

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

File No. 19AV-CV-20-2183

Tyler Kistner, Tomas Settell, Leilani Holmstadt, Jose W. Jimenez, Fern A. Smith, Mariah de la Paz, Cynthia Lonquist, Pam Myhra, Megan Olson, Sandra A. Jimenez, and Greg Buck,

Contestants,

vs.

Steve Simon, only in his official capacity as the Minnesota Secretary of State, Andy Lokken, only in his official capacity as the Elections Director for Dakota County, Angie Craig, Matt Klein, Karla Bigham, Greg Clausen, Liz Reyer, Rick Hansen, Ruth Richardson, Jessica Hanson, Robert Bierman, and John D. Huot,

Contestees.

**FINDINGS OF FACT,
ORDER GRANTING
CONTESTEES'
MOTIONS TO
DISMISS WITH
PREJUDICE, AND
MEMORANDUM**

The above-entitled matter came on before the Honorable Timothy J. M^oManus, Judge of District Court, at the Dakota County Courthouse in Hastings, Minnesota, on December 14, 2020, for consideration of the following motions:

1. Contestee Steve Simon's Motion to Dismiss with prejudice for lack of subject-matter jurisdiction with prejudice, dated December 2, 2020.
2. Contestee Andy Lokken's Motion to Dismiss with prejudice for lack of subject-matter jurisdiction, dated December 4, 2020.
3. Contestee Angie Craig's Motion to Dismiss with prejudice for lack of subject-matter jurisdiction and failure to state a claim upon which relief could be granted, dated December 8, 2020.

4. Contestees Senator Matt Klein, Senator Karla Bigham, Senator Greg Clausen, Representative-Elect Liz Reyer, Representative Rick Hansen, Representative Ruth Richardson, Representative-Elect Jessica Hanson, Representative Robert Bierman, and Representative John D. Huot's Motions to Dismiss with prejudice for lack of subject-matter jurisdiction and failure to state a claim upon which relief could be granted, dated December 8, 2020.

This is an election contest under Minnesota Statutes, Chapter 209. The hearing was conducted by remote application, Zoom, pursuant to Minnesota Supreme Court Chief Justice Gildea's most recent Order concerning COVID-19 safety guidelines.¹

APPEARANCES

Jane L. Volz appeared on behalf of her clients, Contestants, Tyler Kistner, Tomas Settell, Leilani Holmstadt, Jose W. Jimenez, Fern A. Smith, Mariah de la Paz, Cynthia Lonquist, Pam Myhra, Megan Olson, Sandra A. Jimenez, and Greg Buck.

Nathan J. Hartshorn, Assistant Attorney General for the State of Minnesota, appeared on behalf of his client, Contestee, Steve Simon, in his official capacity as the Minnesota Secretary of State.

William Topka, Assistant Dakota County Attorney appeared on behalf of his client, Contestee, Andy Lokken, in his official capacity as the Dakota County Election Director.

Abha Khanna, (who was admitted to the Court *pro hac vice*) December 9, 2020, appeared on behalf of her client, Contestee, Representative Angie Craig.

Charles N. Nauen appeared on behalf of his clients, Contestees, Senator Matt Klein, Senator Karla Bigham, Senator Greg Clausen, Representative-Elect Liz Reyer, Representative Rick Hansen, Representative Ruth Richardson, Representative-Elect Jessica Hanson, Representative Robert Bierman, and Representative John D. Huot.²

¹<https://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/COVID-19/112020.pdf>

² Consistent with Governor Walz's mandate and the procedures set forth by the Minnesota Supreme Court, this hearing was conducted via Zoom.gov. As such, all parties appeared remotely.

The parties submitted affidavits, exhibits, and memoranda. At the hearing, Contestees presented their motions through counsel and argument was made by all parties. The Court then took the matters under advisement on December 14, 2020. At this time, the record was closed for the purposes of this motion.³⁴

The Court being fully informed in the premises, having reviewed the following: all pleadings, memoranda, affidavits, exhibits, statutory and case law, and now having heard argument from the attorneys, makes the following:

FINDINGS OF FACT

1. The COVID-19 pandemic has been an ongoing crisis in our country and has posed unprecedented challenges upon our government, businesses, and citizens, including the endeavor of the 2020 national and local elections in the State of Minnesota.
2. Governor Walz's promulgated mandates have set forth pandemic rules that apply to all government functions, including the 2020 national and state elections. Consequently, there was concern about voter turnout because of large numbers of people congregating in one area with the risk of COVID transmission. In response to these concerns, the Minnesota Secretary of State Steve Simon set forth procedures in an attempt to allow people to vote safely amid the pandemic, but as importantly, to allow all voters to exercise their right to vote during this crisis. To this end, there was a temporary waiver of the witness-signature requirement for mail ballots.
3. Many Minnesota citizens desired to vote by absentee ballot in lieu of voting in-person.

³ The Court provided access to members of the public to observe this hearing via Zoom.gov.

