



State Democracy Research Initiative

UNIVERSITY OF WISCONSIN LAW SCHOOL

Research Note: Laches in State Court Election Cases

Harry Isaiah Black, Staff Attorney

Published: October 11, 2024

Ahead of Election Day 2024, courts—and especially state courts—continue to be inundated with election-related lawsuits. As in 2020, courts may see a deluge of post-election litigation as well. A recurring question in these pre- and post-election cases is whether the plaintiffs waited too long to sue. Under the longstanding equitable doctrine of “laches,” courts sometimes reject claims as untimely even when plaintiffs satisfy the applicable statute of limitations if, in fairness, the claims should have been brought sooner.¹

This Research Note offers a 50-state survey of laches doctrine in the election context. It turns out that nearly every state has case law addressing laches defenses to election-related claims. Approximately 40 state supreme courts have issued at least one on-point ruling, and often several.² At least six other state high courts have similarly considered whether election-related claims were unduly delayed, but without invoking laches by name.³ And in two of the four states that appear to lack relevant high court precedents, there are lower court rulings that assess laches in election-related cases.⁴

¹ The word “laches” derives from the Middle English “lachesse,” meaning “lax.” *Laches*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/laches?src=search-dict-box#word-history> (last visited Sept. 3, 2024). The doctrine of laches emerged within England’s equity courts when “stale demands, usually involving the loss of witnesses or records, offended the Chancellor’s sense of fairness.” *Ross v. State Bd. of Elections*, 876 A.2d 692, 703 (Md. 2005).

² Those states are Alabama, Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, West Virginia, Wisconsin, and Wyoming.

³ Those states are Arkansas, Idaho, Maine, New Hampshire, North Carolina, and Texas.

⁴ Delaware and Vermont are the states with relevant lower court rulings. Only Utah and Virginia appear to have no election-specific laches precedent or decisions that more generally assess whether a delay bars an election-related claim.

A few high-level takeaways emerge from this survey:

First, although courts around the country may articulate the laches standard in slightly different ways and assess the application of laches on a case-by-case basis, they generally apply the doctrine only in situations involving both delay *and* prejudice. In other words, they ask whether plaintiffs could have and should have brought their claims sooner and whether allowing the claims to proceed despite the plaintiffs' tardiness would harm the defendants (or others). Thus, when there remains adequate time to resolve claims before an election without unduly disrupting the voting process or unduly burdening election administrators, courts are less likely to hold that the claims are barred by laches.

Second, courts in some states expressly weigh the "public interest" as part of their laches inquiry.⁵ In other courts, such an assessment remains more implicit. Courts have sometimes invoked the public interest, for example, as a reason to be cautious about applying laches when doing so would leave a broad infringement on constitutional rights unredressed.⁶

Third, courts have indicated that laches is especially appropriate when litigants appear to be engaging in tactics that Professor Lisa Marshall Manheim has called "electoral sandbagging."⁷ These are situations in which litigants choose not to challenge an election law or practice prior to

⁵ See, e.g., *McConnell v. Marshall*, 467 S.W.2d 318, 320 (Ky. 1971) (declining to apply laches despite the plaintiffs' delay in filing suit since the "qualification of candidates [is] a matter in which the public has an interest"); *White v. Manchin*, 318 S.E.2d 470, 479 (W. Va. 1984) (declining to apply laches despite the petitioners' delay since "[a]ny inconvenience suffered by the respondent candidates or third parties as a result of the" the petitioners' less than seven-week delay in filing suit "is far outweighed by the inconvenience suffered by the public should those candidates prove ineligible to hold the offices sought in mandamus actions brought following completion of the primary election"); *Clarke v. Wisconsin Elections Comm'n*, 998 N.W.2d 370, 391 (Wis. 2023) (declining to apply laches despite the petitioners' delay since "any disruption to the current state legislative districts is necessary to serve the public's interest in having districts that comply with each of the requirements of the Wisconsin Constitution"). *But see, e.g., Weston v. Williams*, 2 S.E.2d 381, 382 (S.C. 1939) (applying laches since allowing the suit to proceed would "greatly hamper the public interest" by preventing the governor from appointing the winner of the primary to serve as a magistrate).

⁶ See, e.g., *Sears v. Treasurer & Receiver Gen.*, 98 N.E.2d 621, 632 (Mass. 1951) (observing that when, as here, the constitutionality of a law is challenged, "it cannot be made valid by the laches of anyone or by any lapse of time"); *Indigenous Lifeways v. New Mexico Compilation Comm'n Advisory Comm.*, 528 P.3d 678, 686 (N.M. 2023) (observing that "[c]aution in the application of laches to bar a constitutional claim is invoked . . . because it would be the epitome of inequity to allow an unconstitutional law to remain in effect merely because someone slumbered on his or her rights" (citation omitted)).

⁷ Lisa Marshall Manheim, *Electoral Sandbagging*, 13 UC Irvine L. Rev. 1187, 1191 (2023).

an election—or perhaps even encourage or support the law or practice—but then sue after the election to contest the results if the election’s outcome is unfavorable to them.⁸

Fourth, laches inquiries sometimes become enmeshed with discussions of the so-called “*Purcell* principle.” That principle, developed by and for federal courts, establishes a presumption against last-minute judicial alterations of election rules.⁹ Although state courts generally have not embraced the *Purcell* principle in its strong federal form,¹⁰ they sometimes explain that a party’s delay in bringing suit counsels against judicial intervention when an election is looming.¹¹

* * *

Alabama

In Alabama, laches requires showing that “the plaintiff has delayed in asserting a claim, that that delay is inexcusable, and that the delay has caused the party asserting the defense undue prejudice.” *Veitch v. Vowell*, 266 So. 3d 678, 683 (Ala. 2018).

⁸ See, e.g., *Lewis v. Cayetano*, 823 P.2d 738, 741 (Haw. 1992) (“We apply the doctrine of laches in cases such as this and *Thirty Voters v. Doi*[,] [599 P.2d 286, 288 (Haw. 1979),] because efficient use of public resources demand that we not allow persons to gamble on the outcome of the election contest then challenge it when dissatisfied with the results, especially when the same challenge could have been made before the public is put through the time and expense of the entire election process.”); *Ross v. State Bd. of Elections*, 876 A.2d 692, 705–06 (Md. 2005) (“[A] candidate or other election participant should not be allowed to ambush an adversary or subvert the election process by intentionally delaying a request for remedial action to see first whether they will be successful at the polls.”); *Trump v. Biden*, 951 N.W.2d 568, 572 (Wis. 2020) (“[Laches] is applied because the efficient use of public resources demands that a court not allow persons to gamble on the outcome of an election contest and then challenge it when dissatisfied with the results, especially when the same challenge could have been made before the public is put through the time and expense of the entire election process.” (quoting 29 C.J.S. Elections § 459 (2020))). *But see*, e.g., *In re Contest of Nov. 8, 2011 Gen. Election of Off. of New Jersey Gen. Assembly*, 40 A.3d 684, 706 (N.J. 2012) (holding that the plaintiff was not required to seek the removal of a candidate from the ballot prior to the election since state law allows a party 30 days to contest an election and the plaintiff, who was competing against that candidate, would have had “to expend the time and resources” prior to the election “pursuing an investigation and litigation when such commodities are precious”).

⁹ *Purcell v. Gonzalez*, 549 U.S. 1 (2006).

¹⁰ See Robert Yablon and Derek Clinger (Sept. 11, 2024), *Purcell Principles for State Courts*, University of Wisconsin Legal Studies Research paper No. 1814, available at SSRN: <https://ssrn.com/abstract=4953898> or <http://dx.doi.org/10.2139/ssrn.4953898>.

¹¹ See, e.g., *Liddy v. Lamone*, 919 A.2d 1276, 1287–88 (Md. 2007); *DeVisser v. Sec’y of State*, 981 N.W.2d 35 (Mich. 2022) (Welch, J., concurring). While the Texas Supreme Court does not apply laches to election cases, it requires parties to “act[] diligently to protect their rights” when asserting a claim for mandamus within the elections context. *In re Hotze*, 627 S.W.3d 642 (Tex. 2020).



In *Veitch*, the plaintiff sought to have his name added to the ballot. The Alabama Supreme Court declined to apply laches, reasoning that the plaintiff had not inexcusably delayed in waiting two weeks to file his action. *Id.*

In another case, the court issued a memorandum opinion affirming dismissal of a mandamus action seeking to have the secretary of state verify the eligibility of all presidential candidates appearing on the ballot. *McInnish v. Bennett*, 150 So. 3d 1045 (Ala. 2014) (mem.). One justice concurring in the decision cited laches as part of his reasoning. According to the justice, the plaintiffs had inexcusably delayed in filing their suit until “approximately eight months after being apprised of the Secretary of State’s position that she had no affirmative duty to investigate [candidate eligibility] and two weeks after the ballots were to be printed and delivered to the various counties.” *Id.* at 1046. The justice added that “[t]he prejudice that would have ensued from such a late challenge, if successful, would have been twofold: first, assuming it could have been accomplished from a practical standpoint, the reprinting and distribution of general-election ballots would have come, at that late date, at great financial cost to the State; and second, and just as important, the reprinted ballots would differ from absentee ballots already sent to the members of our military and other citizens overseas.” *Id.* In contrast, a dissenting justice reasoned that the plaintiffs had timely filed their claim since they had “brought their challenge only 5 weeks after selection of the presidential nominees and 26 days before the election.” *Id.* at 1059.

Alaska

In Alaska, “The defense of laches requires that the defendant show two independent elements: (1) that the plaintiff has unreasonably delayed in bringing the action, and (2) that this unreasonable delay has caused undue harm or prejudice to the defendant.” *State v. Arctic Vill. Council*, 495 P.3d 313, 320–21 (Alaska 2021) (internal quotation marks and citation omitted).

