

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Robert LaRose, Teresa Maples, Mary
Sansom, Gary Severson, and Minnesota
Alliance for Retired Americans Educational
Fund,

Case Type: Civil Other/Misc.
Case No. 62-cv-20-3149
Judge Sara Grewing

Plaintiffs,

v.

Steve Simon, in his official capacity as
Minnesota Secretary of State,

Defendant,

Republican Party of Minnesota, Republican
National Committee, and National
Republican Congressional Committee,

Intervenor-Defendants.

**INTERVENOR-DEFENDANTS'
MEMORANDUM OF LAW IN SUPPORT
OF THEIR MOTION FOR JUDGMENT
ON THE PLEADINGS**

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INTRODUCTION

Last year, in the early months of the unprecedented COVID-19 pandemic, Plaintiffs filed this lawsuit challenging the constitutionality of two provisions of Minnesota election law: (1) the requirement that an absentee voter complete her ballot in the presence of a witness (“Witness Requirement”), and (2) the requirement that a voter return her absentee ballot by Election Day (“Election Day Receipt Deadline”) (collectively, the “Ballot Integrity Provisions”). Plaintiffs sought immediate relief from these provisions, which they maintained were unduly burdensome in light of the ongoing public-health emergency and the then-impending 2020 elections.

Plaintiffs obtained most of their requested relief. The Minnesota Secretary of State agreed to join two consent decrees enjoining the Ballot Integrity Provisions in connection with the 2020 elections. Both consent decrees were “premised upon the current public health crisis facing Minnesota caused by the ongoing spread of the novel coronavirus.” Index #23, 98. Minnesota conducted both elections without the Witness Requirement, but the Eighth Circuit held that the consent decree’s modification of the Election Day Receipt Deadline for the November general election likely violated the Electors Clause of the U.S. Constitution. *See Carson v. Simon*, 978 F.3d 1051, 1062–63 (8th Cir. 2020). Ultimately, however, only approximately 2,500 absentee ballots arrived after the deadline out of more than 1.9 million cast.¹

Plaintiffs themselves pleaded that their claims are inextricably intertwined with the impact of COVID-19 on the “upcoming [2020] elections,” Compl. ¶ 3, and they have not asked the Court

¹ Stephen Montemayor, *Of 1.8 million mail-in ballots in Minnesota, just 2,500 arrived after Election Day*, Star Tribune (Nov. 13, 2020), <https://www.startribune.com/of-1-8-million-mail-in-ballots-in-minnesota-just-2-500-arrived-after-election-day/573069142/>; Minn. Sec’y of State, Twitter (Nov. 13, 2020), <https://twitter.com/mnstevesimon/status/1327328409073102849>; Minn. Sec’y of State, *Absentee Data* (Jan. 14, 2021), <https://www.sos.state.mn.us/election-administration-campaigns/data-maps/absentee-data/>.

for any further relief following the November 2020 general elections. Now, for three main reasons, the Court should grant judgment on the pleadings and dismiss this case.

First, the Complaint must be dismissed for lack of a justiciable case or controversy. Plaintiffs' claims premised on the COVID-19 pandemic are speculative and hypothetical at this juncture: Minnesota's next statewide elections are not until August 2022,² and it is impossible to know whether the pandemic will affect elections more than a year from now. Although Plaintiffs claim the Ballot Integrity Provisions are unconstitutional in all circumstances, they do not allege facts showing that these laws cause them any cognizable injury absent the COVID-19 pandemic.

Second, the Complaint must be dismissed because—as the Minnesota Supreme Court's recent decision demonstrates—Plaintiffs fail to set forth a legally sufficient claim for relief. Plaintiffs have assumed a heavy burden in this suit: they seek sweeping facial relief against the Ballot Integrity Provisions. *See* Compl., Prayer for Relief ¶¶ a–c. Accordingly, Plaintiffs must establish that the Ballot Integrity Provisions are “unconstitutional in all applications”—and even a single constitutional application of these laws defeats Plaintiffs' claims. *McCaughtry v. City of Red Wing*, 831 N.W.2d 518, 522 (Minn. 2013).

Here, the Ballot Integrity Provisions are constitutional because they are “nondiscriminatory, generally applicable regulation[s],” *DSCC v. Simon*, 950 N.W.2d 280, 292 (Minn. 2020), that do not impose anything more than the “usual burdens of voting,” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008). Indeed, the Ballot Integrity Provisions are part of an absentee voting process that *alleviates* the usual burdens of voting in person on Election

² *See* Minn. Sec'y of State, *Elections Calendar*, <https://www.sos.state.mn.us/election-administration-campaigns/elections-calendar/>. No Plaintiff has alleged he or she is eligible for or intends to participate in, or sought any relief with respect to, any local election that occurs before August 2022.

Day. Moreover, Minnesota’s important interests in protecting the integrity of elections and public confidence in the democratic process amply justify the Ballot Integrity Provisions. Thus, under the *Anderson/Burdick* framework that governs all of their constitutional claims, Plaintiffs have failed to state a claim that the Ballot Integrity Provisions are unconstitutional, let alone that they are facially unconstitutional in all applications.

Third, Plaintiffs’ claims must be dismissed because this Court has no authority to grant the requested relief of eliminating the Ballot Integrity Provisions for federal elections. The Electors and Elections Clauses of the U.S. Constitution delegate to state legislatures plenary authority to regulate federal elections. *See* U.S. Const. art. II, § 1, cl. 2; *id.* art. I, § 4, cl. 1. As the Eighth Circuit explained in reviewing the General Election Consent Decree entered in this case, state courts are without authority to override legislative enactments governing federal elections. *See Carson*, 978 F.3d at 1060. Plaintiffs, however, ask this Court to do precisely that by enjoining the Ballot Integrity Provisions. Accordingly, at a minimum, the Court must dismiss the claims under the Electors and Elections Clauses insofar as they implicate federal elections.

BACKGROUND

A. Absentee Voting in Minnesota

Minnesota makes “vot[ing] by absentee ballot” available to “[a]ny eligible voter.” Minn. Stat. § 203B.02, subd. 1 (2020). A Minnesota voter may apply for an absentee ballot for any election “not less than one day before ... that election” or may register as a permanent absentee voter and “automatically receive an absentee ballot application before each election.” *Id.* § 203B.04, subds. 1(a), 5(a).

