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OFFICE OF APPELLATE COURTS

State of Minnesota

In Supreme Court

Joan Growe, Paul Anderson, Thomas Beer, David Fisher, Vernae Hasbargen, David Thul, Thomas Welna, and Ellen Young,

Petitioners,

v.

Steve Simon, Minnesota Secretary of State,

Respondent,

v.

Republican Party of Minnesota,

Respondent.

PETITIONERS' ADDENDUM

Charles N. Nauen (#121216)
David J. Zoll (#0330681)
Kristen G. Marttila (#0346007)
Rachel A. Kitze Collins (#0396555)
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401-2159
(612) 339-6900
cnnauen@locklaw.com
djzoll@locklaw.com
kgmarttila@locklaw.com
rakitzecollins@locklaw.com

FREE SPEECH FOR PEOPLE
Ronald Fein (*pro hac vice*)
Amira Mattar (*pro hac vice*)
Courtney Hostetler (*pro hac vice*)
John Bonifaz (*pro hac vice*)
Ben Clements (*pro hac vice*)
1320 Centre St. #405
Newton, MA 02459
(617) 244-0234
rfein@freespeechforpeople.org
amattar@freespeechforpeople.org
chostetlet@freespeechforpeople.org
jbonifaz@freespeechforpeople.org
bclements@freespeechforpeople.org

Attorneys for Petitioners

KEITH ELLISON
Attorney General
State of Minnesota

NATHAN J. HARTSHORN
Assistant Attorney General
Atty. Reg. No. 0320602

ALLEN COOK BARR
Assistant Attorney General
Atty Reg. No. 0399094
445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1252 (Voice)
(651) 297-1235 (Fax)
nathan.hartshorn@ag.state.mn.us
allen.barr@ag.state.mn.us

Attorneys for Respondent Steve Simon, Minnesota Secretary of State

R. Reid LeBeau II (#347504)
JACOBSON, MAGNUSON, ANDERSON
& HALLORAN, P.C.
180 E. Fifth St. Ste. 940
St. Paul, MN 55101
(651) 644-4710
rlebeau@thejacobsonlawgroup.com

Attorneys for Intervenor-Respondent Republican Party of Minnesota

Nicholas J. Nelson (#391984)
Samuel W. Diehl (#388371)
CROSSCASTLE PLLC
333 Washington Avenue N.
Ste 300-9078
Minneapolis, MN 55401
P: (612) 429-8100
F: (612) 234-4766
nicholas.nelson@crosscastle.com
sam.diehl@crosscastle.com

Attorneys for Donald J. Trump and Amicus Curiae Donald J. Trump for President 2024, Inc.

INDEX TO PETITIONERS' ADDENDUM

STATE OF MINNESOTA
IN SUPREME COURT

Court File No. A12-1765

REID A. OINES,

Petitioner,

vs.

MARK RITCHIE, in his official capacity as Minnesota Secretary of State, and
KEN MARTIN, in his official capacity as Minnesota DFL State Chair,

Respondents.

PETITIONER'S MEMORANDUM OF LAW REGARDING TIMELINESS OF PETITION AND THE APPLICABILTY OF LACHES

Reid A. Oines, pro se, for the petitioner.

Oliver J. Larson, Deputy Attorney General, Minnesota State Attorney's Office for the State of Minnesota, Ken Martin, attorney unknown, documents hand delivered.

I. INTRODUCTION

This matter is before the court on the Petitioner's October 3, 2012, petition under Minn. Stat. 204B.44. Oines is seeking to remove from the November 2012 general election ballot the name of Barack Hussein Obama as a candidate for President of the United States on the basis that he is not a "natural born citizen" of the United States and is therefore not eligible to serve under Article 2, Section 1 of Constitution of the United States.

The Court has ordered petitioner to address the timeliness of the petition and the applicability of laches. *See* Order (October 4, 2012).

II. Addressing the timeliness of the petition.

On or about September 22, 2012, Oines discovered information pertaining to this case that started this process. This timeframe was based on documents downloaded from the internet. Over that weekend Oines researched this case and discovered that there may be something to pursue. The following Monday the petitioner attempted to contact attorneys that worked with constitutional law. None would return his calls. Oines then pursued this case on his own gathering as much information and related documents that he could find. After discovery, Oines was limited in respect to time due to full time employment. The petition was expedited and on October 3, 2012 the case was filed with Office of Appellate Courts.

