

STATE OF MINNESOTA
IN SUPREME COURT
No. A24-_____

FILED

December 13, 2024

**OFFICE OF
APPELLATE COURTS**

Paul Wikstrom,

Contestant,

v.

Curtis Johnson,

Contestee.

**CONTESTEE’S PETITION FOR DISCRETIONARY REVIEW
OF THE DISTRICT COURT’S ORDER DENYING CONTESTEE’S
MOTION TO DISMISS**

INTRODUCTION

Contestee Curtis Johnson seeks discretionary review pursuant to Minnesota Rule of Civil Appellate Procedure 105 of the district court’s December 6, 2024 Order denying Contestee’s motion to dismiss this election contest on the basis of laches.¹ (ADD-1-14). Rule 105 permits a party to petition the Court to allow an appeal from an order not otherwise appealable “in the interests of justice.” Rule 105.01 applies to the Minnesota Supreme Court as well as the Court of Appeals with respect to “orders ... not otherwise appealable pursuant to ... governing statute.” Because this contest was brought pursuant to

¹ Contestee brings this motion in the alternative to an appeal as of right under 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. Subdivision 4 does not state that the order need be the district court’s final order. However, should the Court find that Contestee does not have a right of appeal from the district court’s order on the motion to dismiss, Contestee requests this petition for discretionary review be granted.

Minnesota Statutes section 209.10, which requires that appeals go directly to the Minnesota Supreme Court, Rule 105 permits the Supreme Court to allow a discretionary appeal in the interest of justice. Those interests support permitting a discretionary appeal in this case. This post-election residency challenge is the first of its kind, and the district court's order denying the motion to dismiss runs contrary to this Court's decades of precedent requiring challengers to act with expediency in bringing residency challenges to the Court's attention. Furthermore, granting this discretionary review will not cause delay, because the evidentiary hearing is complete, and may save the district court from the necessity of issuing findings of fact, and may save the legislature from the burden of conducting its own evidentiary hearing to resolve the residency question. This Court frequently requests parties to brief and issues rulings based on threshold issues such as laches in election related matters. This petition is consistent with longstanding precedent and the Court should accept discretionary review.

STATEMENT OF FACTS

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.² The Ramsey County Canvassing Board certified the results of the election on November 13, 2024. On November 20, 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.

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, 2024.³

² 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).

³ 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.

STATEMENT OF THE ISSUES

This appeal is limited to the discrete question of whether the district court erred by denying Contestee's motion to dismiss the election contest on the basis of laches.⁴

STATEMENT WHY IMMEDIATE REVIEW IS NECESSARY

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 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 district court issues its decision and the findings of fact are transmitted to the Legislature. 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.

When ruling on a petition for discretionary review, the court considers, among other factors, whether the challenged ruling is vested in the district court's discretion, whether the ruling is questionable or involves an unsettled area of law, the impact of the ruling on the petitioning party's ability to proceed, the importance the legal issue presented, whether appellate review would benefit from the development of a more complete record or the ruling would be reviewable on appeal from a final judgment, and the specific circumstances of the case. *See Minn. All. for Retired Americans Ed. Fund v. Simon*, A24-1134, 2024 WL

⁴ Contestee is not requesting discretionary review of the second issue raised in the motion to dismiss, which is whether a residency challenge is a proper basis for an election contest. Contestee reserves the right to raise this issue in a later appeal.

3841815, at *1 (Minn. App. Aug. 13, 2024) (citing *Gordon v. Microsoft Corp.*, 645 N.W.2d 393, 399-402 (Minn. 2002)).

Each of these factors support discretionary review in this case. First, this petition raises an important issue of first-impression in this Court—whether a losing candidate can bring a post-election residency challenge against his opponent when the public record demonstrates that the candidate had suspicion regarding his opponent’s residency status six month’s prior, delayed the start of his investigation, and then publicly announced the results of the investigation, but declined to file a legal challenge prior to the election. Whether such a post-election challenge can proceed presents an important question that will have major implications for residency challenges going forward.

Second, the issue is also one of statewide importance. Again, this case could upset the balance that this Court has struck with respect to requiring petitioners to act diligently to bring residency issues to the Court’s attention. Moreover, the Minnesota State House of Representatives currently faces a nearly unprecedented 67-67 party split, and the House is currently working to figure out how to share power in the face of this tie. The Court should not countenance the months long delay in bringing a challenge until it was apparent that the Contest could upset the balance of power in the legislature.

Third, the issue of laches does not rely on further development of the record, and would be dispositive of the case. The parties do not dispute the facts material to the laches issue, which can be decided on Contestant’s allegations alone. *See, e.g.*, Contest ¶¶ 14, 15, 35 (ADD-19, 23-24); Contest Ex. 5 (ADD-38). In addition, granting this discretionary review will not cause any delay. The district court has already held an evidentiary hearing,

and has until January 14, 2025 to issue findings of facts and conclusions of law. Should the Minnesota Supreme Court rule that the case is barred by laches before then, it would eliminate the need for such findings. Importantly, an early order from this Court dismissing the contest on the basis of laches would make clear that litigants cannot sit on their rights in election-related matters until they determine that the stakes are sufficiently high to pursue their claims to the substantial prejudice of candidates, voters, and the legislature. It is especially important to do so in the context of a legislative election contest where the district court's factual findings would form the basis of proceedings before the legislature with the potential to shift the balance of power in the Minnesota House. *See* Minn. Stat. § 209.10, subd. 4; Minn. Const. Art IV; § 6.

Finally, permitting discretionary review of the district court's order related to laches is consistent with how this Court typically handles election-related cases, in that it frequently orders petitioners to demonstrate why a petition should not be dismissed on the basis of laches as a threshold issue. *See, e.g., Kieffer v. Governing Body of Municipality Rosemount*, 978 N.W.2d 442, 442 (Minn. 2022) (referencing order to petitioners to address laches); *Olson v. Simon*, 978 N.W.2d 269, 269 (Minn. 2022) (same); *Begin v. Ritchie*, 836 N.W.2d 545, 548 (Minn. 2013) (referencing order to parties to address jurisdiction and laches).

This contest presents an important issue of first impression that should be addressed by this Court prior to a ruling on the merits. For the reasons stated above, Contestee respectfully requests the Court grant discretionary review pursuant to Minnesota Rule of

Appellate Procedure 105.01 of the district court's order denying Contestee's motion to dismiss on the basis of laches.

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 **1,625** words. This brief was prepared using Microsoft Word 365.

s/Rachel A. Kitze Collins
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