

STATE OF MINNESOTA
IN SUPREME COURT
No. A24-1957



Paul Wikstrom,

Respondent,

v.

Curtis Johnson,

Petitioner.

**RESPONDENT PAUL WIKSTROM’S OPPOSITION TO PETITIONER CURTIS
JOHNSON’S PETITION FOR DISCRETIONARY REVIEW**

INTRODUCTION

Respondent Paul Wikstrom, the Contestant in the underlying district court proceeding under Minnesota Statute 209 et. seq., opposes Petitioner Curtis Johnson’s petition for discretionary review of district court order denying Johnson’s motion to dismiss pursuant to Minnesota Rule of Civil Appellate Procedure Rule 105.01. The order, issued December 6, 2024, dismissed Johnson’s laches challenge under Minn. R. Civ. Proc., Rule 12.02(e), while also claiming Wikstrom’s election contest under Minn. Stat. § 209.02 as proper.

Granting discretionary review should be denied. First, the order denying Johnson's motion to dismiss is presently a non-appealable order. The district court did not enter judgment as mandated under Minn. R. Civ. Proc. 58.01.

Second, contrary to Johnson's argument, Wikstrom, as the Contestant in a Chapter 209 statutory proceeding, is well within his statutory right to initiate a post-election contest for any "deliberate, serious, and material violation" of "Minnesota Election Law." See Minn. Stat. §§ 209.01 and 209.02. The phrase "Minnesota Election Law" is statutorily inclusive and specifically identified under Minn. Stat. § 200.01: "This chapter and chapters 201, 202A, 203B, 204B, 204C, 204D, 205, 205A, 206, 208, 209, 211A, 211B, and 211C shall be known as the 'Minnesota Election Law.'"

Third, Johnson seeks to engage in piecemeal appeals to undermine the orderly statutory process outlined in Minn. Stat. § 209 et. seq. Both parties, this Court, and the district court have expended their respective limited resources to reach a full and fair adjudication of the contest under the procedure outlined in Chapter 209. Any analysis of the factors outlined in *Gordon v. Microsoft*, 645 N.W.2d 393 (Minn. 2002) would support this Court waiting until final judgment is issued by the district court before addressing any appealable issues raised by either party.

Under the *Gordon* factors, this review does not address an unsettled area of law. While a Chapter 204B violation has not been previously brought under Chapter 209, the use of Chapter 209 is the statutory procedure to bring post-election claims. Laches does not apply to Chapter 209 claims if jurisdiction is perfected. Next, there is no impact on the petitioning party's ability to proceed. Should the district court resolve the contest in

Johnson's favor, the appeal to this Court would be moot. Thus, this Court would be wasting its valuable resources and undermine the procedural process and order under Chapter 209. Meanwhile, if Johnson lost, he would have a right to appeal on all issues decided by the district court. Therefore, only when the entire Chapter 209 process is before this Court, could the appeal be considered of "statewide" importance as the statutory process applies to all elections. Finally, under the circumstances of this case, to grant discretionary review would rob this Court of an opportunity, with a complete record regarding the entire § 209 process, to establish the applicable standards and principles of law for future § 209 contests.

It is also important to address implications in the Johnson petition that the underlying contest is political in that it was brought to impact the legislative conundrum of an evenly political party split among representatives of the Minnesota House of Representatives. That issue is a legislative problem and not this Court's. Moreover, there is no dispute the contest commenced within the statutory time frame under Chapter 209.¹ If Johnson is found to have not resided within the district he sought election, it is Johnson that has cast a negative light upon the election process and dare we say, fraud upon the electors. If true that Johnson did not reside in the district, it is for the Legislature to decide and for the time-being, for the relief sought, Johnson should not receive a certified election certificate. Meanwhile, Johnson's implication of a political motive is spurious and casts a

¹ It is important to note Johnson lays out his margin of victory within his petition. These facts are irrelevant to the Chapter 209 post-election process. The focus should instead be on whether Respondent's evidence demonstrates a deliberate, serious and material violation of Minnesota Election Law.

negative light upon this Court as the cornerstone of our legal system to determine what the law is irrespective of political intrigue or political repercussions cast upon or made by the arguing party.

In the end, Johnson's request for discretionary review before this Court should be denied.