The sequence of dates for the 2012 general election had been publish on the Internet though at the time of discovery all those dates had already lapsed. As to the date of filing, Oines did expedite the filing of the case with the Court as soon as possible after the discovery. Acting pro se is not the best way to deal with this issue, but it resulted in the only alternative due to not being able to secure an attorney to manage the case. Though the filing was executed shortly after discovery it was made mid way into the process of the 2012 elections. It would not have been possible to file this case any earlier due to the date of discovery and the

circumstances that followed. *See* Knox v. Knox, 222 Minn. 477, 486 (1986).

III. Addressing the issue of laches regarding the petition.

As to the candidate in dispute, President Barack Hussein Obama will not suffer prejudice because he is not eligible to run for the office of President of the United States. *See* Minor v. Happersett. 88 U.S. 162, 167 (1875). The candidate would have no recourse with laches. Respondent Ken Martin, State DFL Chair, will not suffer any prejudice and therefore also has no recourse with the laches defense.

The question left is if Mark Ritchie as Minnesota Secretary of State has the right to the use the affirmative defense of laches? I will attempt to frame the response to clearly defend the position that the Secretary of State is not entitled to claim a defense of laches. The five (5) points below are my justification for not allowing the Secretary of State to claim an affirmative defense of laches.

1) The Secretary of State was to certify the candidates for the 2012 general election. As to certify, the Secretary of State was to guarantee that the candidates that were submitted to his office were in fact eligible and proper for the office they sought. Minn. Stat. 208.04 Preparation of Ballots, reads;

> "The secretary of state shall certify the names of all duly nominated presidential candidates and vice presidential candidates to the county auditors of the counties of the state.",

and *See* Minn. Stat. 204B.10, Subd. 4.

The office of the Secretary of State did not properly guarantee that the candidates for the office of the President of the United States were in fact eligible to run for that office. This has opened up a challenge on the candidacy of Barack Hussein Obama and his eligibility to legally run for office of the President of the United States. All that the office of the Secretary of State has done in regard to any certification is the endorsing and clerical paperwork to ensure that it meets the statute. *See* Minn. Stat. 204B.10 Affidavits of Candidacy; Nominating Petitions; Duties, Subd. 1. Affidavits of candidacy; numbering. reads,

> "The official with whom the affidavits of candidacy are filed shall number them in the order received."

There seems to be no real verification of eligibility process that takes place during certification.

2) Secretary of State Ritchie while carrying out his duties improperly certified President Barack Hussein Obama to be eligible as a candidate for the office of the President of the United States and by doing so has violated his oath to support the Constitution of the United States. *See* Minn. Const. Article 5, Sec. 8. This violation stems from the fact that candidate, President Barack Hussein Obama running for the President of the United States must be a "natural born citizen" as required under Article 2, Section 1 of the Constitution of the United States. He is not. *See*

Minor v. Happersett. 88 U.S. 162, 167 (1875).

3) Nor has Secretary of State Ritchie provided the security, benefit or protection of the people of this state. The state government is mandated to protect the citizens of this sovereign state and not place the citizens in a position that could cause the citizens harm and possibly the loss of inherent rights. This is a fundamental right of the citizens of Minnesota. This is especially true when an officer of the state fails to properly fulfill their duties of the office that they hold and by failing in those duties cause harm to the citizens of the state. Allowing a candidate that is not eligible to run for an office causes harm to all of the citizens of the State of Minnesota. *See* Minn. Const. Article 1, Sec. 1, reads,

> "OBJECT OF GOVERNMENT. Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform government whenever required by the public good."
>
> Section 2 of that Article reads, "No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof...."
>
> Article's Sec. 16 reads, "The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people."

The requirements for any office are put down in law for a reason. If they are

not to be followed then why were they required in the first place? With the negligence coming from inadequate verification by the office of the Secretary of State for the qualifications of the candidates for the office of the President of the United States has caused a greater prejudice to each and every citizen in the State of Minnesota than any amount of prejudice the Secretary of State would have. We as citizens have a "fundamental right" to "cast a ballot in an election free from the taint of intimidation and fraud". *See* Burson v. Freeman, 504 U.S. 191, 211 (1992).

4) This petition is in regard to, not just a candidate that is not eligible to run or hold the office of the President of the United States it is a blatant disregard of the rule of law set down by the framers of the Constitution of the United States. This is a constitutional question that was resolved in Minor v. Happersett, 88 U.S. 162 (1875). Every restriction imposed by the constitution must be considered as something which was designed to guard the public welfare, and it would be a violation of duty to not give it anything less than the fair and legitimate consideration.

