

**FILED**

August 5, 2022

**OFFICE OF  
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A22-1070

Judy Kay Olson,

Petitioner,

vs.

Steve Simon, in his official capacity as  
Minnesota Secretary of State, Gene Dornink,  
current candidate for Senate District 23,  
Laura Ihrke, in her official capacity as Steele  
County Auditor, Tammy Spooner, in her official  
capacity as Waseca County Auditor, Pat Martinson,  
in her official capacity as Freeborn County Auditor,  
Scott Felten, in his official capacity as Mower County  
Auditor, and Darren Esser, in his official capacity  
as Faribault County Auditor,

Respondents.

O R D E R

On May 24, 2022, Gene Dornink filed an affidavit of candidacy with the Minnesota Secretary of State that contained a handwritten statement that he is a “Republican” Party candidate in the 2022 election for “State Senate” from District “23.” Dornink was first elected to the Minnesota Senate in 2020 to represent then-District 27. At that time, Dornink lived in Hayfield. But because of redistricting that occurred in February 2022, Hayfield is now located in newly created Senate District 24. In February 2022, Dornink publicly

announced his decision to move his residence to the newly created District 23. When Dornink filed his affidavit of candidacy, he wrote in as his “Residence Address” a location in Brownsdale, a city in Senate District 23.

On July 28, 2022, petitioner Judy Kay Olson filed a petition pursuant to Minn. Stat. § 204B.44 (2020), alleging that Dornink is not eligible for election to Senate District 23 because he will not have resided in the district for the 6 months prior to the November 8, 2022, general election, as required by Article IV, Section 6, of the Minnesota Constitution, and Minn. Stat. § 204B.06, subd. 4a(4) (2020). The petition alleged that Dornink instead actually resides in Hayfield, and included affidavits from 3 people who had purportedly investigated where Dornink has been living since May 8, 2022. This investigation included visiting the Hayfield property four times and the Brownsdale property five times between May 8, 2022, and July 15, 2022, searching property tax records, and speaking with phone companies. The petition sought an order directing the removal of Dornink’s name from the August 9, 2022, primary election ballot or granting Olson other relief as the court deems just and appropriate.

Respondents are Steve Simon, the Minnesota Secretary of State, Dornink, and the five county auditors from the counties that comprise Senate District 23. We allowed respondents to respond and also ordered Olson to address why this petition could not have been filed at an earlier time and why laches should not apply. Dornink filed a response disputing all allegations in the petition and contending in a supporting affidavit that he has been living in Senate District 23 at the Brownsdale address since May 6, 2022. Dornink

also argued that the petition should be dismissed on laches, a position shared by the Secretary of State in his response.<sup>1</sup>

We agree that the petition should be dismissed on laches grounds. We have applied laches to election ballot challenges, dismissing petitions when the petitioner does not proceed “ ‘with diligence and expedition in asserting his claim.’ ” *Clark v. Pawlenty*, 755 N.W.2d 293, 299 (Minn. 2008) (quoting *Marsh v. Holm*, 55 N.W.2d 302, 304 (Minn. 1952)). This includes dismissing section 204B.44 petitions, based on laches, that sought the same relief claimed here: to remove a candidate’s name from a primary ballot on the grounds that the candidate did not reside in the legislative district. *See Larkey v. Ritchie*, No. A12-1064, Order at 2–3 (Minn. filed June 28, 2012) (declining to hear a petition seeking to strike a legislative candidate from the primary ballot who allegedly did not live in the district when an affidavit of candidacy showing non-residency was publicly available 20 days before the petition was filed and ballots had to be made available 3 days after the petition was filed); *see also Clark v. Reddick*, 791 N.W.2d 292, 293–96 (Minn. 2010) (declining to hear challenge seeking to strike candidate’s name from the ballot when petitioner waited more than 2 months to file the petition, which was 15 days before absentee ballots were to be made available to voters); *Pawlenty*, 755 N.W.2d at 303 (declining to hear a challenge seeking to strike a candidate’s name or remove the incumbent designation from a primary ballot filed 24 days before the primary). “[T]he practical question in each case is whether there has been such an unreasonable delay in asserting a known right,

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<sup>1</sup> The five county auditor respondents also filed letter responses, stating only when they believed that a decision by the court was needed.

resulting in prejudice to others, as would make it inequitable to grant the relief prayed for.” *Winters v. Kiffmeyer*, 650 N.W.2d 167, 170 (Minn. 2002) (citation omitted) (internal quotation marks omitted).

