

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: CIVIL/OTHER

Paul Wikstrom,

Court File No. 62-CV-24-7378

Hon. Leonardo Castro

Contestant,

v.

**MEMORANDUM IN SUPPORT OF
CONTESTEE'S MOTION TO DISMISS**

Curtis Johnson,

Contestee.

I. INTRODUCTION

On October 15, 2024, three weeks before the General Election, Contestant Paul Wikstrom's campaign published an advertisement questioning the residency of Contestee Curtis Johnson.¹ Based on allegations in Contestant's own complaint, his campaign had been monitoring Johnson for at least three months leading up to the general election. Despite these efforts, Contestant waited until weeks after the election, which he lost by more than 7,503 votes, to bring this matter to the Court's attention. On this basis alone, the Contest must be dismissed. It is a cardinal rule of election law that parties must be diligent in raising issues in order not to disrupt the canvassed and certified results of the election. There is no case law showing that a court ever entertained a residency challenge under the election contest statute after an election has been held; and even if a residency challenge was a proper basis for an election contest, the court should dismiss this contest under the equitable doctrine of laches because Contestant should have pursued an action months ago through a section 204B.44 petition, which is explicitly intended to be used to resolve

¹ YouTube, *Curtis Johnson's Residency*, <https://www.youtube.com/watch?v=q6bM8WbJ4xM> (last visited November 27, 2024).

challenges to a candidate's eligibility. Contestant's delayed action cannot stand and the contest must be dismissed.

II. BACKGROUND

In January 2024, Contestee Curtis Johnson registered a political committee, Curtis Johnson for MN House, in support of his candidacy for election to the open seat in House District 40B. Decl. ¶ 1. In March 2024, Johnson signed a lease with Rosedale Estates at 2735 Rice Street in Roseville, for Apartment 103A, and began living there. Decl. ¶¶ 3-4. It is undisputed that this apartment is within the boundaries of District 40B. Johnson updated his driver's license to the Rice Street address, registered to vote, and voted from that address for both the primary and general election. Decl. ¶ 5, 19. The property was undergoing extensive construction at the time, and as a result, all electricity was being handled through the main building. There were no individual electric meters in the apartments. Decl. ¶ 6. In addition, because Johnson usually worked from the office or a coffee shop, he did not set up internet at the apartment. Decl. ¶ 7. During the busy campaign season, Johnson would often work all day, door knock, and come home to the apartment to sleep. The only windows in the apartment were in the kitchen, and when he came home late at night, he had no need to turn on the kitchen lights. Decl. ¶ 8. The other lights in the apartment were not visible through those windows. *Id.* The ongoing construction caused a number of problems in Johnson's apartment, requiring him to initiate at least five maintenance requests between May and October of 2024. Decl. ¶ 9. After sewage flooded from the bathroom on October 10, 2024, Rosedale Estates gave Johnson the option to move into another empty apartment within the building. Decl. ¶ 10. On October 15, 2024, Johnson moved his belongings into Apartment 303. Decl. ¶ 11. At the time the campaign worker allegedly took pictures under the door of Apartment 103, Johnson had already moved upstairs.

Johnson and his wife own a house in Little Canada. Decl. ¶ 13. Johnson's wife and adult child remained in the Little Canada home, while the family searched for a house within the district. Decl. ¶ 13, 16. As the family was preparing the Little Canada home for sale, they determined that many items needed repair and maintenance before that could occur, which delayed their ability to put the house on the market. Decl. ¶ 14. However, they did order a storage POD in order to start moving and storing bigger items. Decl. ¶ 15. The family continues to search for a new home within the district, as they prepare to sell the Little Canada house. Decl. ¶ 16.

Johnson visited the home regularly, particularly in the early mornings and evenings, particularly to see his child, who was back from college. His car was also parked there for extended periods while the family took vacations during the summer. Decl. ¶¶ 17-18.

In short, although the Court need not reach these issues, the factual allegations in the contest are wholly without merit, and should the matter proceed to an evidentiary hearing, the evidence will demonstrate that Johnson established and maintained residency in the district as required by the Minnesota constitution and statutes.

III. STANDARD OF REVIEW

A contestee may move to dismiss under Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief can be granted to challenge the legal sufficiency of the grounds on which an election contest is based. *Bergstrom v. McEwen*, 960 N.W.2d 556, 562-63 (Minn. 2021) (citing *Derus v. Higgins*, 555 N.W.2d 515, 516 n.4 (Minn. 1996); *Franson v. Carlson*, 137 N.W.2d 835, 839 (Minn. 1965)). Minnesota Rule of Civil Procedure 8.01 requires the pleader to “set[] forth a claim for relief” that “contain[s] a short a plain statement of the claim showing that the pleader is entitled to relief.” The Court must “accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). But the Court is not bound by legal conclusions stated in a complaint. *Id.*

at 603. A notice that challenges the election of a person to office “must specify the grounds on which the contest will be made.” Minn. Stat. § 209.021, subd. 1. The right to contest an election is “purely statutory.” In addition to alleging irregularities in the conduct of the election or a violation of election laws, there must be a “plain statement showing that the contestant is entitled to a decree changing the declared result of the election.” *Christenson v. Allen*, 119 N.W.2d 35, 40-41 (Minn. 1963).

Contestant’s election contest is based solely on the allegation that Johnson was ineligible for the office to which he was elected because he was not a resident of the district for six months preceding the general election, as required by the Minnesota Constitution, art IV, § 6 and Minn. Stat. § 204B.06, subd. 4a(4). This contest must be dismissed for two reasons. First, the contest is barred by laches because the Contestant unreasonably delayed his investigation of Contestee’s residency. Once Contestant did start investigating, he failed to bring the issues to the Court’s attention prior to the election, despite a clear mechanism for doing so. Second, a challenge to residency is an improper basis for an election contest. For these reasons, the contest fails on its face and must be dismissed.