⁴ The Court received several affidavits from Ms. Volz on December 15, 2020, that are not recognized for the purposes of the motions before the Court at this time.

4. On May 13, 2020, a group of aggrieved Minnesota voters filed an action in state court against the Secretary of State, arguing that Minnesota’s Election Day receipt deadlines and waiver of the witness-signature requirements for mail ballots violates the United States and Minnesota constitutions. The Republican Party of Minnesota, the Republican National Committee, and the National Republican Congressional Committee were granted permission by the court to intervene in this lawsuit. The Honorable Sara Grewing, a Ramsey County District Court Judge, issued an order entering the consent decree on August 3, 2020 (hereinafter referred to as the “Consent Decree”).
5. The Consent Decree was then appealed to the Minnesota Supreme Court. Prior to the Minnesota Supreme Court hearing this matter, the litigants signed a stipulation to dismiss their appeals and waive the right to challenge in any other judicial forum the August 3, 2020 orders. As a result, the Minnesota Supreme Court dismissed the appeal pursuant to the stipulations made by the parties. *LaRose & NAACP-Minn. v. Simon*, Nos. 62-CV-20-3149, 62-CV-20-3265, *appeals filed*, Nos. A20- 3 1040, A20-1041 (Aug. 10, 2020).
6. Absentee and early voting were allowed to commence in the State of Minnesota on September 18, 2020.
7. Minnesota voters who requested and received absentee ballots also received written instructions advising them that they were not required to have a witness signature for the 2020 Minnesota State General Election.
8. More than 1,900,000 absentee and mail ballots from Minnesota voters were accepted and counted in the 2020 election.
9. The General Election took place on November 3, 2020. The Contestees prevailed and the Contestants then filed this lawsuit.

10. The Dakota County Canvas was certified by Andy Lokken on November 12, 2020.
11. The Dakota County postelection review was certified by Andy Lokken on November 16, 2020.
12. The 2020 State Canvassing Board Certificate was signed by the Minnesota Secretary of State, Steve Simon, on November 24, 2020, certifying the votes cast for State General Election for Presidential Electors, United States Senator, United States Representative, State Senators, State Representatives, and State Judicial Offices.⁵
13. There were numerous parties who had standing to contest the consent and stipulation decree. Contestants either knew, or should have known, about the decree and participated timely. Instead, contestants filed an action with the Minnesota Supreme Court on November 24, 2020, challenging the constitutionality of the consent decree from August, 2020. The Minnesota Supreme Court dismissed this action pursuant to the doctrine of laches. *See Order Kistner v. Simon*, No. A20-1486, slip op. at 3-4 (Minn. Dec. 4, 2020).
14. Ten Republican candidates who lost in the November 3, 2020 general election, along with two individual voters, (hereinafter referred to as “Contestants”) filed a Notice of Election Contest with this Court on November 30, 2020, pursuant to Minnesota Statute Chapter 209, to contest the results of their respective races.⁶ Contestants specifically allege irregularities in the election process concerning the U.S. Representative seat in the

⁵ <https://officialdocuments.sos.state.mn.us/Files/GetDocument/125081>

⁶ Contestants filed a Motion to Amend Notice of Election Contest on December 2, 2020. Dan Hall withdrew as a candidate (dismissing Lindsey Port), Deborah Coxe withdrew as a voter-contestant, and Jerry Ewing sought to be added as a voter-contestant. Nathan Hartshorn and William Topka consented to the amendments. *See Third Aff. of Jane L. Volz.*

2nd Congressional District, numerous State House seats, and numerous State Senate seats.

15. Contestee, Steve Simon, is the Minnesota Secretary of State and oversees statewide elections and certifies the results of elections.
16. Contestee, Andy Lokken is the Election Director of Dakota County and supervised the postelection review.
17. Contestee, Representative Angie Craig, and Contestant, Tyler Kistner, were candidates for the U.S. Representative seat in the 2nd Congressional District, which encompasses Dakota, Goodhue, Scott, Rice, Wabasha, and Washington Counties, Minnesota. Representative Craig prevailed in this race by a margin of 9,
18. Contestee, Matt Klein, and Contestant, Tomas Settell, were candidates for the State Senate seat in Legislative District 52, which District is located solely within Dakota County, Minnesota.
19. Contestee, Karla Bigham, and Contestant, Leilani Holmstadt, were candidates for the State Senate seat in District 54.
20. Contestee, Greg Clausen, and Contestant, Jose W. Jimenez, were candidates for the State Senate seat in District 57.
21. Contestee, Liz Reyer, and Contestant, Fern A. Smith, were candidates for the State House seat in District 51B.
22. Contestee, Rick Hansen, and Contestant, Mariah de la Paz, were candidates for the State Senate House seat in District 52A.
23. Contestee, Ruth Richardson, and Contestant, Cynthia Lonquist, were candidates for the State House seat in District 52B.