5) Though Oines considers the petition to have been filed timely, a candidate that is not eligible to run for an office can not prejudiced by a petition that may be considered not timely. *See* Melendez v. O'Connor 654 N.W.2d 114, 117 (Minn. 2002).

"We conclude that we need not determine whether or when

petitioners were put on notice of Samuels' residency defect because regardless of whether there has been an unreasonable delay by petitioners in filing their petition, there would be no prejudice to Samuels or others in granting the relief requested. The petition alleges that Samuels is not qualified to run for office in district 59B because he moved out of the district on June 1. If this move resulted in a change in Samuels' residence to a place outside district 59B, then he is not eligible to run for state legislative office in district 59B regardless of the timing of the challenge to his eligibility. There is nothing in the record indicating that Samuels was prejudiced by the timing of the filing of the petition. Therefore, the doctrine of laches does not require dismissal of the petition and we will consider the petition on its merits."

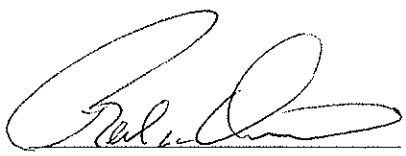
IV. Conclusion

With this document it has been shown that Oines did file the petition in a timely and reasonable manner after discovery. The petitioner has also shown that the respondents and the candidate do not have a claim of affirmative defense by laches. This petition is a constitutional matter that the Court should and can resolve in order to uphold the Constitution of the United States and protect the rights of the citizens of Minnesota from fraudulent elections. It is important to the citizens that

the Court does not apply laches for the reasons above and allow the correction to be made for the benefit of all the citizens in Minnesota. Because if the error is proven and not corrected it is the citizens that will be prejudiced. If Barack Hussein Obama is found to not be a "natural born citizen" and not eligible for the office he seeks, is it not in the best interest of the citizens that this be corrected?

Dated: October 7, 2012

Reid A. Oines
13951 Quay Street NW
Andover, Minnesota 55304
763.742.5262



signature

STATE OF MINNESOTA
IN SUPREME COURT

Court File No. A12-1765

Reid A. Oines,

Petitioner,

vs.

Mark Ritchie, Minnesota Secretary of State, and Ken Martin,

Respondents.

RESPONDENT KEN MARTIN'S MEMORANDUM OF LAW SUPPORTING DISMISSAL OF PETITION

Five weeks before the general election and twelve days after absentee ballots were made available to voters, Petitioner Reid Oines asks this Court to remove President Barack Obama from the general election ballot. The Court should not indulge Petitioner by addressing the merits of his allegations. Rather the Court should dismiss the Petition because Petitioner failed to act with even a modicum of diligence and his claims are barred by the doctrine of laches.

ARGUMENT

The doctrine of 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." *Clark v. Pawlenty*, 755 N.W.2d 293, 300 (Minn. 2008) (*citing Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2002)). This Court has recognized that, to be guilty of laches, a party must have discovered the mistake or "[be]

chargeable with knowledge of facts from which, in the exercise of reasonable diligence, he ought to have discovered it." *Clark v. Reddick*, 791 N.W.2d 292, 294 (Minn. 2010) (*citing Lindquist v. Gibbs*, 122 Minn. 205, 208, 142 N.W. 156, 158 (Minn. 1913)). When the operative facts "are a matter of public record and an inspection of the record is suggested by ordinary prudence," the Court requires "[a] greater degree of diligence." *Id.* (*quoting Briggs v. Buzzell*, 164 Minn. 116, 120, 204 N.W. 548, 549 (Minn. 1925). This Court has repeatedly stressed the need for diligence and expeditious action by parties bringing ballot challenges. *Clark v. Reddick*, 791 N.W.2d at 295 (Minn. 2010); *Clark v. Pawlenty*, 755 N.W.2d at 299 (noting that "more than 50 years ago we declined to consider the merits of a ballot challenge because 'the petitioner ha[d] not proceeded with diligence and expedition in asserting his claims.'") (*quoting Marsh v. Holm*, 238 Minn. 25, 28, 55 N.W.2d 302, 304 (Minn. 1952) (alteration in original)).

Petitioner alleges that he could not have pursued his claims earlier because he did not discover the alleged error until he downloaded unspecified information from the internet on September 22, 2012. This is irrelevant. The facts giving rise to Petitioner's supposed claim are matters of long-standing public record. [1] In fact, the very argument Petitioner makes to this Court was rejected by the Indiana Court of Appeals three years ago. *Ankeny v. Governor of the State of Indiana*, 916 N.E.2d 678, 684-689 (Ind. Ct. App.

