

STATE OF MINNESOTA
IN SUPREME COURT
No. A25-0017



Minnesota Voters Alliance, et al.,

Petitioners,

Republican Party of Minnesota,

Petitioner,

vs.

**STATE RESPONDENTS'
RESPONSE TO
MINN. STAT. § 204B.44 PETITION**

Timothy Walz, in his official capacity as
Governor of the State of Minnesota, et al.,

Respondents,

Tracy West, in her official capacity as County
Auditor of Ramsey County, Minnesota, et al.,

Respondents.

The terms of office of all members of the Minnesota House of Representatives terminate, and the new terms begin, on the first Monday in January in each odd-numbered year. Minn. Const. arts. IV, § 4, VII, § 7. In December 2024, pursuant to state law, Respondent Governor Tim Walz issued a writ of election to fill a vacancy in a House seat that was certain to arise when the new legislative terms began on January 6, 2025.

More than a week after the Governor issued the writ, Petitioners Minnesota Voters Alliance, the Republican Party of Minnesota, and two individuals petitioned the Court to stop the special election scheduled for January 28. They contend that the writ was unlawful

and ask the Court to invalidate the special election process that is already well underway to fill the legislative vacancy. Petitioners’ argument is based on legal provisions that are inapplicable to this case—and even if their legal theory had merit, their petition is void on the basis of laches. As a result, the Governor and Respondent Minnesota Secretary of State Steve Simon (collectively, “the State Respondents”) request that the Court deny the petition.

FACTS

At the statewide general election held on November 5, 2024, Curtis Johnson was elected to the seat in the Minnesota House of Representatives representing House District 40B. (2024 State Canvassing Board Report 40.)¹ After the county canvassing board certified Johnson as the victor, his opponent filed an election contest in district court. *See Wikstrom v. Johnson*, No. 62-CV-24-7378, Notice of Contest (Ramsey Cty. Dist. Ct. filed Nov. 20, 2024). The district court concluded that Johnson was not eligible to hold the seat he had been elected to because he did not reside in District 40B. *See Wikstrom*, Findings of Fact, Conclusions of Law, and Order (Ramsey Cty. Dist. Ct., filed Dec. 20, 2024) (Dickey Aff. Ex. C).

The next step in the contest would have been a dispositive hearing in the Minnesota House of Representatives. *See* Minn. Stat. § 209.10, subd. 5 (2024). Before such a hearing could take place, however, Johnson abandoned his attempt to become a state representative. On December 27, he notified the Governor that he had decided not to accept the House seat

¹ The report of the State Canvassing Board canvassing the 2024 statewide general election is available online at <https://officialdocuments.sos.state.mn.us/Document/Details/152508>.

to which he had been elected. (Dickey Aff. Ex. A.) This mooted the election contest, which was never completed.

Johnson's decision made it inevitable that the seat of state representative for District 40B would become vacant when the previous officeholder's term ended on Monday, January 6. *See* Minn. Const. art. VII, § 7. The Governor therefore issued, and the Secretary signed, a writ of special election for the seat—scheduling a candidate filing period on December 31; a special primary, if necessary, on January 14; and a special election on January 28. (*See* Writ (Dickey Aff. Ex. B).)

Proceedings in the special election are now well underway. Ballots have been printed, election judges and polling-place facilities have been secured, and District 40B residents are voting. (Erickson Decl. ¶ 7; Triplett Aff. ¶¶ 16-21.) Petitioners ask this Court to end the process and invalidate the votes that have been cast.

ARGUMENT

Petitioners contend that the writ of special election is void, asserting that the relevant vacancy resulted from a successful election contest and that the writ conflicts with a statute describing the responsibilities of county auditors. They are wrong on both counts. First, the House seat for District 40B is currently vacant because Johnson decided not to be seated; the legislative hearing that would have determined the contest never occurred. Second, the statute placing timing requirements on county auditors does not control, and has never controlled, the legal authority of the governor to call a special election to fill a vacancy. Additionally, Petitioners' decision to delay filing the instant petition until a Saturday more

than a week after the challenged writ had been issued constitutes laches that justifies dismissing the petition.

