

**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.

**MOTION BY DEMOCRATIC NON-PARTISAN LEAGUE (DEM-NPL)
DISTRICT 8 HOUSE OF REPRESENTATIVES CANDIDATE KATHRIN
VOLOCHENKO REQUESTING THAT THE SUPREME COURT PERMIT HER
TO INTERVENE AS A NECESSARY PARTY TO THE PROCEEDINGS
ASSOCIATED WITH THE PETITION BY NORTH DAKOTA GOVERNOR
DOUG BURGUM FOR “PRELIMINARY INJUNCTIVE RELIEF,
DECLARATORY JUDGMENT, WRIT OF INJUNCTION, AND WRIT OF
MANDAMUS”**

[¶1] Invoking original jurisdiction of the North Dakota Supreme Court, Governor Doug Burgum has petitioned the Court for “preliminary injunctive relief, declaratory judgment, (a writ of injunction, and (a) writ of mandamus” to preclude the Secretary of State,

Legislative Assembly and District 8 Republican Committee” from filling the District 8 legislative seat following the pre-election death of Republican House Candidate David Andahl – so as to permit the Governor to himself fill that seat by appointment. 1

[¶2] On the basis of the attendant facts and those legal authorities² which will be presented an accompanying Memorandum which will be filed shortly hereafter, it is the position of Movant Democratic Non-Partisan League (Dem-NPL) Party District 8 House of Representatives Candidate Kathrin Volochenko that **the respective positions adopted in this original jurisdiction case by both the Petitioner and the Respondents are incorrect** and that the Supreme Court should order that the Movant prevailed in the

1 It is noted by Intervenor Kathrin Volochenko that the Supreme Court has scheduled oral argument in the instant case for Friday, November 20, 2020, at 9:00 a.m. This Intervenor hereby requests leave of the Court to participate in said oral argument.

2 A complete recitation of attendant facts and legal authorities in support of the instant Motion will be filed later today in a complete Memorandum in support hereof. Some representative authorities relating to circumstances where a candidate for public office has died prior to an election – where news of the candidate’s death has been widely publicized in newspapers and other media – and where solicitations have been sent out urging voters to cast their ballots on election day for a deceased person – as actually occurred following the death of David Andahl in District 8 -- where the candidate receiving the next greatest number of votes has been declared the winner of the election – include the following: *State ex. Rel. Bancroft v. Frear*, 128 N.W. 1068 (Wis. 1920); *Madden v. Election Commissioners*, 146 N.E. 280 (Mass. 1925); *State ex. Rel. Wolff v. Guerkin*, 109 P.2d 1094 (Mont. 1941); *Blaine v. Alameda County*, 35 P.2d 517 (Cal. 1934); *Dunagan v. Jones*, 76 S.W.2d 219 (Tex. Civ. App. 1934). Additional authorities and documented facts will be presented in the Memorandum in support of the instant Motion which will be filled later today. Parenthetically, as will be discussed at length in the forthcoming Memorandum in support of the instant Motion, neither of the decisions of the North Dakota Supreme Court in *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) involve deceased candidates for public office or advance public knowledge of such candidates’ deceased status, and thus those decisions are inapposite as precedential authorities to support the positions taken by the Petitioner or the Respondents in the instant case.

November 3, 2020 General Election and this Movant should be seated as a member of the House of Representatives representing District 8 in the Sixty-Seventh Legislative Assembly.

[¶3] The instant motion by Dem-NPL Party District 8 House of Representatives Candidate Kathrin Volochenko is made pursuant to the authorities of N.D.R.App.P. 27, N.D.R.Civ.P. Rule 24(a)(2), and N.D.R.Civ.P. 19(a)(1).

[¶4] Rule 24(a)(2) of the North Dakota Rules of Civil Procedure provides as follows:

RULE 24. INTERVENTION

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

[¶5] Under N.D.R.Civ.P. 19(a)(1), “[a] person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party” if the person meets the following requirements, in part:

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may:

(i) as a practical matter impair or impede the person’s ability to protect the interest . . .

[¶6] Clearly, on the basis of the foregoing, Dem-NPL Party District 8 House of Representatives Candidate Kathrin Volochenko is a required party to the current proceedings precipitated by the current Petition for Preliminary Injunctive Relief,

Declaratory Judgment, Writ of Injunction and Writ of Mandamus”, given the substantive positions adopted by the Petitioner and the Respondents in this case.

[¶7] Furthermore, joinder of Kathrin Volochenko in this case will not deprive the Court of subject matter jurisdiction. N.D.R.Civ.P. 19(a)(1). Ms. Volochenko was a Dem-NPL Party candidate for the House of Representatives in District 8, and she resides in North Dakota

Dated this 17th day of November, 2020,

/s/ David C. Thompson

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2020, the following documents:

MOTION BY DEMOCRATIC NON-PARTISAN LEAGUE (DEM-NPL) DISTRICT 8 HOUSE OF REPRESENTATIVES CANDIDATE KATHRIN VOLOCHENKO REQUESTING THAT THE SUPREME COURT PERMIT HER TO INTERVENE AS A NECESSARY PARTY TO THE PROCEEDINGS ASSOCIATED WITH THE PETITION BY NORTH DAKOTA GOVERNOR DOUG BURGUM FOR “PRELIMINARY INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, WRIT OF INJUNCTION, AND WRIT OF MANDAMUS”

was filed electronically with the Clerk of Court through SUPREME COURT ELECTRONIC FILING PORTAL, and a copy of the above listed documents were mailed electronically by the filing portal to the following:

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;

Dated this 17th day of November, 2020.

/s/ David C. Thompson

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