24. Contestee, Jessica Hanson, and Contestant, Pam Myhra, were candidates for the State House seat in District 56A.
25. Contestee, Robert Bierman, and Contestant, Megan Olson, were candidates for the State House seat in District 57A.
26. Contestee, John Huot, and Contestant, Sandra A. Jimenez, were candidates for the State House seat in District 57B.

ORDER

1. Steve Simon's (in his official capacity as the Minnesota Secretary of State) Motion to Dismiss with prejudice for lack of subject-matter jurisdiction is **GRANTED**.
2. Andy Lokken's (in his official capacity as Elections Director for Dakota County) Motion to Dismiss with prejudice for lack of subject-matter jurisdiction is **GRANTED**.
3. Representative Angie Craig's Motion to Dismiss with prejudice for lack of subject-matter jurisdiction and failure to state a claim is **GRANTED**.
4. Senator Matt Klein, Senator Karla Bigham, Senator Greg Clausen, Representative-Elect Liz Reyer, Representative Rick Hansen, Representative Ruth Richardson, Representative-Elect Jessica Hanson, Representative Robert Bierman, and Representative John D. Huot's Motions to Dismiss with prejudice for lack of subject-matter jurisdiction and failure to state a claim are **GRANTED**.
5. Pursuant to Minn. Stat. § 209.07, subd. 3, costs are herein awarded respectively to all Contestees, Steve Simon, Andy Lokken, Angie Craig, Matt Klein, Karla Bigham, Greg Clausen, Liz Reyer, Rick Hansen, Ruth Richardson, Jessica Hanson, Robert Bierman, and John D. Huot. If litigants are unable to reach an agreement on costs and disbursements within 30 days of the final Court Order, or Appellate Order, then the

successful parties shall file affidavits for recovery of permitted costs consistent with the applicable statutory and procedural rules under Minnesota Law.

6. The attached memorandum serves in part as the Court's rationale, analysis, and incorporation of the evidence and law submitted.

It is so **ORDERED** this the 15th day of December, 2020.

Hon. Timothy J. McManus
Judge of the District Court

Memorandum

Introduction

This Court takes the election contest allegations *very* seriously. The undersigned judge understands the ramifications and broad impact of this decision on an individual's right to vote. To manipulate votes or the election process is, at its core, treasonous and reprehensible behavior that undermines our democracy. It is a fundamental and cherished right for every American to be able to cast their vote and know it will be counted.

General Standards

The authority of Minnesota courts to hear election contests is “solely statutory.” *Moulton v. Newton*, 144 N.W.2d 706, 710 (Minn. 1966). Minnesota Statute Chapter 209 governs election contests. Minn. Stat. § 209. The importance of election finality requires courts to strictly construe this election contest statute in the interest of strong public policy considerations, including the need for our elected officials to conduct the business of the people. *Stransky v. Indep. Sch. Dist. 761*, 439 N.W.2d 408, 410-411 (Minn. App. 1989); *Greenly v. Indep. Sch. Dist. No. 316*, 395 N.W.2d 86, 91 (Minn. App. 1986). Minnesota courts are “powerless to entertain such proceedings” outside of the strictly-construed limits delineated by Chapter 209. *Christenson v. Allen*, 119 N.W.2d 35, 38 (Minn. 1963).

Subject-matter Jurisdiction

Subject-matter jurisdiction vests the court with the authority to hear a particular type of case and grant the type of relief sought. *Seehus v. Bor-Son Constr., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010). Without subject-matter jurisdiction, the court is barred from hearing the case at

issue. *Id.* Whether subject-matter jurisdiction exists is a question of law. *Hale v. Viking Trucking Co.*, 654 N.W.2d 119, 123 (Minn. 2002); *Centra Homes LLC v. City of Norwood Young America*, 834 N.W.2d 581, 585 (Minn. App. 2013). Defects in subject-matter jurisdiction cannot be waived by agreement of the parties. *Seehus*, 783 N.W.2d at 147. Parties may raise issues of subject-matter jurisdiction at any time. *Id.*

Minnesota courts have subject-matter jurisdiction over election contests solely via statute. *Moulton*, 144 N.W.2d at 710. The jurisdiction conferred to Minnesota courts to hear election contests fits within a narrow set of circumstances. *See generally* Minn. Stat. § 209.021, subd. 3. Under Chapter 209, the circumstances which fall within a court’s jurisdiction as it pertains to election contests arise when a contestant challenges either “(1) the nomination or election of any person for whom the voter had the right to vote if that person is declared nominated or elected to the senate or house of representatives of the United States, or to a statewide, county, legislative, municipal, school, or district court office; or (2) the declared result of a constitutional amendment or other question voted upon at an election.” Minn. Stat. § 209.02, subd. 1. (2020). Contests may challenge (1) “an irregularity in the conduct of an election or canvass of votes,” (2) “who received the largest number of votes legally cast,” (3) “the number of votes legally cast in favor of or against a question,” or (4) “deliberate, serious, and material violations of Minnesota Election Law.” *Id.*