STATEMENT OF FACTS

There is no dispute that Respondent Wikstrom, as the Contestant, filed a valid Notice of Election Contest pursuant to Minn. Stat. 209 et. seq. by perfecting the notice requirements necessary for a district court to attain jurisdiction. Wikstrom served the Contestee Curtis Johnson, the Ramsey County Court, and the Ramsey County Auditor on November 20, 2024. Johnson Pet. for Discr. Rev. at 3. Johnson, as a candidate, sought election in District 40B for a seat in the Minnesota House of Representatives. ADD-18, ¶ 8. There is no evidence in the record to suggest that Wikstrom knew or should have known that Johnson did not reside in District 40B. Johnson, upon the filing of his Affidavit of Candidacy with the Minnesota Secretary of State on May 21, 2024, attested under oath to residing at 2735 Rice Street in the City of Roseville, Minnesota. Wikstrom's Notice of Election Contest alleges that concerns regarding residency were not substantiated until a whistle blower came forth in September. Wikstrom's Notice alleged the following:

- Wikstrom campaign in September was told by a Roseville City Council member while door knocking about specific suspicion that candidate Johnson was not residing in District 40B. ADD-19, ¶ 14.
- Wikstrom Campaign volunteers began an investigation on August 31st on unsubstantiated rumors, but a coordinated effort became

active by mid-September after being alerted to the specific accusations told to Wikstrom while door knocking. *Id.*, ¶ 15.

- Daily investigations of Johnson, completing all investigations by November 11th. *Id.*, 19–27, ¶¶ 15–54.
- Totality of investigations reveals sufficient facts believed to meet Minn. Stat. § 209.02, subd. 1 criteria as “serious, deliberate, and material,” violations of Minnesota Election Law. ADD-29, 30–31, ¶¶ 61; 64–17.

As statutorily mandated, on November 26, 2024, two days after the submission of the Notice of Election Contest upon the Ramsey County Court Administrator, State Supreme Court Chief Justice Natalie Hudson presented a list of ten district court judges to both parties to decide which judge would hear the matter. The next day, November 27, 2024, counsel for the parties selected the Honorable Leonardo Castro.

On the same day, after counsel met with Judge Castro, Johnson filed a motion to dismiss. The motion asserted laches and that a residency challenge was an improper basis for an election contest. In response, Wikstrom, on December 2, 2024, filed a Motion for Default Judgment and a Motion *in Limine*. After a hearing with oral argument on December 3, 2024, the court denied all motions two days later. ADD–1–14. The court did not direct the Clerk of Court to enter judgment. ADD–14. There is no evidence that judgment was entered.

Meanwhile, in compliance with Minn. Stat. 209 et. seq. procedures, the district court conducted a two-day trial from December 5, 2024 to December 7, 2024 (Saturday.) As the court directed, the parties submitted proposed findings of fact and conclusions of law on December 13, 2024. According to Minn. Stat. § 209.10, subd. 3, “[t]he judge *shall* decide the contest, *issue appropriate orders*, and make written findings of fact and conclusions of

law.” Emphasis added. After the trial, and after the submissions of proposed findings of fact and conclusions of law, Johnson filed his petition for discretionary review on December 13, 2024.

- a. **Interlocutory appeals are disfavored, and since the district court did not enter judgment, the court’s order to dismiss is not an appealable order.**

When Johnson filed his motion to dismiss, he did not challenge the district court’s jurisdiction. The right to submit an election contest is purely statutory. *Bergstrom v. McEwen*, 960 N.W.2d 556, 563 (Minn. 2021). *See also Phillips v. Ericson*, 248 Minn. 452, 80 N.W.2d 513, 517 (1957). Therefore, the provisions of the statute relating to the filing and serving of notice must be strictly followed if the court is to acquire jurisdiction. *Greenly v. Indep. Sch. Dist. No. 316*, 395 N.W.2d 86, 90 (Minn. App. 1986) *see also Petrafeso v. McFarlin*, 296 Minn. 120 (1973).

Generally, interlocutory appeals are disfavored and, ordinarily, only “final judgments” are appealable. *Gordon v. Microsoft Corp.*, 645 N.W.2d 393, 398 (Minn. 2002), *See Emme v. C.O.M.B.*, 418 N.W.2d 176, 178–79 (Minn. 1988). When ruling on a petition for discretionary review, this 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 the law, the impact of the ruling on the petitioning party's ability to proceed, the importance of 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. *Minnesota All. for Retired Americans Educ. Fund v. Simon*, No. A24-1134, 2024 WL 3841815, at *1 (Minn. App. Aug. 13, 2024). *See also, Gordon v. Microsoft Corp.*, 695 N.W.2d at 399-402 and *Doe 175 ex rel. Doe 175 v. Columbia Heights Sch. Dist., ISD No. 13*, 842 N.W.2d 38, 47 (Minn. App. 2014).

i. Johnson requests discretionary review in an attempt to make this Court a factfinder.