An absentee-ballot return envelope must contain “[a] certificate of eligibility”—a space “designed to ensure that the voter provides the same type of identification as provided on the voter’s absentee ballot application for purposes of comparison.” *Id.* § 203B.07, subd. 3. The voter

must provide her identifying information in that space, sign it, and swear that she is an eligible voter. *Id.* The certificate of eligibility must also contain a statement signed by a registered Minnesota voter or a notary (or other individual authorized to administer oaths) providing that: (1) the ballot was displayed to that individual unmarked; (2) the voter marked the ballot in that individual’s presence without showing how it was marked; and (3) if the voter was not previously registered, the voter provided proof of residence. *Id.* This is the Witness Requirement.

The voter may return her absentee ballot by mail or deliver it in person “during the 46 days before the election.” *Id.* § 203B.081, subd. 1. An absentee voter also “may designate an agent” to deliver or mail the ballot, so long as that agent does not assist more than three voters per election. *Id.* § 203B.08, subd. 1. An absentee ballot returned in person “must be submitted . . . by 3:00 p.m. on election day,” while an absentee ballot returned by mail must be received by 8:00 p.m. on election day. *Id.* § 203B.08, subsd. 1, 3. This is the Election Day Receipt Deadline.

B. Procedural Background

Plaintiffs are four Minnesota registered voters (“Individual Plaintiffs”) and the Minnesota Alliance for Retired Americans Educational Fund (“Alliance”). They filed this lawsuit on May 13, 2020, challenging the constitutionality of the Witness Requirement and Election Day Receipt Deadline under the United States and Minnesota Constitutions. Compl. ¶¶ 98–142. Plaintiffs asked for a declaratory judgment that the Ballot Integrity Provisions are unconstitutional and an injunction on their enforcement. *Id.*, Prayer for Relief ¶¶ a–c.

The lawsuit was filed during the early months of the COVID-19 pandemic shortly before voting was scheduled to begin for the August primary election. Plaintiffs alleged that many voters were likely to engage in absentee voting by mail “to protect their safety and the health and safety of their community.” *Id.* ¶ 4. Each of the Plaintiffs alleged that the Ballot Integrity Provisions, in

combination with the COVID-19 crisis, would make it more difficult to vote in the “upcoming [2020] elections.” *Id.* ¶¶ 3, 9–12, 14.

On June 17, 2020, the Court approved a consent decree that eliminated the Ballot Integrity Provisions for the August primary election. Index #23. The next day, the Republican Party of Minnesota, Republican National Committee, and National Republican Congressional Committee (collectively, “Republican Committees”) filed a Notice of Intervention. Index #29.

Plaintiffs filed a Motion for Temporary Injunction on July 2, asking the Court to set aside the Ballot Integrity Provisions for the November general election. Index #51. On July 17, Plaintiffs and Defendant submitted another proposed consent decree (“General Election Consent Decree”) to enjoin the Ballot Integrity Provisions for the November general election. *See* Index #70. The Republican Committees filed an opposition to Plaintiffs’ motion that same day, *see* Index #75, and objections to the General Election Consent Decree two days later, *see* Index #80.

On August 3, the Court entered an order granting the Republican Committees permissive intervention and approving the General Election Consent Decree. *See* Index #97. The Court held it was “reasonable for the Secretary to conclude that the Plaintiffs are likely to succeed on their Election Day Receipt Deadline motion” in light of the “unusual global crisis.” *Id.* at 25. The Court also thought it “reasonable for the Secretary to conclude that the Plaintiffs are likely to succeed on their” challenges to the Witness Requirement and that it “would have been empowered to grant the preliminary injunction” due to “the current pandemic.” *Id.* at 24. The General Election Consent Decree stated it was “premised upon the current public health crisis facing Minnesota caused by the ongoing spread of the novel coronavirus.” Index #98 at 1.

In a separate suit filed in federal court, nominees to serve as presidential electors challenged the General Election Consent Decree’s modification of the Election Day Receipt Deadline under

the U.S. Constitution’s Electors Clause, U.S. Const. art. II, § 1, cl. 2. *See Carson*, 978 F.3d at 1056. The district court denied them relief on standing grounds, but the Eighth Circuit reversed and held that the consent decree’s modification of the deadline likely violated the Electors Clause. *Id.* at 1059–60. The Eighth Circuit required Minnesota officials to separately maintain absentee ballots received after the deadline. *Id.* at 1062–63. Ultimately, only approximately 2,500 absentee ballots out of more than 1.9 million cast were received after the deadline. *See supra* n.1.

LEGAL STANDARD

A district court must grant a motion for judgment on the pleadings if a complaint fails to set forth a legally sufficient claim for relief. Minn. R. Civ. P. 12.03; *Zutz v. Nelson*, 788 N.W.2d 58, 61 (Minn. 2010). “To withstand a motion for judgment on the pleadings, [a plaintiff] must state facts that, if proven, would support a colorable claim and entitle it to relief.” *Midwest Pipe Insulation, Inc. v. MD Mech., Inc.*, 771 N.W.2d 28, 31 (Minn. 2009). The court is “not bound by legal conclusions stated in a complaint,” *Heber v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008), and a plaintiff “must provide more than labels and conclusions” to state a claim, *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010).

ARGUMENT

The Court should grant Republican Committees’ Motion for Judgment on the Pleadings because the Complaint fails to state a legally sufficient claim for relief. Plaintiffs offer only speculative allegations of harm that fail to establish a justiciable case or controversy, fail to plead a cognizable constitutional claim under the governing *Anderson/Burdick* framework, and seek relief beyond this Court’s power to grant under the U.S. Constitution. The Court should dismiss the Complaint.

I. PLAINTIFFS' CLAIMS ARE NON-JUSTICIABLE BECAUSE THEIR ALLEGED HARM IS SPECULATIVE AND HYPOTHETICAL.

“[T]he presence of a justiciable controversy” is “essential” to a district court’s “exercise of jurisdiction.” *Schowalter v. State*, 822 N.W.2d 292, 298 (Minn. 2012). This case implicates two related doctrines of justiciability: standing and ripeness. Standing requires that the plaintiff’s “alleged harm cannot be speculative” or “predicated on hypothetical facts.” *Minn. Voters All. v. State*, 955 N.W.2d 638, 642 (Minn. Ct. App. 2021) (citation omitted); *see also Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (standing requires that the “threatened injury must be *certainly impending*” such that “[a]llegations of *possible* future injury” are not sufficient). Ripeness requires that the challenged law “is, or is about to be, applied to [the plaintiff’s] disadvantage.” *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 338 (Minn. 2011) (citation omitted). “Issues which have no existence other than in the realm of future possibility are purely hypothetical and are not justiciable.” *Id.* at 339.

