

STATE OF MINNESOTA
IN SUPREME COURT

FILED

August 15, 2022

**OFFICE OF
APPELLATE COURTS**

Christine Marie Fisher and
Ashley Jo Klingbeil,
Petitioners,

vs.

Case No.: A22-1112

Steve Simon, in his official capacity as
Minnesota Secretary of State,
Keith Ellison, in his official capacity as
Minnesota Attorney General
Torrey Westrom, current candidate for
Senate District 12,
Michelle Knutson, in her official capacity
as Big Stone County Auditor,
Vicki Doehling, in her official capacity as
Douglas County Auditor,
Stephanie Rust in her official capacity as
Pope County Auditor,
Randy R. Schreifels, in his official
capacity as Stearns County Auditor,
Stephanie Buss, in her official capacity as
Stevens County Auditor, and
Kim Saterbak in her official capacity as
Swift County Auditor.,
Respondents.

**RESPONSE OF SENATOR TORREY
WESTROM**

INTRODUCTION

This Court's Order of August 9, 2022 permits candidate Senator Westrom to respond to the Petition filed by Ms. Fischer and Ms. Klingbeil challenging Senator Westrom's residence in Senate District 12.¹ Senator Westrom now submits this Response

¹ Petitioners are wholly wrong concerning the legal definition of "residency." Pet. at ¶ 26. In so misstating the law, Petitioner relies on the definition of residency *with respect*

to Petitioners' frivolous petition. Senator Westrom requests that this Court dismiss the Petition primarily because Mses. Fischer and Klingbeil brought their petition 69 days after Senator Westrom filed his affidavit of candidacy, a Certificate of Nomination is forthcoming, and because the Petition fails as a matter of law to establish that Senator Westrom's has not established residency in Senate District 12.

FACTS

Torrey Westrom is the state senator for Senate District 12. Decl. of Senator Torrey Westrom at ¶ 2 [hereinafter "Westrom Decl."]. After the legislative redistricting announced by this Court in February of 2022, Senator Westrom and his family decided to move to the newly created District 12, which has different borders than the previous District 12 Senator Westrom currently represents. *Id.* at ¶ 4. On March 9, 2022, Senator Westrom publicly announced his intent to run in Senate District 12 and move into the new District. *Id.* at ¶ 9. Senator Westrom and his family immediately began looking for housing in the new Senate District 12 in March and April of 2022. *Id.* at ¶ 5. Due to the competitive housing market, the Westroms made offers on several homes but were unable to finalize an agreement until April 27, 2022. *Id.* at ¶ 6 and ¶ 10. The home they purchased is located at [REDACTED] in Douglas County, within the boundaries of the new Senate

to voters, as defined in Minn. Stat. § 200.031. This is incorrect. "[T]he legislature has not adopted a definition of 'residency' for evaluating *candidate* qualifications." *Piepho v. Bruns*, 652 N.W.2d 40, 43 (Minn. 2002) (emphasis added). In declining to apply the statutory language applicable to voter residency to evaluating candidate residency, the Court noted that "we naturally focus on physical presence and intent." *Id.* at 44. This misapplication of the law appears to be the basis for the inclusion of Pet. Exhibit K and the harassment of Senator Westrom's son found at Pet. Exhibit T.

District 12. *Id.* at ¶ 8. On April 29, 2022, Senator Westrom informed the Grant County Assessor that he wished to change his homestead tax status to his Lake Mary residence. *Id.* at ¶ 11. Senator Westrom was informed by the Grant County Assessor that a notation had been made, and the change would go into effect next year. *Id.*

