

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0111**

Minnesota Voters Alliance, et al.,  
Petitioners,

vs.

Office of the Minnesota Secretary of State,  
Respondent.

**Filed August 15, 2022  
Rule declared valid  
Reilly, Judge**

Minnesota Secretary of State

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Minnesota; and

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Considered and decided by Frisch, Presiding Judge; Worke, Judge; and Reilly,  
Judge.

**NONPRECEDENTIAL OPINION**

**REILLY**, Judge

In this declaratory-judgment action under Minn. Stat. § 14.44 (2020), petitioners challenge the validity of Minnesota Rule 8210.2450, subparts 2 and 3 (2021) (the challenged rule), arguing that it conflicts with Minnesota Statutes section 203B.121 (2020

& Supp. 2021), such that petitioners cannot comply with both. The challenged rule provides guidelines for examination of absentee ballot envelopes by ballot board members. Petitioners contend that the challenged rule prohibits ballot board members from considering relevant evidence as required by the statute and prevents them from fulfilling their statutory duties. Because no conflict exists between the challenged rule and Minn. Stat. § 203B.121, we conclude that the challenged rule is not invalid.

### FACTS

Petitioner Minnesota Voters Alliance is a nonpartisan organization that “advocates for election integrity and provides research and voter education.” Petitioners Tony Ward, Thomas Polachek, and Edward Bailen are Ramsey County residents who served as election judges and were members of the ballot board for Ramsey County in the 2020 and 2021 elections. Ward, Polachek, and Bailen intend to apply and serve in the same capacity in the 2022 elections.

“To promote accurate and secure elections, Minnesota law sets uniform requirements for processing and counting absentee ballots.” *Minn. Voters All. v. County of Ramsey*, 971 N.W.2d 269, 272 (Minn. 2022). In 2010, the legislature enacted Minn. Stat. § 203B.121 (the ballot board statute or statute). 2010 Minn. Laws ch. 194, § 9, at 4-7. Under the statute, “[t]he governing body of each county, municipality, and school district with responsibility to accept and reject absentee ballots must, by ordinance or resolution, establish a ballot board.” Minn. Stat. § 203B.121, subd. 1(a). The duties of the

ballot board include accepting or rejecting absentee ballot signature envelopes,<sup>1</sup> opening accepted envelopes, and storing and counting absentee ballots. *Id.*, subds. 2-5. The only duty at issue here is the acceptance or rejection of signature envelopes.

Generally, any eligible Minnesota voter may request an absentee ballot by submitting a written application to the county auditor or municipal clerk where that voter resides. Minn. Stat. § 203B.04, subd. 1 (Supp. 2021). The application must provide specific identifying information and contain an oath by the voter swearing that the information on the form is accurate, the voter is applying on their own behalf, and the form is signed under penalty of perjury. *Id.*, subd. 1(b)-(c). If the application satisfies the requirements of Minn. Stat. § 203B.04, the county auditor or municipal clerk sends the voter an absentee ballot, a signature envelope, a security envelope, and directions for completing the absentee ballot. Minn. Stat. § 203B.07, subd. 1 (2020).

The signature envelope contains a certificate of eligibility to vote, which has space “for the voter’s Minnesota driver’s license number, state identification number, or the last four digits of the voter’s Social Security number, or to indicate that the voter does not have one of these numbers.” *Id.*, subd. 3 (2020). The certificate requires a sworn statement signed by the voter confirming that the voter meets all legal requirements for voting by absentee ballot and space for a statement to be signed by a qualified witness (a registered Minnesota voter, notary public, or other person authorized to administer oaths) that the proper protocol was followed in marking the ballot. *Id.* The components of the certificate

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<sup>1</sup> The absentee voting statutes and rules sometimes refer to a signature envelope as a return envelope. For clarity purposes, we refer to it only as a signature envelope in this opinion.

of eligibility track the identifying information collected on the application. *Compare* Minn. Stat. § 203B.04, subd. 1(b)-(c), *with* Minn. Stat. § 203B.07, subd. 3.