I. THE GOVERNOR LAWFULLY EXERCISED HIS STATUTORY AUTHORITY TO FILL VACANCIES IN OFFICE.

A Minnesota governor must issue a writ of special election to fill legislative vacancies “when a vacancy occurs and the legislature will be in session” such that the successful candidate can “take office and exercise the duties of the office immediately upon election.” Minn. Stat. § 204D.19, subd. 2 (2024). Moreover, when a future vacancy in office is certain to occur and will require a special election to fill it, all “appropriate authorities may begin procedures leading to the special election so that a successor may be elected at the earliest possible time.” *Id.* § 351.055. In this case, Governor Walz issued the challenged writ under the authority granted to him by these and other state statutes. (*See* Writ of Special Election (citing Minn. Stat. §§ 204D.17–.27, 351.01, .02, .055, “and other relevant statutes”) (Dickey Aff. Ex. B).) The writ is lawful and should be upheld.

A. The District 40B Vacancy Is Not the Result of a Successful Contest.

Petitioners first contend that the writ of special election is invalid because it fails to follow the timeline provided by Minn. Stat. § 204D.19, subd. 4, which provides that if a vacancy “results from a successful election contest,” the Governor must issue a writ of special election 22 days after the first day of the legislative session. Minn. Stat. § 204D.19, subd. 4 (2024). But this provision is irrelevant to the current proceeding, because the contest against Johnson was neither successful nor even completed. The sole binding

portion of a legislative contest—a hearing in the affected house of the legislature—never even began.

Each house of the Minnesota Legislature is “the judge of the election returns and eligibility of its own members.” Minn. Const. art. IV, § 6. This legislative authority is, by its nature, “an absolute grant of constitutional power which may not be delegated to or shared with the courts.” *Scheibel v. Pavlak*, 282 N.W.2d 843, 847 (Minn. 1979).² As a result, any judicial determinations made in an election contest over a legislative seat are advisory and non-binding. *Id.* at 848 (“In short, we have no jurisdiction to issue a final and binding decision in this matter, and our opinion by statute will be and by the Minnesota Constitution must only be advisory to the House of Representatives.”).

The Minnesota election contest chapter, Minn. Stat. ch. 209, recognizes the dispositive role of the houses of the legislature in contests pertaining to their members. Section 209.10 incorporates the constitutional directive that the legislative branch hears such contests. Minn. Stat. § 209.10, subs. 5-6 (2024) (providing procedures for legislative houses to hear election contests and disclaiming any limitation on “the constitutional power of the house of representatives and the senate to judge the election returns and eligibility of their own members”). In a substantive sense, election contests arising from legislative elections do not take place in the judicial branch; the only dispositive portion of any such contest occurs within the relevant legislative house.

² See also *State ex rel. Palmer v. Perpich*, 182 N.W.2d 182, 186 (Minn. 1971) (holding that “[t]he determination of the status and eligibility of [a contested state senator] rests with the senate and they must determine his eligibility. On that question we do not intrude” and “it is the senate whose votes must decide the outcome of the election contest”).

This indisputable constitutional context refutes the notion that the contest against Johnson was “successful.” After an advisory judicial proceeding, a district court opined that Johnson was ineligible to serve as the state representative from District 40B.³ Under both the contest statute and the constitutional powers of the legislature, this merely completed the procedural prerequisites for the actual election contest: the trial de novo in the Minnesota House of Representatives. *See* Minn. Stat. § 209.10, subs. 5-6. But rather than leave the district and the state in limbo, Johnson elected to withdraw his claim to the House seat. (Dickey Ex. A.)⁴ No binding determination regarding Johnson’s eligibility to serve in the House has ever been issued.

For these reasons, the statute governing writs of special election to fill vacancies resulting from “successful election contest[s]” is irrelevant. The contest against Johnson was not successful, because it was never determined: it was *mooted* by Johnson’s withdrawal before the binding portion of the proceeding ever began.