Senator Westrom closed on the purchase of the Lake Mary residence on Friday, May 6, 2022. *Id.* at ¶ 13. The Relative Homestead Credit form was completed at closing. *Id.* The personal belongings of the previous owners were removed within 24 hours of closing on the house. *Id.* at ¶ 10. That same day, Senator Westrom changed the residence on his Minnesota I.D. card to the Lake Mary Address. *Id.* at ¶ 12. Senator Westrom and his family began the process of moving into the Lake Mary residence that same day and continued moving into the 7th of May. *Id.* at ¶ 14. On or about May 6, 2022, Senator Westrom contacted the Ottertail Power Company to have the electricity changed to his and his wife's name. *Id.* at ¶ 15. Senator Westrom switched the propane service at this time as well, and executed a new, binding homestead insurance policy on the new property. *Id.* The Lake Mary residence has its own well and septic system. The family relies on personal hot spots for internet service due to the lack of reliable cable service until they can get faster, reliable internet service trenched in by Runestone Telephone, which they have arranged to have done yet this summer. *Id.* at ¶ 16. The Westroms have an agreement with their neighbor, the owner of Scenic View RV Resort, to use the Resort's dumpster for their trash disposal. *Id.*

Since moving into the new house, Senator Westrom has been absent intermittently while conducting his legislative duties. *Id.* at ¶¶ 19, 40. Additionally, the family has also

been working at and preparing to sell their previous residence, which is listed with their realtor and posted on the “Coming Soon” site for upcoming listings. *Id.* at ¶ 39. However, Senator Westrom and his family have hosted their extended family numerous times at their new residence. *Id.* at ¶¶ 28, 31, 33, 35. Numerous people have picked up and dropped off Senator Westrom at the Lake Mary residence. *Id.* at ¶¶ 26, 27, 29, 34, 36, 40, 41, 42. Once, while being driven back to the Lake Mary residence, Senator Westrom’s driver missed a turn. Senator Westrom, who is blind, noticed the missed turn and was able to correct the driver. *Id.* at ¶ 40. The family has changed churches, and their current address at Lake Mary is listed within the church directory. *Id.* at ¶ 20. Recently, Senator Westrom registered to vote within Douglas County and successfully voted in the primary election on August 9, 2022. *Id.* at ¶ 43.

Senator Westrom filed his formal affidavit of candidacy on May 31, 2022. Petition at ¶ 23. Petitioner Klingbeil did not begin her investigation until 38 days later on July 8, 2022. Decl. of Ashley Jo Klingbeil in Supp. Of Pet. Pursuant to Minn. Stat. § 204B.44 to Remove Candidate from Ballot at ¶ 5 [hereinafter “Klingbeil Decl.”]. Petitioner Fischer did not begin her investigation until 39 days later on July 9, 2022. Decl. of Christine Marie Fischer in Supp. Of Pet. Pursuant to Minn. Stat. § 204B.44 to Remove Candidate from Ballot at ¶ 12 [hereinafter “Fischer Decl.”]. These investigations consisted of the Petitioners performing 18 “residency checks” on 10 different days. Fischer Decl. at ¶¶ 12-25; Klingbeil Decl. at ¶¶ 5-13. Only seven of these so-called “residency checks” were performed at the Lake Mary house. Fischer Decl. at ¶¶ 13-25; Klingbeil Decl. at ¶ 5. On one of these checks, Petitioner Fischer acknowledges that Senator Westrom’s wife had her

car parked at the Lake Mary residence. Fischer Decl. at ¶ 25. Petitioners have also submitted a mere 14 minutes of video footage that documents their “investigation.” Pet. Exhibits M, N, O, P, Q, R, S, T, U, V, W, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK.

GENUINE ISSUES OF MATERIAL FACTS IN DISPUTE

Senator Westrom disputes all allegations, suggestions, or implications of Petitioners that he does not reside in Senate District 12. Additionally, Senator Westrom disputes any and all claims inconsistent with his attached Declaration.

ARGUMENT

I. Laches Is and Should be a Bar to this Petition, and the Petition Should be Dismissed.

A. The Petition must be dismissed based on the equitable doctrine of laches because Petitioners’ failure to act expeditiously in filing it has caused substantial prejudice to Senator Westrom, election officials, and the general electorate.

The Petition is barred by the equitable doctrine of laches because Petitioners unreasonably delayed in filing their claim resulting in substantial prejudice to Senator Westrom, election officials, and the Minnesota electorate. As a result, this Court should dismiss the Petition without reaching the merits.

1. Laches bars a petition challenging a candidacy that is unreasonably delayed, resulting in prejudice to others.

In Minnesota, it is well-settled that the equitable doctrine of laches bars a challenge to a candidacy that was not timely made. “Laches is an equitable doctrine which applies to ‘prevent 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.” *Clark v. Reddick*, 791 N.W.2d 292, 294 (Minn. 2010) (quoting *Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2002)).

