

No. A__-_____

**STATE OF MINNESOTA
IN SUPREME COURT**

Minnesota Voters Alliance; Greg
Ryan; Chris Bakeman,

Petitioners,

Republican Party of Minnesota,

Petitioner,

v.

Timothy Walz, in his official capacity
as Governor of the State of Minne-
sota; Steve Simon, in his official ca-
pacity as Secretary of State of the
State of Minnesota; Tracy West, in
her official capacity as County Audi-
tor of Ramsey County, Minnesota;
David Triplett, in his official capac-
ity as chief election official of Ram-
sey County, Minnesota; Ramsey
County.

Respondents.

**FIRST AMENDED PETITION
FOR CORRECTION OF ERRORS
AND OMISSIONS**

MINN. STAT. § 204B.44

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
SUPPORTING DOCUMENTS.....	ii
INTRODUCTION	1
JURISDICTION.....	5
PARTIES	7
BACKGROUND FACTS AND RELEVANT STATUTES.....	9
I. The Democrat-Farmer-Labor Party candidate in House District 40B lost an election contest by failing to reside in the district for the legally required period of time.....	9
II. Curtis Johnson lost his election contest, is not an incumbent, cannot resign from an office he does not hold and has been disqualified from, and the seat he attempted to resign from is not vacant because the current officeholder remains in office.	11
III. Governor Tim Walz issued an unlawful writ of special election.	15
IV. Absent this Court’s intervention, a special election will be unlawfully held on January 28, 2025.....	17
RESPONDENTS’ ERRORS AND LEGAL BASIS FOR CORRECTION.....	18
I. Governor Tim Walz issued an unlawful Writ of Special Election because it was premature.	20
II. Governor Walz’s Writ of Special Election is unlawful because it fails the notice requirements of Minnesota Election Law, which can be corrected now, before any election.....	26
CLAIMS FOR RELIEF	31

SUPPORTING DOCUMENTS

1. Affidavit of Andrew Cilek
2. Affidavit of Greg Ryan
3. Affidavit of Chris Bakeman
4. Affidavit of Donna Bergstrom
5. Affidavit of Allen Shen
6. Affidavit of James Dickey with Exhibits A-C
7. Any public records or publicly available documents referenced herein.

TO: THE SUPREME COURT OF THE STATE OF MINNESOTA:

Pursuant to Minnesota Statutes section 204B.44, Petitioners Minnesota Voters Alliance, Greg Ryan, Chris Bakeman, and the Republican Party of Minnesota petition the Supreme Court of the State of Minnesota for an order quashing the Writ of Special Election ordered by Governor Tim Walz on December 27, 2024, or ordering the recall of said writ, and requiring Respondents Governor Tim Walz, Secretary of State Steve Simon, Ramsey County Auditor Tracy West, Ramsey County Elections Manager David Triplett (all official capacity), and Ramsey County to cancel the upcoming January 28, 2025 special election, and otherwise enjoining any election for Minnesota House District 40B from occurring on that date. Petitioners state and allege as follows:

INTRODUCTION

1. Because Governor Tim Walz unlawfully issued a writ of special election for Minnesota House District 40B on December 27, 2024, and because Respondents are planning to unlawfully hold a special election on January 28, 2025, the Court should quash and declare invalid the writ, or order its recall, and enjoin any such special election from occurring on that date.

2. “[T]he legislature intended to protect potential candidates for public office from the errors and omissions of those enumerated persons charged with properly completing the procedural and mechanical duties attendant to the election process.” *Schroeder v. Johnson*, 252 N.W.2d 851, 852 (Minn. 1976).

3. “The foundation upon which an election system rests is the confidence which the electorate places in that system.” *In re Contest of Election of Vetsch*, 71 N.W.2d 652, 659 (Minn. 1955).

4. Jamie Becker-Finn is the current representative for the Minnesota House of Representatives from District 40B until January 6, 2025. <https://www.house.mn.gov/members/profile/15457> (accessed Jan. 3, 2025); Minn. Const. art. IV, §4; Minn. Stat. § 204D.02, subd. 2; Minn. Stat. §3.011.

5. At the time the writ was issued, there was no vacancy for the seat under Minnesota law.

6. At the time the writ was issued, Curtis Johnson was neither an officeholder nor an incumbent. He received the most votes for representative of House District 40B in the general election held on November 5, 2024 to replace Representative Becker-Finn, but was subsequently held by the Ramsey County District Court to be ineligible to hold that seat as the “result[] from a successful election contest.” Minn. Stat. §204D.19, subd. 4; *see also* Findings of Fact, Conclusions of Law, and Order, *Wikstrom v. Johnson*, No. 62-CV-24-7378 (Minn. Dist. Ct. Dec. 20, 2024) (attached as Exhibit C to Dickey Aff.).

7. Thus, any special election to fill the seat for which Mr. Johnson is ineligible must proceed from a writ issued by the Governor pursuant to the provisions of Minn. Stat. §204D.19, subd. 4, which expressly and specially applies where “a vacancy results from a successful election contest.”

