And even if the Court were to consider State Respondents' hypothetical, the canon against absurdity "only operates where the words of a statute are ambiguous; the rule cannot generally be used to override the plain language of a statute." *Weston v. McWilliams & Assocs., Inc.*, 716 N.W.2d 634, 639 (Minn. 2006) (cleaned up). This Court will "disregard a statute's plain meaning only in rare cases where the plain meaning 'utterly confounds a clear legislative purpose.' " *Id.* (cleaned up). The plain language shows that subdivision 2 is mandatory, and does not create an absurd result here.

Subdivision 1 commands that the "writ shall be filed with the secretary of state immediately upon issuance [by the governor]." Minn. Stat. §204D.22, subd. 1. Subdivision 2 reiterates the urgency: "Immediately upon receipt of the writ, the secretary of state shall send...the writ by United States mail and electronic mail to the county auditor." *Id.* subd. 2. None of the other notice provisions in the statute contain such urgent commands.

The posting of the writ in the auditor's office five days before the close of the candidate filing period is the only notice requirement that an election is occurring so that candidates might file. The ill this is intended to cure is obvious from the face of the statute. If a governor is not required to provide notice as to when a candidate filing period is occurring, it could give the appearance of impropriety if, for example, only those "in the know" file for the special election.

The statutes are clear, and Respondents' hypothetical is, well, hypothetical. Respondents are creating their own nuisances for the Court to solve, for no reason. Respondents also fail to explain why the candidate-notice period must take a backseat to the election-timing law, where the election-timing laws already as subject to hypotheticals in which it would be impossible to give any notice, even with the five-day posting requirement erased. For example, if a vacancy occurs on December 7, 2027, a special election must occur within 35 days, which is January 11, 2028. In the Respondents' parlance: compliance with both election-timing and candidate-notice requirements is impossible.

In this scenario, if the governor issued a writ on December 7, 2027, and held a one-day candidate filing period on the same day, and if a special primary cannot occur until 14 days after the close of the candidate filing period, the soonest it could be is December 21, 2027. However, a special primary cannot occur four days before or after Christmas, December 25, 2027, or four days

before or after New Years Day, January 1, 2028. The first opportunity to hold the special primary would be January 6, 2028. The special election must be 14 days after a special primary, Minn. Stat. § 204D.21, subd. 3, which would be January 20, 2028. But, January 20, 2028, is within four days of Martin Luther King, Jr. Day, on January 17, 2028. The next opportunity to hold a special election would be January 22, 2028, 46 days after the vacancy, 11 days beyond the 35-day requirement to hold a special election.[11]

State Respondents identify a hypothetical window where if a vacancy occurs, the governor could not issue a writ that would allow compliance with the five-day advance notice of the close of the candidate filing period. To resolve this, State Respondents ask this Court to allow the Governor to not comply with the law because the legislature could not intend an absurd result. But State Respondents ignore other examples, like the one outlined above, that create an impossibility even if the five-day advance notice of a candidate filing period requirement is ignored. What then? By Respondents' own logic, do *all* statutes regarding notice periods become directory, not mandatory?

The Court need not reach the issue of what *might* happen in a hypothetical

[11] If the governor issues the writ anytime within the five days of a vacancy that he's required to issue the writ, the outcome is the same.

future case.[12] In this case, there was nothing preventing the Governor from issuing a writ that complied with *all* of the election laws, including allowing residents of House District 40B the full notice period to file for elected office. The requirement to post the writ five days before the close of the filing period is mandatory. *See Walters*, 121 N.W.2d at 610.

Residents should not be deprived of a full, robust slate of candidates, or the full notice period to become aware of and file for candidacy for an elected office. Residents, potential candidates, parties, and all Minnesotans rely on our laws to conduct and order their affairs. They are often held to strict compliance with the letter of those laws, and the government officials responsible for carrying them out should have to comply as well.[13]

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[12] This Court has held that substantial compliance with election laws after an election will not necessarily invalidate it. Thus, if such a hypothetical "impossibility" occurred, and all of the special election laws' statutory timelines could not be complied with, and a challenge was brought, the Court could look to its substantial-compliance jurisprudence to resolve the issue.

[13] *See, e.g.*, *In re Pfliger*, 819 N.W.2d 620, 621 (Minn. 2012) (requiring strict statutory compliance (with a statutory requirement as minor as failing to include a phone number on an affidavit of candidacy) prior to an election and cabining "substantial compliance" with election laws to narrow circumstances after an election).