Notably, the policy considerations underlying the doctrine of laches apply with particular force in the context of election-related disputes. This Court has “repeatedly stressed the need for diligence and expeditious action by parties bringing ballot challenges.” *Reddick*, 791 N.W.2d at 295; see *Clark v. Pawlenty*, 755 N.W.2d 293, 299-300 (Minn. 2008) (noting that “[m]ore than 50 years ago we declined to consider the merits of a ballot challenge because the ‘petitioner ha[d] not proceeded with diligence and expedition in asserting his claim’” (quoting *March v. Holm*, 238 Minn. 25, 29, 55 N.W.2d 302, 304 (1952) (second alteration in original))). Litigation involving ballot challenges necessitates close attention to matters of timing: “The very nature of matters implicating election laws and proceedings routinely requires expeditious consideration and distribution process.” *Pawlenty*, 755 N.W.2d at 300 (quoting *Peterson v. Stafford*, 490 N.W.2d 418, 419 (Minn. 1992)). Accordingly, this Court’s “longstanding concern for diligence and timeliness in the initiation of ballot challenges warrants particular attention by those who bring such actions.” *Reddick*, 791 N.W.2d at 295.

2. Petitioners waited 69 days after filing his affidavit of candidacy to file their Petition; this constitutes unreasonable delay.

“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). As this Court recently reasserted “[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.” Order at 4, *Olson v. Simon*, No. A22-1070 (Minn. filed Aug. 5, 2022), quoting *Monaghan* at 330 (In *Olson*, the petitioner delayed two months in asserting her claim).

This Court has held that a petitioner’s duty to inquire into the facts underlying a purported election-related challenge is triggered at the time the facts giving rise to such challenge are publicly disclosed. *See also, Clark v. Reddick*, 791 N.W2d 292, 293-96 (Minn. 2010) (concluding: “[a] change in [respondent’s] party status to “Independence,” occurring 2 weeks after the deadline for filing for elective office, should have aroused [petitioner’s] suspicions and should have been sufficient... to trigger a duty on the part of a political opponent to inquire into the circumstances of the change.”).

Here, Petitioners concede that Senator Westrom’s intent to relocate was first announced when he publicly stated his intent to move to Douglas County and run for election in District 12 during a radio interview in the days prior to March 9, 2022. Pet. at ¶ 30. A follow up article dated March 9, 2022 confirmed Senator Westrom’s intent to move and run for the State Senate. *Id.* Petitioners’ concession demonstrate that they were well-aware of the potential residency issue months before their known right to challenge Senator Westrom’s candidacy ripened. Shortly thereafter, Senator Westrom filed his affidavit of candidacy seeking to run for State Senator for District 12 on May 31, 2022, thereby triggering Petitioners’ known right to challenge Senator Westrom’s candidacy. *Id.* at ¶ 23. However, Petitioner Fischer did not begin her attempts to investigate Senator Westrom’s residence until July 8, 2022. Fischer Decl. at ¶ 5-11. She did not physically travel to Senator Westrom’s residence until July 9, 2022. *Id.* at ¶ 12. Likewise, Petitioner

Klingbeil did not begin her attempts to investigate Senator Westrom's residence until July 8, 2022. Klingbeil Decl. at ¶ 5. The Petition seeking Senator Westrom's removal from the ballot was not properly filed until August 8, 2022, 152 days after Senator Westrom announced his intent to seek office which "should have aroused [Petitioners'] suspicions" of a potential residency issue, and 69 days after Senator Westrom filed his affidavit of candidacy, which, if such residency issue existed (which it doesn't), should have confirmed the potential residency issue.