8. Under that law—which specially applies to this exact situation and was enacted by the legislature for no other purpose—the Governor may only issue a writ calling a special election “22 days after the first day of the legislative session,” absent other action by the legislature (which has not occurred). *Id.*

9. The timing of this matter is a policy decision made by the legislature, balancing the competing interest of minimizing the time a district is without a representative and the need for a fair, properly noticed election that allows for full participation by voters and candidates. The legislature deemed that in the situation where an election contest causes the ineligibility of a contestee, the Governor must issue a writ calling for a special election 22 days after the start of the legislative session, Minn. Stat. §204D.19, subd. 4, which session begins on January 14, 2025. The legislature also deemed that the public should have at least five days’ notice of when the filing period closes for residents in a legislative district to file an affidavit of candidacy, should they choose to seek election to the office. *See* Minn. Stat. §204D.22, subd. 2.

10. Candidates and political parties rely on these notice periods and deadlines to timely file for office, recruit candidates to run for office, message to voters, and prepare for election day. *See* Bergstrom Aff.; Shen Aff.

11. Thus, the earliest a writ may issue under current circumstances is Wednesday, February 5, 2025.

12. Once the writ for these special circumstances is properly issued, a special election proceeds thereafter within 35 days of the issuance of the writ, as soon as possible so long as the notice procedures of Minn. Stat. §204D.22, subd. 3 are followed, and so long as there is no conflict with a buffer period around state holidays. Minn. Stat. §204D.19, subd. 2.

13. Contrary to clear Minnesota Election Law, on December 27, 2024, Respondent Governor Tim Walz issued a Writ of Special Election, filed by Respondent Secretary of State Steve Simon, falsely declaring a vacancy in District 40B “caused by the resignation of Representative-elect Curtis Johnson, effective immediately.” Dickey Aff. Ex. B, *available at* <https://officialdocuments.sos.state.mn.us/Files/GetDocument/146365> (opens .pdf) (accessed Jan. 3, 2025).

14. It is impossible for a representative-elect to resign and create a current vacancy for an office held by another representative, so it was impossible for Curtis Johnson’s letter to create a “vacancy” on December 27, 2024.

15. Further, the December 27, 2024 Writ called for a filing period for candidates closing December 31, 2024, at 5:00 PM. Not only was the rushed and unlawful writ premature, in further contravention of the law it only allowed for four days’ notice to the public as to when the filing period closed. Petitioners have found no other example in any special election in the history of Minnesota with similar facts and such an impetuous timeline.

16. All Respondents have violated or are about to violate the Minnesota Election Law by attempting to hold a special election for House District 40B that is not authorized by statute. This Court should immediately grant the relief sought and correct these errors so that Minnesotans can have confidence that their elections are conducted in a fair and lawful manner.

17. The Court should issue a decision in this matter prior to January 28, 2025, when the illegal special election is planned to occur.¹

18. Petitioners do not believe there will be any dispute of fact requiring the appointment of a Special Master.

19. Petitioners will effect service on the named Respondents and the two identified candidates for the illegal special election, Paul Wikstrom and David Gottfried, as well as any other individuals on whom the Court might order service.

JURISDICTION

20. This Court has jurisdiction over this matter pursuant to Minn. Stat. § 204B.44, which allows “[a]ny individual” to file a petition directly with this Court asking it to correct an “error” that has occurred or is about to occur

¹ See Order, *Jacobs v. City of Columbia Heights*, No. A23-1780 (Minn. Feb. 9, 2024) (February 9, 2024 order cancelling recall election set for February 13, 2024).

“of any . . . county auditor . . . the secretary of state . . . or any other individual charged with any duty concerning an election.”

21. Respondents are all officials expressly named in section 204B.44 or charged with duties concerning Minnesota elections.

22. The petition “shall be filed with any judge of the supreme court in the case of an election for state or federal office.”² Minn. Stat. §204B.44(b).

23. The legislature has granted this Court jurisdiction over special elections. Minn. Stat. §204D.18 (“Except as provided in sections 204D.17 to 204D.27, all of the provisions of the Minnesota Election Law are applicable to special elections as far as practicable.”); Minn. Stat. §200.01 (defining Minnesota Election Law to include Minn. Stat. ch. 204B).

24. As described further herein, on December 27, 2024, Respondent Governor Tim Walz issued a Writ of Special Election. This writ ordered a special election to be held on January 28, 2025, to elect a representative to House District 40B. Dickey Aff. Ex. B.

² Petitioners filed this action without delay. Governor Tim Walz’s unclean hands in issuing a premature writ requiring noncompliant notice timelines has forced Petitioners to act with haste to file the initial petition just eight days after the rushed writ was issued and two days after the unlawfully compressed filing and withdrawal period closed. Petitioners subsequently filed this first amended petition the very next day.

25. This action, brought under Minn. Stat. § 204B.44, is necessary to prevent the error of Ramsey County and the other Respondents holding an illegal special election for House District 40B resulting from the error of an illegally issued Writ of Special Election and resulting actions.

PARTIES

26. Petitioner Minnesota Voters Alliance is a grassroots, non-partisan organization which focuses on election integrity, research, voter education, and advocacy. MVA and its volunteers and supporters have a strong interest in Minnesota election officials strictly and properly following Minnesota election law. *See* Cilek Aff. ¶3.

27. The individual petitioners, Greg Ryan and Chris Bakeman, are supporters of and volunteers for MVA and are residents of and eligible voters for House District 40B. *See* Cilek Aff. ¶6; Ryan Aff. ¶¶2-3; Bakeman Aff. ¶¶2-3.

