

DCT
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20200298
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
NOVEMBER 23, 2020
STATE OF NORTH DAKOTA

November 23, 2020

Ms. Meagen A. Powell
Chief Deputy Clerk of the Supreme Court
Supreme Court
Judicial Wing, First Fl.
600 E. Boulevard Ave.
Bismarck, ND 58505-0530

**Re: Rule 28(k) N.D.R.App.P. Post-Oral Argument Citation and Reference;
Burgum v. Jaeger – Supreme Court No. 20200298**

Dear Ms. Powell:

The following correspondence is presented on behalf of my client, Intervenor Katherin Volochenko, and is a post-oral argument update and citation of authorities presented pursuant to Rule 28(k) of the North Dakota Rules of Appellate Procedure, which rule provides as follows:

(k) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed—or after oral argument but before decision—a party may promptly advise the court by letter, with a copy to all other parties, setting forth the citations. The letter must state without argument the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. Any response must be made promptly and must be similarly limited. (*bold emphasis added*).

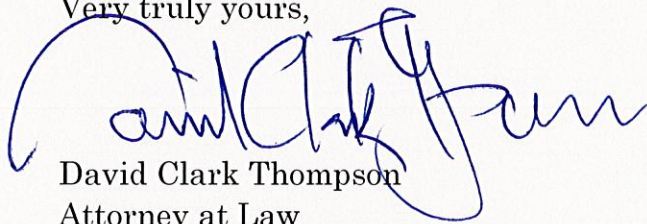
During oral argument in this case on November 20, 2020, Justice Crothers [at **audiotape 20:08**] raised the question with counsel for the Petitioner as to whether the Supreme Court would have jurisdiction over the subject matter of filling the District 8 House of Representatives seat in the absence of a statutory election contest civil action. Later in colloquy with the undersigned counsel for Intervenor Kathrin Volochenko, Justice Crothers asked [at **audiotape 39:10**] if the current litigation was an election contest action – to which question the undersigned counsel responded

that while it the Intervenor did not believe that it was, that Ms. Volochenko still would be able to file a timely election contest action under N.D.C.C. Chapter 16.1-16. Later on in the argument [at **audiotape 52:19**] the undersigned counsel reiterated that Ms. Volochenko still had the option of commencing a timely election contest civil action.

This afternoon, Ms. Volochenko began a combination election contest civil action pursuant to N.D.C.C. Chapter 16.1-16 and mandamus action in the District Court, South Central Judicial District, in Burleigh County. A copy of the Complaint in that case is forwarded to the Supreme Court under this cover, and the position of Ms. Volochenko relative to this election contest/mandamus action – within the context of the instant original jurisdiction Supreme Court case – is delineated with applicable legal authorities in Footnote 7 of this new, timely civil action Complaint. In light of the commencement of this civil action in the District Court, Intervenor Kathrin Volchenko hereby requests that the Supreme Court defer decision in Supreme Court Case No. 20200298, pending the completion of the election contest proceedings in the District Court.

If the Supreme Court should have any questions with regard to the content of this post-oral-argument submission made by Intervenor Kathrin Volochenko, pursuant to Rule 28(k) of the North Dakota Rules of Appellate Procedure, the undersigned counsel stands available to respond, as appropriate, at any time.

Very truly yours,



David Clark Thompson
Attorney at Law

DAVID C. THOMPSON, P.C.

Counsel for Intervenor Katherin Volochenko

With enclosure: Complaint in *Kathrin Volochenko v. Alvin Jaeger*;

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Kathrin Volochenko,

Contestant/Plaintiff, ,

vs.

Alvin Jaeger, North Dakota
Secretary of State,

Contestee/Defendant.

Case No. 08-2020-CV-03162

SUMMONS

THE STATE OF NORTH DAKOTA TO ABOVE-NAMED DEFENDANT ALVIN JAEGER:

[1] You are hereby summoned and required to appear and defendant against the Complaint in this action, which is herewith served upon you and filed with the above-captioned District Court, by serving an Answer within fourteen (14) days after the service of the election contest civil action Summons and Complaint, exclusive of the day of service. See, N.D.C.C. § 16.1-16-04. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated this 23rd day of November, 2020,

DAVID C. THOMPSON, P.C.