The Court has applied laches to delays of far less egregious length, *see, e.g., Reddick*, 791 N.W.2d at 295 (concluding that laches barred consideration of petition to strike a candidate from the general election ballot where ballot challenge was filed more than 2 months after the amended affidavit of candidacy was publicly available), and even to delays of much shorter duration. *See, e.g., Carlson v. Ritchie*, 830 N.W.2d 887, 892 (Minn. 2013) (citing *Larkey v. Ritchie*, No. A12-1064, Order (Minn. filed June 28, 2012) (dismissing a petition seeking to strike a candidate from the primary ballot who allegedly did not reside in the district from which election was sought because the affidavit of candidacy showing the non-residency had been of record for 20 days before the petition was filed). Lastly, the Court has very recently applied laches to a delay of almost equal length to the one at hand. *See Order, Olson v. Simon*, No. A22-1070 (Minn. filed August 5, 2022). In *Olson v. Simon*, this Court concluded that laches barred consideration of a petition to strike a candidate from the primary ballot when the petition had been filed 65 days after the candidate had filed his affidavit of candidacy. *Id.* Here, as in *Olson*,

Petitioners failed to diligently investigate their claim and sat on their known right for over two months before filing their petition.

Petitioners' suspicion of Senator Westrom's residency necessitated extreme diligence and expeditious action immediately after Senator Westrom filed his affidavit of candidacy. Waiting over a month to begin any kind of investigation, and over two months to file a petition, after the Senator had publicly announced his intent to run almost six months earlier, is neither diligent nor expeditious action.

Additionally, there is nothing novel about the Petitioners' "evidence." Senator Westrom announced his intention to run in March, and confirmation of Senator Westrom's residence in May's public filing should have led Petitioners to immediately investigate the matter. They didn't. And the investigation they did was not so unique that it needed to wait five weeks to commence. In the end, Petitioners' investigation consisted of a few internet searches, occasionally driving by Senator Westrom's former home, and once trespassing at Senator Westrom's new residence. Simply, this could have been done anytime in the two months it took to launch this dragnet.

3. Petitioners' failure to act expeditiously in filing their Petition has resulted in significant prejudice.

The next inquiry in the laches analysis is whether Petitioners' delay resulted in prejudice to others. *See Reddick*, 791 N.W.2d at 295. It most certainly did.

Notably, the prejudice relevant to this analysis is not limited to that affecting the individual targeted for removal from the ballot. Rather, this Court considers any prejudice to "respondents, other election officials, other candidates, and the Minnesota electorate in

general.” *Clark v. Pawlenty*, 755 N.W.2d 293, 299-300 (Minn. 2008). Here, the prejudice resulting from Petitioner’s delay extends well beyond Senator Westrom.

First, state and county election officials will be significantly prejudiced by Petitioners’ claim. Petitioners’ decision to wait to file their petition means that there is a strong probability that their claims will not be resolved until after the time that county auditors are legally permitted to begin printing ballots. County auditors have an incentive to act as expeditiously as possible finalizing ballots after the primary date in order to have such ballots available to the public at least 46 days (i.e. Sept. 23, 2022) before the general election as required by Minnesota law. *See* Minn. Stat. § 203B.081. Upon information and belief, some of the Counties involved plan to send general election ballots to the printers on or about August 18, 2022.

Petitioners’ requested relief of removing Senator Westrom’s name from the ballot will frustrate election officials’ ability to organize and administer a proper absentee balloting process by delaying their ability to finalize ballots and make them available for the public. *See Reddick*, 791 N.W.2d at 295 (finding prejudice to election officials where the timing of Petitioner’s claim resulted in delay in printing ballots); *cf. Pawlenty*, 755 N.W.2d at 303 (explaining that the risk of creating errors or problems with the voting process “by mandating last-minute changes cannot be overlooked”).

Further, Petitioners’ delay in bringing this petition will cause significant prejudice to Senator Westrom. By waiting over two months to file the Petition, Petitioners have forced this Court to expedite Senator Westrom’s time for a response. *See Stude v. Kiffmeyer*, 712 N.W.2d 552 (Minn. 2006) (explaining that a petitioner challenging a

candidacy “must proceed promptly in view of the inherent limitations upon adequate judicial consideration” (quoting *Moe v. Alsop*, 180 N.W.2d 255, 260 (1970))). As a result, while Petitioners delayed filing their Petition for 69 days, Senator Westrom is thus forced to provide a near immediate response to the Petition. Additionally, Senator Westrom has already spent a substantial amount of time, treasure, and energy campaigning for an office that he has a constitutional right to seek. See *Clark v. Pawlenty*, 755 N.W.2d 293, 302-03 (Minn. 2008) (“[t]here would be prejudice to Justice Gildea [...]. Were we to grant the petition and strike Justice Gildea’s name from the primary ballot, she would be denied the right to run for an elected office for which she has already expended time, energy, and resources to file for candidacy, form a campaign committee, prepare and print election materials, and mount an election campaign- and for which she asserts that she has a constitutional right to run.”).