Plaintiffs’ claims fail these justiciability requirements. *First*, the Complaint is intertwined with allegations—both general to all Minnesotans and specific to the Individual Plaintiffs—regarding the COVID-19 public-health emergency as it existed during the lead-up to the 2020 primary and general elections. *See* Compl. ¶¶ 3–4, 9–12, 64, 66, 78–89. Yet Plaintiffs “do not allege (and rightly so, since no one knows) that the pandemic will be ongoing” during Minnesota’s next statewide election in August 2022, well more than a year from now. *People First of Ala. v. Merrill*, 479 F. Supp. 3d 1200, 1207–08 (N.D. Ala. 2020) (rejecting a COVID-19 challenge to election laws seven months before the next election as “simply too speculative” to ground a case or controversy). Indeed, if anything, the public record indicates that the pandemic will not disrupt the electoral system in 2022 in the way that Plaintiffs allege that it did in 2020.

For example, every Minnesotan age 16 or older is now eligible to receive a vaccine.³ As of April 13, 49.0 percent of all Minnesotans—and 84.6 percent of Minnesotans age 65 or older—have received at least one dose of the COVID-19 vaccine.⁴ And as of April 15, no category of business activity remains closed in Minnesota, restaurants are operating at 75% capacity, religious houses and salons are operating at 100% capacity, caps on the number of patrons at certain venues have been raised, and working from home is no longer required for many businesses. *See Minnesota’s Stay Safe Plan*, <https://mn.gov/covid19/stay-safe/stay-safe-plan/index.jsp>. According to the State, “the sun is brighter than ever and the end of COVID-19 is in sight,” as “[v]accine progress is having an impact.” *Id.* Thus, it is more than possible—even likely—that Plaintiffs will have the opportunity to vote in person in August 2022 or be able to satisfy the Witness Requirement absent the disruptions caused by COVID-19.

In all events, Plaintiffs make no allegations regarding the effect of the COVID-19 pandemic more than a year in the future. This is unsurprising: any such allegations would be “speculative,” *Minn. Voters All.*, 955 N.W.2d at 642, and would exist only “in the realm of future possibility,” *McCaughtry*, 808 N.W.2d at 339 (citation omitted). Thus, Plaintiffs’ claims resting on the future effect of the COVID-19 pandemic “are purely hypothetical and are not justiciable,” and the Court should dismiss those claims. *Id.*⁵

³ Minn. COVID-19 Response, *Who’s Getting Vaccinated?* (last visited Apr. 15, 2021), <https://mn.gov/covid19/vaccine/whos-getting-vaccinated/index.jsp>.

⁴ Minn. COVID-19 Response, *Vaccine Data* (data reported as of Apr. 13, 2021), <https://mn.gov/covid19/vaccine/data/index.jsp>.

⁵ The recent decision in *League of Women Voters of Minnesota Education Fund v. Simon*, No. 20-CV-1205, 2021 WL 1175234 (D. Minn. Mar. 29, 2021), underscores the speculative nature of the alleged injury in this case. In that case, the court held that a plaintiff adequately alleged a cognizable injury because she intends to vote by mail in an upcoming 2021 local election. *Id.* at *5. “[E]ssential” to the court’s conclusion was the complaint’s detailed allegations that COVID-19 “will continue to pose a substantial public-health risk in connection with November 2021 elections, for which absentee voting begins in September 2021.” *Id.* Here, by contrast, no Plaintiff

Second, although the Complaint asserts that the Ballot Integrity Provisions unconstitutionally burden the right to vote even outside the COVID-19 pandemic, Compl. ¶¶ 6–7, the Individual Plaintiffs do not adequately allege such an injury. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (“[A]t the pleading stage, the plaintiff must clearly . . . allege facts demonstrating each element” of standing.). Quite to the contrary: three of the Individual Plaintiffs—Ms. Maples, Ms. Sansom, and Mr. Severson—all *admit* that they have consistently voted in the past notwithstanding the Ballot Integrity Provisions. *See* Compl. ¶¶ 10–12. And the fourth Individual Plaintiff, Mr. LaRose, does not allege that he will continue to be absent from the state during the 2022 elections or even that he will be a registered Minnesota voter at that time. *See id.* ¶ 9. Accordingly, Mr. LaRose does not allege that he will be unable to vote in person, or to locate a witness for and/or timely return an absentee ballot, in the 2022 elections. *See id.* Plaintiffs’ own allegations therefore foreclose the required showing that their purported injuries are “attributable to the” Ballot Integrity Provisions. *Minn. Voters All.*, 955 N.W.2d at 642.

Finally, the Alliance also has failed sufficiently to plead a justiciable case or controversy. The Alliance’s associational standing claim fails at the threshold because they have not alleged non-speculative harm to any member caused by the Ballot Integrity Provisions. *St. Paul Police Fed’n v. City of St. Paul*, No. A05-2186, 2006 WL 2348481, at *2 (Minn. Ct. App. Aug. 15, 2006) (an organization has standing to sue on behalf of its members “only if it has alleged facts sufficient to make out a case or controversy had the members themselves brought suit” (citation omitted)).

As with the Individual Plaintiffs, the alleged harm to the Alliance’s members is intertwined with

alleges he or she intends to participate in any election in 2021, let alone by absentee ballot. Moreover, the Complaint’s allegations regarding the impact of COVID-19 relate exclusively to the state of affairs during the 2020 elections. *See, e.g.*, Compl. ¶¶ 1–3, 5, 9–12, 14. The Complaint is devoid of allegations of the expected impact of COVID-19 on Plaintiffs and the electoral system at the time of the next election in which they intend to participate.

the COVID-19 crisis that existed during the 2020 elections. In particular, the Alliance alleges that its members are “at a heightened risk of coronavirus complications,” are “overwhelmingly likely to vote by mail *this year*” (i.e., 2020) because of the pandemic, and are likely to “face difficulty in finding someone to *safely* witness their absentee ballots.” Compl. ¶ 14 (emphases added). And, as with the Individual Plaintiffs, this alleged harm in connection with next year’s elections is purely speculative because it is contingent on unknown future developments of the public-health situation. Because the Alliance “has not identified a member who is suffering immediate or threatened injury” separate and apart from the hypothetical future impact of COVID-19, it “has not alleged facts sufficient to make out a case or controversy had its members brought suit.” *St. Paul Police Fed’n*, 2006 WL 2348481, at *2.