Here, there is no prejudice if the issue of laches is not resolved by this Court and discretionary review denied before the district court issues its decision adjudicating Wikstrom’s Notice of Contest. The Notice of Election Contest was properly brought under Minn. Stat. 209 et. seq. Johnson asserts that “permitting discretionary review of the district court’s order related to laches is consistent with how this Court typically handles election-related cases.” Johnson Pet. for Discr. Rev. at 6. Johnson fails to note that the cases he cites are all Minn. Stat. § 204B.44 errors and omissions petitions in which this Court has *original jurisdiction* and have nothing to do with the discretionary review of district court orders. *E.g., Page v. Carlson*, 488 N.W.2d 274, 277 (Minn. 1992). Johnson Pet. for Discr. Rev. at 6, citing *Kieffer v. Governing Body of Municipality Rosemount*, 978 N.W.2d 442 (Minn. 2022) (Petitioner using § 204B.44 petition process filed with the Supreme Court); *Olson v. Simon*, 978 N.W.2d 269, 270 (Minn. 2022) (same); *Begin v. Ritchie*, 836 N.W.2d 545, 546 (Minn. 2013) (same).

ii. Johnson fails to note any prejudice in the utilization of a post-election contest.

Johnson believes that Wikstrom’s Notice of Contest should have been filed prior to the election without substantive proof. *See* Johnson Pet. for Discr. Rev. at 5. Indeed, this Court has opined that “petitioners cannot wait until *after* elections are over to raise challenges that could have been addressed *before* the election.” *Carlson v. Ritchie*, 830 N.W.2d 887, 892 (Minn. 2013) citing *Peterson v. Stafford*, 490 N.W.2d 418, 419 (Minn. 1992) (stating that “[t]he very nature of matters implicating election laws and proceedings routinely requires expeditious consideration and disposition by courts facing considerable time constraints imposed by the ballot preparation and distribution process”). But, this Court never suggested a person file a factually unsubstantiated petition filled with rumor, innuendo, or fallacious allegations. *Carlson v. Ritchie*, 830 N.W.2d at 892. As this Court has acknowledged, “[o]ur precedent focuses on when the petitioner became aware of his rights and whether he was reasonably diligent in pursuing those rights.” *Id.*, e.g., *Clark v. Pawlenty*, 755 N.W.2d 293, 302 (Minn. 2008) (Laches barred consideration of ballot challenge by voter and Supreme Court candidate, filed less than 30 days before primary election, when counties could not comply with impending ballot deadline.).

iii. Similar to a 204B.44 procedure, the district court has already performed the work of a referee to decide all motions relevant to the proceeding.

Nevertheless, when this Court decides matters related to § 204B.44 contests, it will refer matters to a referee as a fact finder, and decide *all motions* brought before the referee, which in turn, this Court will review all referee decisions as one cohesive set of arguments:

When we refer a section 204B.44 petition to a referee to make findings of fact, we “defer to the findings of the referee who heard the witnesses testify.” *Piepho v. Bruns*, 652 N.W.2d 40, 45 (Minn. 2002)

(per curiam); see also *Lundquist v. Leonard*, 652 N.W.2d 33, 37 (Minn. 2002) (per curiam) (stating that “because the record support[ed] the referee's conclusions” about the candidate's intent to establish residency in a legislative district and the actions she took to establish residency there, we would not “disturb the findings”). We have also explained that “[i]t is the role of the referee, and not this court, to evaluate the credibility of witnesses.” *Lundquist*, 652 N.W.2d at 37. Issues of statutory interpretation, however, like questions involving the constitutionality of a statute and subject matter jurisdiction, are legal issues we review de novo. See *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 649, 653 (Minn. 2012); *Daniel v. City of Minneapolis*, 923 N.W.2d 637, 644 (Minn. 2019).

Martin v. Simon, 6 N.W.3d 443, 450 (Minn. 2024).

