

STATE OF MINNESOTA  
IN SUPREME COURT  
No. A24-\_\_\_\_\_

**FILED**

December 13, 2024

**OFFICE OF  
APPELLATE COURTS**

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Paul Wikstrom,

Contestant,

v.

Curtis Johnson,

Contestee.

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**CONTESTEE'S APPEAL OF ORDER DENYING MOTION TO DISMISS**

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## I. INTRODUCTION

In the decades since the enactment of Minnesota Statute section 204B.44 and its predecessors, this Court has heard dozens of pre-election challenges to the residency status of candidates for office. The foundational principle articulated by the Court in these cases has never wavered: petitioners must proceed with diligence and expeditiously in asserting a claim to ensure the will of the voters is upheld. *See Olson v. Simon*, 978 N.W.2d 269, 270 (Minn. 2022); *Moe v. Alsop*, 180 N.W.2d 255, 330 (Minn. 1970) (“An application for an order preventing the placement of a candidate’s name upon an election ballot for any office must be timely made and clearly established.”); *Taylor v. Taylor*, 10 Minn. 107, 112 (1865) (“The public good demands that the will of the people as expressed at the ballot box should not be lightly disturbed.”). In no instance that Contestee is aware has the Court ever entertained a post-election residency challenge; let alone one in which Contestant admitted to having doubts regarding Contestee’s residency since May preceding the November general election, and did nothing to investigate those claims for months.<sup>1</sup> The district court’s decision permitting this matter to proceed and rejecting Contestee’s motion to dismiss on the basis of laches was in error, and threatens to upset the decades of precedent this Court has established regarding the need to act with diligence in asserting election related claims. Should the district court’s order be permitted to stand, litigants need no longer assert any residency challenge prior to an election, and may simply wait until the

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<sup>1</sup> Contestee denies the allegations and strongly disputes the claims in the Contest, but accepts them as true only for purposes of this motion to dismiss.

results are in, to bring such matters to the courts' attention. The district court's order must be reversed and this Contest dismissed on the basis of laches.

## II. BACKGROUND

In January 2024, Curtis Johnson registered a political committee, Curtis Johnson for MN House, in support of his candidacy for election to the Minnesota State House of Representatives for District 40B. Contest ¶ 8 (ADD-18). On May 21, 2024, Mr. Johnson filed with the Minnesota Secretary of State to be on the primary ballot by filing his affidavit of candidacy under Minn. Stat. § 204B.06, subd. 1. Contest ¶ 13 (ADD-18). He listed his address as 2735 Rice Street, Roseville, Minnesota 55114. *Id.*

Contestant alleges that when he was out doorknocking, he was informed by a resident that the resident had doubts about Contestee's residence. Contest ¶ 14 (ADD-19). Contestant himself acknowledged that he suspected Johnson did not reside in the district as early as May 2024. *Id.*; Contestant's Exhibit 5 (ADD-38). Contestant's volunteers investigated Contestee's residence beginning August 31, 2024, and continuing through November 11, 2024. Contest ¶ 15 (ADD-19). On October 15, 2024, Contestant released a campaign video questioning his opponent's residency status. Contest ¶ 35 (ADD-23-24).

The general election was held on November 5, 2024. Mr. Johnson won the election by 7,503 votes, which is a margin of more than 30 points.<sup>2</sup> The Ramsey County Canvassing Board certified the results of the election on November 13, 2024. On November 20, 2024,

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<sup>2</sup> See Secretary of State, *Results for State Representative District 40B*, <https://electionresults.sos.mn.gov/results/Index?ErsElectionId=170&scenario=StateRepresentative&DistrictId=434&show=Go> (last visited December 12, 2024).

Contestant Paul Wikstrom served and filed a notice of election contest pursuant to Minnesota Statute section 209.02, alleging that Contestee Curtis Johnson committed deliberate, serious, and material violations of Minnesota Election Law, by failing to establish residency in the district to which he was elected in the six months and thirty days prior to the November 5, 2024 General Election. (ADD-27-31).

On November 27, 2024, Mr. Johnson filed a motion to dismiss the contest on the basis of laches, and on the basis that a residency challenge was an improper basis for an election contest. The district court denied the motion to dismiss on December 6, 2024.<sup>3</sup> Mr. Johnson appeals the district court's order denying the motion to dismiss on the basis of laches pursuant to Minn. Stat. § 209.10, subd. 4, which permits an appeal from the district court's decision in an election contest to be made to the Minnesota Supreme Court within ten days after its entry.<sup>4</sup> In the alternative, as described in the attached petition, Mr. Johnson requests the Supreme Court accept this appeal pursuant to Minnesota Rule of Appellate Procedure 105, which permits the Court, in the interest of justice, to allow an appeal from an order not otherwise appealable, given the novel and important issues presented by this election contest, and the prejudice that may result if the issue of laches is not decided by this Court before the findings of fact are transmitted to the Legislature.