VI. Laches does not permit Respondents to hold an illegal election when they rushed to issue a premature writ on a Friday afternoon before a holiday, immediately began preparations to insulate their unlawful actions from legal challenge, and the Petition was filed within four business days.

"Laches is an equitable doctrine applied to 'prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay.' " *Clark v. Pawlenty*, 755 N.W.2d 293, 299 (Minn. 2008) (quoting *Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2002)). The core question is whether "unreasonable delay" and the "resulting…prejudice" makes it "inequitable to grant…relief." *Id.* (quoting *Winters*, 650 N.W.2d at 170). Respondents' laches arguments fail on all three grounds.

First, there was no unreasonable delay. Despite Respondents deliberately issuing a premature writ with an unlawfully short timeline on a Friday afternoon during the holidays, Petitioners filed within four business days, and on a Saturday at that.

Second, no prejudice has resulted *from* Petitioners' actions. It is because of *Respondents'* rushed election-law violation that resources might be wasted, not Petitioners' filing.

And *third*, it would not be inequitable for this Court to grant the Petition. Respondents chose to quietly announce a violation of Minnesota election law

during the holidays and immediately put that plan in motion. The only inequity would be a holding from this Court that Minnesotans must be constantly monitoring for unlawful activity and take instantaneous action to stop it, while government actors can be scofflaws and spend tax dollars to hide from the courts.

A. Respondents set an unreasonable timeline for their writ, and Petitioners acted expeditiously to challenge it.

Respondents' claim that Petitioners sat "on their rights for a week and a half," is false. State Resp. Br. 16. There were eight days, and only ***four business days***, between Curtis Johnson's false "resignation" and the Petition in this matter, and Petitioners moved expeditiously to file this action.

Johnson posted that letter at 2:03 PM on Friday, December 27.[14] Somehow—just *somehow*—Respondents Walz and Simon were ready to announce an illegal special election that same day. Local news sources started reporting on Johnson's fake "resignation" and Respondent Walz's unlawful writ by 3:49 PM.[15] For those attorneys with a "lack of diligence," State Resp. Br. 16, who failed to browse social media on a Friday afternoon to scour for

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[14] Curtis Johnson for State Representative MN 40B, Facebook (Dec. 27, 2024), https://www.facebook.com/photo/?fbid=1221913566681897 35&set=a.122113919468189735.

[15] Torey Van Oot, "X," (Dec. 27, 2024), https://x.com/toreyvanoot/status/1872761834832547959.

potential election law violations, the 'paper of record' started to report on the day's events around 8:30 PM.[16]

As the Court can see from the Amended Petition and both sides' briefing, these are complex and unprecedented legal issues. It goes without saying that determining whether a legal violation has occurred, then conferring between clients and attorneys, collecting affidavits, and fully researching and drafting a Petition is time-consuming. How many days should attorneys at small law firms who don't have the taxpayer-funded budget of the Attorney General's Office spend on such endeavors? In this case, despite the New Year's Day holiday, Petitioners' counsel took only four business days to complete these tasks, which were done as quickly as possible.

In contrast, the Minn. Stat. §204B.44 cases cited by Respondents either deal with lengthy delays or support Petitioners. *Compare Clark v. Reddick*, 791 N.W.2d 292, 295 (Minn. 2010) (delay of more than two months); *Pawlenty*, 755 N.W.2d at 298, 301 (months-long delay), *with Bergstrom v. McEwen*, 960 N.W.2d 556, 561 (Minn. 2021) (delay of a matter of days, laches did not apply). Indeed, Respondents have cited no support—and Petitioners have found none—that an eight-day or four-business-day gap between unlawful action and

[16] Janet Moore, *DFLer resigns seat in Minnesota House after court finds he failed to meet residency requirement*, Star Tribune, (Dec. 27, 2024), https://www.startribune.com/dfler-resigns-seat-in-minnesota-house-after-court-ruling-found-he-failed-to-meet-residency-requirement/601199580.

filing a §204B.44 Petition allows an equitable-timing defense. *See, e.g.*, Order, *Kistner v. Simon*, A20-1486 (Minn. Dec. 4, 2020) (petition filed on November 24, laches did not apply to claims for *postelection* review of November 3 election); Order, *Martin v. Simon*, A16-1436 (Minn. Sept. 12, 2016) (two-week delay before general election, laches applied).