Additionally, Johnson appears to request this Court, if it decided to take the discretionary review, to act in a manner similar to when it is the factfinder when cases are brought under Minn. Stat. 204b.44 errors and omissions cases. There, the Court often orders petitioners to demonstrate why a petition should not be dismissed on the basis of laches as a threshold issue and refer matters to the referee. Here, that work has been accomplished by the district court. And, although the motion to dismiss was decided prior to the trial, this Court would only be duplicating work already achieved.

iv. The district court was well within its discretion to deny Johnson’s motion to dismiss.

In this case, there is a statutory process to be conducted by the court of original jurisdiction, here the district court. See, Minn. Stat. §§ 209.021, subd. 2; 209.045; 209.065. The district court’s order denying Johnson’s motion to dismiss is vested and within the court’s jurisdiction, and certainly appealable after the disposition of the entire case under Minn. Stat. § 209.10, subd. 4, if filed within the deadlines dictated by the subdivision.

Meanwhile, the order should be treated as every other order to dismiss, in that if denied, is *not* an appealable order:

Generally, an order denying a motion to dismiss is not appealable because it merely retains the action for trial, does not involve the merits of the claim, and is not a final order. *County of Hennepin v. Decathlon Athletic Club, Inc.*, 559 N.W.2d 108, 108 n. 2 (Minn.1997). But an order denying a motion to dismiss for lack of jurisdiction is appealable as a matter of right, as it is not merely retention of the action for trial, but a determination compelling the defendant to take on the burden of litigation that it has a legal right to avoid. *McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 833 (Minn. 1995) (holding dismissal based on lack of subject matter jurisdiction is appealable

State ex rel. Swan Lake Area Wildlife Ass'n v. Nicollet Cnty. Bd. of Cnty. Com'rs, 711 N.W.2d 522, 524 (Minn. App. 2006).

Here, Johnson seeks a piecemeal appeal without entry of judgment:

A party may appeal from a partial judgment entered pursuant to Rule 54.02 if an action involves “multiple claims for relief or multiple parties,” the district court makes “an express determination that there is no just reason for delay,” and the district court expressly directs the entry of a final judgment.

“Rule 54.02 is intended to reduce piecemeal appeals by limiting appeals from judgments that resolve only part of the litigation,” and “to liberalize the appellate process for parties who might be prejudiced by waiting to appeal a decision where other claims or liabilities are yet to be decided.” *T.A. Schifsky & Sons, Inc.*, 773 N.W.2d 783, 787 (Minn. 2009).

City of Elk River v. Bolton & Menk, Inc., 2 N.W.3d 173, 177 (Minn. 2024).

Johnson admits there are multiple issues before the district court. Johnson Pet. for Discr. Rev. at 4 n.4. And as previously stated, the district court did not proclaim “no reason for delay” or is there evidence of judgment being entered. Notably, considering the

statutory posture and process, the decision to deny the motion to dismiss was vested and well within the *district court's* discretion.

Under Minn. Stat. § 209.02, a person may challenge an election of a candidate for “deliberate, serious, and material” violations of Minnesota Election Laws:

Any eligible voter, including a candidate, may contest in the manner provided in this chapter: (1) the nomination or election of any person for whom the voter had the right to vote if that person is declared nominated or elected to...a... legislative, ... office[.]...The contest may be brought ... on the grounds of deliberate, serious, and material violations of the Minnesota Election Law.

The phrase “Minnesota Election Law” is uniquely capitalized because it refers back to the definition of Minnesota Election Law found in Minn. Stat. § 200.01. The statute reads, “This chapter and chapters 201, 202A, 203B, 204B, 204C, 204D, 205, 205A, 206, 208, 209, 211A, 211B, and 211C shall be known as the *Minnesota Election Law*.” (Emphasis added). Therefore, as long as the claim brought under one of those chapters is “deliberate, serious, and material” the violation of the election law is properly brought under Minn. Stat. § 209.02.

Additionally, Wikstrom brought his Chapter 209 Election Contest when it was ripe. Ripeness depends on two factors: filing within the statutory time limits and proper filing and service. A claim becomes ripe when a notice of contest is filed and served within the statutory time limits. Specifically, the notice of contest must be filed within seven days after the completion of the canvass of votes and cannot be filed prior to the canvass. *Coleman v. Ritchie*, 762 N.W.2d 218 (2009). Further, the statutory requirements for filing and serving the notice of contest are critical to the ripeness of the claim. Failure to comply

with these requirements can result in the dismissal of the contest for lack of jurisdiction *Franson v. Carlson*, 272 Minn. 376 (1965). In *Franson*, a notice of election contest was filed prior to the completion of the canvass. The court ruled the notice premature and invalid. Here, Wikstrom’s notice of election contest met the timeliness requirements found in Chapter 209. Notably, Wikstrom and his investigative team couldn’t file until a proper investigation has produced enough evidence to overcome the presumption standard found in *Moe v. Alsop*, 180 N.W.2d 255 (1970). By acting diligently, Contestant imposed no undue prejudice on Johnson.