David Clark Thompson

David Clark Thompson

Attorney at Law

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Grand Forks, North Dakota, 58201

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COUNSEL FOR CONTESTANT/PLAINTIFF KATHRIN VOLOCHENKO

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

Kathrin Volochenko,

Contestant/Plaintiff, 1,

vs.

Alvin Jaeger, North Dakota
Secretary of State,

Contestee/Defendant.2

Case No. 08-2020-CV-03162

**COMPLAINT TO
CONTEST ELECTION
PURSUANT TO N.D.C.C.
CHAPTER 16.1-16; AND
ALTERNATIVE PETITION
FOR A WRIT OF MANDAMUS
TO NORTH DAKOTA
SECRETARY OF STATE
ALVIN JAEGER**

I. THE STATUTORY ELECTION CONTEST CIVIL ACTION

[1] For her Election Contest Complaint relative to the purported “election” of decedent David

1 It is provided in N.D.C.C. § 16.1-16-03 as follows:

16.1-16-03. Commencement of action - Parties - Status of contestee. An action to contest an election must be commenced by service of a summons and verified complaint. The party instituting the action must be known as the contestant, and the party against whom the action is instituted must be known as the contestee. In a contest of an election, the person holding the certificate of election shall take possession and discharge the duties of the office until the contest action is finally decided.

As prescribed by N.D.C.C. § 16.1-16-03, Kathrin Volochenko is designed herein as the “contestant” in the election contest civil action maintained by Ms. Volochenko pursuant to N.D.C.C. § 16.1-16-03, although for Ms. Volochenko’s alternatively-made petition for a Writ of Mandamus, she is designated as a “plaintiff”, with Secretary of State Alvin Jaeger being designated as the “defendant” relative to Ms. Volochenko’s mandamus action.

2 N.D.C.C. § 16.1-16-03 provides that, “The party instituting the action must be known as the contestant, and the party against whom the action is instituted must be known as the contestee. In a contest of an election, the person holding the certificate of election shall take possession and discharge the duties of the office until the contest action is finally decided.”

Andahl to the House of Representatives from District 8, Contestant/Plaintiff Democratic-Nonpartisan League Party (Dem-NPL) District 8 House of Representatives Candidate Kathrin Volochenko hereby avers and states as follows, pursuant to the relevant provisions of N.D.C.C. Chapter 16.1-16:

[2] Contestant/Plaintiff Kathrin Volochenko, who resides in the City of Mercer in McLean County, was a Dem-NPL candidate for the House of Representatives from North Dakota Legislative District No. 8, which district traverses two counties – McLean County and Burleigh County – and Contestant/Plaintiff all times during the 2020 election cycle has been qualified and eligible candidate to serve in the House of Representatives of the North Dakota Legislative Assembly.

[3] The Primary Election took place on June 9, 2020. In that primary, four candidates competed for the two Republican nominations, Dave Nehring, David Andahl, Jeff Delzer and Bob Wheeler., with Nehring and Andahl ending up being the top two vote-getters, thereby receiving the Republican nominations for the two House seats.³

[4] Also in that Primary Election, the Dem-NPL Party presented two unopposed candidates for the two House of Representatives seats, current election Contestant/Plaintiff Kathrin Volocheko, and Linda Babb. As such, Volochenko and Babb thus proceeded to the General Election field as the two House candidate representatives from their party.⁴

[5] Tragically, twenty-eight (28) days before the November 3, 2020 General Election, on October 5, 2020, Republican House candidate David Andahl died after having suffered from

³ North Dakota Secretary of State web link:

<https://results.sos.nd.gov/ResultsSW.aspx?text=Race&type=LG&map=DIST&eid=312>

⁴ *Id.*

COVID-19. 5

[6] At the General Election which took place on November 3, 2020, Republican Dave Nehring -- and the name of the deceased David Andahl -- received the greatest number of votes and the second greatest number of votes, respectively, in that order) in the four-person field vying for the two District 8 House of Representatives seats, while Dem-NPL Party candidates Kathrin Volochenko and Linda Babb finished third and fourth, respectively, in the election.⁶

[7] The name of the late David Andahl received the second most votes for District 8 State Representative at the November 3, 2020 general election, a number of votes which would have been sufficient to elect him to the legislature -- had he not passed away prior to the election. However, Mr. Andahl's death prior to the election rendered him ineligible to be elected to a seat in the legislature under N.D. Const. art. IV, § 5 because he was not a "qualified elector" on election day.