Lastly, this Court “cannot ignore the potential prejudice to the electorate in general” resulting from Petitioners’ delay. *Pawlenty*, 755 N.W.2d at 303. If this Court grants the petition and determines Senator Westrom to be ineligible to hold the office after the 79th day before the general election (*i.e.*, August 21, 2022), then Petitioners’ requested relief will be null and void as a vacancy in the nomination for a partisan office will occur, requiring a special election to fill the office. Minn. Stat. § 204B.13, subd. 1(a)(3), subd. 2(c). The special election for this office is held the second Tuesday of February in the year following the election. Minn. Stat. § 204B.13 subd. 7. If Petitioners’ challenge is successful under this scenario, the people of District 12 will have their general election votes rendered null and void, and they will be left unrepresented until February. This could

have far reaching impact for the state as a whole. 2023 will be the start of the legislative biennium, and both legislative chambers will be organizing based on the recently-elected majorities. If Senate District 12 is left without a Senator for over a month, and the parties are closely divided, legislative leadership and administration of the Senate could be in limbo until the special election is concluded.

II. In the Alternative to Dismissal on Laches, the Court’s Precedent in *McGrath* Counsels Nonintervention at This Late Stage.

State ex rel. McGrath v. Erickson, 281 N.W. 366 (1938), counsels that this Petition should be dismissed because the nominee is already determined. Contrary to *Parsons*,² the physical issuance of a notice of nomination shouldn’t be the defining point when – as here – the election was uncontested.

The purpose of “[t]he primary election is [], in part, to determine the nominee of a major political party in the general election among multiple party candidates for a partisan office.” Order at 5, *Landis v. Simon et al.*, No. A22-0804 (Minn. 2022), *citing* Minn. Stat. § 204D.03, subd. 3 (2020).³ When an office is uncontested, there is no primary election. This Court has recently ordered that a canvass for office, in a similar situation, is unnecessary. *Id.*

Senator Westrom was uncontested in the 2022 primary election. Pursuant to Minn. Stat. § 204D.03, subd. 3(a), there was no primary, and Senator Westrom was declared the

² *Parsons v. Hickey*, 201 N.W.2d 739 (Minn. 1972).

³ Minn. Stat. § 204D.03, subd. 3(a) provides in part: “If no more than one candidate files for nomination by a major political party for a partisan office, the candidate who filed must be declared the nominee upon the closing of filing.”

Republican nominee for the Senate District 12 general election at the close of filing on May 31, 2022.

In a contested election, the County and State canvassing boards meet to determine the winner based on which candidate received the most votes. *See* Minn. Stat. § 204C.32. Following this process, the Secretary of State issues a notice of nomination to those seeking state office. *Id.* The issuance of the notice of nomination follows the State canvass (sometime this week). As there was no primary election, there was no canvass for Senate District 12.

Consistent with the Court’s decision in *McGrath v. Erickson*, which construed an earlier version of the statute in question, the Court should refrain from ordering changes to the general election ballot once a certificate of nomination⁴ has been issued. *State ex rel. McGrath v. Erickson*, 281 NW 366 (1938). In *McGrath*, the issue was whether the Court had the authority to determine the eligibility of a state senate candidate after a certificate of nomination was duly issued. *Id.* Because a certification of nomination had been issued, the Court concluded that it “must yield the determination thereof to the senate of the state upon receiving the votes cast in his favor at the general election.” *Id.* at 366-67.

Although *McGrath*’s scope is limited by subsequent cases, *McGrath* is applicable in this instance. *Parsons v. Hickey*, 201 N.W.2d 739 (Minn. 1972), limited the scope of *McGrath* by holding that the *McGrath* rule did not apply where the case was commenced prior to the certificate of nomination physically being issued to the candidate. *Id.* at 741

⁴ Under the current statutory scheme, notice of nomination, not a certificate of nomination, is issued following the state canvass. Minn. Stat. 204C.32.