28. The Republican Party of Minnesota is a major political party. Members of the Republican Party of Minnesota participate in the election process and are residents of every legislative district in the State of Minnesota. The Republican Party of Minnesota has an interest in recruiting, endorsing, and supporting candidates to seek elected office in both general and special elections. *Bergstrom Aff.* ¶¶3-4. The Republican Party of Minnesota is injured when officials fail to follow Minnesota Election Law because the Party relies

on the law's notice and timing provisions for that recruitment, endorsement, and support process. The Republican Party of Minnesota is aware of at least one member of its party who was a previous candidate for House District 40B who was unable to file an affidavit of candidacy as a result of the unlawful Writ of Election at issue in this matter. Bergstrom Aff. ¶6; Shen Aff. ¶¶5-9.

29. Respondent Governor Tim Walz is the Governor of Minnesota and is sued in his official capacity. As Governor, Walz is responsible for faithfully executing the laws of the state and issuing a writ of election when appropriate under those laws. Minn. Const. art. V, §3; Minn. Stat. §§204D.17-27.

30. Respondent Secretary of State Steve Simon is Minnesota's chief election official, who filed the writ of special election at issue in this matter, certified the names of the candidates for the election, will prepare the polling place rosters for the special election, and will issue a certificate of election for a successful candidate in the planned special election unless enjoined. Minn. Stat. §§204D.22-27.

31. Respondent Ramsey County Auditor Tracy West is Ramsey County's auditor and charged with performing or overseeing election duties related to the planned January 28, 2025, special election and delivering the returns of the election to the county canvassing board. *E.g.*, Minn. Stat. §204D.27.

32. Respondent Ramsey County Elections Manager David Triplett is the elections manager for Ramsey County and, on information and belief, acts as Ramsey County's chief elections officer and performs powers or duties required to be performed by the county auditor related to the planned January 28, 2025, special election.

33. Respondent Ramsey County is the county in which the planned special election is to be held, and the county whose power its officials wield and statutory duties its officials are required to perform, and the body whose power the county canvassing board wields. Minn. Stat. §204D.27.

BACKGROUND FACTS AND RELEVANT STATUTES

I. The Democrat-Farmer-Labor Party candidate in House District 40B lost an election contest by failing to reside in the district for the legally required period of time.

34. Minnesota elections are governed by our Constitution and the Minnesota Election Law. These laws detail the qualifications of elected officials and how elections are conducted.

35. Curtis Johnson was the Democrat-Farmer-Labor candidate for House District 40B. The current House District 40B officeholder, Jamie Becker-Finn, did not seek reelection. Rep. Becker-Finn's office expires on January 6, 2025. *See* Minn. Const. art. IV, § 4; Minn. Stat. §204D.02, subd. 2; Minn. Stat. §3.011.

36. The general election was held on November 5, 2024. On information and belief, on November 13, 2024, the Ramsey County Canvassing Board declared Curtis Johnson elected as having received the highest number votes in the House District 40B election. See <https://www.ramseycounty.us/content/canvassing-board-1> (accessed Jan. 3, 2025); <https://electionresults.sos.mn.gov/results/Index?ErsElectionId=170&scenario=StateRepresentative&DistrictId=434&show=Go> (House District 40B results) (accessed Jan. 4, 2025).

37. A valid, timely election contest pursuant to Minn. Stat. §209.02 was filed in Ramsey County District Court by Paul Wikstrom, a resident of House District 40B, alleging that Johnson, *inter alia*, violated the residency requirements specified in article IV, section 6 of the Minnesota Constitution.

38. The contest proceeded according to chapter 209. The court was required to decide the contest. Minn. Stat. §209.10, subd. 3 (“The judge shall decide the contest, issue appropriate orders, and make written findings of fact and conclusions of law.”)

39. On December 20, 2024, the district court decided the election contest. The court ruled in favor of the contestant, Wikstrom, and against the contestee, Johnson. Findings of Fact, Conclusions of Law, and Order, *Wikstrom v. Johnson*, No. 62-CV-24-7378 (Minn. Dist. Ct. Dec. 20, 2024); Dickey Aff. Ex. C.

40. Thus, the election contest resulted in a “successful election contest,” Minn. Stat. §204D.19, subd. 4.

41. The court concluded that Johnson failed to meet constitutional residency requirements, ordered that Johnson “is not eligible to serve as a representative for Minnesota House District 40B,” and enjoined Johnson from “taking the oath of office and from acting as a member of the Minnesota House of Representatives for House District 40B.” Findings of Fact, Conclusions of Law, and Order, *Wikstrom v. Johnson*, No. 62-CV-24-7378 (Minn. Dist. Ct. Dec. 20, 2024); Dickey Aff. Ex. C.³

42. The matter was not appealed within the 10 days required by Minn. Stat. §209.10, subd. 4, and thus the district court’s orders remain in effect.

II. Curtis Johnson lost his election contest, is not an incumbent, cannot resign from an office he does not hold and has been disqualified from, and the seat he attempted to resign from is not vacant because the current officeholder remains in office.

43. On December 27, 2024, Johnson published a letter stating that he would not be appealing the election contest and purporting to resign from an office he does not hold. Dickey Aff. Ex. A.

³ The district court also ordered that unless the matter was appealed to this Court (which it was not), that “the court administrator shall transmit the findings, conclusions, orders, and records of the proceedings to the Chief Clerk of the Minnesota House of Representatives no later than January 14, 2025 (the first day of the legislative session).” Findings of Fact, Conclusions of Law, and Order, *Wikstrom v. Johnson*, No. 62-CV-24-7378 (Minn. Dist. Ct. Dec. 20, 2024); Dickey Aff. Ex. C.