Moreover, laches generally applies to regularly scheduled elections, not rushed special elections whose announcement is controlled by the government defendants seeking to assert laches, *see, e.g.*, *Pawlenty*, 755 N.W.2d at 302 (September primary); Order, *Martin v. Simon*, A16-1436 (Minn. Sept. 12, 2016) (general election). And even when special elections are at issue, delays must be more significant. *See Trooien v. Simon*, 918 N.W.2d 560, 560-61 (Minn. 2018) (four-week delay before scheduled special election).

Here, Respondents *created* the exigency they now complain about by illegally calling for a special election late in the day on the Friday after Christmas and before New Year's Day with affidavits of candidacy due by New Year's Eve. In *Fetsch*, when filings closed on February 15, the last day for withdrawal was February 25, ballots could be sent to the printer on February 26 and the action was commenced that same day, the "speed d[id] not support a claim of laches." *Fetsch v. Holm*, 236 Minn. 158, 164 (Minn. 1952).

Likewise, Petitioners filing within four business days of the unlawful writ is not a delay, much less an unreasonable one. *See, e.g.*, *State ex rel. Carrier v.*

Hilliard City Council, 45 N.E.3d 1006, 1008 (Ohio 2016) (holding that "[w]e have never required litigants to act with such haste merely to beat the expedited-election-case deadline" and rejecting laches defense when challenge was brought eight days after illegal action).

Finally, Respondents cite no support for their proposition that a purported delay *in service* matters. *See Pawlenty*, 755 N.W.2d at 300 (considering a "delay[] in filing"). To be clear, if Petitioners *could* track down government defendants like Respondent Walz over the weekend for service, they would. But unlike Petitioners, who worked diligently over the weekend to complete and amend the Petition, Respondents' offices were closed. Nevertheless, Petitioners did their best to notify them of this action anyway, by immediately announcing the filings.[17] Respondent Walz himself responded to a media request about this action on Saturday, January 4, before being served on Monday, January 6.[18] No delay of any kind "substantially alter[ed] the timing of the proceedings in this election contest." *Bergstrom*, 960 N.W.2d at 561.

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[17] Republican Party of Minnesota, "X," (Jan. 4, 2025), https://x.com/mngop/status/1875644110058762620?s=12&t=vWDhP-5i4uvHFaWjalBkoQ.

[18] Cory Knudsen, *Minnesota Republicans file petition against Walz in relation to House District 40B special election*, KSTP, (Jan. 4, 2025), https://kstp.com/kstp-news/top-news/minnesota-republicans-file-petition-against-walz-in-relation-to-house-district-40b-special-election/.

B. Any prejudice incurred is the result of Respondents' manufactured timeline.

According to State Respondents, it is Petitioner's "dilatory conduct" that "force[s] this Court to adjudicate an election that is in progress." State Resp. Br. 17. This is nonsense. Candidates were certified on January 2, Triplett Aff. ¶ 10, only three business days after Respondent Walz first issued the writ. Respondents chose to set a prejudicially short timeline for this special election, immediately acted to implement it, and now claim laches because Petitioners failed to file on New Year's Day.

Even if Petitioners had somehow assembled a comprehensive Petition by January 2, County Respondents' own affidavit makes clear that nothing would have changed. By December 30—the first business day after the writ was issued— "County staff began coordinating" polling places, voting systems, and printers. *Id.* ¶¶4-5. Eleven County Elections staff members started spending half of their scheduled hours on preparations starting December 30, *id.* ¶21, election judges were contacted starting December 31, *id.* ¶7, and ballots were created on January 3, *id.* ¶12. So the only way Petitioners could have somehow stopped the County from "pour[ing] resources into preparing to comply with the Writ's timeline," Cnty. Resp. Br. 3, was by filing and serving the Petition by the morning of Monday, December 30—less than 72 hours and zero business days after it was issued.

Moreover, even if Petitioners somehow assembled a comprehensive Petition by December 30, Respondents' affidavit demonstrates that they would have continued to expend resources anyway. Respondents chose, knowing this special election was subject to a challenge with argument scheduled for Wednesday, January 15, to incur ballot printing costs. Triplett Aff. ¶19; *contra Reddick*, 791 N.W.2d at 295 (County delayed sending ballots to printer because of pending Petition). And Respondents have already decided to continue devoting staff time to preparations through January 15. Triplett Aff. ¶21. They have put the stick in their own bicycle spokes and are complaining about it.

Petitioners' filing date is not the problem. The unlawful and rushed writ is. Respondents' decision to issue an illegal writ on a Friday afternoon and immediately begin preparations for a rushed election cannot insulate them from legal accountability now. It was Respondents' own poor strategy that created any hardship.