Arctic Village Council involved a challenge to a witness requirement for absentee voting. The Alaska Supreme Court concluded that laches did not bar the plaintiffs’ claim, relying on the trial court’s factual findings. According to the trial court, the plaintiffs had not unreasonably delayed in challenging the ballot requirement despite waiting until about two months before the election at issue to file suit since their claim was grounded in an unpredictable global pandemic. *Id.* at 321. Moreover, the trial court found no prejudice, reasoning that ruling for the plaintiffs would not require “modification or reprinting of the absentee ballot packages but only further training of Division [of Elections] employees on how to handle unwitnessed ballots and a carefully targeted public education plan, all of which could be accomplished in the time remaining.” *Id.* (internal quotation marks omitted).

In another action seeking certification of a municipal ballot initiative, the court once again declined to apply laches. According to the court, the plaintiff did not unreasonably delay in raising its appeal in time for the election since the plaintiff and defendants each requested extensions

of time with the trial court and the plaintiff had no obligation to appeal. *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage*, 151 P.3d 418, 425 (Alaska 2006). The court also declined to find prejudice merely because a municipality had previously rejected the initiative. *Id.* at 426 n.50.

Arizona

In Arizona, laches requires proof of “unreasonable” delay and “prejudice to the other party sufficient to justify denial of relief.” *Mathieu v. Mahoney*, 851 P.2d 81, 84 (Ariz. 1993).

Mathieu involved a challenge to an initiative measure. The Arizona Supreme Court determined that laches barred the plaintiffs’ claim. According to the court, the plaintiffs had delayed at least a month after the secretary of state certified signatures supporting the initiative, and only days before absentee ballots were to be printed, in filing their suit. *Id.* at 84. The court found that such a delay prejudiced the defendants in leaving them with 24 hours to try the case and appeal the trial court’s decision. *Id.* at 84–85. The court added:

The ultimate prejudice in election cases is to the quality of decision making in questions of great public importance. In ordinary private litigation, the laches defense requires a court to focus on the prejudice to the parties. But public litigation, such as election contests and challenges to ballot propositions, implicates interests well beyond the parties to the case. Litigants and lawyers involved in such litigation must be keenly aware of the need to bring such cases with all deliberate speed or else the quality of judicial decision making is seriously compromised.

Id. at 85.

In a different action challenging the Arizona Legislative Council’s analysis of a proposition to be included in the state’s voter information pamphlet, the court also applied laches. The court reasoned that the petitioners waited nearly two months to file their suit and that the analysis would require an extensive rewrite if the petitioners’ claims were accepted. *Sotomayor v. Burns*, 13 P.3d 1198, 1200 (Ariz. 2000).

In an action challenging a nominating petition, the court also applied laches, reasoning that the plaintiff’s “belated prosecution of [his] appeal, which he filed on the last day of the statutory deadline,” left the defendant “with only one day to file his response brief, jeopardized election officials’ timely compliance with statutory deadlines, and required the Court to decide this matter on an unnecessarily accelerated basis[.]” *McClung v. Bennett*, 235 P.3d 1037, 1040 (Ariz. 2010) (citations omitted).

Still, there are other examples where the Arizona Supreme Court declined to apply laches, typically relying on the length of the time from filing of the lawsuit until the election or a critical election deadline. In an action challenging a ballot measure that would create a constitutional

right to a secret ballot in elections, the court held that laches did not bar the plaintiffs' claim. The court determined that, despite delaying 10 months in bringing their suit, the plaintiffs could proceed with their claim because the secretary of state's office still had sixteen weeks to print a publicity pamphlet and had requested the trial court issue an extended briefing schedule. *McLaughlin v. Bennett*, 238 P.3d 619, 621 (Ariz. 2010).

In yet another case seeking to prevent a country recorder from including overvote instructions with mail-in ballots, the court declined to apply laches. The court ruled that, despite delaying five months in bringing their challenge, the plaintiffs could proceed with their claim since the county was able to meet deadlines for mailing early ballots, and so suffered no prejudice. *Arizona Pub. Integrity All. v. Fontes*, 475 P.3d 303, 310 (Ariz. 2020).

Arkansas

The Arkansas Supreme Court has yet to consider the application of laches within the election context, but it has considered the defense in other contexts:

[L]aches . . . is based on the equitable principle that an unreasonable delay by the party seeking relief precludes recovery when the circumstances are such as to make it inequitable or unjust for the party to seek relief now. The laches defense requires a detrimental change in the position of the one asserting the doctrine, as well as an unreasonable delay by the one asserting his or her rights against whom laches is invoked.

Summit Mall Co., LLC, v. Lemond, 132 S.W.3d 725, 735 (Ark. 2003) (citations omitted).

Still the court has considered the impact of delay in bringing an election-related claim. In one case, the court overturned a trial court's order enjoining an election from taking place. *Brown v. McDaniel*, 427 S.W.2d 193, 195 (Ark. 1968). Given the appeal was presented to the court four days before the election were to be held, the court concluded that "there was no possibility whatever of our giving sufficient study to the merits of the parties' substantive contentions." *Id.* It added that, "if a court, trial or appellate, can at the eleventh hour prohibit a regular election, regularly called, it is at once apparent that the control of judges over the election process goes far beyond reasonable limits." *Id.* at 194. The court emphasized that a "proceeding be brought in sufficient time to permit the issues to be fully considered, on their merits, with adequate time for both sides to prepare and present their contentions." *Id.* at 195.

In another case, the court held that the plaintiffs should have challenged a law prior to an election held under the law. *Ferguson v. Brick*, 652 S.W.2d 1, 2 (Ark. 1983). The court observed that it "do[es] not favor suits after elections by candidates seeking to void an election they would not contest if they had won." *Id.*

California

In California, “[t]he doctrine of laches bars a cause of action when the plaintiff unreasonably delays in asserting or diligently pursuing the cause and the plaintiff has acquiesced in the act about which the plaintiff complains, or the delay has prejudiced defendant.” *Johnson v. City of Loma Linda*, 5 P.3d 874, 884 (Cal. 2000).

In one case, the California Supreme Court held that laches barred the petitioner from challenging a judicial recall election because the petitioner filed the suit a day before the election at issue. *Vela v. Huberty*, 35 P.2d 531, 532 (Cal. 1934). In a more recent case, the court declined to apply laches, reasoning that, despite the petitioners’ delay of several months in filing their claim, the election at issue was still four months away. *Senate of State of Cal. v. Jones*, 988 P.2d 1089, 1097 (Cal. 1999).

Colorado

In Colorado, “[t]he essential element of laches is unconscionable delay in enforcing a right under the circumstances, usually involving a prejudice to the one against whom the claim is asserted.” *Hickerson v. Vessels*, 316 P.3d 620, 623 (Colo. 2014) (internal quotation marks omitted).

In a case from the nineteenth century, the Colorado Supreme Court ruled that laches barred a petitioner from challenging the secretary of state’s decision rejecting a nominating petition while accepting another. *McKnight v. Whipple*, 55 P. 182, 183 (Colo. 1898). According to the court, the petitioner delayed about a month in filing his challenge. *Id.* The court found that “the petitioner ha[d] been not only extremely dilatory, but seemingly guilty of intentional and vexatious delay[,]” as evidenced by “his failure to introduce any evidence on either of the hearings before the [secretary of state], as well as by his failure to promptly obtain a review of the ruling complained of.” *Id.* at 183–84.

In another challenge to a secretary of state’s decision to reject a nominating petition, the court did not cite laches but held that the “[p]etitioners, having failed to exercise diligence, and their rights having been foreclosed by the lapse of time, cannot now be heard to complain.” *McCall v. Pearce*, 127 P. 956, 957 (Colo. 1912). According to the court, the petitioners had delayed over 40 days in filing their claim. *Id.* at 956–57.

Connecticut

In Connecticut, “laches consists of an inexcusable delay that unduly prejudices the defendant[.]” *Price v. Indep. Party of CT-State Cent.*, 147 A.3d 1032, 1042 (Conn. 2016).

Price involved a dispute over which nominee for the U.S. Senate should appear on the ballot under the Independent Party line. In dicta, the court said that it would apply laches. According to the court, the plaintiffs delayed nearly two weeks in filing their claim. *Id.* at 1044. The court also found inexcusable delay in the fact that the parties had spent several years disputing control over

Connecticut's Independent Party yet did not engage in litigation until two weeks before ballot preparation was scheduled to begin. *Id.* The court found that the plaintiffs' delay caused prejudice since counties and towns had already printed absentee ballots and program voting equipment and would need to incur at least \$218,000 in costs associated with reprinting ballots and reprogramming machines. *Id.* at 1043.

Delaware

The Delaware Supreme Court has yet to consider the application of laches within the election context. Outside of that context, the court has described laches as "an unreasonable delay by a party, without any specific reference to duration, in the enforcement of a right, and resulting in prejudice to the adverse party." *Whittington v. Dragon Grp., L.L.C.*, 991 A.2d 1, 7 (Del. 2009).

Still, a trial court has held that laches barred a challenge to a candidate's qualifications to appear on the ballot, reasoning that the plaintiff had not unreasonably delayed in filing suit within one month of learning that the candidate might have lacked the proper qualifications for office. *Moore v. Stango*, No. CIV. A. 92C-04-020, 1992 WL 114062, at *4 (Del. Super. Ct. May 8, 1992).

Florida

The Florida Supreme Court has explained (outside the election context) that laches entails the plaintiff's "guilt[] of not asserting his rights by suit" and "injury or prejudice to the defendant[.]" *Van Meter v. Kelsey*, 91 So. 2d 327, 331 (Fla. 1956).

In one case challenging election results on the ground that several voters had failed to pay their poll taxes, the Florida Supreme Court held that laches applied. The court observed:

This court is committed to the doctrine that extraordinary relief will not be granted in [a] case where it plainly appears that although the complaining party may be ordinarily entitled to it, if the granting of such relief in the particular case will result in confusion and disorder and will produce an injury to the public which outweighs [sic] the individual right of the complainant to have the relief he seeks.