[8] The North Dakota Constitution is clear that in order to be elected to the Legislative Assembly, an individual must be a "qualified elector" on the day of the election and must have been a resident of the state for one year immediately prior to that election. N.D. Const. art. IV, § 5. N.D. Const. art. IV, § 5 provides in full:

Section 5. Each individual elected or appointed **to the legislative assembly must be, on the day of the election** or appointment, a qualified elector in the district from which the member was selected and must have been a resident of the state for one year immediately prior to that election. An individual may not serve in the legislative assembly unless the individual lives in the district from which selected. (*bold, underlined emphasis added*).

⁵ See, the Forum News Service Article, published October 6, 2020, under the headline, "Candidate in high-profile House Race died of COVID-19".

⁶ North Dakota Secretary of State web link:
<https://results.sos.nd.gov/resultsSW.aspx?text=Race&type=LG&map=DIST>

[9] Additionally, a “qualified elector” is an individual who is a citizen of the United States, eighteen years of age or older, and a resident of North Dakota. N.D. Const. art. II, § 1; N.D.C.C. § 16.1-01-04.

[10] If an individual is not a “qualified elector,” that individual is ineligible to hold office as a member of the legislative assembly. See N.D.C.C. § 44-01-01 (“Every elector is eligible to the office for which that person is an elector, except when otherwise specifically provided. No person is eligible who is not such an elector.”).

[11] The North Dakota Supreme Court has held the standard for “eligibility” to hold office turns on the ability of a candidate to satisfy the “requirement to take an oath of office and give an official bond.” See *Nielsen v. Neuharth*, 331 N.W.2d 58, 60 (N.D. 1983).

[12] David Andahl passed away prior to the November 3, 2020 election. Because of Mr. Andahl’s unfortunate passing, it cannot be disputed he was not a citizen of the United States or resident of North Dakota, and thus a “qualified elector,” on the date of the election. Further, Mr. Andahl is not able to take an oath of office or otherwise complete the requirements necessary to assume the legislative seat. Accordingly, the late Mr. Andahl is undoubtedly ineligible to hold office.

[13] This Court in *Jenness v. Clark*, 21 N.D. 150, 129 N.W. 357 (1910), explicitly held that “[a] person who is ineligible to hold a public office cannot be elected thereto, and his election is a nullity.”

[14] Because decedent David Andahl was ineligible -- being quintessentially unable to meet the qualifications to hold the office of House of Representatives member as required by law as of the date of the November 3, 2020 General Election, decedent David Andahl cannot be validly “elected” to that office. Furthermore, it is specifically alleges that the North Dakota Republican Party, the District 8 Republican Organization, and indeed Contestee Secretary of State Alvin Jaeger, had actual knowledge that David Andahl, being deceased, **did not or could not meet the**

qualifications to hold the office of a House of Representatives member as required by law.

See, N.D.C.C. § 16.1-16-05 and N.D.C.C. § 16.1-15-08.

[15] N.D.C.C. § 16.1-16-02 provides as follows:

16.1-16-02. Who may contest election. **A defeated candidate** or ten qualified electors **may contest the** nomination or **election of any person** or the approval or rejection of any question or proposition submitted to a vote of the electorate, pursuant to chapters 16.1-04, 16.1-05, 16.1-06, 16.1-07, 16.1-08.1, 16.1-09, 16.1-10, and 16.1-11. In a county election to change the county seat or to change the boundaries of the county, the complaint must be filed against the board of county commissioners, who shall appear and defend the contest action.

[16] As the putatively “defeated” candidate for the second House of Representatives seat from North Dakota Legislative District 8, Contestant/Plaintiff Kathrin Volochenko possesses statutorily-granted standing to bring the instant action under N.D.C.C. § 16.1-16-02.