(“the fact remains that the proceeding had been commenced and the certificate had not issued [...]”). The facts in *Parsons* are, however, distinguishable from this case. In *Parsons*, the petitioner first challenged the eligibility of a candidate in the primary election. In contested races, the nominee is not known and finalized until after the primary election and once the certificate of nomination has been issued. There, under the *McGrath/Parsons* holdings, the issuance of the certificate of nomination presents a logical cut-off point to timely filing this type of petition. Here, where Senator Westrom is unchallenged and, by law, is declared the Republican nominee at the close of filing on May 31, 2022, the candidate is known and final as of at that point. The certificate of nomination in this case occurs after the primary for administrative efficiency but could occur at any time after the close of filing for candidacy. Unlike *Parsons*, the issuance of the certificate of nomination in the case of unchallenged major party candidate carries less significance because the nominee is, by operation of law, already determined for months. Here, consistent with *McGrath/Parsons*, the cut-off point to timely file this type of action should be a reasonable period of time after the close of filing for candidacy – not at a point which bears little significance to the finality of an unchallenged major party nominee. If this Court should find *Parsons* applicable, the scope of *Parsons* should be limited to matters where the primary is contested and petitioners have at least attempted to remove the candidate from the primary ballot. In the case where there were months of certainty as to the outcome of a primary election, petitioners should be held to a higher bar.

Here, Petitioners never attempted to challenge Senator Westrom’s placement on the primary ballot, and they commenced this action 69 days after Senator Westrom was

declared the nominee on May 31, 2022. *McGrath/Parsons* counsels this Court to deny rewarding petitioners for waiting in the weeds for the time post-primary to bring eligibility claims that they made no attempt to raise before.

The potential harm caused by the lack of such a rule justifies the limitation. Control of the legislative chambers can be close run things.⁵ If certainty in nomination, as endorsed by *McGrath*, is undercut, parties can manipulate the election calendar to ensure legislative control. The first votes in the House and Senate in each biennium are to organize the Chambers. In the House, the Speaker is elected, in the Senate, the President and Majority Leader. Strict adherence to *Parsons* could lead to significant legislative turmoil. If candidates were removed after the 79th day before the general election, the provisions of Minn. Stat. § 204B.13 would control. This would delay the sitting of members until after the special election in February, over a month after the beginning of the biennial session. *Parsons* shouldn't reward petitioners who have sat on a known claim against an uncontested candidate and did not make any attempt to bring a petition prior to the primary election.

In this case, there was never any doubt that Senator Westrom would be the Republican nominee for Senate District 12. Petitioners made no effort to assert their claim at any time before the primary or near the time Senator Westrom was declared the nominee. *Parsons* should not be the basis to reward Petitioners' unreasonable delay where the

⁵ In 2018 when the Senate convened, the caucus split was 34-33 due to resignations and a special election. See, <http://www.lrl.mn.gov/history/caucuses>.

primary election outcome is never in doubt. *McGrath* rather should counsel that, absent other extenuating factors, once a primary election is concluded and a nominee declared, the ballot should be left alone.

III. The Petition Fails as a Matter of Law as it Fails to Provide Evidence Sufficient to Prove Lack of Residence.

A. Petitioners’ “Investigation” Fails to Show that Senator Westrom Did Not Establish Residence in District 12.

On February 15, 2022, the Minnesota Special Redistricting Panel released the new boundaries for Legislative District 12 that placed Senator Westrom’s prior residence outside of the new District. Pet. at ¶ 13. On March 9, Senator Westrom announced his intention to run for the newly-redrawn Senate District 12. On May 31, he filed to run for office. Pet. at ¶ 23.

38 days later, on July 8, Petitioners began their investigation. This investigation consisted of Ms. Fischer and Ms. Klingbeil going primarily to the former Elbow Lake residence on overlapping days. There were only six days where Petitioners visited the Lake Mary residence, on one of which, July 31, Ms. Fischer admits seeing people at the home. Fischer Decl. at ¶ 25.