State ex rel. Pooser v. Wester, 170 So. 736, 738–39 (Fla. 1936). Applying that principle, the court concluded that the plaintiffs had failed to file their lawsuits "seasonably and appropriately" and so laches barred the plaintiffs' suit. *Id.* at 738. According to the court, the plaintiffs had waited over four months, and only one month before the election, to file their suit. *Id.* at 739. The court determined that other facts weighed in favor of applying laches, including the fact that the plaintiffs had only alleged a generalized grievance, a ruling for plaintiffs would not necessarily result in overturning the election, and that the plaintiffs had failed to allege how the defendants in the case took any part in the alleged violation. *Id.*

In another decision, the court held that laches did not apply to a mandamus proceeding seeking recertification of election results, reasoning that a delay of over 60 days in bringing suit did not

produce any “injury, embarrassment or disadvantage to any person” nor “prejudicial change in position by any of the parties.” *State ex rel. Clendinen v. Dekle*, 173 So. 2d 452, 456 (Fla. 1965).

In a different case, *State ex rel. Haft v. Adams*, the court applied laches to a mandamus proceeding seeking to remove certain candidates from the ballot, reasoning that the petitioner had brought his lawsuit “too little, too late,” delaying twenty-one days, and only one month before the first primary election of the year, in bringing his lawsuit. 238 So. 2d 843, 845 (Fla. 1970).

Finally, in a challenge to ballot measure, the court declined to apply laches, reasoning that the petitioners had not unreasonably delayed in filing suit several weeks after voting on the measure had occurred and despite the fact that several petitioners might have been aware of the ballot text or purpose of the proposed amendment prior to the election. *Wadhams v. Bd. of Cnty. Comm’rs of Sarasota Cnty.*, 567 So. 2d 414, 417 & n.2 (Fla. 1990). In doing so the court rejected the defendant’s argument that voters would be “hoodwink[ed]” unless a challenge was brought prior to the election. *Id.* at 417.

Georgia

In *Plyman v. Glynn County*, 578 S.E.2d 124 (Ga. 2003), the Georgia Supreme Court held that laches barred the plaintiffs from challenging a tax 42 days after voters had approved it. In so holding, the court described the relevant factors in determining whether to apply laches:

Whether laches should apply depends on a consideration of the particular circumstances, including the length of the delay in the claimant’s assertion of rights, the sufficiency of the excuse for the delay, the loss of evidence on disputed matters, the opportunity for the claimant to have acted sooner These factors are relevant because laches is not merely a question of time, but principally a matter of inequity in permitting the claim to be enforced.

Id. at 126.

In an earlier case, the court held that laches did not bar a plaintiff from challenging election results, reasoning that laches “is a purely equitable defense” and that “[a]n election contest is not equitable in nature.” *Stuckey v. Storms*, 458 S.E.2d 344, 346 (Ga. 1995). Still, the court added that laches is inapplicable where, as here, the plaintiff delayed in litigating the case, not in filing the case. *Id.*

Finally, recently, in a case outside of the strict laches context, the court emphasized that in determining whether an appeal is moot, “the party challenging either a primary or general election should make every effort to dispose of election disputes with dispatch and that the courts should not interfere with the orderly process of elections after the general election has been held.” *Miller v. Hodge*, No. S24A0490, --- S.E.2d ----, 2024 WL 3801827, at *3 (Ga. Aug. 13, 2024).

Hawaii

In Hawaii, the state supreme court has announced a laches standard specific to the post-election challenges: “[I]f there has been opportunity to correct any irregularities in the election process or in the ballot prior to the election itself, plaintiffs will not, in the absence of fraud or major misconduct, be heard to complain of them afterward.” *Thirty Voters of Kauai Cnty. v. Doi*, 599 P.2d 286, 288 (Haw. 1979).

In *Thirty Voters*, the court determined that laches barred a challenge to a ballot’s format, reasoning that the plaintiffs had waited until after an election to bring their claim even though they were put on notice of the ballot language a month before that election.

In a similar case, the court once again applied laches, citing *Thirty Voters v. Doi*. In doing so, the court explained:

We apply the doctrine of laches in cases such as this . . . because efficient use of public resources demand that we not allow persons to gamble on the outcome of the election contest then challenge it when dissatisfied with the results, especially when the same challenge could have been made before the public is put through the time and expense of the entire election process.

Lewis v. Cayetano, 823 P.2d 738, 741 (Haw. 1992).

In a challenge to the ratification of a constitutional amendment, the court declined to apply laches. Though the plaintiff filed suit after the election, the court determined that she had “not s[ought] to correct ‘irregularities in the election process or in the ballot’” nor had she “gamble[d] on the outcome of the election contest” because her claim challenged the procedures the legislature had followed in adopting the amendments. *State ex rel. Bronster v. Yoshina*, 932 P.2d 316, 319, 322–23 (Haw. 1997).

Finally, in a challenge to the ratification of a constitutional amendment, the court declined to apply laches, distinguishing *Thirty Voters* and *Lewis* on the ground that the plaintiffs had brought their lawsuit prior to the election. *Watland v. Lingle*, 85 P.3d 1079, 1088 (Haw. 2004). Additionally, the court determined that the plaintiffs had timely challenged educational material regarding the amendment within 10 days of receiving notice of the material. *Id.* at 1089. It also concluded that the plaintiffs had timely challenged the procedures followed for publishing the amendment since the violations could not be remedied before the election. *Id.*

Idaho

The Idaho Supreme Court has yet to consider the application of laches within the election context. Outside of the election context, the court has defined the test as follows:

The necessary elements to maintain a defense of laches are: (1) defendant’s invasion of plaintiff’s rights; (2) delay in asserting plaintiff’s rights, the plaintiff

having had notice and an opportunity to institute a suit; (3) lack of knowledge by the defendant that plaintiff would assert his rights; and (4) injury or prejudice to the defendant in the event relief is accorded to plaintiff or the suit is not held to be barred.

Henderson v. Smith, 915 P.2d 6, 11 (Idaho 1996).

In an early case, while not referring to laches, the court held that a plaintiff waited too long to challenge another candidate's nomination, reasoning:

The plaintiff had abundant opportunity, under the law, to have any of the alleged errors in the ballot corrected before the election, and, having neglected to avail himself thereof, he cannot now be heard to urge such objections when their recognition would avail not only to defeat the express will of the voters, but to disfranchise hundreds of legal voters.

Baker v. Scott, 43 P. 76, 78 (Idaho 1895).

Illinois

In Illinois, "[l]aches is applied where there is such neglect or omission to assert a right, taken in conjunction with a lapse of time of more or less duration and other circumstances causing prejudice to an adverse party, as will operate to bar relief in equity." *Thurston v. State Bd. of Elections*, 392 N.E.2d 1349, 1350–51 (Ill. 1979).

In *Thurston*, the plaintiffs challenged a county judge's candidacy. The Illinois Supreme Court determined that laches barred the plaintiffs' claim. According to the court, the plaintiffs delayed filing their suit until two weeks after the election despite knowing of the judge's nomination over three months before the election. See *id.* at 1351. The court added that such a delay worked "to the detriment of [the candidate] and to those who had promoted his candidacy and cast their votes for him." *Id.* As for prejudice to the candidate, the court cited the facts that he had expended money on his campaign and left his previous position to serve as a judge. See *id.*

In another case, the court applied *Thurston* to conclude that laches barred a challenge to a mandatory retirement statute for elected judges. According to the court, a judicial candidate waited nearly a year to bring his challenge, which in turn prejudiced other candidates who meanwhile "expended considerable time, energy and money on their campaigns[.]" *Tully v. State*, 574 N.E.2d 659, 663 (Ill. 1991).

Finally, in yet another election contest, the court declined to apply laches, reasoning that the plaintiff did not delay in challenging the results of a primary within ten days of the state elections board certifying the plaintiff's opponent as the winner, nor did she delay in litigating the case. *McDunn v. Williams*, 620 N.E.2d 385, 407–08 (Ill. 1993).

Indiana

In Indiana, laches is defined as “an unreasonable delay; or the neglect to do at the proper time what by law or duty ought to be done; or the failure to prosecute a claim within a reasonable and proper period.” *State ex rel. Harris v. Mutschler*, 115 N.E.2d 206, 209 (Ind. 1953).

In *Harris*, the petitioners challenged an election resulting in a school consolidation. The Indiana Supreme Court applied laches to the petitioners’ claim, reasoning that they delayed nearly a month-and-a-half in bringing suit. *Id.*

In another case, the court once again applied laches, reasoning that the petitioner had delayed 20 months in bringing a claim for usurpation of a political office. *Hogue v. Slack*, 162 N.E. 670, 674 (Ind. 1928).

Iowa

In Iowa, “[l]aches is an equitable doctrine premised on unreasonable delay in asserting a right, which causes disadvantage or prejudice to another.” *State ex rel. Holleman v. Stafford*, 584 N.W.2d 242, 245 (Iowa 1998).

In *State ex rel. Freese v. Mid-Prairie Reorganized Community School District of Washington County*, 93 N.W.2d 109 (Iowa 1958), the Iowa Supreme Court applied the doctrine to bar the plaintiff from challenging an election that resulted in school consolidation, reasoning that the county had taken steps to effectuate the consolidation during the 19 months in which the plaintiff delayed in filing his claim. *Id.* at 110.

In another case contesting a school consolidation election, the court declined to apply laches, reasoning that, despite the fact that a school corporation purchased bonds following the election and before the relators brought suit, the relators did not discover facts essential to their claim until trial. *State v. Mohr*, 199 N.W. 278, 282 (Iowa 1924).

Kansas

In Kansas, “[l]aches does not, like limitation, grow out of the mere passage of time; but it is founded upon the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relations of the property or the parties.” *Kirsch v. City of Abilene*, 244 P. 1054, 1056 (Kan. 1926) (citation and quotation marks omitted).

In *Kirsch*, the plaintiffs contested a bond election funding city construction. The court held that laches barred the plaintiffs’ claim. According to the court, the plaintiffs delayed over five months in challenging the election, which prejudiced the city since the city had taken steps to effectuate the project. *Id.* at 1056. As the court reasoned:

If the plaintiff stands by and remains passive while the adverse party incurs risks, enters into obligations, and makes large expenditures, so that by reason of the

changed conditions disadvantages and great loss will result to the adverse party which might have been avoided, if the plaintiff had asserted his claim with reasonable promptitude, there are grounds for declining to grant the relief.