[17] N.D.C.C. § 16.1-16-05 provides as follows:

16.1-16-05. Grounds for election contest. An election contest may be commenced for any of the following causes:

1. **If the contestee does not or cannot meet the qualifications to hold the office as required by law.**
2. Because of illegal votes or erroneous or fraudulent voting, count, canvass, or recount of votes. (*bold, underlined emphasis added*).

[18] N.D.C.C. § 16.1-16-04 provides, in pertinent part, that, “(a)ny action to contest an election must be commenced and the complaint must be filed in the district court of the contestee's county of residence within five days after final certification of a recount by the appropriate canvassing board or within fourteen days after the final certification by the appropriate canvassing board if no recount is to be conducted.

[19] Upon the Contestant/Plaintiff’s information and belief, the Burleigh County Canvassing Board and the McLean County Canvassing Board both met, separately, on November 9, 2020, to certify their 2020 general election results, and that those results were certified in both of the counties which

comprise Legislative District 8.

[20] Counsel for Contestant/Plaintiff Kathrin Volochenko has been informed by staff within the Office of the North Dakota Secretary of State that no “Certificate of Election has yet been issued by the Secretary of State.in connection with the election for the second seat in the District 8 House of Representatives race, because of the pendency of the North Dakota Supreme Court original jurisdiction case, *Burgum v. Jaeger*, Supreme Court No. 20200298.7

[21] Because the candidacy of decedent David Andahl was a “nullity”, and because the “votes” cast by District 8 electors for his name appearing on the General Election ballot are correspondingly a collective “nullity”, upon the information and belief of Contestant/Plaintiff Kathrin Volochenko, because the Secretary of State is currently withholding issuance of a certificate of election with respect to the second District 8 House of Representatives election – given the fact that decedent

7 To be clear, Contestant/Plaintiff Kathrin Volochenko is entitled, as a matter of right, to take advantage of the statutory election contest procedure set forth in N.D.C.C. Chapter 16.1-16, particularly that as described in N.D.C.C. §§ 16.1-16-02 through 16.1-16-10. To the extent that the current proceedings in North Dakota Supreme Court original jurisdiction case, *Burgum v. Jaeger*, Supreme Court No. 2020029, would abridge the Contestant/Plaintiff’s procedural and substantive rights to contest the results of the November 3, 2020 General Election as to the District 8 second House of Representatives seat, as granted by N.D.C.C. Chapter 16.1-16, such a thing would violate Kathrin Volochenko’s Procedural Due Process and Substantive Due Process rights as guaranteed her by the Fourteenth Amendment to the United States Constitution. It should be noted as well that during oral argument in *Burgum v. Jaeger* on November 20, 2020, there was brief discussion as to whether the election contest provisions of N.D.C.C. Chapter 16.1-16 were applicable in that case. The Court was advised by the undersigned counsel for Contestant/Plaintiff Kathrin Volochenko that the time for commencing an election contest civil action pursuant to N.D.C.C. Chapter 16.1-16 had not yet expired. It is respectfully submitted here that North Dakota Century Code title 16.1 -- a completely new, thoroughly-overhauled package of election statutes enacted during the Legislative Assembly’s 1981 Session – is the only applicable statutory law which directly applies to fill the vacancy left by the death of David Andahl. Correspondingly, under N.D.C.C. §§ 16.1-16-02 through 16.1-16-10, District 8 House Candidate Kathrin Volochenko is specifically granted a statutory remedy to contest the November 3, 2020 putative “election” of the ineligible deceased David Andahl, and to be declared the winner of that election. As such, **it is respectfully submitted that 1981-enacted Chapter 16.1-16 superintends and statutory overrules preceding decisional law** such as *Jenness v. Clark*, 21 N.D. 150, 129 N.W. 357 (1910); *Woll v. Jensen*, 162 N.W.403 (N.D. 1917); and *Cassleton Reporter v. An Alleged Newspaper Called the “The Fargo Forum”*, 261 N.W. 549 (N.D. 1935).