The proper contestee in a given election contest depends upon the type of challenge at issue. *See generally* Minn. Stat. § 209.021, subd. 3. In contests challenging the nomination or election of a candidate for State Legislative Offices, the proper contestee is the successful candidate, and that candidate alone. *Id.* In contests challenging the nomination or election of a candidate for the Senate or House of Representatives of the United States, the proper contestee is

the successful candidate, and that candidate alone. *Id.* Outside of elections for Minnesota’s Secretary of State, an individual holding this office can only be named as a contestee in an election contest when the contestant is challenging the declared result of a constitutional amendment or other question voted upon at the election. *Id.* Election contests that name the Secretary as a contestee that fall outside of these strict boundaries must be dismissed as to the Secretary. *In re Contest of General Election Held on November 4, 2014, for the Purpose of Electing a United States Senator from the State of Minnesota*, No. 62-CV-14-7915, Order at 5–6 (Ramsey Cty. Dist. Ct. Dec. 30, 2014), *appeal dismissed*, No. A14-2201 (Minn. Jan. 15, 2015).

Failure to State a Claim

Pursuant to the Minnesota Rules of Civil Procedure, courts may dismiss actions for failure to state a claim upon which relief may be granted. Minn. R. Civ. P. 12.02(e). When considering a motion to dismiss, the court must accept all facts alleged in the complaint (here, notice) as true and may construe all reasonable inferences in favor of the nonmoving party. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). Although Minnesota is a notice pleadings state, a notice of election contest must state facts sufficient to alert the contestee of the grounds of contests, so as to provide the contest with the fair opportunity to adequately defend against the suit. *Id.* at 605; *Greenly*, 395 N.W.2d at 91. Mere conclusory statements will not suffice. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008) (citation omitted).

“Where an election contest is based on irregularity in the conduct of an election or canvass of votes, a notice that questions only which party received the highest number of votes legally cast in the election is sufficient under the statutes to confer jurisdiction upon the court.” *Holmen v. Miller*, 296 Minn. 99, 206 N.W.2d 916 (1973). Furthermore, the notice must contain a “plain statement showing that the contestant is entitled to a decree changing the declared result

of the election” in order to invoke the court’s jurisdiction to hear the contest. *Christenson*, 119 N.W.2d at 40–41.

I. This Court lacks subject-matter jurisdiction over Contestees Steve Simon and Andrew Lokken.

Contestants included Secretary of State Steve Simon and Election Director of Dakota County Andrew Lokken as two of their named contestees. Because Contestants are challenging “the nomination or election of any person for whom the voter had the right to vote if that person is declared nominated or elected to the senate or house of representatives of the United States, or to a statewide, county, legislative, municipal, school, or district court office,” only the successful candidate can be named as contestee. *See* Minn. Stat. § 209.021, subd. 3. Neither Contestee ran as candidate for the Senate or House of Representatives of the United States, or for a statewide, county, legislative, municipal, school, or district court office. As such, neither Contestee was a successful candidate in any race at issue. Although Simon and Lokken each play a critical role in Minnesota’s election process, Minnesota law does not allow either individual to be named as a party to this type of election contest.⁷ Therefore, this Court lacks subject-matter jurisdiction over Steve Simon and Andrew Lokken. Accordingly, Steve Simon and Andrew Lokken’s Motions to Dismiss with prejudice for lack of subject-matter jurisdiction are granted.⁸

II. This Court lacks subject-matter jurisdiction to hear the election contest against Representative Craig.

As stated, Contestants bring this contest on two of the four statutorily-permissible grounds: (1) “who received the largest number of votes legally cast” and (2) “deliberate, serious,

⁷ As stated, the Minnesota Secretary of State can be named as a contestee if the contestant is challenging “the declared result of a constitutional amendment or other question voted upon at an election.” Minn. Stat. § 209.02, subd. 1; *see generally* Minn. Stat. § 209.021, subd. 3. An election director such as Andrew Lokken cannot be named as a contestee, no matter the challenge at issue. *See generally* Minn. Stat. § 209.021, subd. 3.

⁸ To the extent that Contestants challenge the conduct and appropriateness of Secretary of State Simon and Director Lokken during the 2020 election, their remedy seems to be set forth in Minnesota Statute Section 204B.44.

and material violations of Minnesota Election Law.” Notice of Election Contest Under Minnesota Statutes Chapter 209 (“Notice”) 2. As to the first ground, “when a contest relates to the office of senator or a member of the house of representatives of the United States, the *only* question to be decided by the court is which party to the contest received the highest number of votes legally cast.” Minn. Stat. § 209.12 (emphasis added). The court is limited to this singular inquiry. *Id.* Although “[e]vidence of any other points specified in the notice of contest, including but not limited to the question of the right of any person to nomination or office on the ground of deliberate, serious, and material violations of the provision of the Minnesota Election Law, must be taken and preserved by the judge trying the contest,” the judge “shall make no findings or conclusion on those points.” *Id.*

