

STATE OF MINNESOTA

IN SUPREME COURT

#C0-02-1352

David McGuire,

Petitioner,

vs.

FINDINGS OF FACT

Fran Windschitl, as County
Auditor of Rice County,
Minnesota,

Respondent,

Laura Ihrke, as County
Auditor of Steele County,
Minnesota,

Respondent,

Joan Manthe, as County Auditor
of Waseca County, Minnesota,

Respondent,

Mary Kiffmeyer,
Minnesota Secretary of State,

Respondent,

Jeremy W. Eller,

Intervenor.

The above-entitled matter came on for hearing before the undersigned referee on August 19, 2002, upon the order of the Minnesota Supreme Court dated August 15, 2002, to determine facts relevant to the petition filed by David McGuire in that court.

Appearances were as follows:

Tony Trimble and Matthew Haapoja, Trimble & Associates, 11700 Wayzata Blvd., Wayzata, MN 55305 (for petitioner David McGuire);

Meredith A. Erickson, Assistant Rice County Attorney, 218 N.W. Third St., Faribault, MN 55021 (for respondent Fran Windschitl);

Douglas L. Ruth, Steele County Attorney, 317 N. Cedar, P. O. Box 616, Owatonna, MN 55060 (for respondent Laura Ihrke);

Alan W. Weinblatt, 1616 Pioneer Bldg., 336 Robert St., St. Paul, MN 55101 (for intervenor Jeremy W. Eller);

Alan I. Gilbert, Solicitor General, Office of the Attorney General, 1100 NCL Tower, 445 Minnesota St., St. Paul, MN 55101, and Kenneth E. Raschke, Jr., and Christie B. Eller, Assistant Attorneys General, Suite 200, 525 Park Ave., St. Paul, MN 55103 (for Mary Kiffmeyer, Secretary of State).

Based on the affidavits, exhibits, and testimony, and all of the relevant proceedings herein, the undersigned makes the following findings of fact:

1. Petitioner David McGuire, who resides at 1955 Third Avenue Northeast, Owatonna, Minnesota 55060, is an eligible voter entitled to vote in the September 10, 2002, primary and November 5, 2002, general elections in Legislative District 26.
2. On August 8, 2002, McGuire filed a petition pursuant to Minn. Stat. § 204B.44 (2000), asking the Minnesota Supreme Court to direct respondents, Fran Windschitl, the duly qualified and acting auditor of Rice County, Minnesota; Laura Ihrke, the duly qualified and acting auditor of Steele County, Minnesota; and Joan Manthe, the duly qualified and acting auditor of Waseca County, Minnesota, to omit the name of respondent-intervenor Jeremy W. Eller from the ballots for Minnesota State Senator from Legislative District 26 for the 2002 primary and general elections.
3. Petitioner alleges that Eller has not complied with the residency requirement for candidacy for legislators set out in Minn. Const. art IV, § 6. The six-month residency period immediately preceding the November 5, 2002, general election began on May 5, 2002.
4. The March 19, 2002, decision of the Minnesota Special Redistricting Panel mandated use of the panel's plan or, alternatively, any constitutional legislative plan subsequently enacted by the Minnesota Legislature and the Governor of the State of Minnesota. Pursuant to Minn. R. Civ. App. P. 104.01, subd. 1, the time for appeal did not expire for 60 days after service of notice of filing.
5. Based on an affidavit of candidacy filed with the office of Mary Kiffmeyer, Secretary of State for the State of Minnesota, the secretary certified to the county auditors of Rice, Steele, and Waseca counties Jeremy W. Eller as a candidate for Minnesota State Senator from District 26, for inclusion on the ballot for the September 10, 2002, primary election.

6. Eller's affidavit of candidacy for the office of Minnesota Senator from District 26, includes a mailing address of P.O. Box 304, Faribault, Minnesota.
7. On May 2, 2002, Eller filed a statement of organization with the Campaign Finance and Public Disclosure Board, indicating that his mailing address is 2130 198th Street West, Faribault, Minnesota.
8. Secretary of State Kiffmeyer and the Waseca and Rice County Auditors report that absentee ballots for the primary election have been printed, were delivered to their offices, and were available for voting beginning on Friday, August 9, 2002. Absentee voters are currently using the ballots. The Waseca, Rice, and Steele County Auditors made no error or omission in the performance of their duties with respect to the ballot in question.
9. Since 1999, Eller and his wife own and have owned property at 9382 Dodd Road, Kilkenny, Minnesota, which is not in District 26.
10. Prior to May 5, 2002, Eller intended to run for office from former District 25B. Due to redistricting, he decided to move to and run for office from the current District 26.
11. Intending to establish residence in District 26, in April 2002, Eller reached an oral agreement to rent a bedroom from his parents Stanley and Angela Eller at their home in District 26 at 2130 198th Street West, Faribault, Minnesota.
12. On April 30, 2002, Eller executed a post office change-of-address form to 2130 198th Street West, Faribault, Minnesota. On May 1, 2002, Eller applied for a new driver's license, changing his address to 2130 198th Street West, Faribault, Minnesota. Eller has disseminated this new address to friends and family.
13. Since May 1, 2002, Eller has collected his mail, stored his clothing and some personal effects, and slept most nights at 2130-198th Street West, Faribault, Minnesota.
14. Eller's wife continues to run her and their businesses out of their house at 9382 Dodd Road. Since May 5, 2002, she has slept there most nights. Their pet also stays there.
15. About two nights per week, Eller stays at the Dodd Road house to conduct business until late at night.
16. Since at least early May 2002, Eller has worked from about 6:00 a.m. to 4:00 p.m. in Faribault and has spent many evenings each week campaigning in District 26.
17. Eller and his wife have listed the Dodd Road property with a realtor for sale with a realtor and have undertaken additional work on the property to enhance its prospects for sale.
18. Eller and his wife have viewed properties in District 26, and have made offers that were rejected due to a contingency involving sale of the Dodd Road property. Eller does not

intend to reside at the Dodd Road property.

19. Eller has done all that is reasonably possible to establish residency in district 26, and has in fact established such residence.
20. Petitioner David McGuire has failed to sustain his heavy burden to clearly establish that the Rice, Steele, and Waseca County Auditors should omit Jeremy W. Eller's name from the ballots for the September 10, 2002, primary election or the November 5, 2002, general election.

Dated: August 21, 2002

/s/ Edward Toussaint _____
Edward Toussaint
Referee