“The first step in a laches analysis is to determine if petitioner unreasonably delayed asserting a known right.” *Monaghan v. Simon*, 888 N.W.2d 324, 329 (Minn. 2016). A petitioner “ha[s] 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.* at 330; *see also Reddick*, 791 N.W.2d 294–95 (looking to the information available on an affidavit of candidacy to conclude that a petitioner’s “duty to inquire” was triggered by that public filing). Olson filed her petition 65 days after Dornink filed his affidavit of candidacy, 35 days after absentee voting began for the primary, and 12 days before the date of the primary.

We have acknowledged that “some” delay in filing a petition challenging a candidate’s residency “may be excused” because the challenger needs to know more than where the candidate claims to be residing and instead needs to investigate and gather evidence to prove that the candidate is not residing in the district. *Monaghan*, 888 N.W.2d at 330. The record here, however, indicates that Olson did not act expeditiously or diligently in conducting her investigation. *Marsh*, 55 N.W.2d at 304 (declining to consider a ballot challenge when “petitioner ha[d] not proceeded with diligence and expedition in asserting his claim”). Although Olson’s associates made two visits to the Brownsdale property within 4 days of Dornink filing his affidavit of candidacy on May 24, 2022, they waited 18 days, until June 15, 2022, to visit it again. And after visiting it on June 15 and 16,

2022, they waited another month, or until July 15, 2022, to make their last visit. Because there were long periods in which Olson and her associates did nothing to investigate, the delay in conducting the investigation was unreasonable. *See Monaghan*, 888 N.W.2d at 330 (noting that the petitioner “did nothing in June to investigate” the candidate’s residence).<sup>2</sup>

In addition to unreasonable delay, we must assess whether that delay “result[s] in prejudice to others, as would make it inequitable to grant the relief.” *Fetsch v. Holm*, 52 N.W.2d 113, 115 (Minn. 1952). The prejudice analysis considers the impact on “election officials, other candidates, and the Minnesota electorate in general.” *Pawlenty*, 755 N.W.2d at 301. Because ballots have already been printed, early voting for the primary began more than a month ago, on June 24, 2022, and the primary is just days away, substantial prejudice would result from ordering respondents to remove Olson’s name from the primary ballot. *See Trooien v. Simon*, 918 N.W.2d 560, 561 (Minn. 2018) (dismissing a section 204B.44 petition on laches that was filed 5 days after early voting began and concluding that “substantial prejudice would result from making such a last-minute change to the ballot after voting has begun”); *Pawlenty*, 755 N.W.2d at 301–03 (applying laches and concluding there would be substantial prejudice to “election officials, other candidates,

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<sup>2</sup> Even if some of Olson’s delay can be excused because of the time to investigate Dornink’s residency, the court has found delays much shorter than 65 days to be unreasonable. *See Trooien v. Simon*, 918 N.W.2d 560, 561 (Minn. 2018) (declining to hear challenge seeking to change the political party or political principle of a candidate when candidate waited 27 days to file petition); *Larkey*, Order at 1–2 (dismissing a petition, based on laches, that sought to remove a candidate from a primary ballot because she did not meet the residency requirement when she waited 20 days to file the petition).

and the Minnesota electorate in general” if the court were to grant the requested relief when the petition was filed after early voting had begun and all the necessary changes “cannot be accomplished in the days remaining before the primary election”).

Accordingly, Olson’s unreasonable delay in filing the petition and the substantial prejudice that would result from making a last-minute change to the ballots after they have been printed and early voting commenced, requires that the petition be dismissed.<sup>3</sup>

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition to remove Senator Dornink from the ballot for the August 9, 2022, primary election for the office of State Senator for District 23 be, and the same is, dismissed.

Dated: August 5, 2022

BY THE COURT:



Lorie S. Gildea  
Chief Justice

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<sup>3</sup> A dismissal on the basis of laches is without prejudice.