Id. at 1055.

In a separate election contest, the court once again concluded that laches barred the plaintiff's claim, reasoning that the plaintiff "passed up two opportunities to raise his present complaint at times when administrative remedy could easily have been afforded without disrupting the electoral process." *Douville v. Docking*, 501 P.2d 778, 779 (Kan. 1972).

Finally, in another action seeking to compel submission of a proposed ordinance to the electorate, the court once more applied laches, reasoning that the plaintiff filed his claim "more than twenty-eight months after the urban renewal program was officially launched, and after appellees along with the federal government had expended much time and money in widely publicized actions which were essentials in the shaping of an urban renewal project." *State ex rel. Frizzell v. Paulsen*, 465 P.2d 982, 987 (Kan. 1970).

Kentucky

The Kentucky Supreme Court has said (outside the election context) that laches "serves to bar claims in circumstances where a party engages in unreasonable delay to the prejudice of others rendering it inequitable to allow that party to reverse a previous course of action." *Plaza Condo. Ass'n, Inc. v. Wellington Corp.*, 920 S.W.2d 51, 54 (Ky. 1996).

In a case seeking to prevent city commissioners from usurping the powers of the mayor, the Kentucky high court declined to apply laches, observing "[t]hat one is not guilty of laches or estopped from protecting his possession of an office to which he is entitled, simply because he might have acted sooner, when he did act before his possession was disturbed, seems too plain to us to permit of serious discussion." *Goin v. Smith*, 260 S.W. 10, 12 (Ky. 1924).

Similarly, in another case seeking to remove a candidate from the ballot, the court declined to apply laches, reasoning that, despite the fact that the plaintiffs did not file suit until a week before the election and six weeks after the candidate filed his nomination papers, the suit must proceed since the "qualification of candidates [is] a matter in which the public has an interest[.]" *McConnell v. Marshall*, 467 S.W.2d 318, 320 (Ky. 1971).

Still, the court has dismissed a case where the plaintiff could have, but failed to, bring a claim before the election. In a case seeking to remove a candidate from the ballot, the court did not cite laches but held that the plaintiff could not challenge the nomination post-election, reasoning "that the voting public ought not to be duped or confused by the appearance on the ballot of the name of a person who has no right for it to be there, and if it was open to a legal challenge before the election there can be no relief in an action brought thereafter by one who could have acted earlier." *Fletcher v. Teater*, 503 S.W.2d 732, 733-34 (Ky. 1974).

Louisiana

To “determin[e] what will constitute such unreasonable delay or laches” in Louisiana, “regard should be had to the circumstances justifying the delay, to the nature of the case, the relief demanded, and the question of whether the rights of defendants or other persons have been prejudiced by the delay.” *Louisiana Ry. & Nav. Co. v. Town of Coushatta*, 48 So. 532, 536–37 (La. 1909).

In *Town of Coushatta*, the plaintiff sought to enforce a tax approved by voters. The court applied laches, reasoning that the plaintiff had “take[n] no steps to compel the town authorities to levy, assess, and collect the [tax] until years after the taxes should have been levied, assessed, and collected[.]” *Id.* at 537.

In a separate action seeking to compel a local Democratic party to hold a primary, the court once again applied laches, reasoning that the relator did not file his suit in time for the party to hold a primary under state law. *State ex rel. Davion v. Democratic Exec. Comm. of City of Oakdale*, 35 So. 2d 427, 429 (La. 1948); see also *State ex rel. Lemoine v. Mun. Democratic Exec. Comm. of Town of Mansura*, 102 So. 2d 234, 235 (La. 1958) (applying laches; citing *Davion* in support).

Maine

The Maine Supreme Court has yet to consider the application of laches within the election context. In other contexts, the court has defined laches as:

negligence or omission seasonably to assert a right. It exists when the omission to assert the right has continued for an unreasonable and unexplained lapse of time, and under circumstances where the delay has been prejudicial to an adverse party, and where it would be inequitable to enforce the right.

Brochu v. McLeod, 148 A.3d 1220, 1223–24 (Me. 2016).

While not expressly relying on laches, in a case seeking relief from the statutory deadline for filing nominating papers, the court held that a delay in filing a lawsuit ultimately barred the plaintiffs from short-circuiting the normal appellate process. *Crafts v. Quinn*, 482 A.2d 825, 828 (Me. 1984). The trial court denied preliminary relief, and the plaintiffs filed an interlocutory appeal. *Id.* at 826. Citing a laches case, the court denied the interlocutory appeal, reasoning in part that the plaintiffs’ delay by two months in filing their suit did not excuse them from receiving a final judgment from the trial court before appealing. *Id.* at 828 (citation omitted).

Maryland

In Maryland, “laches applies when there is an unreasonable delay in the assertion of one’s rights and that delay results in prejudice to the opposing party.” *Liddy v. Lamone*, 919 A.2d 1276, 1283 (Md. 2007) (citations omitted).

In *Liddy*, the plaintiff sought to remove a candidate from the ballot. Invoking the U.S. Supreme Court's admonishment in *Purcell v. Gonzalez* that federal courts should not block state election rules shortly before an election, the Maryland Court of Appeals¹² determined that laches applied. *Id.* at 1287–88. According to the court, the plaintiff delayed nearly two months after the court decided a similar suit, and until 18 days prior to a general election, to bring his claim. *Id.* at 1279, 1284. The court found that such a delay prejudiced (1) the candidate since he had relied on the certification of his candidacy and the results of a primary that he won, (2) election officials since they had no time to reprint ballots and reprogram voting equipment, and (3) the electorate since last-minute changes to the ballot would have disenfranchised voters who had already voted and confused voters yet to vote. *Id.* at 1289–90. It added that “delayed challenges” such as the plaintiff’s “go to the core of our democratic system and cannot be tolerated.” *Id.* at 1291.

The *Liddy* opinion is consistent with the court’s treatment of another challenge to a candidate’s qualifications to appear on the ballot. In *Ross v. State Board of Elections*, 876 A.2d 692, 705 (Md. 2005), The plaintiff waited until three days after the election to bring suit. Such a delay prejudiced (1) the candidate since she had relied on the certification of her candidacy and the results of an election that she won, (2) election officials who had “expended considerable efforts in overseeing the election[,]” and (3) “the electorate as a whole by denying them the efficacy of their vote and undermining their faith in a free and fair election.” *Id.* at 706. The court added, “[A] candidate or other election participant should not be allowed to ambush an adversary or subvert the election process by intentionally delaying a request for remedial action to see first whether they will be successful at the polls.” *Id.* at 705–06.

In a more recent challenge to a candidate’s qualifications to appear on the ballot, the court, however, declined to apply laches, reasoning that the plaintiffs’ one-day delay in filing their claim was not unreasonable and that “[a] candidate who does not meet the qualifications for a particular office cannot be prejudiced by a judicial challenge to his or her candidacy.” *Ademiluyi v. Egbuonu*, 215 A.3d 329, 356, 358 (Md. 2019). The court observed that the limitations period for the plaintiffs’ claim served as a “benchmark” for determining whether laches applied. *Id.* at 354–55.

Massachusetts

In Massachusetts, “[l]aches is not mere delay but delay that works disadvantage to another.” *Robinson v. State Ballot L. Comm’n*, 731 N.E.2d 1090, 1093 (Mass. 2000).

In *Robinson*, the petitioner sought to add himself to the ballot. The Massachusetts Supreme Court declined to apply laches. According to the court, the petitioner did not delay in filing his suit within five days of an administrative commission denying relief. *Id.* The court also determined that the defendant had not suffered any prejudice since “[a]ll that [he] was required to do to

¹² Prior to 2022, the Court of Appeals was Maryland’s highest court.

prepare for this proceeding was to brief and argue before the court essentially the same issues that he presented to the commission.” *Id.* The court added that, “[t]o the extent that [the defendant] has suffered any disadvantage by [the petitioner’s] actions, it is not enough to outweigh the importance of ballot access, implicating as it does fundamental concerns under the First Amendment to the United States Constitution, and the public’s right to choose candidates for elective office.” *Id.*

In an earlier case, *Sears v. Treasurer & Receiver Gen.*, 98 N.E.2d 621 (Mass. 1951), the court also declined to apply laches to an action seeking to block enforcement of an initiative measure. According to the court, when, as here, the constitutionality of a law is challenged, “it cannot be made valid by the laches of anyone or by any lapse of time.” *Id.* at 632. The court added that the petitioners had not unreasonably delayed in filing their suit after the initiative passed since it could not “have been known that the proposed measure would be voted upon favorably until after the returns of the election were compiled.” *Id.*

In contrast, in another challenge to a ballot initiative, the court applied laches. According to the court, the petitioners should have brought their case earlier in the process of passing an initiative, which required a measure to be initiated by 10 voters before receiving signatures from additional voters and consideration by the state legislature. *Bowe v. Sec’y of the Com.*, 69 N.E.2d 115, 121, 123 (Mass. 1946). The petitioners contested one of the original ten signatures supporting the initiative yet did not file their suit until thousands of additional signatures were collected and the legislature had acted on the measure. *Id.*

Michigan

The Michigan Supreme Court has defined the test for laches outside of the election context as: “mere delay in attempting to enforce a right does not constitute laches, but that it must further appear that the delay resulted in prejudice to the party claiming laches of such character as to render it inequitable to enforce the right.” *Dunn v. Minnema*, 36 N.W.2d 182, 185 (Mich. 1949).

In the election context, the court issued a memorandum opinion staying lower-court decisions pending appeal that blocked election guidance from taking effect. *DeVisser v. Sec’y of State*, 981 N.W.2d 30 (Mich. 2022) (mem.). Two justices concurring in the stay cited laches as part of their reasoning. The first concurrence observed that several of the plaintiffs had delayed nearly two years in bringing their suit and that the defendants had suffered prejudice because they would be unable to train election workers on new guidance prior to an election occurring in one week. *Id.* at 32 (Bernstein, J., concurring). The other justice invoked the U.S. Supreme Court’s admonishment in *Purcell v. Gonzalez* that federal courts should not block state election rules shortly before an election, suggesting that doing so “is, in essence, the equitable doctrine of laches applied in a unique way to election matters.” *Id.* at 35 (Welch, J., concurring).