C. Granting the Petition would not be inequitable, while blessing Respondents' gamesmanship would.

At bottom, "laches is a discretionary, equitable concept," so this Court can "choose to address petitioners' claim on the merits." *Breza v. Kiffmeyer*, 723 N.W.2d 633, 635 (Minn. 2006). Here, the balance of equities is obviously in Petitioners' favor.

The only harms asserted by Respondents are the costs in reprinting ballots and potentially "repeated" employee work. Triplett Aff. ¶22. The work County Respondents completed at the time of filing their response, 264 hours, amounts to about 6 full-time employees working a 40-hour work week. *Id.* ¶21. Respondents want to conduct an illegal election over *that*? Moreover, this Court has already decided that the cost of reprinting ballots is not a good reason to dismiss a Petition, *see Martin v. Dicklich*, 823 N.W.2d 336, 342 (Minn. 2012), and Respondents *chose* to undertake those printing costs with full knowledge of this Petition, *cf. Reddick*, 791 N.W.2d at 295.

Moreover, delays in reprinting ballots and preparing for an election are only prejudicial when they would result in Respondents being unable to comply with statutory deadlines. *See Pawlenty*, 755 N.W.2d at 301-02. Here, the only current deadlines are set by Respondents' own illegal activity, and Respondents have not asserted that they would be unable to complete a lawful election after this Court issues a decision on the merits. There is no prejudice from the special election taking place later, which is when the legislature determined it should be in Minn. Stat. §204D.19, subd. 4. *See Monaghen v. Simon*, 888 N.W.2d 324, 330 (Minn. 2016) (rejecting laches argument that it would be prejudicial for special election to take place later because legislature had chosen that policy).

Finally, there are offsetting and overwhelming benefits to reviewing the Petition on the merits. There is clear value in this Court of last resort deciding how to construe these important laws. And Respondents' actions in this case have resulted in prejudice to Petitioner Republican Party of Minnesota, Bergstrom Aff., other Minnesotans who wanted to run for office, Shen Aff., and minor parties that were locked out of the 40B race, Libertarian Party Amicus Br. 4–8. In comparison to the minimal delay and prejudice asserted by Respondents, Petitioner's interest in correcting this legal error is obviously offsetting. *Cf. Martin*, 823 N.W.2d at 342 ("Given the paramount interests of voters, who are entitled to a ballot that accurately identifies the candidates actually running for office, we proceed to address the merits of the petition.").

CONCLUSION

For the foregoing reasons, Petitioners respectfully request this Court quash the Writ of Special Election for House District 40B, order Respondents to take all steps necessary to cancel the special election scheduled for January 28, 2025, and enjoin Respondents from taking any action to hold a special election for House District 40B on January 28, 2025.

For Petitioner Republican Party of Minnesota:

Dated: January 13, 2025

CROSSCASTLE, PLLC

/s/ Ryan D. Wilson
Ryan D. Wilson (#400797)
14525 Highway 7 Suite 345
Minnetonka, MN 55345
ryan.wilson@crosscastle.com
(612) 429-8100

For Petitioners Minnesota Voters Alliance, Greg Ryan, Chris Bakeman:

Dated: January 13, 2025

UPPER MIDWEST LAW CENTER

/s/ James V. F. Dickey
Douglas P. Seaton (#127759)
James V. F. Dickey (#393613)
Alexandra K. Howell (#504850)
12600 Whitewater Dr., Suite 140
Minnetonka, Minnesota 55343
doug.seaton@umlc.org
james.dickey@umlc.org
(612) 428-7000

CERTIFICATE OF COMPLIANCE

I certify that this reply brief complies with the Minn. R. Civ. App. P. 132.02, pursuant to the Court's January 6, 2025 Order requiring filings to be submitted in that manner. This brief is typed in 13-point Century New Schoolbook font, with 6-1/2 by 9-1/2 margins. This reply brief also complies with the requirements of Minn. R. Civ. App. P. 132.01, subd. 3(b) because it has 6,854 words, which were counted using the word-count function of Microsoft Word 365, version 16.92, including all footnotes and headings, and excluding the caption, table of contents, signature block, and this certificate.

Dated: January 13, 2025

CROSSCASTLE, PLLC

/s/ Ryan D. Wilson

Ryan D. Wilson (#400797)
14525 Highway 7 Suite 345
Minnetonka, MN 55345
ryan.wilson@crosscastle.com
(612) 429-8100