The Alliance’s claim that it has suffered direct injury fares no better. The Alliance claims that the Ballot Integrity Provisions “frustrate” its mission because “they deprive individual members of the right to vote” and “threaten the electoral prospects of Alliance-endorsed candidates whose supporters will face greater obstacles casting a vote.” Compl. ¶ 14. But the Complaint lacks any supporting facts showing the Ballot Integrity Provisions deprive any member of the right to vote. And the Alliance’s general interest in its preferred candidates winning is simply a “generalized partisan preference[]” or “collective political interest” that cannot establish standing. *Gill v. Whitford*, 138 S. Ct. 1916, 1932–33 (2018). Harm to an organization’s generalized political preferences describes only “a setback to [its] abstract social interests,” which is not a concrete injury-in-fact. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982).

The Alliance also claims that it “must devote time and resources” to educating and assisting members in complying with the Ballot Integrity Provisions. Compl. ¶ 14. But the diversion of resources alleged here “results not from any actions taken by [the State], but rather from the

[organization's] own budgetary choices.” *Fair Emp’t Council of Greater Wash., Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1276 (D.C. Cir. 1994). An organization does not have standing “merely by virtue of its efforts and expense to advise others how to comport with the law.” *Fair Elections Ohio v. Husted*, 770 F.3d 456, 460 (6th Cir. 2014); *see also Lane v. Holder*, 703 F.3d 668, 675 (4th Cir. 2012); *Ass’n for Retarded Citizens of Dallas v. Dallas Cnty. Mental Health & Mental Retardation Ctr. Bd. of Trustees*, 19 F.3d 241, 244 (5th Cir. 1994). The Alliance may not manufacture standing simply by choosing to devote resources to helping members comply with the law. To hold otherwise would eviscerate traditional limits on standing.

The Court should enter judgment dismissing the Complaint.

II. THE COMPLAINT FAILS TO SET FORTH A LEGALLY SUFFICIENT CLAIM FOR RELIEF.

Even if Plaintiffs had adequately alleged a cognizable injury, their constitutional claims fail as a matter of law. Because they seek facial relief against the Ballot Integrity Provisions, Plaintiffs have taken on the “heavy burden” of proving that those laws are “unconstitutional in all applications.” *McCaughtry*, 831 N.W.2d at 522. But the Ballot Integrity Provisions easily pass constitutional muster under the governing *Anderson/Burdick* framework, so the Court should dismiss the Complaint on this basis as well. *See, e.g., Hawkins v. DeWine*, 968 F.3d 603 (6th Cir. 2020) (affirming dismissal on the pleadings); *Libertarian Party of Va. v. Alcorn*, 826 F.3d 708 (4th Cir. 2016) (same).

Plaintiffs challenge the Ballot Integrity Provisions under the United States and Minnesota Constitutions. Compl. ¶¶ 108, 130. The applicable framework is the same under both: courts must weigh the burden (if any) imposed by the challenged law on protected rights against the State’s interests in and justifications for the law. *See, e.g., DSCC*, 950 N.W.2d at 292–93. Under this analytical approach—commonly known as the *Anderson/Burdick* test for the two U.S. Supreme

Court cases from which it is derived—“[r]egulations imposing severe burdens on plaintiffs’ rights must be narrowly tailored and advance a compelling state interest,” while those imposing “[l]esser burdens . . . trigger less exacting review, and [the] State’s ‘important regulatory interests’ will usually be enough to justify ‘reasonable, nondiscriminatory restrictions.’” *Kahn v. Griffin*, 701 N.W.2d 815, 832 (Minn. 2005) (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358–59 (1997)). This “less exacting” scrutiny is closely akin to rational-basis review. *See Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 607–08 (8th Cir. 2020); *DSCC*, 950 N.W.2d at 293.

At the threshold, courts applying *Anderson/Burdick* must “identify a burden before [they] can weigh it.” *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1261 (11th Cir. 2020) (quoting *Crawford*, 553 U.S. at 205 (Scalia, J., concurring)). Thus, as the Minnesota Supreme Court recently held, laws pass muster under the *Anderson/Burdick* framework when the burden they impose on voters is not sufficiently weighty to violate the Constitution. *See DSCC*, 950 N.W.2d at 291–94. This can occur, for example, when the challenged law imposes “a nondiscriminatory, generally applicable regulation” on voters or even a subset of voters. *Id.* at 292. It can also occur when the burdens imposed do not amount to “a significant increase over the usual burdens of voting.” *Id.* at 293 (citing *Crawford*, 553 U.S. at 198). Accordingly, in *DSCC*, the Minnesota Supreme Court reversed the district court and held that Minnesota’s ballot-harvesting limit is constitutional under the *Anderson/Burdick* framework even though the limit might burden some groups of voters. *See id.* at 291–94; *see also League of Women Voters*, 2021 WL 1175234, at *8 (“[A] facial constitutional challenge to a law regulating voting procedures is not plausible if it is based only on burdens tied to the peculiar circumstances of individual voters.” (citing *Brakebill v. Jaeger*, 905 F.3d 553, 558 (8th Cir. 2018))).

The U.S. Supreme Court's decision in *Crawford* well illustrates the *Anderson/Burdick* test in practice. There, the plaintiffs challenged Indiana's requirement that voters present a photo ID before voting. *See* 553 U.S. at 185. The Supreme Court rejected the plaintiffs' challenge. *See id.* at 200–04. The court recognized that the law placed a minimal burden on voters, requiring those who did not already have a photo ID to bear “the inconvenience of making a trip to the [D]MV, gathering the required documents, and posing for a photograph.” *Id.* at 198. The court concluded, however, that such inconvenience “surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting.” *Id.* And the court reasoned that any burden imposed by the photo ID requirement is amply justified by “several state interests,” including the interests in “detering and detecting voter fraud,” guaranteeing the “orderly administration” of elections, and “safeguarding voter confidence.” *Id.* at 191, 196.