David Andahl may not be a proper “contestee” in the instant action as “the person holding the certificate of election” for the purposes of N.D.C.C. § 16.1-16-03 – the only possible “contestee” for the purposes of the instant action is North Dakota Secretary of State Alvin Jaeger himself.

[22] Pursuant to N.D.C.C. § 16.1-16-08, Contestant/Plaintiff Kathrin Volochenko hereby requests that the above-captioned District Court, after trying this civil action without a jury, grant to her the following relief:

1. Enter Judgment that Contestant/Plaintiff Kathrin Volochenko was elected to the second District 8 House of Representatives seat because the deceased David Andahl did not -- and could not -- “meet the qualifications of the office as required by law” for the purposes of N.D.C.C. § 16.1-16-05(1), and as required by N.D. Const. art. II, § 1; N.D. Const. art. IV, § 5. N.D. Const. art. IV, § 5; and N.D.C.C. § 44-01-01; and
2. Enter an Order requiring the Secretary of State issue a certificate of election to Contestant/Plaintiff Kathrin Volochenko declared to be elected in accordance with the Court’s Judgment.

II. PETITION BY KATHRIN VOLOCHENKO FOR A WRIT OF MANDAMUS

[23] Contestant/Plaintiff Kathrin Volochenko hereby incorporates Paragraphs 1 through 21 herein, as if wholly set forth again.

[24] Alternatively and consecutively, Contestant/Plaintiff Kathrin Volochenko hereby asserts that under the facts attendant to November 3, 2020, District 8 House of Representatives election for the second House seat in that District, the Contestant/Plaintiff received the second highest number of votes among qualified candidates for one of the two District 8 House of Representatives seats, and that as such, Contestee/Defendant Alvin Jaeger should have issued her a certificate of election as the prevailing candidate for the second District 8 House of Representatives seat.

[25] In connection with the November 3, 2020, General Election, the North Dakota State Canvassing Board met pursuant to N.D.C.C. § 16.1-15-35 on November 13, 2020, “for the purpose

of canvassing and ascertaining the result of the election.”⁸ In one news account of this event, it was reported as follows:

State Canvassing Board certifies North Dakota elections

by: Maddie Biertempfel

Posted: Nov 13, 2020 / 04:39 PM CST / Updated: Nov 13, 2020 / 04:39 PM CST

Friday afternoon, North Dakota’s State Canvassing Board unanimously certified all local and statewide elections.

Secretary of State Al Jaeger presided over the board, which voted to make official the vote counts in all 53 counties in the state. No write-in candidates met the 10 percent vote threshold in any race, and the District 18 candidate who lost by just 16 votes, Cindy Kaml, has three days to ask for a recount, though she has indicated she will not.

Jaeger made clear at the start of the meeting that the board would not wade into the controversy over the District 18 but simply certify vote totals.

“Whatever is decided by others outside of this meeting, that’s beyond the control of this board. All we’re here to do is to say, these are the results,” Jaeger said.

With the certification today, the District 8 controversy heats up as David Andahl has officially won a seat as a representative.⁹ (*bold, underlined emphasis added*).

[26] N.D.C.C. § 16.1-15-41 provides as follows:

16.1-15-41. Statements of general or special election prepared by state canvassing board - Contents. Upon receiving the certified abstracts on file with the secretary of state, the state canvassing board shall proceed publicly to examine and make statements of the whole number of votes cast at any general or special election for all state or district offices. The statements must show the names of the individuals for whom the votes were cast for the offices and the whole number of votes for each, distinguishing the several districts and counties in which they were cast.

[27] N.D.C.C. § 16.1-15-42 in turn provides as follows:

16.1-15-42. Certificate of result of general or special election by state canvassing board - Secretary of state to receive. The statements provided for in section 16.1-15-41 must be certified by the members of the state canvassing board, who shall subscribe their names to the

⁸ <https://www.kxnet.com/news/local-news/state-canvassing-board-certifies-north-dakota-elections/>

⁹ *Id.*

statements. The board then shall determine what persons have been duly elected to the offices and shall prepare and subscribe on each statement a certificate of that determination and shall deliver the same to the secretary of state. The candidate or candidates to be elected for each office receiving the highest number of votes must be duly elected to the office. (bold, underlined emphasis added).