In total, Petitioners are basing the entirety of their petition on only 10 days of observation where they (either together or separately) visited primarily the former address of Senator Westrom. (Ms. Fischer claims 7 days: July 9, 18, 19, 20, 21, 28, 31, and Ms. Klingbeil claims 6 days: July 8, 17, 18, 19, 28, and August 2) (Fischer Decl. at ¶¶ 12-25; Klingbeil Decl. at ¶¶ 5-13). Petitioners also submit video evidence of their investigation. These videos add up to a grand total of **14 minutes and 3 seconds** of observations. Pet.

Exhibits M, N, O, P, Q, R, S, T, U, V, W, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK. The whole of this petition is based on less time than the average coffee break.

In prior residency cases, the Court has found that the event of redistricting provides context for candidates' actions in establishing residency. In *Piepho v. Bruns*, 652 N.W.2d 40 (Minn. 2002), the Court found that the candidate's quick and consistent action in finding housing within his new district, even though his physical presence was limited and the housing appeared temporary to an outside observer, was enough to establish residency within the district. The Court found that Senator Hottinger made his intent to move his residency into the new district through "his announcement to that effect, execution of the lease, voter registration, request for mileage reimbursement, and driver's license application." *Id.* at 46.⁶

Additionally, in *Olson v. Zuehlke*, 652 N.W.2d 37 (Minn. 2002), the Court held that Representative Solberg had established residency by signing a purchase agreement and *attempting* to move, even though his physical presence was limited and his move was delayed. In fact, Mr. Solberg's presence was far more sparse than Petitioners allege here. In *Olson*, the Court found that "[f]rom May 5 to July 1, 2002, Solberg collected his mail and visited the townhouse numerous times. He did not have a key to the unit, but stayed overnight there on April 30, 2002." *Id.* at 39. Even though during this time Mr. Solberg spent time at his cabin, on vacation, and stayed "primarily at the Bovey house," the Court

⁶ In *Piepho*, the Court noted that Senator Hottinger didn't actually move into the leased space until May 24, spending May 1-24 in another room in the building with no kitchen. (May 5 being the operative date for the 6-month window.)

still concluded that he “had done all that is reasonably possible to establish residency in [the new district] and in fact established such residency.” *Id.*

Even if Petitioners’ allegations were true, which they are not, this Court has found far less presence and intent as being sufficient to establish a change of residency by candidates after redistricting. In this case, as explained above, Senator Westrom has gone far beyond what others have done to establish residency. In short order, he found a new residence, moved furniture and various items into it, slept there for the first time on May 7, 2022 with his family, established utilities, changed his driver’s license, and homesteaded the property. These actions, as a matter of law, sufficiently demonstrate the requisite physical presence and intent to reside in his new residence within the newly created District 12.

B. Petitioners Publicly Admit to Illegally Obtaining Evidence in Violation of Minnesota Privacy Laws. Petitioners Should be Admonished.

Under both the criminal statutes and civil common law of Minnesota, it is illegal for a person to invade another’s privacy, and Petitioners gathered evidence in violation of Senator Westrom’s right to privacy in his residence.

1. Petitioners gathered evidence in violation of Minnesota’s peeping tom statute and should be admonished.

Minnesota’s peeping tom statute states that:

A person is guilty of a gross misdemeanor who enters upon another’s property, surreptitiously gazes, stares, or peeps in the window or any other aperture of a house or place of dwelling of another, and does so with intent to intrude upon or interfere with the privacy of a member of the household.

Minn. Stat. § 609.746, subd. 1(a).

Petitioners both admit to facts demonstrating that they violated Minn. Stat. § 609.746, subd. 1(a) in the course of surveilling Senator Westrom. Specifically, both Petitioners skulked around Senator Westrom’s current and previous residences numerous times while recording the premises. Fischer Decl. at ¶¶ 13-25; Klingbeil Decl. at ¶ 5. Petitioner Fischer even stalked through the neighboring RV Park and the adjacent forest to record Senator Westrom’s property, blatantly disregarding and walking past “No Trespassing” signs installed by the property’s previous owner. Fischer Decl. at ¶ 16; *see also* Response Exhibit A. Petitioners, along with their supporters, peered into and recorded the interior of the properties to try and discern how lived in the properties were. Petitioner Klingbeil was quoted in the Swift County-Monitor News as saying “[t]he property said, ‘no trespassing.’ We didn’t care. We did it anyway.” Response Exhibit B.