Minnesota

In Minnesota, laches requires proof of “unreasonable delay in asserting a known right, resulting in prejudice to others, as would make it inequitable to grant the relief prayed for.” *Clark v. Pawlenty*, 755 N.W.2d 293, 299 (Minn. 2008) (citation omitted).

In *Clark*, the petitioners sought to remove a candidate from the ballot. The Minnesota Supreme Court determined that laches barred the petitioners’ claim. According to the court, the plaintiffs delayed at least 44 days after the candidate filed an affidavit of candidacy in filing suit. See *id.* at 300–01. The court found that such a delay prejudiced (1) the respondents since there would not be enough time to modify absentee ballots and voting machines prior to the election, (2) other election officials since they would face costs implementing any ordered changes, (3) certain candidates since they might be removed from the ballot despite expending time, energy, and resources filing for candidacy, and (4) the Minnesota electorate since some voters had already cast ballots and others yet to vote might not have their ballots accurately counted if voting machines were changed at the last minute. *Id.* at 301–03. The court added:

The very nature of matters implicating election laws and proceedings routinely requires expeditious consideration and disposition by courts facing considerable time constraints imposed by the ballot preparation and distribution process. As a result, we have examined applications for relief not only on their merits, but also from the perspective of whether the applicant acted promptly in initiating proceedings.

Id. at 300.

In an action seeking to prevent certification of election results, the court also applied laches. The court determined that the petitioners had unreasonably waited “2 months after voting started, 3 weeks after voting ended, and less than 24 hours before the State Canvassing Board met to certify election results” to challenge the suspension of an absentee-voting witness requirement. *Kistner v. Simon*, No. A20-1486, slip op. at 4 (Minn. Dec. 4, 2020). It then concluded that the petitioners’ separate request for a recount “would cast an unacceptable degree of uncertainty over the election, potentially leaving Minnesotans without adequate election representation[,]” and “would impose unacceptable burdens on voters and election officials alike.” *Id.*

In other cases, however, the court has declined to apply laches. In an action involving candidate substitution, the court declined to apply laches. The court reasoned that, notwithstanding the need to reprint ballots that would arise from accepting the claim, the petitioners filed their suit to replace a candidate the same day a county auditor refused to accept that candidate’s filing to withdraw from the race. *Martin v. Dicklich*, 823 N.W.2d 336, 341–42 (Minn. 2012). According to the court, voters’ interests in a “ballot that accurately identifies the candidates actually running for office” were “paramount.” *Id.* at 342.



In yet another case seeking to remove a candidate from the ballot, the court once again declined to apply laches. The court determined that, despite the costs of holding a special election that the state would incur because of petitioner's two-month delay in bringing her suit, the petitioner could proceed with her claim since the date for the special election would "preserve[] the right of the major political parties to nominate a candidate for the office and the voters' choice of eligible candidates at the election for this office" and would "give[] election officials ample time to prepare for the special election without causing disruptions to the other elections taking place on the day of the general election." *Monaghan v. Simon*, 888 N.W.2d 324, 330–31 (Minn. 2016).

Finally, in a case seeking to add a candidate to the ballot, the court once more declined to apply laches, reasoning that, despite the petitioners' nearly two-month delay in filing their suit, almost five weeks remained before ballots were to be made available for early voting. *De La Fuente v. Simon*, 940 N.W.2d 477, 485–86 (Minn. 2020).

Mississippi

In Mississippi, laches "applies to bar a suit when the plaintiff's unreasonable delay results in injustice or disadvantage to another." *Initiative Measure No. 65: Mayor Butler v. Watson*, 338 So. 3d 599, 606 (Miss. 2021) (internal quotation marks and citation omitted).

Watson involved a challenge to a ballot initiative. The court declined to apply laches. According to the court, the petitioners did not delay in filing their suit within 60 days of a state board finalizing the initiative. *Id.* The court also found that the defendant had not demonstrated prejudice to the public, reasoning that it was in the state's "interest to have erroneous and void actions declared so." *Id.* Finally, the court determined that the defendant had not demonstrated prejudice to his office since ruling on the sufficiency of the initiative did not "change the condition" of his office. *Id.* at 607.

Missouri

In Missouri, "The general meaning of laches is that the party seeking relief has delayed his action for an unreasonable and unexplained length of time resulting in disadvantage to the other party." *Cherry v. City of Hayti Heights*, 563 S.W.2d 72, 77 (Mo. 1978) (citation omitted).

In *Cherry*, the plaintiff sought to overturn a court order authorizing an election to incorporate a city. The Missouri Supreme Court held that laches barred the plaintiff's claim. According to the court, the plaintiff had delayed two years after the city incorporated to file her suit. *Id.* The court determined that allowing the plaintiff's suit to proceed would result in "grave consequences" and "governmental chaos." *Id.* at 78–80. (citation omitted).

In a separate action, the relators sought to challenge an election that extended the boundaries of a school district. The court once again applied laches, reasoning that the relators had delayed eight years since the election in filing suit and that such a delay would cause "injurious results" if

the suit were allowed to proceed. *State ex inf. Otto ex rel. Harrington v. Sch. Dist. of Lathrop*, 284 S.W. 135, 140 (Mo. 1926).

Finally, in a more recent election contest, the court declined to apply laches, reasoning that filing suit within thirty days of receiving the results of a recount did not constitute “unreasonable delay.” *Shoemyer v. Missouri Sec’y of State*, 464 S.W.3d 171, 174 (Mo. 2015).

Montana

In Montana, laches requires proof of “unexplainable delay” that “has prejudiced the party asserting laches or has rendered the enforcement of a right inequitable.” *Cole v. State ex rel. Brown*, 42 P.3d 760, 763 (Mont. 2002).

Cole involved a challenge to term limits. The Montana Supreme Court determined that laches applied. According to the court, the plaintiffs had delayed nine years to challenge the term limits. *Id.* at 763. The court found that such a delay prejudiced the elected officials who had already left office under the term limits and their supporters, along with other potential candidates. *Id.* at 764. The court added:

Similarly, if we allowed Plaintiffs to challenge the procedure by which [the term limits] w[ere] enacted nine years after the fact, what would prevent a party from filing a similar procedural challenge to some other constitutional initiative fifteen, twenty or even thirty years after that initiative’s enactment? There must be a point at which a claim asserting that Montana voters failed to follow the proper procedures in enacting a constitutional initiative simply comes too late. We have reached that point.

Id. at 764–65.

Additionally, in a case challenging a statutory initiative after the election, the court applied laches, reasoning that “in failing to make a timely attack on the preliminary proceedings prevents them from raising such questions after the vote of the people and the promulgation of the Act.” *State ex rel. Graham v. Bd. of Examiners*, 239 P.2d 283, 290 (Mont. 1952).

In other cases, however, the court has declined to apply laches. In *Phillips v. City of Whitefish*, 330 P.3d 442 (Mont. 2014), the court declined to apply laches, reasoning “that filing a legal challenge to the Referendum four days after the results were certified was not an unreasonable delay or negligent assertion of rights sufficient to warrant dismissal based upon laches, where there has been no demonstration of prejudice or inequity aside from the ordinary cost of the election process.” *Id.* at 450.

Similarly, in a case seeking to prevent certification of an initiative measure, the court declined to apply laches, reasoning that, despite the plaintiff’s filing of its suit a week before the certification deadline, “the liberties of the people of this state should not be jeopardized merely because the



plaintiff has not acted with the greatest degree of celerity[.]” *Sawyer Stores v. Mitchell*, 62 P.2d 342, 357 (Mont. 1936).

Nebraska

In Nebraska, the court has defined laches as “delay that works to the disadvantage of another,” and has further explained that “[t]he delay required necessarily varies with the nature of the situation.” *Richards v. McBride*, 68 N.W.2d 692, 695 (Neb. 1955).

In *Richards*, the court held that laches did not bar a challenge to an election that authorized school construction. The court concluded that the plaintiffs did not delay in commencing their suit since they filed their claim the day after construction had begun. Furthermore, the defendants’ claim of laches was undermined by the fact that they proceeded with the construction despite receiving a notice from the state attorney general that the election results were incorrect. *Id.* at 695–96.

In an earlier case, the court did not reach the question of whether laches applied but observed that a challenge to a referendum must be raised with sufficient time for the appellate process to play out prior to an election. *Barkley v. Pool*, 169 N.W. 730, 732 (Neb. 1918).

Nevada

In Nevada, “[l]aches is an equitable doctrine which may be invoked when delay by one party works to the disadvantage of the other, causing a change of circumstances which would make the grant of relief to the delaying party inequitable.” *Miller v. Burk*, 188 P.3d 1112, 1125 (Nev. 2008).

Miller involved a challenge to ballot language. The Nevada Supreme Court held that laches applied, reasoning that the legislature waited 12 years to file its suit and upholding the challenge “would be prejudicial to the voters who for the last 12 years have been relying on the amendment that they approved and its now imminent implementation.” *Id.*

New Hampshire

The New Hampshire Supreme Court has yet to consider the application of laches within the election context. In other contexts, the court has explained that:

Laches is an equitable doctrine that bars litigation when a potential plaintiff has slept on his rights. Laches is not a mere matter of the elapsing of time, but is principally a question of the inequity of permitting the claim to be enforced. When the delay in bringing suit is less than the applicable statute of limitations period, laches will bar suit only if the delay was unreasonable and prejudicial. We consider four factors in our analysis: (1) the knowledge of the plaintiffs; (2) the conduct of the defendants; (3) the interests to be vindicated; and (4) the resulting prejudice.

In re LaRocque, 53 A.3d 615, 618 (N.H. 2012) (internal quotation marks and citations omitted).