A. The Witness Requirement Is Constitutional.

The Witness Requirement is constitutional because it is “a nondiscriminatory, generally applicable regulation” on all absentee voters and imposes no more than “the usual burdens of voting.” *DSCC*, 950 N.W.2d at 292–93. The Witness Requirement simply requires an absentee voter to locate any other registered voter or a notary to witness her ballot. That burden is less onerous than the burden upheld as constitutional in *Crawford*, which required a voter to gather required documentation, visit the DMV, and pose for a photograph *in addition to* traveling to the polling place and waiting in line to vote in person. *See* 553 U.S. at 198. In fact, if anything, the Witness Requirement *lowers* the “usual burdens of voting,” *id.*, because it enables secure absentee voting, permitting voters to bypass the inconvenience of in-person voting.

That the Witness Requirement does not impose a cognizable burden on any voter is sufficient to demonstrate its constitutionality under the *Anderson/Burdick* framework. *See DSCC*, 950 N.W.2d at 291–94. But if more were somehow needed, the Witness Requirement also is more

than amply justified by at least two “legitima[te]” and “unquestionably relevant” interests. *Crawford*, 553 U.S. at 191; *see also Kahn*, 701 N.W.2d at 832.

First, the Witness Requirement promotes the State’s important interest in “detering and detecting voter fraud” and preventing ballot tampering. *Crawford*, 553 U.S. at 191. It does so primarily by ensuring that the person who submits an absentee ballot (1) began with an unmarked ballot, (2) was the voter who marked the ballot, and (3) provided proof of residence, if the voter was not previously registered to vote. Minn. Stat. § 203B.07, subd. 3. Relatedly, it ensures that the person who completes an absentee ballot does so free from undue influence or coercion.

Numerous courts have recognized the legitimacy of states’ concerns about voter fraud—and especially in the context of absentee voting. *See, e.g., Crawford*, 553 U.S. at 195–96 (explaining history of in-person and absentee fraud “demonstrate[s] that not only is the risk of voter fraud real but that it could affect the outcome of a close election”); *Griffin v. Roupas*, 385 F.3d 1128, 1130–31 (7th Cir. 2004) (“Voting fraud is a serious problem in U.S. elections generally . . . and it is facilitated by absentee voting.”). The renowned Commission on Federal Election Reform, chaired by former President Jimmy Carter and former Secretary of State James A. Baker III and whose report was cited in *Crawford*, determined that “[a]bsentee ballots remain the largest source of potential voter fraud.” *Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform* 46 (Sept. 2005) (“Carter-Baker Report”). “Absentee balloting is vulnerable to abuse in several ways” because ballots can be “intercepted” on their way to or from the voter; “[c]itizens who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure”; and “[v]ote buying schemes are far more difficult to detect when citizens vote by mail.” *Id.*

Against this backdrop, there can be no doubt that Minnesota has a legitimate interest in

detering absentee-ballot fraud.⁶ To be sure, no fraud-prevention measure is foolproof, and the Witness Requirement cannot prevent every instance of fraud. But it undoubtedly plays a role in deterring voter fraud, and that is what counts for constitutional purposes.

Second, and equally important, the Witness Requirement promotes Minnesota’s interest in “protecting public confidence in the integrity and legitimacy of representative government.” *Crawford*, 553 U.S. at 197; *see also DSCC*, 950 N.W.2d at 293. “[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.” *Crawford*, 553 U.S. at 197; *see also Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (“Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.”). Indeed, “[t]he electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud.” Carter-Baker Report at 18.

For its part, the Witness Requirement allays any concerns the public may have regarding the freedom and flexibility of a no-excuse absentee ballot. It installs an ordinary Minnesotan in the role normally played by the State at the polling place: watchperson to ensure that the ballot—and the vote it contains—is a valid and proper exercise of the franchise. Of course, like all humans, no Minnesotan is infallible, and some may take this role with nefarious intentions. But it is the ideal of an honest, watchful eye that inspires public confidence in the integrity and legitimacy of absentee ballots cast in Minnesota.

⁶ The State’s interest in combatting voter fraud would be sufficient to justify the Witness Requirement even if “[t]he record contain[ed] no evidence of any such fraud actually occurring in [Minnesota] at any time in its history.” *Crawford*, 553 U.S. at 194. But Minnesota has a firm basis for concern about voting fraud—particularly in absentee voting. *See, e.g., Minneapolis Man Charged With Absentee Ballot Fraud*, U.S. News & World Report (Nov. 5, 2019), <https://www.usnews.com/news/best-states/minnesota/articles/2019-11-05/minneapolis-man-charged-with-absentee-ballot-fraud>; *Voter fraud charge reduced to misdemeanor*, The Free Press (Feb. 13, 2017), https://www.mankatofreepress.com/news/local_news/voter-fraud-charge-reduced-to-misdemeanor/article_1e875196-f206-11e6-8cd9-e72c8c0a799d.html.

Plaintiffs' various attempts to plead a constitutional infirmity in the Witness Requirement uniformly fail. For example, Plaintiffs assert that the Witness Requirement burdens "all Minnesota voters by requiring them to incur additional transaction costs and, in some cases, monetary costs to exercise their right to vote." Compl. ¶¶ 104, 126. But this allegation proves too much: *all* voting laws impose some "costs" on the exercise of the right to vote. *See DSCC*, 950 N.W.2d at 293 ("[V]oting invariably requires surmounting some burdens."). And voting laws such as the Witness Requirement are constitutional when they amount to "nondiscriminatory, generally applicable regulation[s]" that do not affect "a significant increase over the usual burdens of voting." *Id.* at 292–93.

Plaintiffs also allege that the Witness Requirement's burdens are "severe" for voters who "temporarily live out of state, are disabled, are seniors, or live alone." Compl. ¶¶ 104, 126. But as the Minnesota Supreme Court clarified in *DSCC*, such a "subgroup" analysis is improper "when the challenged law is nondiscriminatory and generally applicable." *DSCC*, 950 N.W.2d at 292 n.14. After all, the ballot-harvesting limit upheld in *DSCC* affected only voters who needed assistance in returning their ballots, and the photo ID requirement upheld in *Crawford* imposed different burdens on voters who did or did not already possess a qualifying ID. *See id.* at 292–93; *Crawford*, 553 U.S. at 197–98. Yet "burdens arising 'from life's vagaries' do not translate to unconstitutional state regulations on voting, particularly when adequate alternatives are available to the voter." *DSCC*, 950 N.W.2d at 293 (quoting *Crawford*, 553 U.S. at 197–98).