44. Minnesota statutes regulate how resignations occur. The law requires that “Resignations shall be made in writing signed by the resigning officer: (1) By *incumbents* of elective offices, to the officer authorized by law to fill a vacancy in such office by appointment, or to order a special election to fill the vacancy” Minn. Stat. §351.01, subd. 1 (emphasis added)

45. A vacancy is also defined by statute. Minn. Stat. §351.02 states:

Every office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:

- (1) the death of the *incumbent*;
- (2) the *incumbent's* resignation;
- (3) the *incumbent's* removal;
- (4) the *incumbent's* ceasing to be an inhabitant of the state, or, if the office is local, of the district, county or city for which the incumbent was elected or appointed, or within which the duties of the office are required to be discharged;
- (5) the *incumbent's* conviction of any infamous crime, or of any offense involving a violation of the official oath;
- (6) the *incumbent's* refusal or neglect to take the oath of office, or to give or renew the official bond, or to deposit or file such oath or bond within the time prescribed;
- (7) the decision of a competent tribunal declaring the *incumbent's* election or appointment void;
- (8) the death of the person elected or appointed to fill a vacancy, or for a full term, before the person qualifies, or before the time when by law the person should enter upon the duties of the office, in which case the vacancy shall be deemed to take place at the time when the term of office would have begun had the person lived.

(emphasis added).

46. No resignation or vacancy defined by statute has occurred. The incumbent for House District 40B, Rep. Jamie Becker-Finn, remains in the seat until January 6, 2025.⁴

47. The legislature has also provided in Minn. Stat. § 351.055:

If a future vacancy becomes certain to occur and the vacancy must be filled by a special election, the appropriate authorities may begin procedures leading to the special election so that a successor may be elected at the earliest possible time. For prospective vacancies that will occur as a result of a resignation, preparations for the special election may begin immediately after the written resignation is received by the official provided in section 351.01, subdivision 1.

48. The first clause of this provision allows that “appropriate authorities may begin procedures leading to the special election,” but it does not regulate the timing of the issuance of a writ for the special election or when special election procedures must occur. The timing of the issuance of a writ of election for a special election in this circumstance, and the notice provisions for such an election, and the deadline for holding such an election, are specifically regulated by “sections 204D.17 to 204D.27.” Minn. Stat. §204D.17, subd. 1.

⁴ Johnson could not have “resigned” from an office he did not hold on December 27, 2024, under the “contingent resignations” provision of Minn. Stat. §351.01, subd. 3(b), either, because he was not an “incumbent” on December 27, 2024. See Minn. Stat. §351.01, subd. 1(1) (“incumbents of elective offices” may resign).

49. Also, “begin procedures leading to the special election” is starkly different from “calling for a special election.” *Contra* Minn. Stat. §204D.19. Section 351.055 simply does not regulate the timing of the issuance of a writ.

50. The second clause likewise does not regulate the timing of the issuance of a writ; rather, it notes the timing in which those with election-related duties may begin preparing for a special election after a true resignation occurs. But the second clause does not apply to Johnson, because resignations are defined in Minn. Stat. §351.01, which by its own terms only applies to “incumbents,” which Johnson is not.

51. Section 351.055 does not regulate the timing of the issuance of a writ of election, or the timing of the holding of a special election. The statute authorizes election officials to begin “election procedures” such as preparing ballots. *See* Minn. Stat. § 204D.25, subd. 1 (“[T]he county auditor must prepare separate ballots for a special primary and special election . . .”).

52. Further, the reference to “the earliest possible time” for holding a special election simply means that election officials can make “preparations” so that an election can be held at the earliest possible time after a writ is validly issued. In this case, all arrangements for a special election to be held no later than 35 days after February 5, 2025, could be made.

53. A recent example of these statutes being properly utilized (in terms of the timing of the issuance of the writ calling for a special election) can

be found in the manner in which former Rep. Kurt Daudt's seat was filled. Daudt, then a true incumbent who had just been re-elected, notified Governor Walz of his future resignation on January 10, 2024, with his resignation effective February 11, 2024. <https://www.house.mn.gov/sessiondaily/Story/18043>. No vacancy existed on January 10, 2024. As such, Governor Walz did not issue a writ at that point in time. Instead, Governor Walz issued a writ of election on February 13, 2024, *after* the vacancy arose. https://www.lrl.mn.gov/archive/elections/writs/writ_of_special_election_20240213_27B.pdf (opens .pdf). The timing of the writ, coming after the vacancy arose, was proper. The special primary election was held February 29, 2024, and the special election was held March 19, 2024—exactly 35 days after the issuance of the writ. This was also proper, even if the latest possible date.

III. Governor Tim Walz issued an unlawful writ of special election.

54. On December 27, 2024, Governor Tim Walz filed a Writ of Special Election with the Secretary of State. Dickey Aff. Ex. B.

55. Minnesota law is clear on when the governor may call a special election after a successful election contest. Section 204D.19, subd. 4 states:

If a vacancy results from a successful election contest, the governor shall issue 22 days after the first day of the legislative session a writ calling for a special election unless the house in which the contest may be tried has passed a resolution which states that it will or will not review the court's determination of the contest. If the resolution states that the house will not review the court's

determination, the writ shall be issued within five days of the passage of the resolution.