In one elections case, the court held that a plaintiff waited too long to add his name to the ballot. Noting that it was unclear “whether the absence of the plaintiff’s name results from inadequacies of the statute, R.L. c. 33 § 49, or from his laches, or failure on his part to furnish the statutory affidavit[,]” the court determined that “[n]o sufficient time would remain in which absentee ballots bearing the plaintiff’s name could be printed, distributed to voters some of whom are doubtless in distant places, and returned to Ward 1 by election day.” *Maclay v. Fuller*, 76 A.2d 247, 247–48 (N.H. 1950).

New Jersey

The New Jersey Supreme Court has explained (outside the election context) that laches “precludes relief when there is an unexplainable and inexcusable delay in exercising a right, which results in prejudice to another party.” *Fox v. Millman*, 45 A.3d 332, 341 (N.J. 2012) (internal quotation marks omitted).

In the election context, in a case in which the plaintiff sought to remove a candidate from the ballot, the New Jersey Supreme Court, described arguably in dicta why laches did not apply. According to the court, the plaintiff was not required to seek the removal of a candidate from the ballot prior to the election since state law allows a party 30 days to contest an election and the plaintiff, who was competing against that candidate, would have had “to expend the time and resources” prior to the election “pursuing an investigation and litigation when such commodities are precious.” *In re Contest of Nov. 8, 2011 Gen. Election of Off. of New Jersey Gen. Assembly*, 40 A.3d 684, 706 (N.J. 2012).

New Mexico

In New Mexico, “[l]aches is an equitable defense that prevents litigation of a stale claim where the claim should have been brought at an earlier time and the delay has worked to the prejudice of the party resisting the claim.” *Indigenous Lifeways v. New Mexico Compilation Comm’n Advisory Comm.*, 528 P.3d 678, 685 (N.M. 2023) (internal quotation marks and citation omitted).

Indigenous Lifeways involved a challenge to a constitutional amendment. The court declined to apply laches to the petitioners’ claim. The court ruled that, despite delaying nearly two years in bringing their challenge, the petitioners could proceed with their claim since the “major changes worked by [the amendment] were yet to take effect.” *Id.* at 686. The court also observed that “[c]aution in the application of laches to bar a constitutional claim is invoked . . . because it would be the epitome of inequity to allow an unconstitutional law to remain in effect merely because someone slumbered on his or her rights.” *Id.* (citation omitted).

New York

In New York, “laches is designed to introduce flexibility into the process of determining when rights have been asserted so unseasonably that a point at which they should be barred has been

reached.” *Hoffmann v. New York State Indep. Redistricting Comm’n*, 234 N.E.3d 1002, 1018–19 (N.Y. 2023) (citation omitted).

In *Hoffmann*, the New York Court of Appeals¹³ declined to apply laches to a mandamus proceeding seeking to require New York’s Independent Redistricting Commission (“IRC”) to prepare a revised congressional map. The case involved an Article 78 proceeding, which under New York law allows a state court to review official governmental action. *Id.* at 1010. “When laches is invoked in an article 78 proceeding in the nature of mandamus, proof of unexcused delay without more may be enough.” *Id.* at 1018 (internal quotation marks and citation omitted). According to the court, the plaintiffs had not unreasonably delayed in bringing their action. Though the plaintiffs had filed suit around two months after the court had decided another case implementing an interim map for the previous election cycle, “the date on which they made a demand was early enough to allow for [the IRC] proceeding to work its way through the courts with a determination made in time for the IRC to act in advance of the deadlines set forth in the Constitution ahead of the upcoming elections.” *Id.* at 1019.

In another action challenging a ballot measure, the court held that laches barred the plaintiffs’ claim. According to the court, the plaintiffs had delayed over two months to bring their suit, which “imposed a well nigh impossible burden upon respondents, since they were forced to attempt to formulate a defense to a variety of complex challenges within a matter of days.” *Cantrell v. Hayduk*, 383 N.E.2d 870, 872 (N.Y. 1978). The court added, “[t]o condone the attempted resolution of these issues in such an unnecessarily precipitous manner would be to do a great disservice to the residents of Westchester County whose interests are most deeply implicated in this proceeding.” *Id.*

Finally, in a different action challenging a legislative map, the court declined to apply laches, reasoning that the plaintiffs had allowed four election cycles to pass before challenging the map. *In re Reynolds*, 96 N.E. 87, 88 (N.Y. 1911).

North Carolina

The North Carolina Supreme Court has yet to consider the application of laches within the election context. In considering it in other contexts, the court has defined the test as follows:

To establish the affirmative defense of laches, our case law recognizes that 1) the doctrine applies where a delay of time has resulted in some change in the condition of the property or in the relations of the parties; 2) the delay necessary to constitute laches depends upon the facts and circumstances of each case; however, the mere passage of time is insufficient to support a finding of laches; 3) the delay must be shown to be unreasonable and must have worked to the

¹³ The Court of Appeals is New York’s highest court.



disadvantage, injury or prejudice of the person seeking to invoke the doctrine of laches; and 4) the defense of laches will only work as a bar when the claimant knew of the existence of the grounds for the claim.

MMR Holdings, LLC v. City of Charlotte, 558 S.E.2d 197, 198 (N.C. 2001).

In an early election case, the court did consider the timing of the plaintiffs' action in dismissing it. In *Jones v. Commissioners of Person*, 12 S.E. 69, 70 (N.C. 1890), the court observed, that, having waited three years to file suit, "[m]anifestly the plaintiffs carelessly and negligently, and without the slightest cause, so far as appears, failed to bring their action within a reasonable period of time, and this, too, while important facts, of which they must have had knowledge, prompted them to do so if they were dissatisfied with the election for any proper cause." *Id.* The court further explained:

Elections are serious and important things, and not to be interfered with for slight causes, or at any and all times, at the pleasure of complaining parties. They are authorized by the law, and serve important purposes in the economy of government, and when apparently regular and valid, must be upheld in all connections, unless they shall be contested at the proper time and in the proper way.

Id.

North Dakota

The North Dakota Supreme Court has explained (outside the election context) that "[l]aches does not arise from a delay or lapse of time alone, but is a delay in enforcing one's rights which works a disadvantage to another." *Stenehjem ex rel. State v. Nat'l Audubon Soc'y, Inc.*, 844 N.W.2d 892, 898 (N.D. 2014).

In the election context, the court declined to apply laches in a case challenging an election that led to the creation of a new county. *State ex rel. Davis v. Willis*, 124 N.W. 706 (N.D. 1910). Despite delaying nearly three months in filing suit, the court reasoned that the relator could proceed with his claim since "the only matter of public interest that had intervened during that interval was the appointment by the Governor of North Dakota of county commissioners for the new county." *Id.* at 710. The court added that ruling in favor of the relator would not "produce[] such confusion in the public service as to warrant the district court in refusing to entertain the application on the ground that his laches and delay were gross and unreasonable."

In another action, the court held that laches barred plaintiffs from challenging a voter-approved petition to annex territory into a school district. According to the court, the plaintiffs had delayed two years after the annexation to file suit. *Greenfield Sch. Dist. v. Hannaford Special Sch. Dist.*, 127 N.W. 499, 501 (N.D. 1910). The court determined that allowing the plaintiffs' suit to proceed

would result in “grave consequences” since the expanded district had been in operation for several years. *Id.*

Finally, in a case in which the plaintiffs sought to prevent canvassing of a recall election, a justice concurring in the denial of the plaintiffs’ claim observed that the plaintiffs had “slept upon their rights” in that they failed to file suit within the 45-day period in which petitions for recall were filed and a recall election was held. *State v. Hall*, 186 N.W. 284, 290 (N.D. 1921) (Grace, C.J., concurring).

Ohio

In Ohio, laches requires proof of “(1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party.” *State ex rel. Polo v. Cuyahoga Cnty. Bd. of Elections*, 656 N.E.2d 1277, 1279 (Ohio 1995).

Polo involved an attempt to remove a candidate from the ballot. The Ohio Supreme Court determined that laches barred the relator’s claim. The relator had delayed 17 days to challenge the elections board’s decision to deny his candidate protest, and the court found that such a delay prejudiced the elections board since it had already mailed out absentee ballots. *Id.* The court admonished that “[e]xtreme diligence and the promptest of action are required in election cases.” *Id.*

In another action challenging a township referendum, the court cited *Polo* in holding the relators’ claim was barred by laches. *State ex rel. Fuller v. Medina Cnty. Bd. of Elections*, 778 N.E.2d 37, 39 (Ohio 2002). According to the court, the relators had delayed two months in contesting the referendum before the elections board and another 17 days in filing suit once the board denied their challenge. *Id.* at 38. The court found that such a delay prejudiced the board since it had already printed ballots. *Id.* at 39.

In contrast, the court declined to apply laches to bar a candidate’s attempt to have her named added to the ballot. Noting that the candidate had unreasonably delayed in bringing suit 21 days after the elections board had refused to file her nominating petition, the court determined that the delay did not prejudice the board because, even if the candidate had brought her suit earlier, the board would still have had to litigate the suit on an expedited basis and the absentee-ballot deadlines would still have likely passed. *State ex rel. Brinda v. Lorain Cnty. Bd. of Elections*, 874 N.E.2d 1205, 1208–09 (Ohio 2007).

Finally, in another action challenging a city referendum, the court also declined to apply laches, reasoning that, notwithstanding a 21-day delay in filing suit, there was still “time to decide this case on the merits without impeding the Franklin County Board of Elections in its duty to prepare and mail absentee ballots[.]” *State ex rel. Pennington v. Bivens*, 185 N.E.3d 41, 48 (Ohio 2021).



Oklahoma

The Oklahoma Supreme Court has stated (outside the election context) that “the party invoking the laches defense must show unreasonable delay coupled with knowledge of the relevant facts resulting in prejudice.” *Sullivan v. Buckhorn Ranch P’ship*, 119 P.3d 192, 202 (Okla. 2005).

