

STATE OF MINNESOTA
IN SUPREME COURT
A16-1436



Ken Martin,

Petitioner,

vs.

Steve Simon, Minnesota Secretary
of State,

Respondent.

ORDER

“At least 71 days before the general election day,” a major political party must certify to the Secretary of State “the names of the persons nominated as presidential electors, the names of persons nominated as alternate presidential electors, and the names of the party candidates for president and vice president.” Minn. Stat. § 208.03 (Supp. 2015). After separately certifying the nomination of Donald J. Trump and Michael R. Pence as the candidates for president and vice-president, respectively, on August 25, 2016, the chair of the Republican Party of Minnesota (RPM) filed a Certificate of Nomination: Presidential Electors with the Secretary of State that listed RPM’s presidential electors and the alternate electors that were “duly nominated and elected.” The period to certify electors and candidates closed on August 29, 2016.

On September 8, 2016, petitioner Ken Martin filed a petition under Minn. Stat. § 204B.44 (Supp. 2015), requesting an order from this court that directs respondent Steve Simon to remove the names of Donald J. Trump and Michael R. Pence from the ballot for

the November 8, 2016, general election as the Republican Party of Minnesota's candidates for the offices of President and Vice President of the United States. Martin alleges that the RPM failed to comply with the clause in section 208.03 that requires a party's alternate presidential electors to "be nominated by delegate conventions called and held under the supervision of the . . . state central committee[]," Minn. Stat. § 208.03, and, therefore, the presidential and vice-presidential candidates to be voted for by RPM's electors cannot be on the ballot. *See* Minn. Stat. § 204D.02, subd. 1 (2014) ("Presidential electors shall be chosen at the state general election . . .").

In an order filed September 9, 2016, the court deemed the RPM to be a party, permitted the RPM to file a response to the petition, and ordered the parties to address the issue of laches. Petitioner Martin argues that laches should not apply because he was not aware of the RPM's failure to comply with the statute until August 25, 2016, at the earliest, and he could not file his petition until he conducted an adequate factual and legal investigation. The RPM contends the petition must be dismissed because petitioner "delayed for months."

The Secretary of State has notified the court that a decision is necessary by September 12, 2016, in order to ensure proper and timely printing of ballots in advance of the first date for early voting, which this year is September 23, 2016. *See* Minn. Stat. § 203B.081 (Supp. 2016) (permitting early voting beginning 46 days before the election). The Secretary of State also reports that ballot printing began on August 30, 2016, and at least 1,000,000 general election ballots have already been printed.

Laches is an equitable doctrine applied to “prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay.” *Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2002) (internal quotation marks omitted). This doctrine has particular application in the context of petitions filed under Minn. Stat. § 204B.44. *Piepho v. Bruns*, 652 N.W.2d 40, 43 (Minn. 2002) (stating the doctrine has “particular application in challenges to ballot preparation and election proceedings”). We have “repeatedly stressed the need for diligence and expeditious action by parties bringing ballot challenges” because the “very nature of matters implicating election laws and proceedings routinely requires expeditious consideration and disposition by courts facing considerable time constraints imposed by the ballot preparation and distribution process.” *Clark v. Reddick*, 791 N.W.2d 292, 295 (Minn. 2010) (citation omitted). Thus, we have explained “that litigation involving ballot challenges necessitates close attention to matters of timing” and we have urged parties to pay “particular attention” to matters of “diligence and timeliness” in bringing ballot challenges. *Id.*; *see also Martin v. Dicklich*, 823 N.W.2d 336, 342 (Minn. 2012) (stating that petitioners “must judge carefully whether they can afford to wait even a few days before acting on a known right” because the orderly administration of elections and voter certainty “cannot wait for convenience”).

We will therefore consider whether a “reasonable valid excuse” is provided to demonstrate that the petitioner could not have acted more expeditiously. *Marsh v. Holm*, 238 Minn. 25, 28-29, 55 N.W.2d 302, 304 (1952). If an unreasonable delay is found, we will also consider whether prejudice results from the delay. *See Desnick v. Mast*, 311 Minn.