56. The first day of the legislative session is January 14, 2025. February 5, 2025, is “22 days after the first day of the legislative session.”⁵

57. Governor Walz issued his Writ of Special Election on Friday, December 27, 2024. This is 18 days *before* the first day of the legislative session.

58. Governor Walz’s Writ of Special Election states that “Affidavits of candidacy and nominating petitions for District 40B must be filed with the Secretary of State or the county auditor of Ramsey County on Tuesday, December 31, 2024. Affidavits of candidacy and nominating petitions must be filed by 5:00 p.m. that day [A]ffidavits of withdrawal may be filed . . . until 5:00 p.m. on Thursday, January 2, 2025.” Dickey Aff. Ex. B.

59. The effect of this unlawful writ was a filing period where candidates had one single day in which to file their affidavit of candidacy in person, December 31, from 8:00am to 5:00pm. That allowed one full business day,

⁵ Section 204D.19, subd. 4, ties the timing of the issuance of a writ of special election to the first day of “legislative session,” not the date the legislative “term” begins. In past biennia, those two dates occurred in immediate succession. *Compare* Minn. Stat. §3.011 (2022) *with* Minn. Stat. §204D.02, subd. 2 (2022). But in 2023, the legislature amended Minn. Stat. §3.011 such that there is an 8-day period between the beginning of the legislative “term” and the legislative “session.” *Compare* Minn. Stat. §3.011 (2024) *with* Minn. Stat. §204D.02, subd. 2 (2024).

December 30 (December 28 and 29 were a weekend), for candidates to decide whether to file the following day.

60. For a special election, the legislature requires that “[t]he county auditor shall post a copy of the writ in the auditor’s office at least five days before the close of the time for filing affidavits of candidacy for the special election.” Minn. Stat. §204D.22, subd. 2.

61. The time for filing affidavits of candidacy in Governor Walz’s unlawful Writ of Special Election for House District 40B was December 31, 2024, at 5:00pm. Five days before the close of the time for filing is December 26, 2024, one day *before* the writ was issued.

62. The failure to honor the statutory notice requirement is another example of Governor Walz ignoring the express requirements of the law in a rush to order a special election and unlawfully fill a House seat that is not yet vacant.

IV. Absent this Court’s intervention, a special election will be unlawfully held on January 28, 2025.

63. The Secretary of State has now improperly certified, based on the illegal writ, that there are two candidates (one from each major party) for the House District 40B special election: Paul Wikstrom and David Gottfried.

<https://www.sos.state.mn.us/election-administration-campaigns/elections->

<calendar/house-district-40b-special-election/?searchTerm=special%20election>

(accessed Jan. 3, 2025).

64. The Republican Party of Minnesota is prejudiced because it expected Governor Walz to follow Minnesota Election Law and file the writ calling for a special election 22 days after the first day of the legislative session. The Party has an interest in recruiting, endorsing, and supporting candidates to seek elected office in both general and special elections, and it relies on officials following Minnesota Election Law for its recruitment, endorsement, and support process. *Bergstrom Aff.*

65. At least one candidate, Allen Shen, was prejudiced by Governor Walz's failure to provide five days' notice to file an affidavit of candidacy. *Shen Aff.* ¶9. Mr. Shen was out of Minnesota from 3:00 PM on December 26, 2024, to after 5:00PM on December 31, 2024, and would have filed his affidavit of candidacy had proper notice of the right to file said affidavit been given. *Id.* ¶¶6-9.

66. As a result of Governor Walz's unlawful writ of special election, no special primary is currently set to be held, and Mr. Shen and the Republican Party of Minnesota are prejudiced by that. *Id.*; *Bergstrom Aff.* ¶¶ 3-8.

RESPONDENTS' ERRORS AND LEGAL BASIS FOR CORRECTION

67. This Court must correct Respondents' past and about-to-occur errors regarding the House District 40B special election. Governor Walz's

unlawful writ violates Minnesota Election Law because (1) the writ itself is issued prematurely, and (2) the contents of the writ create a legal impossibility for critical statutory notice periods related to filing affidavits of candidacy.

68. Governor Walz has a duty to issue a writ for special election. Minn. Stat. §204D.19. The power and parameters by which he must issue the writ are specified by statute. *See Pavlak v. Growe*, 284 N.W.2d 174, 175 (Minn. 1979) (“3. That there is a vacancy in the office of Representatives from Legislative District 67A, Counties of Dakota and Ramsey and that this vacancy be certified to the Honorable Albert H. Quie, Governor of the State of Minnesota in order that he may *issue a writ of election as provided for by law* so that the vacancy may be filled.” (quoting Journal of the House, 1979, p. 2578)) (emphasis added).

69. Further, the court order in *Wikstrom v. Johnson* expressly noted that the seat “shall be filled according to law.” Dickey Aff. Ex. C.

70. Governor Walz violated Minnesota Election Law by issuing the writ of special election when he did. Secretary Simon improperly filed the writ, repeated the false statement that a vacancy was caused by Curtis Johnson’s “resignation,” and has improperly certified candidates for the planned special election. <https://www.sos.state.mn.us/election-administration-campaigns/elections-calendar/house-district-40b-special->

[election/?searchTerm=special%20election](#) (accessed Jan. 3, 2025). The Ramsey County Respondents are now about to illegally hold a special election absent the Court’s intervention.

71. Respondents’ past and soon-to-occur failures to comply with statutes related to the timing of special elections constitute wrongful acts by officials charged with election duties under section 204B.44, and those errors must be corrected.