In *State v. Hardwig*, the Minnesota Court of Appeals agreed that a person violates § 609.746, subd. 1(a) by walking around a private dwelling and looking into the home’s windows. 355 N.W.2d 333, 334-335 (Minn. Ct. App. 1984). The district court found, and the appellate court affirmed, that “there was surreptitiousness in that there were heavy bushes preventing anyone from seeing him from the neighboring home, even though it was daylight.” *Id.* There is a privacy fence around the Lake Mary house, as well as an adjacent wooded area. Fischer Decl. at ¶16. Similar to the circumstance in *Hardwig*, the Petitioners and their colleagues were able to skulk around and record Senator Westrom’s home with the concealing benefit of this privacy fence, which existed when the property was purchased, and wooded area.

A reasonable expectation of privacy attaches when a person has a subjective expectation of privacy in that place and society recognizes that expectation as reasonable. *In re. Welfare of B.R.K.*, 658 N.W.2d 565, 571 (Minn. 2003). Senator Westrom has a subjective expectation of privacy in his Lake Mary home. It has a privacy fence and is bordered by an RV park and wooded areas. There are explicit “no trespassing” signs on the property as well, which were installed by the previous owner. It is reasonable to expect privacy when you are surrounded by a fence, wooded areas, and have signs specifically to keep unauthorized individuals away. Additionally, any person, including a candidate, can reasonably expect that he or she is not being constantly surveilled in his or her own home. This type of surveillance offends any person’s sense of privacy and common decency. Furthermore, to permit such action without comment will invite more extreme and potentially dangerous actions in future cases.

VENUE

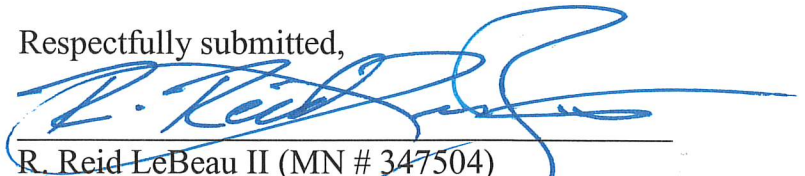
Respondent respectfully requests that if this Court issues an order appointing a Special Master to conduct a fact-finding hearing, it appoint a Special Master in the Douglas County area. All of the parties are situated in or near Douglas County, and it would provide Respondent with a greater opportunity to call witnesses in his defense as they would be more freely available in the area.

CONCLUSION

Senator Westrom’s public announcement of his intent to run for office placed an onus on the Petitioners to act expeditiously after Senator Westrom filed his affidavit of candidacy. Rather than acting expeditiously, Petitioners waited over a month to begin their

investigations and over two months to file their Petition. Their delay has resulted in significant prejudice to Senator Westrom, the state and county election officials, and the general electorate. As such, their Petition is barred by laches. Further, Senator Westrom will, in a matter of days after this filing, obtain his certificate of nomination for the general election. The Court should not accept Petitioners' invitation to alter the ballot. Finally, Senator Westrom and his family have engaged in far more activity than other candidates in previous redistricting years to establish a new residence. Therefore, this Petition should, and must, be dismissed.

Respectfully submitted,



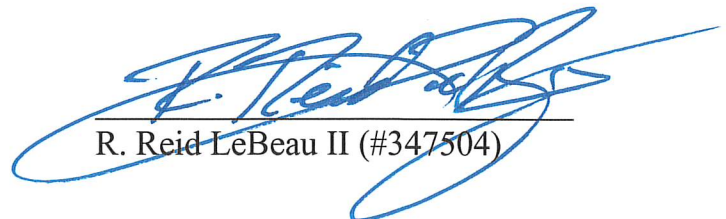
Date: August 15, 2022

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ACKNOWLEDGEMENT

The undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.211, sanctions may be imposed if the Court finds violation of this section.

Dated: August 15, 2022



R. Reid LeBeau II (#347504)