[1] *See e.g.*, *Things you might not know about Barack Obama*, Rocky Mountain News (Aug. 6, 2008), http://www.rockymountainnews.com/news/2008/aug/06/things-you-might-not-know-about-barack-obama/ (noting previous article previously included the erroneous assertion that the President holds dual citizenship in the United States and Kenya); White House press release, available at http://www.whitehouse.gov/blog/2011/04/27/president-obamas-long-form-birth-certificate (April 24, 2011 press release providing a copy of the President's long form birth certificate).

2009). Had he looked, Petitioner would have found all of the information necessary to assert his argument ***years*** ago.

Even if it were appropriate for Petitioner to wait to raise his concerns in the context of the 2012 election (it was not), he could have, and should have, filed the petition months earlier. As reflected on the Minnesota Secretary of State's website, on July 9, 2012, DFL Party Chair Ken Martin certified to the Minnesota Secretary of State that Barack Obama was the Party's candidate for the office of president pursuant to Minnesota Statutes, Section 208.03.[2] Petitioner could have asserted his claims in July. *See Clark v. Pawlenty*, 755 N.W.2d 293, 300 (noting that claim challenging right of person appointed by governor to fill a judicial vacancy to run for election to fill the same seat could have been commenced when the incumbent candidate filed her affidavit of candidacy). Instead Petitioner delayed three months waiting until the paper ballots had been printed and absentee voting was underway.

Petitioner unreasonably delayed asserting his claim and this delay has "result[ed] in prejudice to others, as would make it inequitable to grant the relief prayed for." *Fetsch v. Holm*, 236 Minn. 158, 162, 52 N.W.2d 113, 115 (Minn. 1952). In analyzing whether the doctrine of laches bars a ballot challenge, the Court considers prejudice to respondents, election officials, candidates, and the Minnesota electorate. *Clark v. Reddick*, 791 N.W.2d at 295 (Minn. 2010); *Clark v. Pawlenty*, 755 N.W.2d at 301.

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[2] *See* http://candidates.sos.state.mn.us/CandidateFilingResults.aspx?county=0&municipality=0&schooldistrict=0&hospitaldistrict=0&level=1&party=0&federal=True&judicial=True&executive=True&senate=True&representative=True&title=&office=0&candidateid=0.

Upon information and belief, all ballots for the general election have been printed; electronic voting machines programmed, and absentee ballots made available to voters.[3] Granting the requested relief would require all paper ballots for the entire State to be either altered by hand or reprinted; all voting machines to be reprogrammed; and new absentee ballots sent to all voters who requested an absentee ballot, including those who already cast a ballot. *See Clark v. Pawlenty*, 755 N.W.2d at 301-02. This would require extraordinary work and result in extraordinary expense for Respondent Mark Ritchie, the Minnesota Secretary of State, and all local election officials across the State of Minnesota.

In addition, the President has pursued a nation-wide reelection campaign and will appear on the ballot in every State. The President, the DFL Party, and many volunteers have invested significant time and resources to support the reelection campaign throughout Minnesota. If the late Petition were granted, President Obama would be denied the right to run for reelection to the office ***he presently holds*** and for which he and the DFL Party have expended significant time, energy, and resources.'" *Clark v. Reddick*, 791 N.W.2d at 295-96 (*citing Clark v. Pawlenty*, 755 N.W.2d at 302).

Finally, the Court must consider the potential prejudice to the electorate in general resulting from a last-minute change to the ballot. *Id.* (*citing Clark v. Pawlenty*, 755 N.W.2d at 303). If President Obama is removed from the general election ballot, Minnesota voters would be denied the opportunity available to voters in every other

[3] Respondent acknowledges that final ballots may not be completed and voting machines not programmed for House District 7B following this Court's September 25, 2012 Order in *Martin and Simonson v. Dicklich and Ritchie*, (A12-1588).

State: to cast a ballot to re-elect the President Obama and to seat Democrat electors for the Electoral College to select the next President of the United States.

CONCLUSION

The allegations in the petition are not new and Petitioner could have raised his concerns regarding President Obama's eligibility to hold his elected office years ago. Instead, Petitioner sat on his rights waited to file his frivolous Petition with this court five weeks before the general election and after absentee voting had already begun. Respondent Ken Martin respectfully requests that this court deny the petition due to Petitioner's unreasonable delay and the substantial prejudice and disruption to the election process which would result from granting the requested relief.