Thus, the only issue that this Court may adjudicate in this contest, as it relates to the race in Minnesota’s 2nd Congressional District, is whether Representative Craig received the highest number of votes legally. The State Canvassing Board certified Representative Craig as the winner of this race on November 24, 2020. This fact constitutes “prima facie evidence that [Representative Craig], the contestee, has been elected to the office” by receiving the highest number of legally-cast votes. *In re Contest of Gen. Election Held on Nov. 4, 2008 for Purpose of Electing U.S. Senator from State of Minn.*, 767 N.W.2d 453, 458 (Minn. 2009) (per curiam). Contestants bear the burden of proving that the State Canvassing Board’s certification was “in error.” *Id.*

Given this sole inquiry at hand, if a contestant fails to allege that the contestee did not get the highest number of votes legally cast, the court lacks jurisdiction to hear the contest. *Christenson*, 119 N.W.2d at 38. If a contestant seeks to meet this burden by alleging irregularities in the election process, then contestant must also allege that those irregularities

changed the outcome of the election. *Hancock v. Lewis*, 122 N.W.2d 592, 594 (Minn. 1963); *see also Hahn v. Graham*, 225 N.W.2d 385, 386 (Minn. 1975) (“It has been the rule in this state for well over 100 years that violation of a statute regulating the conduct of an election is not fatal to the election in the absence of proof that the irregularity affected the outcome or was the product of fraud or bad faith.”)

Here, Contestants have failed to state in the Notice that the alleged irregularities in the election process changed the outcome of the race for the seat in the 2nd Congressional District. During oral arguments, Ms. Volz, on behalf of Contestants, indicated that “we just don’t know what happened” and that it is likely the irregularities occurred during the ballot counting. The allegations contained in the Notice are insufficient to constitute a suggestion that Representative Craig did not receive the highest number of valid votes. Accordingly, Contestants have failed to invoke the court’s jurisdiction over the election contest against Representative Craig, and her motion to dismiss with prejudice⁹ for lack of subject-matter jurisdiction is granted.

A. Contestants’ challenge to the Consent Decree is barred by the doctrine of laches.

One such “irregularity” that Contestants rely upon is the use of absentee ballots cast in reliance on Ramsey County District Judge Sara Grewing’s August 2020 Consent Decree (“Consent Decree”). *See* Notice 4, 8–9, 18. This consent decree temporarily suspended the witness-signature requirement for mail ballots throughout the November 2020 General Election.

⁹ Pursuant to Minn. Stat. § 209.021, subd. 1, a notice of election contest “must be served and filed . . . within seven days after the canvas is completed in the case of a . . . general election.” Canvas is completed when all PERs have concluded. Minn. Stat. § 206.89, subds. 6, 10. The State Canvassing Board completed its canvas on November 24, 2020. Thus, Contestants were required to file and serve their Notice of Contest against Representative Craig by December 1, 2020. Because that deadline has passed, the Court cannot allow Contestants to amend the Notice to cure jurisdictional defects. *Christenson*, 119 N.W.2d at 39 (“The court cannot appropriate to itself jurisdiction which the law does not give by permitting such amendments after the time for initiating the proceeding has expired.”). As a result, the Court dismisses this action against Representative Craig with prejudice. The Court grants all Contestees’ Motions to Dismiss with prejudice under the same analysis.

In another action before the Minnesota Supreme Court, Contestants sought to challenge the validity of this consent decree's ruling. *See Order, Kistner v. Simon*, No. A20-1486, slip op. at 3–4 (Minn. Dec. 4, 2020). On December 4, 2020, the Minnesota Supreme Court held that the time had long-since passed to litigate this issue for the November 2020 election. *Id.* This holding relied, in part, on the doctrine of laches. *Id.* This Court is compelled to follow this holding.

The doctrine of laches prohibits a court from granting the requested relief when there has been “such an unreasonable delay in asserting a known right” that it “result[s] in prejudice to others.” *Piepho v. Bruns*, 652 N.W.2d 40, 43 (Minn. 2002) (per curiam) (quoting *Fetsch v. Holm*, 52 N.W.2d 113, 115 (Minn. 1952)). Minnesota courts have found it especially critical to apply the doctrine of laches in the context of elections because of the time-sensitive nature of these proceedings. *Peterson v. Stafford*, 490 N.W.2d 418, 419 (Minn. 1992) (The “very nature of matters implicating election laws and proceedings routinely require expeditious consideration and disposition by courts facing considerable time constraints imposed by the ballot preparation and distribution process.”).

The Consent Decree was entered on August 3, 2020. Contestants did not timely challenge the Consent Decree at that time. In reliance on the Consent Decree, government officials, voter education groups, and the media informed the public that mail ballots may be submitted without a witness signature. On September 18, election officials began distributing mail ballots containing instructions that, per the Consent Decree, waived the witness-signature requirement. Again, Contestants did not challenge the Consent Decree at this time. It was not until Contestants found out that they did not receive the highest number of votes in their respective races (i.e., they lost!) that they challenged the Consent Decree and in turn the nearly 1.9 accepted million mail ballots.

