

STATE OF MINNESOTA  
IN SUPREME COURT  
No. A24-1957

**FILED**

December 19, 2024

**OFFICE OF  
APPELLATE COURTS**

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Paul Wikstrom,

Contestant,

v.

Curtis Johnson,

Contestee.

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

Contestee Curtis Johnson brought this petition seeking discretionary review of a single, narrow issue—the District Court’s order denying Contestee’s motion to dismiss Contestant’s election contest on the basis of laches. Contestee seeks interlocutory review due to the unprecedented nature of this case, where a candidate waited until *after* he lost the election to challenge the residency status of his opponent under Chapter 209, rather than promptly bringing a pre-election 204B.44 petition. Contestant’s arguments in opposition to the petition are unpersuasive and should be rejected. This Court should accept review to ensure that the fundamental principles of its election law jurisprudence—diligence, expediency, and certainty in the results of the election—are maintained and upheld.

## ARGUMENT

First, Contestee recognizes that judgment has not been entered by the district court—that is why Contestee seeks discretionary review pursuant to Minnesota Rule of Civil Appellate Procedure 105, which permits this Court to accept review of an order *not otherwise appealable*.

Second, Contestee does not seek review of whether Contestant perfected jurisdiction under Statute 209, whether the claim is ripe, or whether there is any circumstance in which a residency challenge could be brought in a post-election proceeding. The issue is whether, under this Court’s well-settled precedent, Contestant improperly delayed when he declined to begin an investigation into Johnson’s residency for four months despite having suspicions in May,<sup>1</sup> proceeded to spend every day from September 16 to October 15 investigating, then decided to release a political ad questioning Johnson’s residency status instead of filing a lawsuit, and then waited an additional month, until after he lost the election, to file a contest. At no point in the long history of residency-related challenges has this type of long-delayed challenge been brought. Permitting it to move forward now would run contrary to this Court’s well-settled laches precedent, which requires a litigant

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<sup>1</sup> Contestant states there is no evidence in the record to suggest that Wikstrom knew or should have known that Johnson did not reside in District 40B. This is incorrect. Wikstrom attached an article to his own petition which contains a quote of him stating that he had suspicions in May that Johnson did not live in Roseville. If Wikstrom wished to investigate, he should have started in May. Contest ¶ 14; Contestant’s Ex. 5 (ADD-19; ADD-38). Wikstrom claims he did not know until a “whistleblower” alerted him in September that Johnson may not live in Roseville. Wikstrom overstates the information provided, which was merely a resident of Roseville conveying another rumor to Wikstrom regarding Johnson’s residency—no more and no less information that Wikstrom had in May, yet it triggered the belated investigation that ultimately led to this Contest.

to be diligent in asserting a known right. *See, e.g., Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2002).

If every candidate could wait until after an election to challenge their opponent's residency status, despite having suspicions for months, this Court's entire body of caselaw urging expediency with respect to election issues becomes meaningless. It also runs contrary to this Court's caselaw regarding *post*-election challenges, which make clear that once the voters have spoken, their will is not to be lightly disturbed. *See, e.g., 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 addition, as this Court has stated, and as Contestant concedes, 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). This claim was clearly known to Contestant—he had enough information to share his findings with the public on October 15 and he could have begun investigating his suspicions months earlier—yet declined to raise it with the Court. This Court must take this issue up now and clarify that a claimant cannot sit on his known rights until after the voters have spoken.

With respect to Contestant's other arguments, Contestee does not seek to make this Court a factfinder or to take this case out of order. Contestee recognizes that the cases cited above are primarily 204B.44 petitions, where this Court has original jurisdiction, and where this Court had authority to order parties to brief the issue of laches before the merits; that is because, as noted, every residency challenge to date has been brought under Section

204B.44. Contestee is simply asking this court to review the district court's decision on the issue of laches on an interlocutory basis, prior to a decision being reached on the merits, which is consistent with how the Court has handled other election-related disputes. Furthermore, this Court has affirmed the dismissal of election contests prior to any decision being reached on the merits of such contests. *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)).

It is also true that the issue of laches is generally one that is committed to the district court's discretion. However, the area of election law is unique in that the vast majority of cases and caselaw originate in the Supreme Court. This is an area of law where this Court has set a definitive standard for litigants which requires that they act with a particular sense of diligence and urgency. That standard was not met here, and this Court should act swiftly to correct the error made below.

Finally, granting this petition does not give Contestee two chances to succeed on the same issues to the prejudice of Contestant. This petition is limited to the discrete issue of laches. If the petition is granted, and the Court holds that the petition is not barred by laches, the district court will proceed to rule on the merits of the case. In any subsequent appeal, Contestee acknowledges that the issue of laches will not be appealable a second time. Granting this appeal will also not cause any delay in the underlying proceedings because the evidentiary hearing is complete, and the parties have submitted proposed findings of fact and conclusions of law. This appeal can continue in parallel with the

district court's work of drafting an order; the only risk is that such an order becomes unnecessary if this Court decides the petition was barred by laches.

On the other hand, *failing* to grant this petition has the potential for causing significant prejudice. Once a decision has been reached on the merits—by the district court or following an appeal to this Court—the decision will be transmitted to the legislature to make a final determination as to Contestee's eligibility. *See* Minn. Stat. § 209.10, subd. 6; Minn. Const. Art. IV; § 6. The legislature is free to decide as it chooses—the decisions of the courts are purely advisory—and a legislative determination that Contestee is ineligible will create a vacancy in office, triggering a special election, which will likely not be held until April or May, leaving the residents of District 40B unrepresented in the legislature for several months. Taking this interlocutory appeal of the laches issue is the only way for this Court to issue a decision grounded in well settled law that will prevent the need for a legislative determination in a matter that never should have been initiated due to Contestant's own unjustifiable delay.

### **CONCLUSION**

For these reasons and those stated in Contestee's petition, in the interests of justice, this Court should accept discretionary review of the district court's order denying Contestee's motion to dismiss the petition on the basis of laches.

Dated: December 19, 2024

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CURTIS JOHNSON**

## 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 **1,296** words. This brief was prepared using Microsoft Word 365.

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