In one case, the Oklahoma Supreme Court applied laches to a claim seeking to maintain a candidate’s name on the ballot, reasoning that the petitioner waited 10 days after the state elections board had removed his name from the ballot to file suit. *Harding v. State Election Bd.*, 170 P.2d 208, 208–09 (Okla. 1946). The court added, “The law fixes the date for holding said election and by reason of the necessary work required and time consumed in causing the ballots to be printed for use in said election, it is manifest that time is of the essence and that it was the duty of the petitioner to proceed with utmost diligence in asserting in a proper forum his claimed rights.” *Id.* at 209.

In another case seeking to challenge a candidate’s eligibility, the court once again applied laches, reasoning that the petitioner “does not here claim that he did not know or by the exercise of reasonable diligence could not have learned long before the General Election was held of the facts which he now asserts disqualified [the candidate].” *Wickersham v. State Election Bd.*, 357 P.2d 421, 424 (Okla. 1960).

In a different action seeking to remove a candidate from the ballot, the court applied *Wickersham* to conclude again that laches applied. *Evans v. State Election Bd. of State of Okla.*, 804 P.2d 1125 (Okla. 1990). According to the court, the petitioner waited 115 days to appeal the state election board’s denial of the petitioner’s protest. *Id.* at 1127. The court added that the petitioner made no effort to have the candidate’s name stricken from the ballot once the candidate died and before the election. *Id.*

In contrast, in an effort to challenge the results of an election creating another fire protection district, the court declined to apply laches, reasoning that the petitioners lacked notice that there was an election to challenge until one year after the contest. *Walker v. Oak Cliff Volunteer Fire Prot. Dist.*, 807 P.2d 762, 768–69 (Okla. 1990). The court added, “[w]hen delay is caused by an adverse party, that party may not use the defense to his/her benefit.” *Id.* at 768.

Oregon

In Oregon, “laches or delay in making an application unless satisfactorily explained may afford sufficient cause for its denial, particularly when the delay has been prejudicial to the rights of the respondent.” *State ex rel. Fidanque v. Paulus*, 688 P.2d 1303, 1307 (Or. 1984).

In *Fidanque*, involving a challenge to a ballot measure, the Oregon Supreme Court applied laches. The plaintiffs delayed around 10 months in filing suit, and the court found that the delay prejudiced the organizers and proponents of the measure who spent “time, energy and money to obtain sufficient signatures to be certified for placement on the ballot.” *Id.* at 1307 n.6. It also



determined that the delay prejudiced the court by “plac[ing] the court in a position of having to steamroll through the delicate legal issues in order to meet the deadline for measures to be placed on the ballot.” *Id.* at 1308. The court added, “in light of the great value ascribed to the exercise of the initiative power by the people, by the Oregon Constitution, and the courts and the substantially negative impact that rushed, last minute reviews would have on the exercise of the initiative power, this court has been and should be very wary of last minute challenges.” *Id.*

In another challenge to a ballot measure, the court, however, declined to apply laches, distinguishing *Fidanque* on the ground that that case involved the court’s discretionary original mandamus jurisdiction, whereas this case arose under “the ordinary course of the law[.]” *Ellis v. Roberts*, 302 Or. 6, 12, 725 P.2d 886, 889 (1986). Therefore, according to the court, “the considerations that justified [the court’s] application of laches [in *Fidanque*,]” including that mandamus “is an extraordinary remedy . . . administered on equitable principles and subject to equitable defenses[.]” “have no application to non-discretionary consideration of these cases by the trial courts.” *Id.* at 889–90.

Finally, in another action, the court held that laches barred the plaintiff from challenging a voter-approved consolidation of several school districts. *State ex rel. Teegarden v. Union High Sch. Dist. No. 1*, 53 P.2d 1047 (Or. 1936). According to the court, the plaintiff had delayed five years after the consolidation to file his suit. The court determined that it would go “against public policy and the best interests of the district” to allow the plaintiff’s suit to proceed since the consolidated district had been in operation for several years. *Id.* at 1048.

Pennsylvania

In Pennsylvania, laches requires proof of “a) a delay arising from petitioner’s failure to exercise due diligence; and, b) prejudice to the respondents resulting from the delay.” *Sprague v. Casey*, 550 A.2d 184, 187 (Pa. 1988).

Sprague involved a constitutional challenge to the placement of certain judicial offices on the ballot. The Pennsylvania Supreme Court held that laches did not bar the petitioners’ claim. The court determined that, despite waiting six-and-a-half months to file suit, the petitioner had exercised reasonable diligence in pursuing his claim since the candidate-respondents had failed to ascertain the constitutionality of the offices at issue. *Id.* at 188. Furthermore, the court concluded that the respondents had not suffered any prejudice since they expended time, money, and effort running for the offices at issue regardless of any delay on the petitioner’s part. *Id.*

In an action contesting an election, the court declined to apply laches, reasoning that, despite the petitioner waiting over a month to file his challenge, the respondent did not suffer prejudice from the delay since the occurrence of multiple recounts left her with “no reason to believe that the election was settled in her favor.” *In re Petition to Contest Gen. Election for Dist. Just. in Jud. Dist. 36-3-03 Nunc Pro Tunc*, 670 A.2d 629, 636 (Pa. 1996).



Finally, in another action contesting an election, the court also declined to apply laches, reasoning that the election board's failure to inform the plaintiff of the results caused him to file his suit after the limitations period had run. *In re Twenty-Sixth Election Dist., Second Ward, Borough of Lehighton*, 41 A.2d 657, 660 (Pa. 1945). The court observed, "It is true that those seeking an allowance of an appeal nunc pro tunc in an election matter must be held to a stricter rule than those in a controversy between individuals, but it is also important that a majority of the voters should not have a representative forced upon them who is not of their choosing." *Id.*

On the other hand, in another action challenging a vote-by-mail law, the court held that laches barred the plaintiffs' claim. *Kelly v. Commonwealth*, 240 A.3d 1255, 1257 (Pa. 2020). According to the court, the petitioners delayed over a year since the law at issue was passed and just days before election results were certified to file suit. *Id.* at 1256–57. The court found that such a delay would potentially disenfranchise millions of Pennsylvania voters who had already cast their ballots. *Id.* at 1257.

More recently, in a separate challenge to mail-in ballot notice-and-cure procedures, the court applied laches, reasoning that three election cycles had passed since the petitioners had challenged any notice-and-cure policies before a trial court. *Republican Nat'l Comm. v. Schmidt*, No. 108 MM 2024, slip op. at 3 & n.1 (Pa. Oct. 5, 2024).

Rhode Island

The Rhode Island Supreme Court has defined laches outside of the election context as "requir[ing] a showing of negligence to assert a known right, seasonably coupled with prejudice to an adverse party." *Raso v. Wall*, 884 A.2d 391, 395 (R.I. 2005) (internal quotation marks and citation omitted).

In a case challenging a candidate's qualifications, the Rhode Island Supreme Court applied laches, reasoning that the petitioner delayed in filing suit until multiple elections featuring the candidate had been held and the Board of Elections had certified the candidate as the governor-elect. *Van Daam v. DiPrete*, 560 A.2d 953, 954 (R.I. 1989). The court observed:

The public policy of this state requires that challenges to qualification of candidates for public office be resolved as quickly as possible in order that an election may take place upon the dates previously ordained by the General Assembly. The state has a compelling interest in the validity and finality of the election of candidates to all public offices, but particularly to the office of chief executive.

Id.

In another action seeking to change the position of a candidate's name on the ballot, the court did not cite laches but held that the petitioner's "long delay and the serious effect thereof on necessary preparations of the election machinery make the request for relief at this late date

unreasonable." *Moses v. Cote*, 40 A.2d 441, 442 (R.I. 1944). The court noted that "[n]ot until after the voting machines were thus finally inspected and sealed did the petitioner file the instant petition for mandamus." *Id.*

South Carolina

Under South Carolina, the test for applying laches requires "[t]he party seeking to establish laches [to] show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice." *Robinson v. Est. of Harris*, 698 S.E.2d 214, 220 (S.C. 2010).

In a challenge to primary election results, the South Carolina Supreme Court applied laches. *Weston v. Williams*, 2 S.E.2d 381, 381 (S.C. 1939). According to the court, the petitioner delayed six months after the primary election in filing suit. *Id.* at 382. The court determined that allowing the suit to proceed would "greatly hamper the public interest" by preventing the governor from appointing the winner of the primary to serve as a magistrate. *Id.*

In a case challenging an election authorizing a town to annex land, the court suggested in dicta that it would apply laches, reasoning that the town "would be prejudiced by the unreasonable length of time"—five months—"which elapsed from the declaration of the election result to the bringing of this suit." *Hite v. Town of W. Columbia*, 66 S.E.2d 427, 428, 430 (S.C. 1951).

Finally, in a case challenging the explanation on the ballot of a proposed constitutional amendment, the court once again suggested in dicta that it would apply laches, reasoning that the plaintiff "had notice of the" amendment "many months before he brought this action and, considering the millions of dollars in general obligation bonds issued in reliance" on the amendment's validity, and dismissed the case based on the plaintiff's failure to pursue statutorily-provided remedies. *Taylor v. Roche*, 248 S.E.2d 580, 583 (S.C. 1978).

South Dakota

The South Dakota Supreme Court has (outside the election context) articulated the laches standard as follows:

Laches is an equitable remedy which will apply when the defendant can show that the plaintiff (1) had full knowledge of the facts upon which the action was based, (2) regardless of this knowledge, he engaged in an unreasonable delay before seeking relief in court, and (3) that it would be prejudicial to allow the plaintiff to maintain the action.

Clarkson & Co. v. Cont'l Res., Inc., 806 N.W.2d 615, 619 (S.D. 2011) (internal quotation marks and citation omitted).

In a case challenging an election resulting in a school consolidation ballot question, the South Dakota Supreme Court applied laches. *Lerew v. Cresbard Indep. Consol. Sch. Dist. No. 2 of Faulk Cnty.*, 192 N.W. 747, 748 (S.D. 1923). According to the court, the plaintiffs delayed nearly a year

after the election in filing suit. *Id.* The court determined that allowing the plaintiffs' suit to proceed caused prejudice since the district had been in operation during that time.