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<sup>3</sup> The Contest proceeded to an evidentiary hearing on December 7, 8, and 9. The Parties submitted proposed Findings of Fact and Conclusions of law on December 13, 2024. The District Court has until no later than January 14, 2025, the first day of the Legislative Session, to issue an Order.

<sup>4</sup> Subdivision 4 does not specify that the order being appealed need be the *final* order of the district court.

Contestee requests the Court reverse the district court's denial of the motion to dismiss and order that the contest be dismissed in its entirety, with prejudice.

### **III. ARGUMENT**

Laches is an equitable doctrine that is 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.” *Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2002). The “practical question in each case is whether there has been such an unreasonable delay in asserting a known right, resulting in prejudice to others, as would make it inequitable to grant the relief prayed for.” *Id.* at 170 (quoting *Fetsch v. Holm*, 52 N.W.2d 113, 115 (Minn. 1952)).

The first step in a laches analysis is to determine if petitioner unreasonably delayed in asserting a known right. *Olson*, 978 N.W.2d at 270 (citing *Monaghan v. Simon*, 888 N.W.2d 324, 329 (Minn. 2016)). A Petitioner has a known right to challenge a candidate's residency as of the date the candidate filed his affidavit of candidacy stating where he resided. *Id.* (citing *Monaghan*, 888 N.W.2d at 330). Contrary to the district court's analysis, the filing of the affidavit of candidacy is the clear start of the countdown to file a residency challenge according to the Supreme Court in both *Monaghan*, 888 N.W.2d at 330 (“petitioner had a known right to challenge Barrett's residency as of May 31, 2016, when Barrett filed his affidavit of candidacy stating that he resided at the Furuby house”) and *Olson*, 978 N.W.2d at 270 (“A petitioner has a known right to challenge a candidate's residency as of the date the candidate filed his affidavit of candidacy stating where he resided.”). Here, Contestant Wikstrom admitted to the press that he had suspicions



regarding Johnson’s residency as of May, when the affidavit of candidacy was filed, *see* Order at 2 ¶ 6 (ADD-2); but that he took no steps to investigate those concerns in any concerted way until September 16, and then waited again to bring the matter to the Court’s attention until November 20, 2024—after he had lost the election.

While this Court has noted that *some* delay in bringing a residency challenge may be excused, because the challenger needs to gather evidence to prove the candidate is not residing where they claim to be, *see Olson*, 978 N.W.2d at 270, the Court has never permitted a six-month delay from the time a candidate admits to having suspicions regarding an opponent’s residency status to the time of filing. In *Olson*, the petitioner visited the alleged residence within four days of the filing of the affidavit of candidacy, but then waited 18 days to visit again, and then delayed another month to make the last visit. These delays were unreasonable, and caused the petition to be dismissed on the basis of laches. 978 N.W.2d at 279; *see also Kieffer v. Governing Body of Municipality Rosemount*, 978 N.W.2d 442, 444 (Minn. 2022) (finding three week delay unreasonable and citing cases finding delays of two weeks and twenty days unreasonable). In *Monaghan*, the Court suggested that a month-long delay *might* be unreasonable, but even in that case, the petitioner filed by August 5—three months before the general election. 888 N.W.2d at 330. Contestant here offered no explanation for why he did not try to investigate sooner, given that he suspected since May that Contestee may not live where he stated on his affidavit. The delay of more than three months between the filing of the affidavit of candidacy and the beginning of the investigation alone should cause the matter to be barred by laches.

Even if Contestant’s delay in beginning the investigation could be excused, the district court did not address the most fundamental distinction between this matter and *Monaghan*, as well as every other residency challenge that has been brought before this Court—and that is the fact that Contestant waited until *after* the election to bring this matter to the Court’s attention. This Court has definitively held that when a claim is known to a petitioner before the election, the petitioner *cannot* wait until after the election to raise the issue. See *Carlson v. Ritchie*, 830 N.W.2d 887, 891-93 (Minn. 2013); see also *Butler v. Moore*, No. A23-1582, 2024 WL 3099039, at \*4 (Minn. App. June 24, 2024). The *Carlson* case also clearly explains that the issue is not whether Contestant filed within the timelines provided in Chapter 209; that is not in dispute. The issue is “when the petitioner became aware of his rights and whether he was reasonably diligent in pursuing those rights.” *Carlson*, 830 N.W.2d at 892. Like in *Carlson*, it is clear that even with the delayed start of the investigation, Contestant had gathered enough information for a claim prior to the election, because he released a political ad on October 15, 2024, regarding his opponent’s residency. Yet, Contestant made no attempt to raise the issue with the Court; instead, he waited to see what the results of the election were before bringing the matter as an election contest, more than a month later. Contestant conducted his investigation and released his findings; he made a strategic choice to use the findings politically, and not to bring a legal challenge until after he lost the election. This is impermissible under the Court’s precedent, and the district court clearly erred by failing to address this issue. A claimant cannot sit on his known rights until after the election; the motion to dismiss should have been granted.