B. Section 351.055 Authorized the Governor to Issue the Writ Before the Vacancy Began.

When a future vacancy is certain to occur, state law authorizes “appropriate authorities” to “begin procedures leading to the special election so that a successor may be

³ The district court, unfortunately, did not confine itself to its constitutional advisory role in the District 40B contest. By purporting to “grant” the contest and to enjoin Johnson from taking an oath of office (Dickey Aff. Ex. C at 32), the court asserted powers that lie well outside the limits set by this Court and by state law. *See Scheibel*, 282 N.W.2d at 847-48; *Palmer*, 182 N.W.2d at 186; Minn. Stat. § 209.10, subs. 5-6.

⁴ Had Johnson not withdrawn his claim, he would have been the duly elected and certified state representative for District 40B from January 6 until, at a minimum, the House conducted the election contest.

elected at the earliest possible time.” Minn. Stat. § 351.055 (2024). Here, Johnson’s abandonment of his claim to a House seat created a vacancy when the previous member’s term expired on January 6. *See* Minn. Const. art. VII, § 7. Recognizing that the vacancy was inevitable, the Governor acted under his statutory authority to issue a writ of special election on December 27, ten days before the vacancy began. *See* Minn. Stat. § 351.055.

Petitioners argue that section 351.055 does not apply to the Governor and his authority to issue writs of special election. They contend that it only “authorizes election officials to begin ‘election procedures’ such as preparing ballots.” (Am. Pet. ¶ 49.) This contention is irreconcilable with actual election procedures. Neither preparing ballots nor any other “procedures leading to [a] special election” are possible before the Governor has set dates for a candidate-filing period, a special primary election, and a special election—that is, before the Governor has issued a writ of special election. (Erickson Decl. ¶ 5.)

Petitioners suggest that section 351.055 authorizes election officials to prepare ballots. But that is impossible before the names of the candidates running in the election have been determined, which happens only during the filing period defined by the writ of special election. (*Id.*) Election officials also cannot prepare ballots for a special primary until they know whether the number of candidates running is sufficient to require such a proceeding. (*Id.*) Officials need a writ of special election to provide them with dates of the candidate filing period so that they can arrange for appropriate staff to be available to accept candidate filings. (*Id.*) They need to know the dates of the special primary and special election to secure polling places and election judges to staff them. (*Id.*) They need the same information to staff and prepare for absentee voting. (*Id.*) In short, without the

information provided in a writ of special election, it is impossible in practical terms for election officials to do any meaningful preparation for a special election at all.

Barring the Governor from issuing such a writ under section 351.055 to address an inevitable future vacancy would therefore make it impossible, in practical terms, for any “appropriate authorities” to engage in any relevant “procedures” that prepare for a special election. Petitioners’ interpretation would thus render section 351.055 meaningless. *Cf.* Minn. Stat. § 645.17(1)-(2) (2024) (stating that legislature does not intend any result that is “absurd, impossible of execution, or unreasonable,” and intends each statute to be “effective and certain”).

Nor is the challenged writ the anomaly that Petitioners suggest. Every Minnesota governor in office since section 351.055 was enacted in 1987 has used the authority the statute granted them to issue writs of special election to fill vacancies in office that were inevitable but not current. For example, on July 14, 2008, Governor Tim Pawlenty issued a writ of special election to fill two state senate vacancies that were certain to begin on July 28 and November 5 of that year. (*See* 2008 Writ of Special Election (Erickson Decl. Ex. 1).)⁵ In June 2015, Governor Mark Dayton issued a writ for a special election to fill a state house seat that was due to be vacated in July. (*See* 2015 Writ of Special Election (Erickson Decl. Ex. 2).) And in November 2019, Governor Walz issued a writ of special

⁵ The 2008 special election was conducted on September 9—nearly two months before one of the two state senators being replaced even left office in November. (*See* Erickson Decl. Ex. 1.) Thus, contrary to Petitioners’ claims (*see, e.g.*, Am. Pet. ¶ 53), neither the writ nor even the special election itself need wait for an inevitable vacancy to arrive. *See* Minn. Stat. § 351.055 (authorizing administrative action “so that a successor may be elected at the earliest possible time”).

election to fill a state house vacancy that was certain to occur in December. (*See* 2019 Writ of Special Election (Erickson Decl. Ex. 3).)