Date: October 11, 2012

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

By: _____

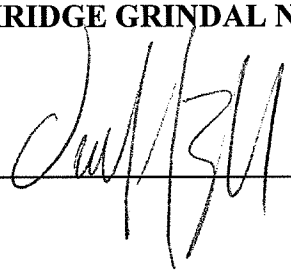
Charles N. Nauen, #121216
David J. Zoll, #0330681
Julie A. Strother, #388835
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Telephone: 612-339-6900
Facsimile: 612-339-0981

ATTORNEYS FOR KEN MARTIN

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

By: 

STATE OF MINNESOTA

IN SUPREME COURT

A12-1765

Reid A. Oines,

Petitioner,

vs.

Mark Ritchie, Minnesota Secretary of State, and Ken Martin, Minnesota DFL State Chair,

Respondents.

RESPONDENT MARK RITCHIE'S MEMORANDUM ON THE ISSUES OF JURISDICTION AND LACHES

INTRODUCTION

On October 4, 2012, this Court entered an order in this matter requiring Petitioner to file and serve a brief addressing why his Petition should not be dismissed on the basis of laches, and permitting Respondents to file a response by October 11, 2012.

Respondent Ritchie's position is that the Petition should be summarily dismissed[1] because: 1) this Court lacks subject matter jurisdiction to rule on challenges to the qualifications of a Presidential candidate, since the federal Constitution and statutes vest jurisdiction to resolve such challenges exclusively in Congress; and 2) in any event, the Petition is untimely and therefore it should be dismissed based on the doctrine of laches.

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[1] If the Court considers the merits of the Petition, Respondent Ritchie requests an opportunity to file a memorandum addressing the merits.

STATEMENT OF FACTS

The dispositive facts set forth in the Petition concern the location of President Obama's birth, and the identity and citizenship of his parents. (Pet. ¶ 4-5, Exs. A, B.) The documents Petitioner attaches as evidence in support of these facts were available to Petitioner no later April 27, 2012, the date President Obama released his long form birth certificate.[2] The facts have also been publicly available from other sources since at least 1995, when President Obama first published the memoir *Dreams from My Father*, describing the circumstances of his birth and the citizenship of his parents. *See* Barack H. Obama, II, *Dreams from my Father* 9-12, (2004 Ed.) (1995). The facts are also fully set forth in a reported opinion from 2009 in which the Indiana Court of Appeals addressed and rejected the exact argument now made by Petitioner. *See Ankeny v. Governor of the State of Indiana*, 916 N.E.2d 678 (Ind. App. 2009).

ARGUMENT

I. JURISDICTION TO RESOLVE CHALLENGES TO THE QUALIFICATIONS OF A CANDIDATE FOR PRESIDENT IS VESTED EXCLUSIVELY IN CONGRESS.

As the Court is aware, the Constitution specifies that the President is not elected directly, but is instead selected by the Electoral College pursuant to Article 2, Section 1 of the Constitution, as modified by the Twelfth Amendment. U.S. Const. art. II, § 1; U.S. Const. amend. XII. These provisions of the Constitution also specify that the votes of the Electoral College are counted and certified by the President of the Senate. *Id.* The

[2] *See* White House press release, available at *http://www.whitehouse.gov/blog /2011/04/27/president-obamas-long-form-birth-certificate*.

method by which the President of the Senate counts the votes of the Electoral College is set forth by federal statute, 3 U.S.C. § 15 ("Section 15").

Section 15 also provides the exclusive method by which challenges may be made to the counting of votes from the electoral college, stating:

> Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision . . .

As a result, Congress decides challenges to the qualifications of an individual to serve as President. *See Robinson v. Bowen*, 567 F. Supp. 2d 1144, 1148 (N.D. Cal. 2008). In *Robinson*, the District Court for the Northern District of California heard a challenge to the qualifications of John McCain to serve as President, brought on the basis that he had been born in the Panama Canal Zone and was therefore not a "natural born citizen." *Id.* at 1145. The Court found it lacked jurisdiction to hear the challenge, holding that:

> [a]rguments concerning qualifications or lack thereof can be laid before the voting public before the election and, once the election is over, can be raised as objections as the electoral votes are counted in Congress. The members of the Senate and the House of Representatives are well qualified to adjudicate any objections to ballots for allegedly unqualified candidates. Therefore, this order holds that the challenge presented by plaintiff is committed under the Constitution to the electors and the legislative branch,

> at least in the first instance. Judicial review—if any—should occur only after the electoral and Congressional processes have run their course.