I. Governor Tim Walz issued an unlawful Writ of Special Election because it was premature.

72. Minnesota Election Law strictly and specifically limits when a special election can be called by a governor. Minn. Stat. §204D.19. Vacancies are filled by a special or general election based on the timing of the vacancy and whether the legislature is in session. *See, e.g., id.* §204D.19 subd. 1 (“Vacancy filled at general election”) & subd. 2 (“Special election when legislature will be in session.”). Moreover, when a special election is required, the governor calls a special election by issuing a writ of special election. *See id.* §204D.19, subds. 2-4. A writ shall be issued at different times, again depending on the timing of the vacancy and whether the legislature is in session. *Id.*

73. Subdivision 1 does not apply because the legislature will be in session “before the final canvass of the state general election returns.” *Id.* §204D.19, subd. 1.

74. Subdivision 2 does not apply for two reasons. First, it applies to vacancies *in existence*, not future vacancies—it could not even theoretically apply until January 6, 2025. Second, and more fundamentally, the legislature specifically passed subdivision 4 to address this exact situation.

75. The legislature knows how to describe what may take place for future or prospective vacancies. *See* Minn. Stat. §351.055 (“If a future vacancy . . .” and “[f]or prospective vacancies . . .”). If the legislature intended for section 351.055 to incorporate section 204D.19 and allow a writ to be issued immediately for a future vacancy caused by a successful election contest, it could have done so. *See In re Hubbard*, 778 N.W.2d 313, 323 (Minn. 2010) (noting that the legislature’s action in one statute but inaction in another shows that the legislature “knows how” to accomplish a particular objective if it wishes to do so). For that matter, if the legislature had intended for section 351.055 to allow the immediate issuance of a writ based on a resignation or future resignation, it would have done so. It did not, and instead, section 204D.19, subdivision 2, only allows the issuance of the writ “when a vacancy occurs,” And section 204D.19, subdivision 4, only allows the issuance of a writ 22 days after the legislative session begins.⁶

⁶ In a statement to the press, Governor Walz admitted there was no vacancy when he issued the December 27, 2024, writ by stating “Representative Jamie Becker Finn’s term ends on Monday [January 6, 2025].” Cory Knudsen,

76. There was no vacancy in House District 40B on December 27, 2024, when the writ was issued, and as of January 5, 2025, there is no current vacancy in House District 40B. Representative Jamie Becker-Finn is the current incumbent and officeholder, and her term in office expires on January 6, 2025, at 12:00AM. Minn. Const. art. IV, §4; Minn. Stat. §204D.02, subd. 2; Minn. Stat. §3.011. Before that time, Johnson could not possibly have become the incumbent for House District 40B because only one person can fill each House seat at a time.

77. This Court has directly spoken on the definition of “incumbent,” and in no sense of the word can Curtis Johnson be considered an incumbent. *Clark v. Pawlenty*, 755 N.W.2d 293, 308 (Minn. 2008) (“The dictionary definitions of ‘incumbent’ include ‘[a] person who holds an office’ and ‘[c]urrently holding a specified office.’ *The American Heritage Dictionary of the English Language* 889 (4th ed. Houghton Mifflin 2000)”).

78. In his letter, Johnson attempted to “resign from the Office of State Representative” and to “not accept [his] seat.” Dickey Aff. Ex. A. Johnson is

Minnesota Republicans file petition against Walz in relation to House District 40B special election, KSTP, <https://kstp.com/kstp-news/top-news/minnesota-republicans-file-petition-against-walz-in-relation-to-house-district-40b-special-election/>. If he believes that, he should have waited until at least January 6, 2025, to issue any writ. Even if he does so, it will be improper because section 204D.19, subdivision 4 applies, not subdivision 2, but at least it would be consistent with his statement.

mistaken. He cannot resign from an office of which he does not hold. Minn. Stat. §351.01, subd. 1; *Clark*, 755 N.W.2d at 308. Furthermore, he cannot “not accept [his] seat,” as the district court has already determined the election contest against him, a decision that he did not appeal.⁷ This is the equivalent of attempting to quit after one has been fired by their employer. Stated otherwise, Johnson no longer holds claim to a future seat for him to “not accept.” Furthermore, there is no provision in the law that allows a non-incumbent to “not accept” a seat in which a governor’s powers then spring to allow him to issue a writ of special election.

79. As Johnson’s statutory time for appeal has passed, Johnson is bound by the Ramsey County District Court’s decision, including its orders. Thus, when the Minnesota House of Representatives convenes at noon on

⁷ Because of the Ramsey County District Court’s injunction, *Dickey Aff. Ex. C*, which Johnson did not appeal, it is unlikely that Johnson could ever become an “incumbent” under Minn. Stat. §351.01 even after Rep. Becker-Finn’s term ends, because he cannot “act as a member of the Minnesota House of Representatives” for which he obtained a certificate of election. *Dickey Aff. Ex. C* at 32 (Johnson is “enjoined from taking the oath of office and from acting as a member of the Minnesota House of Representatives for House District 40B”); *see also* Minn. Const. art. IV, §8 (requiring legislators to take an oath *before* “entering upon his duties”); Minn. Stat. §3.05 (requiring, on the first day of session, all “persons claiming to be members” to present election certifications and be sworn in). Holding a certificate of election is merely “prima facie evidence” of holding an office, not conclusive proof of that. Minn. Stat. §3.02. The final judgment of the election contest renders that certificate of election of no value. But, this is not an issue because when the writ was issued, along with its unlawful affidavit of candidacy period, he was clearly not an incumbent.