All of these chief executives were “appropriate authorities” who recognized that scheduling filing periods, special primaries, and special elections immediately was necessary to permit the imminent vacancies the state faced to be filled at the earliest possible time. *See* Minn. Stat. § 351.055. Petitioners’ interpretation of the statute therefore conflicts with both the practicalities of election administration and the history of the application of section 351.055. *Cf.* Minn. Stat. § 645.16(8) (stating legislative intent can be ascertained by considering “legislative and administrative interpretations of the statute”).

C. A Notice Requirement Binding County Auditors Has No Effect On the Writ.

When a Minnesota governor issues a writ of special election, each county auditor in a county in which votes are to be cast is required to post a copy of the writ in the auditor’s office at least five days before the close of the candidate filing period that is defined in the writ. Minn. Stat. 204D.22, subd. 2 (2024). Petitioners contend that the challenged writ, which scheduled a filing period that ended four days after the writ was issued, violates this requirement and is therefore void. This contention is belied by the statute’s plain language, the impossibility of scheduling special elections under the restrictions Petitioners demand, and the actual special election schedules that Minnesota governors have consistently created.

1. Nothing in section 204D.22, subd. 2, restricts the Governor or the writs of special election he issues.

As an initial matter, subdivision 1 of section 204D.22 places several mandatory restrictions on the Governor and the writs of special election he issues. *See id.*, subd. 1 (requiring writ to state office to be filled, opening and closing dates of candidate filing period, and dates of special primary and special election). Petitioners rely on subdivision 2—which, by contrast, binds only county auditors. *Id.*, subd. 2. As the restrictions it included in subdivision 1 demonstrate, the legislature was capable of requiring the writ itself to provide a special-election filing period that ended less than five days after the writ was issued. Nonetheless, it did not. Neither Petitioners nor the Court can add terms to a statute that the legislature chose to omit. *Johnson v. Cook County*, 786 N.W.2d 291, 295 (Minn. 2010).

Further, section 204D.22 explicitly states that an “omission or defect in any notice required to be given by this section” does not invalidate any special primary or special election. Minn. Stat. § 204D.22, subd. 4. No statutory basis supports Petitioners’ claim that insufficient notice affects the writ or the special election proceedings it orders.

2. Current statutory restrictions make scheduling special election procedures extremely difficult.

As was the case with section 351.055, discussed above, Petitioners’ interpretation of state election law conflicts with the practical requirements of elections. If the five-day requirement in section 204D.22 were applied in the manner Petitioners demand, special elections in any context would be nearly impossible to schedule—especially in December,

January, and February. Governors' attempts to set special elections for current or future vacancies in legislative office are already subject to severe temporal restrictions, to wit:

- A writ of special election must provide at least one day for candidate filing, Minn. Stat. § 204D.22, subd. 1;
- There must be 14 days between the end of the filing period and the date of the special primary, *id.* § 204D.23, subd. 2;
- There must also be 14 days between the special primary and special election, *id.* § 204D.21, subd. 3;
- The entire election proceeding must fit within a period of no more than 35 days between the issuance of the writ and the special election, *id.* § 204D.19, subd. 2—and 29 of those days are already taken up by the three requirements listed above;
- The Governor must issue the writ and begin the 35-day period within five days after the vacancy occurs, *id.*;
- Neither a special primary nor a special election may be held on a state holiday or within four days of one, *id.* § 204D.195(2), which means that each holiday creates a span of nine calendar days during which special primaries and special elections cannot be scheduled; and
- There are *four* state holidays within the 52- to 58-day span between Christmas and Presidents' Day, *id.* § 645.44, subd. 5(a).

These restrictions on special-election scheduling are all mandatory. County auditors *can* violate the five-day notice requirement Petitioners raise here without invalidating an

election, *see id.* § 204D.22, subd. 4, but no such safe harbor exists for election schedules that violate any of the requirements listed above.