[28] N.D.C.C. § 16.1-15-46 provides as follows:

16.1-15-46. Members of legislative assembly to receive certificates of election. At the time election certificates are issued to state and district officers, the secretary of state shall issue certificates of election to all members of the legislative assembly. (bold, underlined emphasis added).

[29] As stated above, Counsel for Contestant/Plaintiff Kathrin Volochenko has been informed by staff within the Office of the North Dakota Secretary of State that no “Certificate of Election has yet been issued by the Secretary of State in connection with the election for the second seat in the District 8 House of Representatives race, because of the pendency of the North Dakota Supreme Court original jurisdiction case, *Burgum v. Jaeger*, Supreme Court No. 20200298.

[30] Contestant/Plaintiff Kathrin Volochenko hereby asserts that notwithstanding the pendency of *Burgum v. Jaeger*, *supra*, North Dakota Secretary of State Alvin Jaeger was **required** by N.D.C.C. § 16.1-15-41, N.D.C.C. § 16.1-15-42, and N.D.C.C. § 16.1-15-46 to issue to a certificate of election to Contestant/Plaintiff, because she received the second highest number of votes in the November 3, 2020 General Election of the live person candidates in the election.

[31] Where Contestant/Plaintiff Kathrin Volochenko was alive, and satisfied all other eligibility requirements to serve as a member of the House of Representatives in the Legislative Assembly, having received the second highest number of votes among the three alive candidates who were competing for the two available District 8 House seats, Contestee/Defendant Jaeger was without discretion to deny to her a certificate of election.

[32] As stated above, the North Dakota Constitution is clear that in order to be elected to the legislative assembly, an individual must be a “qualified elector” on the day of the election and must

have been a resident of the state for one year immediately prior to that election. N.D. Const. art. IV, § 5. N.D.

[33] Additionally, a “qualified elector” is an individual who is a citizen of the United States, eighteen years of age or older, and a resident of North Dakota. N.D. Const. art. II, § 1; N.D.C.C. § 16.1-01-04.

[34] If an individual is not a “qualified elector,” that individual is ineligible to hold office as a member of the legislative assembly. See N.D.C.C. § 44-01-01 (“Every elector is eligible to the office for which that person is an elector, except when otherwise specifically provided. No person is eligible who is not such an elector.”).

[35] The North Dakota Supreme Court has held the standard for “eligibility” to hold office turns on the ability of a candidate to satisfy the “requirement to take an oath of office and give an official bond.” See *Nielsen v. Neuharth*, 331 N.W.2d 58, 60 (N.D. 1983).

[36] David Andahl passed away prior to the November 3, 2020 election. Because of Mr. Andahl’s unfortunate passing, it cannot be disputed he was not a citizen of the United States or resident of North Dakota, and thus a “qualified elector,” on the date of the election. Further, Mr. Andahl is not able to take an oath of office or otherwise complete the requirements necessary to assume the legislative seat. Accordingly, the late Mr. Andahl is undoubtedly ineligible to hold office.

[37] Under the statutory election contest rights which are granted to Contestant/Plaintiff Kathrin Volochenko by virtue of N.D.C.C. Chapter 16.1-16, she has the substantive and procedural right to be certified by Contestee/Defendant Secretary of State Alvin Jaeger as having been elected to the North Dakota House of Representatives from District 8.

[38] The failure of Contestee/Defendant Secretary of State Alvin Jaeger to recognize that any “votes” cast for the deceased David Andahl and the corresponding failure of Jaeger to issue a

certificate of election to Contestant/Plaintiff Kathrin Volochenko pursuant to the mandatory provisions of N.D.C.C. Chapter 16.1-16, was violative of Jaeger's statutory duty.

[39] The district court has authority to issue a writ of mandamus pursuant to NDCC Sec. 32-34-02, where, as here, there is not a plain, speedy, and adequate remedy in the ordinary course of the law." In the present case, the respondent may assert that that the time to initiate an election contest has not yet started because of his failure to issue a certificate of election. If he asserts such and if he is correct, then there is no remedy in the ordinary course of the law. Hence, this remedy is sought in the alternative.