To invalidate these accepted mail ballots now would be to disenfranchise the nearly 2 million Minnesotans who relied upon the Consent Decree in order to exercise their constitutional right to vote. Contestants could have challenged the Consent Decree at any time during the three months between the decree's issuance and Election Day. Their failure to do so cannot be placed on the shoulders of the millions of Minnesotans who followed the directions of their government officials. As the Minnesota Supreme Court stated, “[C]ontestants had a duty to act well before November 3, 2020, to assert claims that challenged [the suspension of the witness requirement for absentee and mail ballots]; asserting these claims 2 months after voting started[and] 3 weeks after voting ended . . . is unreasonable.” *See Kistner*, slip op. at 4. To allow Contestants to move forward with this lawsuit alleging irregularities would completely disrupt the foundation and integrity of our election procedures. Time is of the essence to make these complaints. Minnesota voters relied on the fact that their ballots were being counted and were not being challenged in court. If voters knew absentee ballots were being challenged in the courts, many voters may have chosen to cast their ballots in person at their respective precincts, rather than run the risk that their vote may not be counted. Public policy would not support such disruptions to one of our most treasured fundamental rights. The overwhelming case law mandates that this Court bar Contestants' challenge to the Consent Decree under the doctrine of laches.

B. The remaining irregularities are insufficient to invoke this Court's jurisdiction to hear the election contest against Representative Craig.

Contestants also allege multiple other irregularities in the election process. These irregularities included: (1) the delivery of a Dominion voting machine to Dakota County after the election,¹⁰ (2) the failure of Ballot Boards in Dakota County to fairly balance the partisan make-

¹⁰ Pursuant to the Affidavit of Elections Director Andrew Lokken, this machine was in fact never even plugged in! Specifically, Lokken's Affidavit states the following:

up of election judges, or Dakota County’s failure to utilize election judges at all, (3) inter-county procedural differences in the Postelection Review (“PER”) process, (4) inconsistency in ballot delivery to the Dakota County PER venue, (5) defects in the public’s access to observe the PER process, and (6) issues and inconsistencies with the PER tabulation sheets. Notice 4–5, 12–15. Even assuming *arguendo* that these irregularities do constitute valid concerns, they alone are insufficient to invoke the court’s jurisdiction over this election contest. Contestants failed to allege in the Notice that these irregularities impacted the outcome of the election such that Representative Craig did not receive the largest number of valid votes. Contestants do not allege in the Notice of Contest that these irregularities, even cumulatively, would overcome the 9,580-vote margin of victory for Representative Craig. Therefore, this Court lacks jurisdiction over this election contest, *Christenson*, 119 N.W.2d at 41, and Representative Craig’s motion to dismiss with prejudice for lack of subject-matter jurisdiction is granted.¹¹

III. This Court lacks subject-matter jurisdiction over the election contest against Contestees Senator Matt Klein, Senator Karla Bigham, Senator Greg Clausen, Representative-Elect Liz Reyer, Representative Rick Hansen, Representative Ruth Richardson, Representative-Elect Jessica Hanson, Representative Robert Bierman, and Representative John D. Huot.

Contestants’ claims against the remaining Contestees—Senator Karla Bigham, Senator Matt Klein, Senator Greg Clausen, Representative-Elect Liz Reyer, Representative Rick Hansen,

On November 16, 2020 two large printers sold to the County by Dominion Voting were delivered to the County’s judicial center loading dock. They were not used in the 2020 general election. These printers were purchased with money from a grant and have been on the loading dock, unopened, waiting to be installed. The packing slip was simply delivered to [Lokken] while I was conducting the post-election review.

Lokken, Aff. ¶ 8.

¹¹ Ms. Volz, on behalf of Contestants, also submitted by way of affidavit, information of 19,000 ballots that were received on November 4, 2020 at approximately 2:30 in the morning, as an indication of “deliberate, serious, and material violations of Minnesota Election Law.” During oral argument, when asked why this was not brought up in her original pleadings, counsel’s response was “we just found out about this information, and we really don’t know what happened.” Amendments to the Notice cannot be made passed the time for filing and serving the Notice of Contest. *Christenson*, 119 N.W.2d at 39 (“The court cannot appropriate to itself jurisdiction which the law does not give by permitting such amendments after the time for initiating the proceeding has expired.”).

Representative Ruth Richardson, Representative-Elect Jessica Hanson, Representative Robert Bierman, and Representative John Huot—fail in part for identical reasons to those already stated in relation to Representative Craig’s motion to dismiss. Specifically, this Court lacks subject-matter jurisdiction over these Contestees because the Notice of Contestants fails to allege that the irregularities in the election process changed the outcome of these races. Additionally, claims against the Contestees who won intra-county races must also be dismissed because these Contestees were not timely served. Although these defects in subject-matter jurisdiction are dispositive, the Court notes that the Notice also fails to state a claim upon which relief may be granted.