As other courts have confirmed, analysis of the severity of a law's impact "is not limited to the impact that a law has on a small number of voters." *Richardson v. Tex. Sec'y of State*, 978 F.3d 220, 236 (5th Cir. 2020). Instead, courts must look at the burden's impact "categorically" on *all* voters, without "consider[ing] the peculiar circumstances of individual voters." *Crawford*, 553

U.S. at 206 (Scalia, J., concurring). This approach makes sense, given that every voting rule “affects different voters differently.” *Id.* at 205. But such differential effects are not different “burdens” on the right to vote; rather, they “are no more than the different *impacts* of the single burden that the law uniformly imposes on all voters.” *Id.* Classifying “ordinary and widespread burdens” as “severe” because of some voters’ unique circumstances “would subject virtually every electoral regulation to strict scrutiny” and “hamper the ability of States to run efficient and equitable elections.” *Clingman v. Beaver*, 544 U.S. 581, 593 (2005).

A subgroup analysis is especially inappropriate here, where Plaintiffs have asserted a facial challenge to the Witness Requirement. *See* Compl., Prayer for Relief ¶¶ a–c. “[A] showing of excessive burden ‘on *some* voters’ cannot plausibly support a facial constitutional challenge to a law regulating election procedures” and “does not justify broad relief that invalidates the requirements on a statewide basis as applied to *all* voters.” *League of Women Voters*, 2021 WL 1175234, at *8 (quoting *Brakebill*, 905 F.3d at 558). Whatever unique impact the Witness Requirement has on certain subgroups of voters, it is plainly not burdensome for absentee voters generally to locate one other registered voter to witness their ballot, let alone exceedingly burdensome “in all applications.” *McCaughtry*, 831 N.W.2d at 522.

The Court should dismiss Plaintiffs’ challenge to the Witness Requirement.

B. The Election Day Receipt Deadline Is Constitutional.

The Election Day Receipt Deadline also is constitutional under *Anderson/Burdick* because it is “a nondiscriminatory, generally applicable regulation” on all absentee voters and imposes no more than “the usual burdens of voting.” *DSCC*, 950 N.W.2d at 292–93. The Election Day Receipt Deadline simply requires an absentee voter to take steps within a 46-day period to make sure her ballot is received by the deadline. That burden is less onerous than the burden upheld as constitutional in *Crawford*, which required a voter to gather required documents, visit the DMV,

and pose for a photograph *in addition to* traveling to the polling place and waiting in line to vote in person. *See* 553 U.S. at 198. If anything, the Election Day Receipt Deadline *lowers* the “usual burdens of voting,” *id.*, because it permits voters to bypass the inconvenience of in-person voting and to vote absentee. Indeed, courts routinely uphold the constitutionality of neutral deadlines for exercising voting rights, such as election day receipt deadlines. *See, e.g., Mays v. LaRose*, 951 F.3d 775, 791 (6th Cir. 2020); *Rosario v. Rockefeller*, 410 U.S. 752, 758 (1973); *Thomas v. Andino*, No. 3:20-CV-01552-JMC, 2020 WL 2617329, at *26–27 (D.S.C. May 25, 2020).

Moreover, Plaintiffs do not allege that 46 days is an inadequate period of time to receive, complete, and return an absentee ballot. Nor could they: despite Plaintiffs’ prognostications, only approximately 2,500 absentee ballots out of more than 1.9 million cast—just 0.13%—arrived after the Election Day Receipt Deadline in November 2020. *See supra* n.1; *see also* Compl. ¶¶ 4, 42 (approximately 3,500 mail-in ballots out of approximately 300,000 mail-in ballots cast in 2018 arrived after deadline). Given Minnesota’s generous absentee voting period, any voter’s inability to cast a timely ballot is “not caused by” the Election Day Receipt Deadline but instead “by their own failure to take timely steps to effect” completion and return of their ballot. *Rosario*, 410 U.S. at 758; *see also Mays*, 951 F.3d at 786–87; *Thomas*, 2020 WL 2617329, at *26.

While the Election Day Receipt Deadline does not meaningfully burden voters, it promotes important State interests. *First*, it promotes the State’s interest in “detering and detecting voter fraud” and preventing ballot tampering. *Crawford*, 553 U.S. at 191. The deadline ensures that all voters vote on or before Election Day before polls close and results might become available. It thereby “eliminates the remote possibility that in an extremely close election . . . a person who did not vote on or before election day can fill out and submit a ballot later.” *Nielsen v. DeSantis*, No. 4:20-cv-236, 2020 WL 5552872, at *1 (N.D. Fla. June 24, 2020).

Second, the Election Day Receipt Deadline promotes Minnesota’s interest in “protecting public confidence in the integrity and legitimacy of representative government.” *Crawford*, 553 U.S. at 197 (internal quotation marks omitted). It treats in-person and absentee voters on a par—and by guaranteeing that only ballots received by election day will be counted, forecloses any possibility that late-cast ballots could have any effect on the outcome of the election. *See Nielsen*, 2020 WL 5552872, at *1.

Third, the Election Day Receipt Deadline promotes Minnesota’s interest in “orderly administration” of its elections, including its interest in finality. *Crawford*, 553 U.S. at 196. Deadlines are part and parcel of modern elections and of a state’s generalized interest in orderly election administration. *See, e.g., Rosario*, 410 U.S. at 758; *Mays*, 951 F.3d at 787; *Thomas*, 2020 WL 2617329, at *26–27. Indeed, such deadlines “ensur[e] a smooth process for [voters] to cast ballots and officials to count those ballots.” *Thomas*, 2020 WL 2617329, at *26 (citation omitted); *see also Nielsen*, 2020 WL 5552872, at *1 (requiring ballots to be received by Election Day “eliminates the problem of missing, unclear, or even altered postmarks”).