In a similar suit, the court declined to apply laches, reasoning that, despite the fact that the plaintiffs did not "promptly" seek relief, the defendants were on notice that the school consolidation was illegal and so could not claim prejudice. *Bradwisch v. Howey*, 198 N.W. 820, 821 (S.D. 1924).

Finally, in a challenge to an election incorporating a city, the court declined to apply laches, reasoning that laches cannot apply to "the State [] acting in its sovereign capacity to enforce a governmental right." *State through Att'y Gen. v. Buffalo Chip*, 951 N.W.2d 387, 395 (S.D. 2020).

Tennessee

The Tennessee Supreme Court (in a case outside the election context) has defined laches as requiring proof of "negligen[t]" delay and prejudice to the party asserting laches. See *in re Darwin's Est.*, 503 S.W.2d 511, 514 (Tenn. 1973).

In two consolidated cases, one of which challenged a candidate's nomination and the other contested an election, the Tennessee Supreme Court held that laches applied, reasoning that the plaintiff "chose to take no action for a period of eight (8) weeks while the nominee, the Democratic Party, and the entire election machinery of the state prepared for the general election." *Taylor v. Tennessee State Democratic Exec. Comm.*, 574 S.W.2d 716, 718 (Tenn. 1978).

In another action claiming that the justices of the state supreme court illegally held office, the court applied *Taylor* to hold that laches applied, reasoning that the plaintiffs unreasonably delayed five years in filing suit. *State ex rel. Inman v. Brock*, 622 S.W.2d 36, 45 (Tenn. 1981). The court added that the fact one of the plaintiffs—an organization—"did not exist at the time of the contested nomination, may not escape the bar of laches merely by reason of being founded several years subsequent to that event." *Id.*

In other cases, the court has declined to apply laches. In a case seeking clarification of whether the office of clerk should appear on the ballot as an elected position, the court declined to apply laches, reasoning that the plaintiff had not delayed in filing its action within a month of the statute in question becoming law. *Shelby Cnty. Election Comm'n v. Turner*, 755 S.W.2d 774, 777 (Tenn. 1988).

Finally, in an election contest, the court once again declined to apply laches, reasoning that, despite the plaintiff's four-year delay in seeking a hearing on his claim, there would be no prejudice in holding a new election should the plaintiff prevail. *Shoaf v. Bringle*, 281 S.W.2d 255, 257 (Tenn. 1955).

Texas

Although the Texas Supreme Court has not expressly considered laches in the election context, the court does require parties to “act[] diligently to protect their rights” when asserting a claim for mandamus in election cases. *In re Hotze*, 627 S.W.3d 642 (Tex. 2020). The court has incorporated a federal presumption against last-minute changes to election rules known as the *Purcell* principle into that standard. Under the standard, the court has found unreasonable delays and denied mandamus relief in separate actions that had challenged a county redistricting plan, *In re Khanoyan*, 637 S.W.3d 762 (Tex. 2022), gubernatorial emergency orders extending early and absentee voting, *In re Hotze*, 627 S.W.3d 642 (Tex. 2020), and a challenge to several candidacies, *In re Self*, 652 S.W.3d 829 (Tex. 2022) (citing *In re Khanoyan*, 637 S.W.3d at 829–30).

Utah

The Utah Supreme Court has yet to consider a laches defense in the election context or otherwise determined that delay bars an election-related claim. In other contexts, the court has said that laches has two elements: “(1) [t]he lack of diligence on the part of plaintiff and (2) [a]n injury to defendant owing to such lack of diligence.” *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne*, 289 P.3d 502, 510 (Utah 2012) (internal quotation marks and citation omitted).

Vermont

The Vermont Supreme Court has yet to consider the application of laches within the election context. In Vermont, the “doctrine [of laches] essentially states that the failure to act to enforce a right for an unreasonable period of time, leading to prejudice to the other party, makes it inequitable to enforce that right.” *Hill v. Markowitz*, 2008 Vt. Super. LEXIS 34, at *7 (Vt. Super. Ct. Oct. 17, 2008) (citing *Petition of Vermont Electric Coop., Inc.*, 687 A.2d 883 (Vt. 1994)).

In *Hill*, the plaintiff sought to add his name to the ballot. The trial court concluded that laches applied. According to the court, the plaintiff delayed around seven months in filing suit. *Id.* at *4, *6. The court found that such a delay caused prejudice since, by that point, “ballots have already been distributed – and presumably some have already been returned – and reprinting of the ballots would cost \$ 250,000 to the taxpayers.” *Id.* at *6–7.

Virginia

The Virginia Supreme Court has not considered a laches defense in the election context or otherwise determined that delay bars an election-related claim. In other contexts, the court has explained: “The doctrine of laches involves the failure of a party to assert a known right or claim for an unexplained period of time resulting in prejudice to the adverse party.” *1924 Leonard Rd., L.L.C. v. Van Roekel*, 272 Va. 543, 559, 636 S.E.2d 378, 387 (2006).

Washington

According to the Washington Supreme Court:

Delay and the lapse of time alone do not constitute laches. Its application depends upon the equities of a particular case which would render the maintenance of the action inequitable. Some injury, prejudice or disadvantage to the defendant or an innocent third party must result from allowing the relief sought.

LaVergne v. Boysen, 513 P.2d 547, 548 (Wash. 1973).

In *LaVergne*, the plaintiffs contested an election funding school operations. The court held that laches applied. The court determined that the plaintiffs delayed 79 days from the election in bringing suit and then did not prosecute their claim for another eight months. *Id.* at 549. It concluded such a delay caused prejudice since the school board had proceeded to draft a budget and negotiate teachers' contracts. *Id.* The court added that "[t]here exists a substantial public interest in the finality of elections, necessitating prompt challenges." *Id.*

In another challenge to an election funding school construction, the court once again applied laches. According to the court, the plaintiff delayed one month in filing suit, which prejudiced a school district since it had taken steps to effectuate the project. *Lopp v. Peninsula Sch. Dist. No. 401*, 585 P.2d 801, 805 (Wash. 1978).

West Virginia

In West Virginia, laches applies "when the petitioner has been guilty of unreasonable delay and the rights of the defendant or of innocent third parties will be prejudiced[.]" *Hertzog v. Fox*, 93 S.E.2d 239, 246 (W. Va. 1956).

In *Hertzog*, the petitioner sought a court order permitting him to take his seat on the town council. The court declined to apply laches, reasoning that, despite the petitioner's over five-month delay in filing suit, there was no prejudice since the defendants were on notice that the petitioner would litigate the dispute. See *id.* at 247.

In another action challenging two candidates' qualifications to appear on the ballot, the court once again declined to apply laches, reasoning that "[a]ny inconvenience suffered by the respondent candidates or third parties as a result of the" the petitioners' less than seven-week delay in filing suit "is far outweighed by the inconvenience suffered by the public should those candidates prove ineligible to hold the offices sought in mandamus actions brought following completion of the primary election." *White v. Manchin*, 318 S.E.2d 470, 479 (W. Va. 1984).

Wisconsin

In Wisconsin, the “[a]pplication of laches is within the court’s discretion upon a showing by the party raising the claim of unreasonable delay, lack of knowledge the claim would be raised, and prejudice.” *Trump v. Biden*, 951 N.W.2d 568, 572 (Wis. 2020).

In *Trump*, the Wisconsin Supreme Court determined that laches barred the plaintiffs’ claim, reasoning that the plaintiffs’ “delay in [challenging certain election practices] was unreasonable in the extreme, and the resulting prejudice to the election officials, other candidates, voters of the affected counties, and to voters statewide, is obvious and immense.” *Id.* at 574. As for the delay, the plaintiffs waited months and in certain cases years to contest the practices at issue. *Id.* at 574–75. The court found that such a delay prejudiced election officials, candidates, and voters who had relied on representations that the challenged practices were legal. *Id.* at 576–77. The court explained:

Parties bringing election-related claims have a special duty to bring their claims in a timely manner. Unreasonable delay in the election context poses a particular danger—not just to municipalities, candidates, and voters, but to the entire administration of justice. The issues raised in this case, had they been pressed earlier, could have been resolved long before the election. Failure to do so affects everyone, causing needless litigation and undermining confidence in the election results. It also puts courts in a difficult spot. Interpreting complicated election statutes in days is not consistent with best judicial practices.

Id. at 577.

In a different action involving a challenge to legislative maps, the court declined to apply laches. *Clarke v. Wis. Elections Comm’n*, 998 N.W.2d 370, 391 (Wis. 2023). According to the court, the petitioners had contested the maps in time for the 2024 election cycle despite filing their challenge around a year-and-a-half after the maps were adopted. *Id.* The court also concluded that “litigation costs alone cannot constitute prejudice for laches purposes, and any disruption to the current state legislative districts is necessary to serve the public’s interest in having districts that comply with each of the requirements of the Wisconsin Constitution.” *Id.*

Finally, in an action seeking to add a candidate’s name to the ballot, the court declined to apply laches, reasoning that, notwithstanding the petitioner’s nearly four-week delay in filing his suit, that delay did not cause prejudice since there was still time to finalize and distribute ballots. *Phillips v. Wisconsin Elections Comm’n*, 2 N.W.3d 254, 258 (Wis. 2024).

Wyoming

In Wyoming, “[a] claim of laches is comprised of two elements—inexcusable delay and injury, prejudice, or disadvantage to the defendants or others.” *Cathcart v. Meyer*, 88 P.3d 1050, 1058 (Wyo. 2004).



Cathcart involved a challenge to term limits. The Wyoming Supreme Court declined to apply laches to the plaintiffs' claim. According to the court, despite the fact that the plaintiffs delayed nine years in bringing their claim, their delay was not unreasonable since the plaintiffs who were legislators waited until they sought re-election to file suit and the plaintiffs who were voters "would have been unable to contend that their voting rights were being infringed were they not actually faced with an election where their chosen candidates were unable to seek re-election." *Id.* at 1059.