Id. at 11548. Thus, a challenge to the qualifications of an individual to serve as President must be made to the President of the Senate at the time the results of the Electoral College are counted. 3 U.S.C. § 15. Those challenges are resolved by Congress, not the Courts. *Id.*

II. THE PETITION SHOULD BE DISMISSED BASED ON THE DOCTRINE OF LACHES.

If the Court finds that it has subject matter jurisdiction, it should nonetheless dismiss the Petition under the doctrine of laches. This Court has repeatedly dismissed ballot challenges on the basis of laches, holding that:

> One who intends to question the form or contents of an official ballot to be used at state elections must realize that serious delays, complications, and inconvenience must follow any action he may take and that, unless a reasonable valid excuse be presented by him indicating why he did not act expeditiously, he should not be permitted to complain. It is important that such persons move expeditiously so ballots can be printed and distributed according to the requirements of the law.

Clark v. Pawlenty, 755 N.W.2d 293, 300 (Minn. 2008) *quoting Marsh v. Holm*, 55 N.W.2d 302, 304 (Minn. 1952); *see also Clark v. Reddick*, 791 N.W.2d 292, 295 (Minn. 2010) (applying laches to deny petition to remove candidate from ballot on the basis of a two month delay in the petitioner seeking relief).

Here, Petitioner's delay in seeking relief is clearly unjustified. The facts on which Petitioner relies concerning the location of President Obama's birth, the citizenship of his father, and the marriage of his parents, were publicly available no later than the time President Obama published the memoir *Dreams From My Father* in 1995. These same

facts, and Petitioner's current argument, were also litigated in an reported Indiana Court of Appeals decision released on November 12, 2009. *Ankeny v. Governor of the State of Indiana*, 916 N.E.2d 678 (Ind. App. 2009). Simply put, the facts supporting Petitioner's claim were readily available to him prior to President Obama's first election, let alone the present election.

In his memorandum addressing the issue of laches, Petitioner argues that his delay is excused because he only personally learned of the facts underlying his claim "on or about September 22, 2012." (Pet. Laches Memo. p. 2.) This is a legally deficient excuse. Minnesota courts have long held that individuals are chargeable with knowledge of facts they could have discovered with proper diligence, particularly where the facts are matters of public record. *Reddick*, 791 N.W.2d at 294. Here, the facts underlying the Petition have been matters of public record since at least 1995, are were the subject of a reported opinion in 009. Petitioner's argument concerning when he personally became aware of such facts is therefore immaterial.

There would also be clear prejudice to others if the Petition were allowed at this point in time. Absentee ballots listing President Obama as the DFL nominee and identifying the DFL slate of electors became available for distribution on September 21,

2012. Minn. Stat. § 204B.35, subd. 4 (2010). Thousands of these ballots have already been returned.[3]

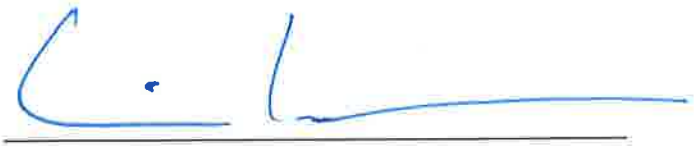
CONCLUSION

For the reasons set forth above, Respondent Ritchie respectfully requests that the Petition be dismissed with prejudice.

Dated: October 10, 2012

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota



OLIVER J. LARSON
Assistant Attorney General
Attorney Reg. No. 0392946

445 Minnesota Street, Suite 1800
St. Paul, Minnesota 55101-2134
(651) 757-1265 (Voice)
(651) 282-2525 (TTY)

ATTORNEY FOR MARK RITCHIE,
MINNESOTA SECRETARY OF STATE

[3] The most recent published figures show that as of October 12, 2012, over 100,000 absentee ballots have been requested, and 41,208 have been returned. *See* http://www.sos.state.mn.us/index.aspx?recordid=693&page=10

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2010).

Dated: October 10, 2012

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

OLIVER J. LARSON
Assistant Attorney General
Attorney Reg. No. 0392946

445 Minnesota Street, Suite 1800
St. Paul, Minnesota 55101-2134
(651) 757-1265 (Voice)
(651) 282-2525 (TTY)

ATTORNEY FOR MARK RITCHIE,
MINNESOTA SECRETARY OF STATE

AG: #3097653-v1