Plaintiffs allege that the Election Day Receipt Deadline imposes a “severe burden” on the right to vote because voters who “misjudge” when to mail their completed ballot or do not receive their absentee ballot until close to Election Day risk “total disenfranchisement.” Compl. ¶¶ 105, 127. But as explained, such allegations do not give rise to a cognizable constitutional claim because burdens that arise “from life’s vagaries,” such as mail delivery, “do not translate to unconstitutional state regulations on voting.” *DSCC*, 950 N.W.2d at 293; *see also Storer v. Brown*, 415 U.S. 724, 728–29 (1974) (characterizing a law as “severe” because it was “so burdensome” as to be “virtually impossible” to satisfy); *Crawford*, 553 U.S. at 205 (Scalia, J., concurring) (“Burdens are severe if they go beyond the merely inconvenient.”). And the Election

Day Receipt Deadline’s alleged effect on any “subgroup” of voters does not render it anything other than a constitutional “nondiscriminatory and generally applicable” law. *DSCC*, 950 N.W.2d at 292 n.14; *see also League of Women Voters*, 2021 WL 1175234, at *8.

Plaintiffs also allege that the Election Day Receipt Deadline “forces” Minnesota absentee voters to cast their ballots “without the benefit of accounting for, or opportunity to consider, information about the election or the candidates that arise in the final week leading up to Election Day.” Compl. ¶¶ 106, 128. That allegation, of course, is false, particularly in light of the “adequate alternatives” available to voters. *DSCC*, 950 N.W.2d at 293; *see also Mays*, 951 F.3d at 785. After all, any voter who does not want to mail her ballot during the “final week” before Election Day can personally return her absentee ballot to an elections office, ask an agent to return the ballot on her behalf, or vote in person on or before Election Day. Compl. ¶¶ 106, 128.

The Court should dismiss Plaintiffs’ challenges to the Election Day Receipt Deadline.

C. The Election Day Receipt Deadline Does Not Violate Due Process.

Plaintiffs allege that the Election Day Receipt Deadline violates due process. *See, e.g.*, Compl. ¶¶ 109–22, 131–42. That claim is, at best, duplicative of their unconstitutional burden claim and, at worst, nonsensical.

At the threshold, it cannot be disputed that the State may constitutionally impose deadlines on the exercise of the franchise, including a deadline for absentee voters to submit their ballots. *See, e.g., Rosario*, 410 U.S. at 758; *Mays*, 951 F.3d at 791; *Driscoll v. Stapleton*, 473 P.3d 386, 394 (Mont. 2020); *League of Women Voters of Mich. v. Sec’y of State*, No. 353654, 2020 WL 3980216 (Mich. Ct. App. July 14, 2020); *Nielsen*, 2020 WL 5552872, at *1; *Thomas*, 2020 WL 2617329, at *26–27. Nonetheless, Plaintiffs allege that the State has committed a violation of constitutional magnitude by selecting the Election Day Receipt Deadline rather than their preferred postmark deadline. This theory fails for at least three reasons.

First, recent decisions from the Minnesota Supreme Court and from courts across the country have agreed that the *Anderson/Burdick* framework is the exclusive rubric by which challenges to election laws are judged. This is so, regardless of whether the challenge is couched in terms of “due process,” “equal protection,” or the “fundamental right to vote.” *See DSCC*, 950 N.W.2d at 294–95 (applying *Anderson/Burdick* to First Amendment claim); *In re Candidacy of Indep. Party Candidates Moore v. Kiffmeyer*, 688 N.W.2d 854, 860–61 (Minn. 2004) (applying *Anderson/Burdick* in equal protection challenge); *Acevedo v. Cook Cnty. Officers Electoral Bd.*, 925 F.3d 944, 948 (7th Cir. 2019); *Obama for Am. v. Husted*, 697 F.3d 423, 430 (6th Cir. 2012).

Second, Plaintiffs cannot satisfy the high standard that their own cases adopt for establishing a procedural due process violation. Those cases make clear that “an election process” violates procedural due process only when it “reache[s] the point of patent and fundamental unfairness.” *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1183 (11th Cir. 2008) (Barkett, J., concurring in part and dissenting in part) (cited at Compl. ¶¶ 114, 135). Under that standard, courts “do not involve themselves in ‘garden variety’ election disputes” or any “ordinary dispute over the counting and marking of ballots.” *Roe v. Alabama*, 43 F.3d 574, 580 (11th Cir. 1995). Rather, courts have held that patent and fundamental unfairness of a constitutional dimension can be shown where a state attempts to count ballots that are invalid under state law, *see, e.g., id.*, or uses a standardless, discretionary approach to determining whether a ballot is validly cast, *see, e.g., Martin v. Kemp*, 341 F. Supp. 3d 1326 (N.D. Ga. 2018); *Saucedo v. Gardner*, 335 F. Supp. 3d 202 (D.N.H. 2018) (cited at Compl. ¶ 134).

The Election Day Receipt Deadline is valid under this rule. The State has reasonably adopted that deadline as part of its orderly election administration. *See supra* Section II.A. By enforcing that deadline, the State is not seeking to reject ballots that are valid under state law or to

count ballots that are invalid under state law. To the contrary, Plaintiffs seek an order from this Court requiring the State to count invalid ballots as a matter of judicial fiat. *See Roe*, 43 F.3d at 581 (holding that state court’s post-election change in standard for validity of absentee ballots violated due process). And the Election Day Receipt Deadline is not a standardless, discretionary approach to counting ballots; instead, it is a valid, neutral, bright-line standard.

Third, if more were somehow needed, the *Mathews v. Eldridge* analysis that Plaintiffs invoke, *see* Compl. ¶¶ 112, 132, further confirms that their procedural due process claim fails. As Plaintiffs point out, one factor in the analysis is “the risk of an erroneous deprivation” of a protected interest under “the procedures used.” *Id.* ¶ 113. But here, the Election Day Receipt Deadline does not result in the “erroneous” deprivation of *any* person’s right to vote. *Id.* That is because the deadline supplies part of the definition of what constitutes a valid vote under Minnesota law. *See, e.g., Roe*, 43 F.3d at 580–81 (upholding Alabama’s witness requirement and holding that a state-court order excusing that requirement violated due process); *Hunter v. Hamilton Cnty. Bd. of Elections*, 850 F. Supp. 2d 795, 846–47 (S.D. Ohio 2012) (rejecting due process challenge to election board’s refusal to count ballots cast in the wrong precinct where “Ohio law would have prevented the Board from counting those miscast ballots regardless of the explanation”). To be sure, the Legislature may adopt a different deadline if it so chooses—but that does not make the deadline it has chosen unconstitutionally erroneous. *See, e.g., Nielsen*, 2020 WL 5552872, at *1; *Rosario*, 410 U.S. at 758; *Mays*, 951 F.3d at 791; *Driscoll*, 473 P.3d at 394; *League of Women Voters of Mich.*, 2020 WL 3980216, at *11; *Thomas*, 2020 WL 2617329, at *26–27.