A. Subject-Matter Jurisdiction

As in the case against Representative Craig, the Court lacks jurisdiction over the remaining Contestees due to Contestants’ failure to allege that the irregularities in the election process changed the outcome of each race. *Christenson*, 119 N.W.2d at 38. Again, Minnesota courts have repeatedly held that the court is powerless to hear election contests when the contestants fail to seek a change in the election’s outcome. *Hancock*, 122 N.W.2d at 595; *see also Greenly*, 395 N.W.2d at 91; *Hahn*, 225 N.W.2d at 386. Merely alleging that errors occurred during the ballot-counting process is insufficient to invoke the court’s jurisdiction to hear an election contest. *Christenson*, 119 N.W.2d at 39. Contestants have alleged various irregularities in the election process but failed to allege that these irregularities altered the outcome of these races. Thus, the court lacks subject-matter jurisdiction over the remaining Contestees. Contestees’ motion to dismiss for lack of subject-matter jurisdiction is therefore granted.

B. Contestants failed to timely serve the seven Contestees for the Senate and House District races located wholly in Dakota County.

The Court’s jurisdiction over this election contest also depends on adherence to strict time requirements set forth in Chapter 209. *Petrafeso v. McFarlin*, 207 N.W.2d 343, 345 (Minn. 1973) (“In order for the district court to acquire jurisdiction the provisions of the statute relating to filing and serving of the notice must be strictly followed.”). The Minnesota Supreme Court found that “this is especially true of contests involving legislative offices because the legislature convenes only for a short time after the canvass of an election.” *Id.* at 346. If a contestant fails to timely file and serve their notice of contest, the court will dismiss the action. *Id.* Adherence to the time constraints set forth in Chapter 209 must be strict; substantial compliance will not suffice. *O’Loughlin v. Otis*, 276 N.W.2d 38 (Minn. 1979).

For election contests such as those in the instant case, “notice must be served and filed . . . within seven days after the canvas is completed in the case of a special or general election.” Minn. Stat. § 209.021, subd. 1. “The appropriate canvas is not completed and the time for notice of contest of election does not begin to run until all reviews . . . are completed,” including the PER process. Minn. Stat. § 206.89, subd. 10. For Dakota County, the Dakota County Canvassing Board is tasked with completing a canvass of the general election returns and subsequently “declare the candidate duly elected who received the highest number of votes for each county and state office for only within the county.” Minn. Stat. § 204C.33, subd. 1. This action by the Dakota County Canvassing Board pertains to Senate Districts 52 and 57 and House Districts 51B, 52A, 52B, 57A, and 57B, as these districts are located entirely within Dakota County.¹²

¹² Senate District 54 (Contestee Karla Bigham’s race) and House District 56A (Contestee Jessica Hanson’s race) span two counties and are therefore excluded from this portion of the Court’s analysis. These races were certified by

The Dakota County Canvassing Board completed its canvas on November 12, 2020, declaring Contestees Senator Matt Klein, Senator Karla Bigham, Senator Greg Clausen, Representative-Elect Liz Reyer, Representative Rick Hansen, Representative Ruth Richardson, Representative-Elect Jessica Hanson, Representative Robert Bierman, and Representative John D. Huot. The Dakota County Canvassing Board then certified the vote totals and informed Minnesota Secretary of State Steve Simon of these totals. Dakota County completed its PER for these races on November 16, 2020. Contestants were therefore required to serve these seven Contestees (Senator Klein, Senator Clausen, Representative-Elect Reyer, Representative Hansen, Representative Richardson, Representative Bierman, and Representative Huot) with the Notice of Contest and file this notice with the Court by November 23, 2020—seven days after Dakota County completed its PER for these races. Minn. Stat. § 209.021, subds. 1, 3; Minn. Stat. § 206.89, subd. 10. This statute is to be strictly construed, consistent with public policy to have closure regarding our election process.

Contestants did not file the Notice of Contest until November 27, 2020. Contestants' Affidavits of Service state that these Contestees were not served until December 1, 2020. Therefore, Contestants filed and served the Notice of Contest after the deadline to do so for Contestees Senator Klein, Senator Clausen, Representative-Elect Reyer, Representative Hansen, Representative Richardson, Representative Bierman, and Representative Huot. Given that, this Court lacks jurisdiction over these Contestees and dismisses them from this contest with prejudice.

the State Canvassing Board on November 24, 2020, per Minnesota Statute Section 204C.33, subdivision 3. Thus, Contestees Karla Bigham and Jessica Hanson were timely served on December 1, 2020.