After the voter completes the absentee ballot as directed, the voter returns the ballot to the county auditor or municipal clerk. Minn. Stat. § 203B.08, subd. 1 (Supp. 2021). Within days of receipt, the county auditor or municipal clerk delivers all ballots to the ballot board. Minn. Stat. §§ 203B.08, subd. 3, .121, subd. 2(a) (Supp. 2021). Upon delivery, two or more members of the ballot board examine each signature envelope and mark it accepted or rejected. Minn. Stat. § 203B.121, subd. 2. The statute requires the ballot board to accept an absentee ballot if a majority of ballot board members examining the signature envelope are satisfied that it meets statutory criteria. *Id.*

Soon after the legislature enacted the ballot board statute, the Secretary of State promulgated Minn. R. 8210.2450 (2021) to provide guidance for the ballot board's examination of signature envelopes under Minn. Stat. § 203B.121. *See* 34 Minn. Reg. 1553, 1571-72 (May 10, 2010) (adopting rule); 38 Minn. Reg. 1363, 1368 (Apr. 21, 2014) (amending rule); 40 Minn. Reg. 1549, 1553 (May 23, 2016) (amending rule). Petitioners argue that the challenged rule (subparts 2 and 3 of rule 8210.2450) conflicts with the ballot board statute (Minn. Stat. § 203B.121).

## DECISION

### I. Scope of pre-enforcement review

In a declaratory-judgment action, this court has original jurisdiction to determine the validity of an agency's rules. *Coal. of Greater Minn. Cities v. Minn. Pollution Control Agency*, 765 N.W.2d 159, 163 (Minn. App. 2009), *rev. denied* (Minn. Aug. 11, 2009). An

interested party<sup>2</sup> may bring a section 14.44 pre-enforcement declaratory-judgment action to challenge the validity of an agency rule “when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner.” Minn. Stat. § 14.44. We may declare a rule invalid if it (1) violates the constitution; (2) exceeds statutory authority; or (3) is adopted without compliance with rulemaking procedures. Minn. Stat. § 14.45 (2020).

Here, petitioners argue that the challenged rule exceeds statutory authority. Whether an agency exceeds its statutory authority is a question of law that we review de novo. *In re Application of Minn. Power for Auth. To Increase Rates for Elec. Serv.*, 838 N.W.2d 747, 753 (Minn. 2013). Agencies can adopt rules to “implement or make specific the language of a statute, [but] they cannot adopt a conflicting rule.” *GH Holdings, LLC v. Minn. Dep’t of Com.*, 840 N.W.2d 838, 842 (Minn. App. 2013) (quotation omitted). To the extent that a rule conflicts with the statute, the statute prevails. *Hirsch v. Bartley-Lindsay Co.*, 537 N.W.2d 480, 486 (Minn. 1995).

## **II. The challenged rule does not conflict with the ballot board statute.**

### **A. Minn. Stat. § 203B.121**

We first address the parties’ disagreement about the meaning of the ballot board statute. Although both parties assert that the statute is unambiguous, they disagree about

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<sup>2</sup> Generally, before addressing the merits of a declaratory-judgment action, this court must determine whether the petitioner has standing to challenge an agency’s rule. *Rocco Altobelli, Inc. v. State, Dep’t of Com.*, 524 N.W.2d 30, 34 (Minn. App. 1994). Shortly after petitioners commenced this action, respondent moved to dismiss the action for lack of standing. This court denied the motion, determining that petitioners have standing to sue because they have an interest in the challenged rule and the harm is not speculative.

its meaning. “The threshold issue in any statutory interpretation analysis is whether the statute’s language is ambiguous.” *State v. Peck*, 773 N.W.2d 768, 772 (Minn. 2009). A statute is ambiguous only when it is reasonably susceptible to more than one interpretation. *Id.*

The ballot board statute requires a ballot board to accept a signature envelope if a majority of members examining it are “satisfied,” in relevant part, that:

- (1) the voter’s name and address on the signature envelope are the same as the information provided on the absentee ballot application;
- (2) the voter signed the certification on the envelope; [and]
- (3) the voter’s Minnesota driver’s license, state identification number, or the last four digits of the voter’s Social Security number are the same as a number on the voter’s absentee ballot application or voter record. If the number does not match, the election judges must compare the signature provided by the applicant to determine whether the ballots were returned by the same person to whom they were transmitted[.]

