

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RICE

NINTH JUDICIAL DISTRICT
Case Type: Other Civil

Benda for Common-sense, a Minnesota
Non-Profit Corporation, and Kathleen
Hagen,

Court File No. 66-cv-22-2022
Judge: Carol M. Hanks

Petitioners/Plaintiffs,

v.

Denise Anderson, Director of Rice County
Property Tax and Elections,

**REPLY MEMORANDUM OF LAW
IN SUPPORT OF RESPONDENT'S
MOTION TO DISMISS
PETITION FOR CORRECTION
OF ERRORS AND OMISSIONS**

Respondent/Defendant;

and

Minnesota Secretary of State Steve Simon,

Intervenor.

INTRODUCTION

Denise Anderson, Director of Rice County Property Tax and Elections,
Respondent for purposes of the Petition for Correction of Errors and Omissions Under
Minn. Stat. § 204B.44 ("Petition"), submits this reply to support her motion to dismiss
the Petition ("Respondent's Motion").

After the filing of Respondent's Motion, the Secretary of State, as Intervenor-
Defendant in this case, filed a Response to the Petition. The Secretary of State addressed
many of same defects and concerns raised in Respondent's Motion, which Respondent
joins in.

Put simply, the Petition did not and does not comply with the requirements of Minn. Stat. 204B.44. These defects require dismissal of the Petition. The Petition was not filed with the correct court, did not detail the alleged error or omission by Respondent Anderson, was not served on all candidates as required by section 204B.44, and is untimely. While Respondent is confident that the Petition would be dismissed on the merits, this Court simply does not have jurisdiction over the Petition, and it should be dismissed even before consideration of the merits.

I. Respondent Joins the Secretary of State's Response to the Petition.

The Secretary of State, as Intervenor-Defendant, filed a Response to the Petition, dated October 13, 2022 (Index #59). In that Response, the Secretary of State argues that the Petition should be dismissed for lack of jurisdiction, for lack of service, on the basis of laches, and because Petitioners' claim fails on its merits because all electronic voting systems in Rice County are properly approved and certified.

The Secretary of State's Response addresses many of the same defects with the Petition as Respondent identified in its Motion, but also had the benefit of reviewing Petitioner's position now that Petitioner has articulated the alleged "error" attributable to Respondent through motion practice. Accordingly, the Secretary of State's Response also addressed many of the counter arguments raised by Petitioners in their Response to the Motion. Respondent joins the Secretary of State's Response and does not restate those arguments here.

II. Petitioners Cannot Correct or Bypass Defects in their Petition by Claiming Respondent is Acting Outside the Procedural Rules.

In their Memorandum of Law in opposition to Respondent's Motion, Petitioners first argue that Respondent's Motion does not follow the Rules of General Procedure pertaining to motion practice, and therefore claim Respondent's Motion should either be dismissed or treated as a motion for summary judgment. The problem here is one of Petitioners' own making.

The parties and this Court are in the unfortunately position of protracted motion practice ahead of a hearing under Minn. Stat. § 204B.44 that does not contemplate nor authorize such motion practice. To illustrate the redundancy, Petitioners filed the Petition, which is a request for an order, and then filed a motion requesting that order.

Despite the fact that section 204B.44 expressly provides: "Upon receipt of the petition the court shall immediately set a time for a hearing on the matter...," Petitioners delayed the hearing.¹ Moreover, Petitioners did not describe the alleged error or omission until they filed their Memorandum in Support of their "Motion for an Order to Correct Errors and Omissions -- Count III," which was filed September 28, 2022, over a month after the Petition was filed. This is inconsistent with section 204B.44 and creates an inconsistency of process which Petitioners now seek to use to their advantage.

Rather than submit an "Objection" or "Response" to the Petition as the Secretary of State recently has done as the Intervenor-Defendant, Respondent was required to

¹ See Declaration of Ann Goering at Exhibit A, filed with Respondent's Motion on September 29, 2022 (Index #50).

engage in motion practice or risk the argument that she was somehow in default or had waived her defenses. It is in this context now that Petitioners claim that Respondent's arguments should be dismissed or treated as a motion for summary judgment.

For example, Petitioners argue that Respondent did not include the required statement identifying all documents which comprise the record and a recital of the material facts, citing to Gen. R. Prac. 115.03(d). Recall that before September 28, 2022, Petitioners had not even identified the alleged error or omission attributable to Respondent.² It is impossible to identify all documents that comprise the record and a recital of material facts or undisputed facts when the allegations themselves are not even described.

Whether Respondent's argument is considered a motion to dismiss, a motion on the pleadings, an Objection to the Petition, or a Response to the Petition, the fact of the matter is that the Petition suffers fatal defects. Respondents cannot bypass those defects by pointing the finger at Respondent.

III. This Court Lacks Subject-Matter Jurisdiction Over the Petition.

Section 204B.44 grants a district court jurisdiction only over claims pertaining to county, municipal, and school-district elections. Specially, "[t]he petition shall be filed with any **judge of the supreme court** in the case of an election for state or federal office

² See Petition at ¶ 53 (Index #2) ("Upon information and belief, Defendant intends to utilize an Electronic Voting System that has hardware, software or features that are not properly approved, certified, or secure").

or any judge of the district court in the county in the case of an election for county, municipal, or school district office.” Minn. Stat. § 204B.44(b) (emphasis added).

In their Response, Petitioners fail to address the statutory requirement that a challenge, such as theirs, relating to state offices must be filed with the Supreme Court.³ The Response instead focuses on the claim that “Defendant Anderson” has duties “concerning an election” and therefore falls within the jurisdiction of this Court. Petitioners ignore the issue of subject-matter jurisdiction and the distinction between an election for “state or federal office” and a “county, municipal, or school district office.” Respondent’s job title or duties does not dictate where the Petition must be filed.

Under the plain language of section 204B.44, Petitioners brought this action before the wrong court. Petitions pertaining to any state and federal offices fall into the exclusive jurisdiction of the state supreme court, not this Court, and therefore the Petition must be dismissed.

CONCLUSION

Even before considering the substance of the Petition, the Petition suffers procedural and jurisdictional defects that are fatal to the Petition. Respondent respectfully requests that this Court dismiss the Petition in its entirety.

³ Petitioners’ allegations relate to all offices on the ballot as the allegation is directed at the entire administration of elections in Rice County. Rice County voters will be presented with ballots listing candidates for thirty-two state and federal offices. *See* Intervenor-Defendant Secretary of State’s Response to Minn. Stat. § 204B.44 Petition, citing to a sample ballot available at <https://tinyurl.com/yzbtejzu>.

RATWIK, ROSZAK & MALONEY, P.A.

Dated: October 19, 2022

By: /s/ Ann R. Goering

Ann R. Goering

Attorney Reg. No. 210699

Jordan H. Soderlind

Attorney Reg. No. 396718

444 Cedar Street, Suite 2100

Saint Paul, MN 55101

(612) 339-0060

**ATTORNEYS FOR DEFENDANT
DENISE ANDERSON**

RRM: 480018

MINNESOTA
JUDICIAL
BRANCH