C. *Contestants have failed to state a claim upon which relief may be granted against Senator Matt Klein, Senator Karla Bigham, Senator Greg Clausen, Representative-Elect Liz Reyer, Representative Rick Hansen, Representative Ruth Richardson, Representative-Elect Jessica Hanson, Representative Robert Bierman, and Representative John D. Huot.*

Again, Contestants bring this contest on two grounds: (1) “who received the largest number of votes legally cast” and (2) “deliberate, serious, and material violations of Minnesota Election Law.” Notice 2. Contestants’ challenges pertain to (1) the Consent Decree, (2) the partisan makeup of the election judges, and (3) inconsistencies and issues with the PER process in Dakota County. Notice 4–5, 12–15. These allegations are insufficient to state a claim for an election contest on either of Contestants’ grounds.

1. Challenges to the Consent Decree

With regard to the following Contestees’ arguments as it relates to failure to state a claim per the Consent Decree, the Court the incorporated arguments stated *infra*, without the necessity of reciting an identical analysis.

2. Challenges to the Partisan Makeup of the Election Judges

Contestants allege that the Dakota County ballot boards “failed to utilize election judges of different major political parties as required by Minn. Stat. § 203B.121, subd. 2(a).” The Notice further takes issue with Dakota County’s failure “to allow bipartisan review of the absentee return envelopes to determine if they should be accepted or rejected.” *Id.* Again, Contestants do not take this implication any further, allege that these facts impacted who received the highest number of votes legally cast, nor allege that these facts constitute “a deliberate, serious, and material violation[] of Minnesota Election Law.”

Furthermore, Minnesota Election Law does not mandate the use of election judges at all. “The postelection review official for each precinct selected must conduct the postelection review and *may* be assisted by election judges designated by the postelection review official for this

purpose. The party balance requirement of section 204B.19 applies to election judges designated for the review.” Minn. Stat. Ann. § 206.89 (emphasis added). In addition, Minnesota Rule 8210.2450 states that “two or more ballot board members from different major political parties must review the absentee ballots returned for the precinct under Minnesota Statutes, section 203B.121, unless they are deputy county auditors or deputy city clerks who have received training in the processing and counting of absentee ballots, or are exempt from that requirement under Minnesota Statutes, section 205.075, subdivision 4, or Minnesota Statutes, section 205A.10, subdivision 2.” Minn. R. 8210.2450 (exempting town general elections and school district elections). It was therefore not incumbent upon Dakota County to use election judges, let alone balance them in terms of political party. Contestants are reading the applicable portion of this statute incorrectly and in a vision of myopia. Therefore, Contestants failed to allege that this “irregularity” either (1) impacted which candidate received the highest number of votes legally casted, or (2) constitutes a “deliberate, serious, and material violation[] of Minnesota Election Law.” Contestants have thus failed to state a claim upon which relief can be granted based on the ballot board’s failure to utilize election judges.

3. Challenges to the Post-Election Process

Contestants have also failed to state a claim under their second grounds for relief, “deliberate, serious, and material violations of Minnesota Election Law.” Minn. Stat. § 209.02, subd. 1. A violation is “deliberate” when it is “intended to affect the voting at the election.” *Schmitt v. McLaughlin*, 275 N.W.2d 587, 591 (Minn. 1979) (citing *Effertz v. Schimelpfenig*, 291 N.W. 286, 329 (Minn. 1940)). A violation is “serious” when it is “not trivial.” *Id.* A violation is “material” when it contributed to “any material degree” to the outcome of the election. *Effertz*, 291 N.W.2d at 329.

Lastly, the remaining irregularities relating to the PER process do not allege violations of Minnesota Election Law at all. As the review of absentee ballot envelopes or applications, Minnesota Election Law does not require a review of these documents, only the absentee and in-person ballots themselves. Minn. Stat. § 206.89, subd. 2–3; Minn. Stat. § 204C.21, subd. 1 (describing method of counting ballots, making no reference to the review of absentee ballot envelopes or applications). Second, as to the public’s proximity to the PER process, Minnesota Election Law does not mandate a distance from which the public must be allowed to oversee the PER process. *See* Minn. Stat. § 206,89. All that Minnesota Election Law requires is that the PER be conducted in public. Minn. Stat. § 206,89, subd. 3. Contestants concede that Dakota County’s PER was indeed conducted in public. Thus, this does not constitute a “deliberate, serious, and material violation[] of Minnesota Election Law.” Notwithstanding, Election Director Lokken and his staff’s decision to require others to stand six feet away from the PER reviewers can easily be explained given the Governor’s mandate that applied to this election process.

Andrew Lokken and his staff were compelled to follow this mandate and its procedures. Their conduct complied with the controlling law at that time. Their intent was not to frustrate the review of casted ballots.

For these reasons, in addition to lacking subject-matter jurisdiction, this Notice of Contest failed to state a claim upon which relief may be granted for the Contestees who won seats in the Minnesota State Legislature. It therefore must be dismissed for this reason as well. Minn. R. Civ. P. 12.02(e). *Greenly*, 395 N.W.2d at 91.

Conclusion

The substantive and procedural defects in Contestants' Notice of Contest bars this Court from entertaining this proceeding. Contestees' Motions to Dismiss with prejudice are therefore granted in all respects.

TJM^c