3. The restriction Petitioners demand would make setting a special election impossible under many circumstances.

When it construes state law, this Court presumes that the legislature does not intend a result that is “absurd, impossible of execution, or unreasonable.” *Auto-Owners Ins. v. Second Chance Invs., LLC*, 827 N.W.2d 766, 772 (Minn. 2013); Minn. Stat. § 645.17(1). The above restrictions already make creating a special-election schedule that fits within the 35-day limit extremely difficult. Imposing the additional five-day notice period that Petitioners demand would make matters even worse; under a number of circumstances, it would make compliance with the scheduling statutes impossible.

Consider, for example, a hypothetical legislative vacancy that arises on Saturday, December 26, 2026, as illustrated below:⁶

2026-27 Calendar						
<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
Dec. 20, 2026	21	22	23	24	25 Christmas	26 Vacancy Arises
27	28	29	30	31 <u>Deadline to issue writ</u>	Jan. 1, 2027 New Year's Day	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18 M.L.K. Day	19	20	21	22	23

⁶ The shaded portions of the calendar denote days on which the Governor is not permitted to set special primaries or special elections because of the proximity to the Christmas, New Year's Day, or M.L.K. Day holidays. *See* Minn. Stat. § 204D.195(2).

With a vacancy arising on December 26, the Governor must issue a writ of election within five days—that is, by December 31—and the special election must be held no more than 35 days after that. The Martin Luther King holiday on January 18, 2027 prevents the Governor from scheduling the special primary on any day between January 14 and 22, and this severely restricts his options. (Other state holidays create equally vexing scheduling problems in other cases.)

In this hypothetical example, the Governor’s only choice would be to issue the writ quickly and schedule the filing period to end no later than December 30 so that the special primary could take place by January 13. One potential schedule taking this approach is illustrated below:

Example Schedule						
<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
Dec. 20, 2026	21	22	23	24	25 Christmas	26 Vacancy Arises <u>Writ Issued</u>
27	28 <u>Filing Period Begins</u>	29	30 <u>Filing Period Ends</u>	31	Jan. 1, 2027 New Year’s Day	2
3	4	5	6	7	8	9
10	11	12	13 <u>Special Primary</u>	14	15	16
17	18 M.L.K. Day	19	20	21	22	23
24	25	26	27 <u>Special Election</u>	28	29	30 <u>35-day deadline</u>

If Petitioners were correct that the filing period must end a minimum of five days after the writ was issued, however, it would be impossible to schedule a special election in

this situation without violating one of the current statutory restrictions. If the Governor issued the writ immediately on December 26 and set a filing period that ends five days later, on December 31, the M.L.K. Day block would prevent the special primary and special election from occurring any earlier than January 23 and February 6, respectively—but the latter date is 42 days after the writ was issued:

Mandatory Five-day Filing Period Example						
<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
Dec. 20, 2026	21	22	23	24	25 Christmas	26 Vacancy Arises Writ Issued
27	28 Filing Period Begins	29	30	31 Filing Period Ends	Jan. 1, 2027 New Year's Day	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18 M.L.K. Day	19	20	21	22	23 Special Primary
24	25	26	27	28	29	30 35-day deadline
31	Feb. 1	2	3	4	5	6 Special Election?

The same problem arises regardless of when the Governor chooses to issue the writ. He could wait for up to five days (that is, until December 31) before issuing it, but that would not solve the problem: because of the holiday block, the special election still could not be scheduled any earlier than February 6, which is 37 days after December 31.

The new mandate for five-day notice of the end of the filing period that Petitioners urge would be impossible to implement and should therefore be rejected.

4. Minnesota governors have repeatedly created special-election schedules that conflict with Petitioners’ reading of the notice statute.

In addition to being unfounded in law, Petitioners’ reliance on the five-day notice provision conflicts with decades of Minnesota history. Recognizing that the notice provision is not mandatory and that it is impracticable to implement under many circumstances, Minnesota governors have issued a series of writs of election that schedule candidate filing periods to end less than five days after the writ. For example:

- On January 9, 1989, Governor Rudy Perpich issued a writ of special election setting a filing period that ended four days later, on January 13 (Erickson Decl. Ex. 4);
- On January 17, 2003, Governor Pawlenty issued a writ of special election setting a one-day filing period four days after the writ, on January 21 (*Id.* Ex. 5);
- Later that month, on January 30, Governor Pawlenty issued a writ that included a filing period that ended four days later, on February 3 (*Id.* Ex. 6); and
- On February 13, 2024, Governor Walz issued a writ that scheduled a special-election filing period on February 14-15 (*Id.* Ex. 7).⁷

All of the schedules created by the writs described above conflicted with the notice requirement demanded by Petitioners, but none of the writs were challenged in court on that (or any) basis. Nor has the legislature changed the law to suggest these past procedures were improper. Petitioners’ legal theory thus departs from Minnesota history.