IV. ARGUMENT

A. The Case is Untimely on the Basis of Laches

In decision after decision, the Minnesota Supreme Court has “urged parties in election matters to proceed expeditiously in asserting their claims in a judicial forum given the time constraints associated with elections.” *Bergstrom*, 960 N.W.2d at 561 (citing *De La Fuente v. Simon*, 940 N.W.2d 477, 485 (Minn. 2020); *In re Youngdale*, 44 N.W.2d 459, 464 (Minn. 1950)). The Minnesota Supreme Court frequently applies laches to dismiss election ballot challenges when the petitioner does not proceed “with diligence and expedition in asserting his claim.” *See Olson v. Simon*, 978 N.W.2d 269, 270 (Minn. 2022); *Clark v. Reddick*, 791 N.W.2d 292, 293-96 (Minn.

2010); *Clark v. Pawlenty*, 755 N.W.2d 293, 299 (Minn. 2008). 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.” *Olson*, 978 N.W.2d at 270 (citing *Winters v. Kiffmeyer*, 650 N.W.2d 167, 170 (Minn. 2002)).

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). Johnson filed his affidavit of candidacy to appear on the Minnesota state primary ballot on May 21, 2024. Contest ¶ 13. This action was not initiated until *six months* later. In the context of residency challenges, Courts have acknowledged that “some” delay “may be excused” because the challenger needs to know more about where the candidate claims to be residing and needs to investigate and gather evidence to prove the candidate is not residing in the district. *See Olson*, 978 N.W.2d at 270. Here, however, it appears that Contestant did not begin investigating until August 31, 2024, at the earliest; three months after the affidavit of candidacy was filed. *See Contest* ¶ 15. The Minnesota Supreme Court has held much shorter delays to be unreasonable. In *Olson*, the petitioner visited the alleged residence within four days of the filing, 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).

Even if it was reasonable for Contestant to wait until the end of August to *begin* investigating, there is no explanation offered for why Contestant needed two months of investigation, including *sixty* visits to Johnson’s apartment and the house where his family resided, to amass sufficient information to bring this matter to the Court’s attention; particularly when the Contestant issued a public video regarding the alleged issues with Contestee’s residence on October 15—three weeks before the election.² See *Trooien v. Simon*, 918 N.W.2d 560, 561 (Minn. 2018) (“candidates must judge carefully whether they can afford to wait even a few days before acting upon a known right”). It is even more inexplicable to wait until after the election to raise this issue. The Court has held that when claims are known to a petitioner before the election, but not filed until after the election, they are barred by laches. See *Carlson v. Ritchie*, 820 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). Contestant’s delay in bringing this challenge was unreasonable and the contest must be dismissed.

In addition to unreasonable delay, the Court must consider whether the delay prejudices others so as to make it inequitable to grant the requested relief. This analysis considers the impact on election officials, other candidates, and the Minnesota electorate in general. In pre-election challenges, Courts will dismiss petitions when ballots have already been printed and voting has already begun. See *Olson*, 978 N.W.2d at 271; see also *Trooien*, 918 N.W.2d at 561 (holding delay of four weeks unreasonable and that substantial prejudice would result from making last-minute change to ballot after voting has begun); *Clark v. Pawlenty*, 755 N.W.2d at 302-03 (similar); *Clark v. Reddick*, 791 N.W.2d at 295-96 (same). In post-election challenges, of any nature, the Court will “not lightly disturb the canvassed [and] certified results of the election.”

² See n.1.

Bergstrom, 960 N.W.2d at 562. Here, the election is complete, and the voters have spoken—decisively. Having sat on these potential claims for months, Contestant should not now be permitted to disenfranchise thousands of voters in House District 40B and require election officials to conduct a special election for the office. The Court should dismiss this contest on the bases of laches.

B. The Eligibility of a Candidate is an Improper Basis for an Election Contest.

Under Minnesota Statute section 209.02, an election contest may be brought over “an irregularity in the conduct of an election or canvass of votes, over the question of who receive the largest number of votes legally cast, over the number of votes legally cast in favor of or against a question, or on the grounds of deliberate, serious, and material violations of the Minnesota Election Law.” There is no question in this case that Contestee Johnson won the election—and did so by a substantial margin of 30 points over his opponent. Instead, Contestant claims that violations of election law (i.e., Johnson’s alleged failure to establish residency) should cause the election to be nullified, and Johnson’s election certificate revoked. However, it does not appear that questions about the residency of a candidate have ever been the basis of an election contest under chapter 209; let alone the basis of a successful election contest that nullified the results of the election. This is unsurprising, because, as discussed above, there is a clear avenue for challenging the residency of a candidate before the election through a petition to the Minnesota Supreme Court under Minnesota Statute section 204B.44, which expressly permits any individual to challenge the “placement of a candidate on the official ballot who is not eligible to hold the office of which the candidate has filed.” Although neither section 204B.44 nor chapter 209 expressly states that residency challenges are limited to section 204B.44 petitions, the weight of the case law, including the case law discussed above with regard to laches, which state that the duty to inquire into a

candidate's residency begins *the day an affidavit of candidacy is filed*, strongly suggests that such challenges are limited to pre-election petitions, and cannot wait for post-election contests.

V. CONCLUSION

For the foregoing reasons, the Court should dismiss the election contest in its entirety.

Dated: November 27, 2024

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