January 14, 2025, for its 94th session, Curtis Johnson, having lost the election contest and being bound by the court's order, cannot take the oath of office. And he cannot "act[] as a member" of the House by virtue of the "successful election contest," and for no other reason. *Dickey Aff. Ex. C* at 32.

80. At present, there simply is no vacancy for House District 40B, so no writ can issue. And even if a vacancy could theoretically exist at the end of Rep. Becker-Finn's term on January 6 but before the beginning of session on January 14, a writ still cannot issue because section 204D.19, subdivision 4, controls in this situation.

81. In other words, one cannot read the vacancy statute in isolation: in these circumstances, a "vacancy" cannot be filled by the procedure of subdivision 2 because the legislature specifically legislated the timing and procedure for the issuance of a writ of election when "vacancy results from a successful election contest." Minn. Stat. §204D.19, subd. 4 ("Writ when vacancy results from election contest.").

82. This Court has repeatedly described how to construe specific statutes in light of general ones. "We therefore turn to the canons of construction to resolve the conflict. One such canon, applicable here, is that, when a conflict exists between two statutory provisions, the specific provisions in a statute control general provisions." *Connexus Energy v. Comm'r of Revenue*, 868 N.W.2d 234, 242 (Minn. 2015) (cleaned up). "As we have explained, the

principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling is well settled.” *Id.* (same). “The canon often applies in situations in which the general and the specific provisions exist side by side, and the two are interrelated and closely positioned, both in fact being parts of the same statutory scheme.” *Id.* “In fact, the canon has particular applicability when, as here, the Legislature has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions.” *Id.* (same).

83. Curtis Johnson lost his election contest. That is a “specific problem[]” with a “specific solution[.]” Johnson’s nugatory attempt to “resign” or “not accept” the House District 40B office is of no legal effect. *Because he lost his election contest*, a vacancy will occur. The plain, unambiguous language of the statute is clear:

If a vacancy results from a successful election contest, the governor shall issue 22 days after the first day of the legislative session a writ calling for a special election unless the house in which the contest may be tried has passed a resolution which states that it will or will not review the court's determination of the contest. If the resolution states that the house will not review the court’s determination, the writ shall be issued within five days of the passage of the resolution.

Minn. Stat. 204D.19, subd. 4.

84. To read the law otherwise, such that a governor can simply ignore subdivision 4 in the face of a successful election contest by some artifice of the

losing contestee, and apply a different set of laws instead, would violate perhaps the most basic rule of statutory interpretation: giving effect to all of a law's provisions. *Daniel v. City of Minneapolis*, 923 N.W.2d 637, 646 (Minn. 2019) (quoting Minn. Stat. §645.17). It would undo the express will of the legislature on a specific law made for just this situation.

85. A vacancy will result for House District 40B *because of a successful election contest against Curtis Johnson*. Based on the present situation, 22 days after the first day of the legislative session, February 5, 2025, Governor Tim Walz can issue a writ of special election for House District 40B. Any writ issued prior to that is void for failing to comply with Minnesota Statutes section 204D.19.

II. Governor Walz's Writ of Special Election is unlawful because it fails the notice requirements of Minnesota Election Law, which can be corrected now, before any election.

86. In addition to the above errors, this Court should grant the requested relief to correct the error caused by Governor Walz's Writ of Special Election for House District 40B, in that the writ failed to allow for proper statutory notice for the submission of affidavits of candidacy by only allowing for a maximum of four days' notice—when five is required. Because of this defect, the Ramsey County Respondents could not provide the required notice under Minn. Stat. §204D.22, subd. 2, to the prejudice of at least one prospective candidate.

87. The legislature has crafted special election laws to balance the need for a quick, timely election, and the need for those involved in the election (including officials, candidates, and voters) to have sufficient time to prepare for an election.

88. Giving proper notice of filing periods in a special election is especially important because of the compressed timeline and the public's general lack of awareness of a special election as opposed to a general election. As such, the legislature, having weighed competing interests, has established a five-day notice period for when the time for filing an affidavit of candidacy closes. Minn. Stat. §204D.22, subd. 2 (“The county auditor shall post a copy of the writ in the auditor’s office at least five days before the close of the time for filing affidavits of candidacy for the special election.”).

89. Governor Walz’s Writ of Special Election required that affidavits of candidacy be filed on Tuesday, December 31, 2024, by 5:00 p.m. The Writ violates Minn. Stat. §204D.22 on its face. It was impossible for the Ramsey County Respondents to then give proper notice because five days before the close of the time for filing is December 26, 2024, one day *before* the writ was issued. *See Ferguson v. City of Morris*, 267 N.W. 264, 265-67 (Minn. 1936) (where 15-day notice was required, election notice published June 4, 1935 for a June 18, 1935 election was one day late because June 3, 1935 would have been 15 days prior).

90. Because Respondents failed to give adequate notice—which was impossible because the writ stated an improperly short window for submitting an affidavit of candidacy—Allen Shen, who wanted to submit an affidavit of candidacy, was prevented from doing so. Shen Aff. ¶¶6-9.