[40] In light of the foregoing, the above-captioned District Court must grant to Contestant/Plaintiff Kathrin Volochenko a Writ of Mandamus directing and requiring Jaeger to forthwith issue a certificate of election to Ms. Volochenko.

[41] WHEREFORE, Contestant/Plaintiff Kathrin Volochenko hereby prays that the above-captioned District Court enter Judgment in her favor and against Contestee/Defendant Alvin Jaeger as follows:

That the Court, after trying this civil action without a jury, grant to her the following relief:

1. That the Court enter Judgment that Contestant/Plaintiff Kathrin Volochenko was elected to the second District 8 House of Representatives seat because the deceased David Andahl did not -- and could not -- "meet the qualifications of the office as required by law" for the purposes of N.D.C.C. § 16.1-16-05(1), and as required by N.D. Const. art. II, § 1; N.D. Const. art. IV, § 5. N.D. Const. art. IV, § 5; and N.D.C.C. § 44-01-01;
2. That the Court enter an Order requiring the Secretary of State issue a certificate of election to Contestant/Plaintiff Kathrin Volochenko declared to be elected in accordance with the Court's Judgment; and, alternatively and consecutively,
3. That the Court grant to a Writ of Mandamus in Contestant/Plaintiff Kathrin Volochenko's favor, directing and requiring Jaeger to forthwith issue a certificate of election to Ms. Volochenko.

Dated this 23rd day of November, 2020,

DAVID C. THOMPSON, P.C.

David Clark Thompson

David Clark Thompson

Attorney at Law

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COUNSEL FOR CONTESTANT/PLAINTIFF KATHRIN VOLOCHENKO

SWORN VERIFICATION OF COMPLAINT

Having been first been duly sworn, I, Kathrin Volochenko, do hereby aver and state, pursuant to N.D.C.C. § 16.1-16-03, that all factual averments and statements made herein are true and accurate, to the best of my knowledge.

Dated this 23rd day of November, 2020,

Kathrin Volochenko

Dated this 23rd day of November, 2020,

NOTARY PUBLIC

SEAL

In the Supreme Court State Of North Dakota

November 17, 2020

Supreme Court No. 20200298

Doug Burgum, in his capacity
as North Dakota's Governor,

Petitioner,

v.

Alvin Jaeger, in his capacity as
North Dakota's Secretary of State;
the North Dakota Legislative Assembly,
Chet Pollert, Chairman of Legislative
Management; and District 8 Republican
Committee, Loren DeWitz, District Chairperson,

Respondents.

DECLARATION OF SERVICE BY ELECTRONIC MEANS PURSUANT TO RULE 25 OF THE NORTH DAKOTA RULES OF APPELLATE PROCEDURE

[¶1] Pursuant to Rule 25(d) of the North Dakota Rules of Appellate Procedure, I hereby certify that I today served the document identified hereafter by electronic means through the Supreme Court's E-filing Portal in compliance with Rule 25(a)(2)(c) of the North Dakota Rules of Appellate Procedure upon the following counsel at the following e-mail addresses Nicholas Mark Suurma

nsurma@vogellaw.com; Matthew Arnold Sagsveen msagsve@nd.gov; Robert James Pathroff rpathroff@vogellaw.com; Megan J. Gordon mgordon@vogellaw.com ; Duane A. Lillehaug dlillehaug@maringlaw.com; [David Ray Phillips drphillips@nd.gov](mailto:drphillips@nd.gov); [Jonathan T. Garaas garaaslawfirm@ideaone.net](mailto:garaaslawfirm@ideaone.net) ; [Tyler Yeargain tyler.yeargain@yale.edu](mailto:tyler.yeargain@yale.edu):

Rule 28(k) N.D.R.App.P. Post-Oral Argument Citation With Enclosed N.D.C.C. § 16.1-16 District Court (Burleigh County) Election Contest Complaint

Dated this 23rd day of November, 2020,

/s/ *David C. Thompson*

David C. Thompson (ND No. 09321)

Attorney at Law

DAVID C. THOMPSON, P.C.

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