

STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

DEC 19 2005

A05-2412

FILED

Rick Studer,

Petitioner,

vs.

Mary Kiffmeyer, Secretary of State;
Randy Schreifels, Stearns County Auditor/Treasurer;
Joan Neyssen, Benton County Auditor/Treasurer; and
Ramona Doebler, Sherburne County Auditor/Treasurer,

Respondents,

and

Sue Ek,

Intervenor-Respondent.

O R D E R

PER CURIAM:

The above-entitled matter came on for hearing on December 19, 2005, on the petition of Rick Studer, filed pursuant to Minn. Stat. § 204B.44 (2004), requesting the court to remove the name of Sue Ek from the ballot for State Representative from House District 15B at the special election to be held on December 27, 2005. Petitioner alleges that candidate Ek will not have resided in District 15B for six months immediately preceding the special election as required by Minn. Const. art. IV, § 6. Candidate Ek

intervened as a respondent, filed a response in opposition to the petition, and moved to dismiss the petition. An evidentiary hearing was held on December 16, 2005, before the Honorable George T. Stephenson, acting as referee by order of this court, and Judge Stephenson filed his findings on that date. Intervenor-respondent Ek filed written objections to the findings on December 18, 2005.

Intervenor-respondent Ek's affidavit of candidacy lists her residence as her parents' home in St. Cloud, Minnesota. Petitioner contends that intervenor-respondent Ek resided at an address in St. Paul, Minnesota, until at least July 9, 2005, a date less than six months before the December 27 special election, and the referee so found. We confirm the findings of the referee and consequently conclude that intervenor-respondent Ek was not a resident of District 15A for the six months prior to December 27. A candidate who has not resided in the legislative district for six months immediately preceding the special election is not qualified to run for state legislative office in that district. *See Melendez v. O'Connor*, 654 N.W.2d 114, 118 (Minn. 2002).

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The petition of Rick Studer be, and the same is, granted.
2. The motion of intervenor-respondent Ek to dismiss the petition is denied.
3. The Benton, Sherburne, and Stearns County Auditors shall remove the name of Sue Ek from the ballot as a candidate for State Representative for House District 15B at the special election to be held December 27, 2005.

4. If replacement absentee ballots are to be printed for District 15B, the County Auditors shall strike the name of Sue Ek from absentee ballots that are provided to voters from District 15B until replacement absentee ballots are available.

5. If a voter has already received an absentee ballot and requests, in any manner, a replacement absentee ballot, the County Auditor shall provide a replacement absentee ballot by mail, or in person if requested by the voter, to be utilized by the voter. Instructions shall accompany the replacement ballot clearly stating (a) that either a regular absentee ballot or a replacement absentee ballot will be accepted as valid if properly completed and returned, (b) that votes cast for candidate Ek will not be counted, and (c) that a returned replacement absentee ballot will replace any absentee ballot the voter may already have cast.

6. If a voter casts two absentee ballots, the ballot with the later date on the return envelope shall be counted.

7. The court expresses no opinion on the issue of whether removal of intervenor-respondent Ek from the ballot creates a vacancy that may be filled in accordance with statute.

8. So as not to impair the orderly election process, this order is issued with opinion to follow.

Dated: December 19, 2005

BLATZ, C.J., took no part in the consideration or determination of this case.