The Court should therefore dismiss Plaintiffs’ due process claim.

III. THIS COURT LACKS THE AUTHORITY TO MODIFY THE BALLOT INTEGRITY PROVISIONS AS APPLIED TO FEDERAL ELECTIONS.

Plaintiffs request that this Court enjoin the Ballot Integrity Provisions for all Minnesota elections. *See* Compl., Prayer for Relief ¶¶ b–c. But any such injunction applicable to federal elections would unlawfully circumscribe the Minnesota Legislature’s authority under the Electors and Elections Clauses of the U.S. Constitution. *See* U.S. Const. art. II, § 1, cl. 2; *id.* art. I, § 4, cl. 1. For this reason as well, the Court should dismiss the claims to the extent they seek relief in connection with federal elections.

Because federal offices “arise from the Constitution itself,” any “state authority to regulate election to those offices . . . had to be delegated to, rather than reserved by, the States.” *Cook v. Gralike*, 531 U.S. 510, 511, 522 (2001). The Constitution effected such delegations to State Legislatures through the Electors and Elections Clauses. The Constitution’s Electors Clause directs that “[e]ach State shall appoint, in such Manner as *the Legislature thereof* may direct,” electors for President and Vice President. U.S. Const. art. II, § 1, cl. 2 (emphasis added). Likewise, the Elections Clause directs that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by *the Legislature thereof*,” subject to the directives of Congress. *Id.* art. I, § 4, cl. 1 (emphasis added).

The Electors Clause “leaves it to [state] legislature[s] exclusively to define the method of” selecting Presidential electors. *McPherson v. Blacker*, 146 U.S. 1, 27 (1892); *Bush v. Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70, 76–77 (2000); *Bush v. Gore*, 531 U.S. 98, 112–13 (2000) (Rehnquist, C.J., concurring). The Elections Clause likewise vests State Legislatures, subject to congressional enactments, with authority “to provide a complete code for congressional elections.” *Smiley v. Holm*, 285 U.S. 355, 366 (1932). This “broad power to prescribe the procedural mechanisms for holding congressional elections,” *Cook*, 531 U.S. at 523 (internal quotation marks

omitted), includes authority to enact “the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved,” *Smiley*, 285 U.S. at 366; *Cook*, 531 U.S. at 524.

This sweeping grant of authority means that “the text of [state] election law itself, and not just its interpretation by the courts of the States, takes on independent significance,” *Bush*, 531 U.S. at 112–13 (Rehnquist, C.J., concurring), and the federal Constitution “operat[es] as a limitation upon the State in respect of any attempt to circumscribe the [delegated] legislative power,” *Palm Beach Cnty.*, 531 U.S. at 76; *McPherson*, 146 U.S. at 25. “A significant departure from the legislative scheme for appointing Presidential electors” or for electing U.S. Representatives—including when such departure is carried out by the state judiciary—thus “presents a federal constitutional question.” *Bush*, 531 U.S. at 113 (Rehnquist, C.J., concurring); *see also Palm Beach Cnty.*, 531 U.S. at 76; *McPherson*, 146 U.S. at 25.

The Eighth Circuit applied these principles in holding that the General Election Consent Decree’s modification of the Election Day Receipt Deadline for the 2020 presidential election likely violated the Electors Clause. *See Carson*, 978 F.3d at 1054. Because the Electors Clause “vests the power to determine the manner of selecting electors exclusively in the ‘Legislature’ of each state,” “only the Minnesota Legislature . . . has plenary authority to establish the manner of conducting the presidential election in Minnesota.” *Id.* at 1059–60. The court held that the “Secretary has no power to override the Minnesota Legislature,” because the “legislature’s power in this area is such that it ‘cannot be taken from them or modified’ even through ‘their state constitutions.’” *Id.* at 1060 (quoting *McPherson*, 146 U.S. at 35). His “attempt to re-write the laws governing the deadlines for mail-in ballots” was therefore “invalid.” *Id.*

The U.S. Constitution thus forecloses Plaintiffs' requested relief for federal elections. Here, the Minnesota Legislature has "created a detailed . . . statutory scheme" to govern the conduct of federal elections. *Bush*, 531 U.S. at 116 (Rehnquist, C.J., concurring). This statutory scheme includes the Ballot Integrity Provisions. No party disputes what the plain language of these provisions require; Plaintiffs simply request that this Court exercise its authority under state law to invalidate them. *See* Compl. ¶ 17. But, in enacting these provisions, the Minnesota Legislature was "not acting solely under the authority given it by the people of the State, but by virtue of a direct grant of authority made under" the federal Constitution. *Palm Beach Cnty.*, 531 U.S. at 76. The Electors and Elections Clauses "operat[e] as a limitation upon the State in respect of *any* attempt to circumscribe the legislative power," including by state courts. *Id.* (emphasis added) (quoting *McPherson*, 146 U.S. at 25). These provisions "conferring on state legislatures, not state courts, the authority to make rules governing federal elections would be meaningless if a state court could override" those rules. *Republican Party of Pa. v. Boockvar*, 141 S. Ct. 1, 2 (2020) (Statement of Alito, J.). Accordingly, the Court must give effect to "the clearly expressed intent of the legislature," *Bush*, 531 U.S. 98, 120 (Rehnquist, C.J., concurring), and may not enjoin enforcement of the Ballot Integrity Provisions in federal elections.

The Court should dismiss Plaintiffs' claims to the extent they implicate federal elections.

CONCLUSION

The Court should grant Intervenor-Defendants' Motion for Judgment on the Pleadings and dismiss the Complaint with prejudice.

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Respectfully submitted,

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The undersigned acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

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