Because Wikstrom perfected jurisdiction, bringing his Notice of Election Contest when ripe, and Johnson made no claims otherwise, the motion to dismiss was without merit. Johnson is not prejudiced. All parties were provided adequate notice and time to present their respective arguments to the district court. The Chapter 209 statutory process ensures the Contestant and Contestee have the necessary protections for review by the district court and this Court, and for the ultimate arbiter, the Minnesota legislature. Minn. Stat. 209.10, subs. 3, 4.

b. Chapter 209 claims are not unsettled areas of law.

Contrary to Johnson’s characterization, this is not a matter of first impression. Johnson Pet. for Discr. Rev. at 5. First, Chapter 209 allows for election contests under Minnesota’s defined Election Laws. Minn. Stat. § 200.01. Second, it doesn’t matter if the person who brings a Chapter 209 election contest is “a losing candidate”. Minnesota Statutes § 209.02, subd. 1, explicitly states that “Any eligible voter, *including a candidate*,

may contest in the manner provided in this chapter....” Emphasis added. Johnson neither challenges the statutory interpretation of whom may file a notice of election contest nor the provision’s constitutionality. In short, Johnson contests the well settled legal principle of laches. Thus, there is no “case of first impression.” The only issue, if any regarding laches, is how it can be used as a defense under Chapter 209, which can be dealt with in the matter of course without the need for discretionary review.

Minnesota Election Law violations may be brought under Minn. Stat. § 209.03. Although this may be the first time a claim has been brought under this particular statute, it is certainly not the first time a case has been brought under Chapter 209, and not even in these particular circumstances. *See Scheibel v. Pavlak*, 282 N.W.2d 843 (Minn. 1979).

- c. **This ruling does not affect the petitioning party’s ability to proceed; in fact, it prejudices the underlying Contestant Wikstrom.**

This Court should consider the prejudice to Wikstrom as the underlying contestant. Proceeding in the manner Johnson desires, would prejudice Wikstrom because it provides Johnson multiple attempts to succeed on the same claim. No matter what happens in this discretionary review, if Wikstrom fails to demonstrate a material serious, and deliberate violation before the district court, the appeal of Johnson’s Motion to Dismiss is moot. However, if Wikstrom wins, under Minn. Stat. § 209.10 subd. 4, Johnson may appeal as a matter of right to this Court. On such an appeal, Johnson will get a second attempt before this Court to have Wikstrom’s claims dismissed. In that instance, *res judicata* would apply due to another ruling for Johnson based on the same set of operative facts. In the interest of justice, it would be better to allow any appealable matters to proceed under the

framework of Chapter 209 as one appeal after the disposition of the district court on *all* issues.

- d. **The legal issue is not of statewide importance, considering it is not relevant to a Chapter 209 analysis.**

Johnson implies that the underlying contest is political in that it is directly related to the legislative conundrum of an even 67-67 political party split among representatives of the Minnesota House of Representatives. Hence, Johnson asserts the issue of the applicability of laches to a Chapter 209 claim is of statewide importance. Johnson Pet. for Discr. Rev. at 5. That issue is a legislative problem and not this Court's. Moreover, there is no dispute the contest commenced within the statutory time frame under Chapter 209. If Johnson is found to have not resided within the district he sought election, it is Johnson that has cast a negative light upon the election process and dare we say, fraud upon the electors. If true that Johnson did not reside in the district, it is the Legislature to decide and for the time-being, for the relief sought, Johnson should not receive a certified election certificate. Meanwhile, Johnson's implication of a political motive is spurious and casts a negative light upon this Court as the cornerstone of our legal system to determine what the law is irrespective of political intrigue or political repercussions cast upon or made by the arguing party.

CONCLUSION

Wikstrom respectfully requests this Court deny Johnson's request for discretionary review.

Dated: December 18, 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, subds. 1 and 3, for a brief produced with a proportional 13-point font. The length of the brief is 3,908 words. This brief was prepared using Microsoft Word.

s/Nicholas R. Morgan
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