91. While a failure to give proper notice under section 204D.22 would not be actionable *after* an election and cannot “invalidate a special primary or special election” *after* the results are in, Minn. Stat. §204D.22, subd. 4, the legislature and this Court are also clear that the time to correct this error is now, *prior* to holding the special election, under Minn. Stat. §204B.44. This Court will not void election *results* as long as there was substantial compliance with the laws. *See Ferguson*, 267 N.W. at 266 (despite invalidating election on other grounds, substantial conformity rule applied where contestant waited until after election to challenge insufficient notice yet there was still a “large vote” at the election). But this Court will hold election officials and candidates alike to strict compliance with Minnesota Election Law *prior* to the election. *See, e.g., In re Pfliger*, 819 N.W.2d 620, 621 (Minn. 2012) (requiring strict statutory compliance (with a statutory requirement as minor as failing to include a phone number on an affidavit of candidacy) prior to an election and cabining “substantial compliance” with election laws to narrow circumstances after an election) (citing *In re Application of Andersen*, 264 Minn. 257, 267, 119 N.W.2d 1, 8 (1962) (noting that “[a]s long as there is substantial compliance with our

laws and no showing of fraud or bad faith, the true result of an election, *once ascertained*, ought not be defeated by an innocent failure to comply strictly with the statute.”) (emphasis in original)).

92. Furthermore, regardless of the motives when issuing the writ, upon receipt of this petition, a failure by Respondents to correct their error cannot be considered innocent because they indisputably now have the opportunity to do so.

93. Here, there is documented harm from the failure to provide notice, which renders the failure of full statutory notice fatal. *State ex rel. Helling v. Ind. Consol. Sch. Dist.*, 92 N.W.2d 70, 76 (Minn. 1958) (“[W]here it does not so clearly appear that failure to follow the statute has not affected the outcome, a deliberate failure to follow a statutory requirement as clear as this one may well be fatal.”); *State ex rel. Maffett v. Turnball*, 3 N.W.2d 674, 676 (Minn. 1942) (“Where the failure of election officials to comply with the requirements of election laws designed to give notice of the election results in but a few out of a large number of voters exercising the right to vote at the time and place designated by law, there is no election.”).

94. This is all the more reason why this Court should correct the error *prior* to the election. See *Kranz v. Sibley East Pub. Sch.* No. A14-2167, 2015 Minn. App. Unpub. LEXIS 237, at *9 (Minn. App. 2015) (explaining that election law evidenced “legislative intent to establish a prerequisite to the holding

of an election,” even if the language did not “support invalidating the results, once an election has been held”).

95. Based on the facts and the arguments herein, Respondent Governor Walz committed a “wrongful act, omission, and error” when he issued a Writ of Special Election prior to the time in which he was authorized to do so. The unlawful writ deprived and will deprive voters of the district of their statutory time to consider the candidates for their district. The unlawful writ also deprived potential candidates of their statutory time to consider whether to seek the House District 40B office. The residents of House District 40B have a right to have Governor Walz’s wrongful act and error corrected by this Court. Now, unless the Court acts, the Respondents will commit the further wrongful acts, omissions, and errors described herein.

96. Respondents, and especially the Governor whose constitutional duty it is to “take care that the laws be faithfully executed,” should not be allowed to undermine our democracy by shunning clearly established election law. The Court should grant the requested relief and correct the error immediately.

CLAIMS FOR RELIEF

WHEREFORE, Petitioners respectfully pray for an Order of the Court as follows:

97. Immediately setting a briefing schedule and time for hearing, pursuant to Minn. Stat. §204B.44, subd. 2, such that Respondents' brief is due Thursday, January 9, 2025, at 5:00PM, Petitioners' reply brief is due Monday, January 13, 2025, at 9:00AM, and a hearing, if the Court desires argument, takes place no later than Friday, January 17, 2025, or at such sooner or other times as the Court may direct;⁸

98. Ordering Respondents to correct the errors described herein or show cause for not doing so at the aforementioned hearing;

99. Quashing the Writ of Special Election for House District 40B, or ordering its recall; ordering Respondents to take all steps necessary to cancel the special election they scheduled for January 28, 2025; and enjoining all Respondents from taking any action to hold a special election for House District 40B on January 28, 2025; and

⁸ Because the law at issue is plain and unambiguous, and the facts likely not in dispute, this Court could order an accelerated schedule with no oral argument. A special primary election provided for in the Writ of Special Election is not currently required, as only a single candidate from each party timely filed an affidavit of candidacy to seek the office, so this Court need only decide this matter prior to the unlawfully scheduled special election date of January 28, 2025. *See Order, Jacobs v. City of Columbia Heights*, No. A23-1780 (Minn. Feb. 9, 2024) (February 9, 2024 order canceling recall election set for February 13, 2024).

100. Granting Petitioners such other and further relief as the Court deems just and appropriate.

For Petitioners Minnesota Voters Alliance, Greg Ryan, Chris Bakeman:

Dated: January 5, 2025

UPPER MIDWEST LAW CENTER

/s/ James V. F. Dickey
Douglas P. Seaton (#127759)
James V. F. Dickey (#393613)
Alexandra K. Howell (#504850)
12600 Whitewater Dr., Suite 140
Minnetonka, Minnesota 55343
doug.seaton@umlc.org
james.dickey@umlc.org
(612) 428-7000

For Petitioner Republican Party of Minnesota:

Dated: January 5, 2025

CROSS CASTLE PLLC

/s/ Ryan D. Wilson
Ryan D. Wilson (#400797)
14525 Highway 7 Suite 345
Minnetonka, MN 55345
ryan.wilson@crosscastle.com
(612) 429-8100