356, 365, 249 N.W.2d 878, 883-84 (1976) (“An essential element of laches, however, is that the party asserting it be prejudiced by the delay.”). “[T]he practical question in each case is whether there has been such an unreasonable delay in asserting a known right, resulting in prejudice to others, as would make it inequitable to grant the relief prayed for.” *Winters*, 650 N.W.2d at 170 (internal quotation marks omitted).

Applying these factors, we have declined to hear election challenges on grounds of laches. See *Larkey v. Ritchie*, No. A12-1064, Order at 2-3 (Minn. filed June 28, 2012) (declining to hear a petition to strike a candidate from the primary ballot who allegedly did not live in the district when the affidavit of candidacy showing non-residency was publicly available 20 days before the petition was filed and ballots had to be made available 3 days after the petition was filed); *Clark*, 791 N.W.2d at 294-96 (declining to hear a challenge to strike a candidate’s name from the ballot when the petitioner waited more than 2 months to file the petition, which was 15 days before absentee ballots were to be made available to voters); *Clark v. Pawlenty*, 755 N.W.2d 293, 303 (Minn. 2008) (declining to hear a challenge filed less than 4 weeks before the primary that sought to strike a candidate’s name or remove the incumbent designation from a primary ballot); *Marsh*, 238 Minn. at 28-29, 55 N.W.2d at 304 (declining to consider the merits of a challenge to a candidate’s name as it appeared on the general election ballot, where the candidate used same name on the primary election ballot).

Relying on August 25 as the date from which any delay should be measured, see *Martin*, 823 N.W.2d at 341 (measuring delay from the date that petitioners were aware a known right could be asserted), *Martin* explains that only 9 business days (2 calendar

weeks) elapsed between August 25 and the filing of his petition on September 8.¹ Further, he explains that time was needed to investigate his claim, which presents, as he notes, issues of national significance. We agree that a reasonable investigation of the factual and legal basis for the claim to be asserted is required. *See* Minn. R. Civ. P. 11.02 (requiring a party to certify “after an inquiry reasonable under the circumstances” that a claim has legal and evidentiary support). But the petitioner that seeks a change in a candidacy designation that the Secretary of State has already certified cannot lose sight of the fact that every day of delay increases the potential prejudicial impact on election processes and the electorate’s right to vote. *See Clark*, 791 N.W.2d at 295 (“Our longstanding concern for diligence and timeliness in the initiation of ballot challenges warrants particular attention by those who bring such actions.”).

Martin argues that the initiation of a ballot challenge cannot be taken lightly given the fundamental issues presented. He also notes that ballots can be reprinted if necessary. But the issues presented by Martin’s petition also demand a fair process.² Here, the other parties and the court have had less time to address the issues than Martin had to research and investigate his claim. More importantly, ballot printing has already begun, 1,000,000 or more ballots have been printed, and recent statutory changes giving Minnesotans the

¹ We could also measure the delay beginning with August 29, 2016, the last date for major political parties to certify candidates and electors to the Secretary of State, *see* Minn. Stat. § 208.03. Martin does not rely on this date, however, and we cannot conclude that the result would be any different even if he had the benefit of these few extra days.

² As Martin also acknowledges, the provisions in section 208.03 regarding alternate electors are “of recent vintage,” *see* Act of May 22, 2015, ch. 70, art. 2, § 3, 2015 Minn. Laws 822, 853, and thus have not been subject to “prior judicial interpretation.”

right to vote early compress the timelines even further. For example, early voting for the November general election, by mail and in-person, begins in just 11 days. *See* Minn. Stat. 203B.081. Under these circumstances, we cannot agree with Martin that a 2-week delay was reasonable or that the prejudice that would result from that delay going forward is minimal. We therefore conclude that the petition must be dismissed.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Ken Martin brought under Minn. Stat. § 204B.44 to strike the names of Donald J. Trump and Michael Pence from the November 2016 general election ballot be, and the same is, dismissed.

Dated: September 12, 2016

BY THE COURT:



Lorie S. Gildea
Chief Justice

STRAS, J., took no part in the consideration or decision of this matter.