⁷ Petitioners praised this writ in their petition (*see* Am. Pet. ¶ 53), even though it violated the new five-day filing period restriction that they ask the Court to impose on writs of special election.

For the above reasons, the writ of special election that the Governor issued on December 27 was well within his legal authority. The petition should therefore be denied on its merits.

II. THE PETITION IS BARRED BY LACHES.

Even if Petitioners' legal theory were sound, however, the petition should be denied based on laches. By sitting on their rights for a week and a half while election proceedings were underway, Petitioners forfeited their ability to challenge the writ of special election. At this point, invalidating the writ would mean throwing away a growing number of Minnesotans' ballots thanks to Petitioners' lack of diligence.

The equitable doctrine of laches “prevent[s] 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.” *Monaghan v. Simon*, 888 N.W.2d 324, 328–29 (Minn. 2016). The Court has repeatedly denied election challenges due to laches. *See Kieffer v. Governing Body of Mun. Rosemount*, 978 N.W.2d 442, 444 (Minn. 2022); *Clark v. Reddick*, 791 N.W.2d 292, 294–96 (Minn. 2010); *Clark v. Pawlenty*, 755 N.W.2d 293, 303 (Minn. 2008). Laches is a critical doctrine in the election context because the “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.” *Peterson v. Stafford*, 490 N.W.2d 418, 419 (Minn. 1992).

A petition filed under Minn. Stat. § 204B.44 is barred by laches when (1) the petitioner unreasonably delays in filing their petition and (2) the relief the petitioner

requests would prejudice election officials, other candidates, and the electorate in general. *Pawlenty*, 755 N.W.2d at 299-303.

Here, the Governor issued the challenged writ on December 27. (Dickey Aff. Ex. B.) The Secretary posted notice of the writ on the 29th, and the Ramsey County Auditor followed suit on the 30th. (Erickson Decl. ¶ 7; Triplett Aff. ¶ 3.) The county engaged in extensive election preparations between December 30 and January 6, including arranging polling places for the special primary and special election, coordinating with ballot vendors, receiving and processing candidate filings, securing the services of election judges, and designing ballots. (Triplett Aff. ¶¶ 4-12.)

It was not until January 4, more than a week after the Governor issued the writ, that Petitioners finally filed the petition. They did so, moreover, on a Saturday afternoon, ensuring that the litigation could not proceed until days later. Inaccurate statements in the initial petition forced Petitioners to file an amended petition the next day, and Petitioners did not serve Respondents with any pleading until a day after that, Monday, January 6—ten days after the Governor issued the writ and the special-election proceedings began.

The election process is now well underway. Absentee ballots have been programmed, printed, and received, and District 40B voters began voting this morning. (Erickson Decl. ¶ 7; Triplett Aff. ¶¶ 16-18.)

Under the circumstances of this case, Petitioners had no reason to wait ten crucial days before serving their petition. Their dilatory conduct has forced this Court to adjudicate an election that is in progress, and every day that goes by means more Minnesotans' votes are at risk of being invalidated.

Petitioners' delay in filing and serving the petition has imposed substantial prejudice on state and local election officials and the District 40B electorate alike. As a result, the petition should be dismissed. *Compare Pawlenty*, 755 N.W.2d at 303 (“[W]e conclude that it would be inequitable to grant the relief sought by petitioners with respect to the primary ballot even if we were to conclude that their arguments had merit.”).

CONCLUSION

For the above reasons, the petition suffers from fundamental and fatal legal flaws. The Court should dismiss the petition on the grounds of laches and because the writ of special election at issue is valid as a matter of law.

Dated: January 10, 2025

Respectfully submitted,

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