In addition to unreasonable delay, the Court also considers whether the delay prejudices others so as to make it inequitable to grant the requested relief. *Olson*, 978 N.W.2d at 271. The district court relied solely on *Monaghan* to hold that there was no prejudice because a special election could be held if Mr. Johnson was determined to have been ineligible. (ADD-8). However, the district court's conclusion that the same remedy from *Monaghan* applies in this matter was incorrect. The result in *Monaghan* created a vacancy in *nomination*, which triggered Minn. Stat. § 204B.13, which requires a special election to be held on the second Tuesday in February of the following year, which is generally about a month after the legislative session begins. Here, however, Mr. Johnson has already been elected. If Mr. Johnson is deemed ineligible by the Court, the matter goes to the legislature, which may hold its own evidentiary hearings and will make a final decision regarding the eligibility of its member. *See* Minn. Stat. § 209.10, subd. 6; Minn. Const. Art. IV; § 6. If the legislature deems Mr. Johnson ineligible, it may create a vacancy in *office*. A separate set of statutes, specifically Minnesota Statutes sections 204D.17 to .29 govern special elections resulting from a vacancy in office, and the timing of the election will vary depending on how quickly the legislature acts. The Secretary of State also sets presumptive dates for Special Elections in advance, which are the second Tuesday in February, the second Tuesday in April, the second Tuesday in May, the second Tuesday in August, and the second Tuesday in November.<sup>5</sup> Given the timing of the contest, and the

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<sup>5</sup> Secretary of State, *Special Elections*, <https://www.sos.state.mn.us/election-administration-campaigns/elections-calendar/special-elections/> (last visited Dec. 13, 2024).

need for the legislature to hold its own hearings, it is practically impossible that the special election to fill a vacancy would be held by February, and it will more likely be held in April or May. It is therefore likely that the residents of 40B would be unrepresented for a period of several months before a special election can be held to fill the seat, resulting in significantly more prejudice to the residents of the district than those who were unrepresented for a month in the case of *Monaghan*.<sup>6</sup>

Finally, the district court's order threatens the precedent this Court has set since at least 1970, if not earlier, that a petitioner must act diligently to bring these issues to the Court's attention. This principle flows from the central tenet of election law this Court has recognized since the State's founding: "From the beginning, it has been the policy of the state to give effect to the votes of legal voters regardless of irregularities in the election." *Clayton v. Prince*, 151 N.W. 911, 911 (Minn. 1915). "The public good demands that the will of the people as expressed at the ballot box should not be lightly disturbed." *Taylor*, 10 Minn. at 112; *see McEwen v. Prince*, 147 N.W. 275, 277 (Minn. 1914) (collecting cases). To respect these foundational principles and "avoid disenfranchising those who have already cast their ballots," the Minnesota Court of Appeals has held that where a pre-

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<sup>6</sup> It is also impossible to ignore the fact that the House of Representatives is facing an equal split in party balance this session, which has not occurred for decades. Significant efforts are underway to negotiate a power-sharing agreement on the presumption that each party will have an equal number of representatives in the house. The potential removal of one member, followed by the election of a new member to fill that seat, will disrupt the power balance this session in a way that such a contest might not in any other election year. These political realities can certainly factor into an analysis of prejudice in this case, particularly given the fact that Contestant sat on his rights for an extended period of time, and it was not until these election results were final that Contestant sought to throw a wrench in what will already be a challenging session.

election challenge was available but not brought by the contestant, that fact “necessarily affects our analysis.” *In re Contest of Special Election Held on Nov. 4, 2014*, No. A14–2167, 2015 WL 1014155, at \*2 (Minn. App. Mar. 9, 2015) (rejecting challenge to pre-election procedures in post-election challenge). In sharp contrast here, under the district court’s analysis, laches cannot apply to a residency challenge (ADD-7), and any candidate may conduct a six-month investigation into their opponents’ residency, wait to see what the results of the election are, and then decide whether to challenge the eligibility of their opponent. This conclusion turns a fundamental premise of election law—the interest of voters in the certainty and finality of election results—on its head, *see Bergstrom v. McEwen*, 960 N.W.2d 556, 561 (Minn. 2021); and further risks enormous disruption to the business of the legislature, if it is suddenly dealing with an influx of post-election eligibility challenges, that could have been resolved under a pre-election 204B.44 petition. Finally, it risks disenfranchising the voters of District 40B, who overwhelmingly elected Contestee, leaving them without representation in the legislature.

#### **IV. CONCLUSION**

For the foregoing reasons, Contestee respectfully requests the Court enter an Order reversing the district court’s denial of Contestee’s motion to dismiss the Contest on the basis of laches and directing the district court to dismiss the Contest in its entirety, with prejudice.

Dated: December 13, 2024

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## CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs.1 and 3, for a brief produced with a proportional 13-point font. The length of this brief is **2,677** words. This brief was prepared using Microsoft Word 365.

s/Rachel A. Kitze Collins  
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