Minn. Stat. § 203B.121, subd. 2(b)(1)-(3).<sup>3</sup>

Petitioners contend that to be satisfied that “the voter signed the certification on the envelope,” they must rely on all evidence before them, including signature comparison, and “their training, experience, wisdom, and best judgment.” Respondent counters that, read as a whole, section 203B.121, subdivision 2(b), permits signature comparison only if the voter’s identification number (e.g., Minnesota driver’s license number) on the signature

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<sup>3</sup> The statute also requires the members of the ballot board to be satisfied that: (4) the voter is registered and eligible to vote in the precinct; (5) the certificate is complete as prescribed in the directions for casting an absentee ballot; and (6) the voter has not already voted in that election. Minn. Stat. § 203B.121, subd. 2(b)(4)-(6). These requirements are not at issue here.

envelope does not match the voter’s ballot application or voter record. We agree with respondent.

Although the statute requires the ballot board to be satisfied that the voter’s name on the signature envelope is “the same as the information provided on the absentee ballot application,” *id.*, subd. 2(b)(1), and that “the voter signed the certification on the [signature] envelope,” *id.*, subd. 2(b)(2), it requires signature comparison only when an identification number on the signature envelope does not match the application or the voter’s record, *id.*, subd. 2(b)(3). The statute does not require identical signatures, or require further inquiry if a signature discrepancy occurs, as it does with mismatched identification numbers. Reading the three provisions together, as we must, we conclude that the statute contemplates signature comparison only when identification numbers do not match. *See* Minn. Stat. § 645.16 (2020) (“Every law shall be construed, if possible, to give effect to all its provisions.”).<sup>4</sup>

“If the language of a statute is clear and free from ambiguity, the court’s role is to apply the language of the statute and not explore the spirit or purpose of the law.” *Toyota-Lift of Minn., Inc. v. Am. Warehouse Sys., LLC*, 886 N.W.2d 208, 211 (Minn. 2016). And “[w]e will not read in requirements to a statute where none exist.” *Minn. Voters All.*, 971

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<sup>4</sup> Petitioners assert that the use of a definite article—*the* voter—in section 203B.121, subdivision 2(b)(2), reflects a legislative intent for signature comparisons. We do not doubt that the legislature intended for a particular voter (or another authorized person) to sign the envelope containing that voter’s ballot. But the question before us is what actions ballot board members can take in satisfying themselves that the signature requirement is met. Petitioners’ semantical argument does not persuade us that the statute authorizes or requires signature matching when there is not an identification-number discrepancy.

N.W.2d at 277. We therefore apply the plain meaning of the statute: a determination that the voter signed the certification does not contemplate signature comparison. We next consider whether the challenged rule conflicts with the statute.

**B. Minn. R. 8210.2450, subp. 2**

Minnesota Rule 8210.2450, subpart 2, provides guidelines for examination of signature envelopes, specifically, “name, address, and signature review”:

The voter’s name and address on the absentee ballot application must match the voter’s name and address on the signature envelope. . . . Ballot board members must determine whether the signature envelope was signed by the voter. Use of, or lack of, full names, nicknames, abbreviations, or initials within either signature are not a reason for rejection. A signature is considered the voter’s even if a voter uses a signature mark on either or both documents, or if a voter has another individual or different individuals sign the voter’s name in their presence on either or both the application and the signature envelope in accordance with Minnesota Statutes, section 645.44, subdivision 14. A ballot must be rejected under this subpart on the basis of the signature if the name signed is clearly a different name than the name of the voter as printed on the signature envelope. This is the only circumstance under which a ballot may be rejected on the basis of signature under this subpart.

Minn. R. 8210.2450, subp. 2.

Petitioners argue that subpart 2 conflicts with Minn. Stat. § 203B.121, subd. 2(b)(2), because it “expressly eliminates the ballot board members’ analysis of several categories of evidence which could be used for them to be ‘satisfied’ that ‘the voter signed’ the envelope.” Petitioners challenge the rule’s guidance that, “Use of, or lack of, full names, nicknames, abbreviations, [a signature mark], or initials on either document are not a reason for rejection.” Minn. R. 8210.2450, subp. 2.



Although petitioners are correct that the ballot board statute requires members to be satisfied that the voter signed the envelope, the statute does not, to this end, require (or allow ballot board members to require) exact consistency between the signature envelope and application. As explained above, we understand the ballot board statute to contemplate signature comparison only when there is an identification-number discrepancy. The statute does not require signature comparison when the voter uses a nickname, abbreviation, signature mark, or initials on one of the documents.

Subpart 2 makes clear, in conformity with Minn. Stat. § 203B.121, subd. 2(b)(1), that “[t]he voter’s name and address on the absentee ballot application must match the voter’s name and address on the signature envelope.” Minn. R. 8210.2450, subp. 2. It does not authorize, or require, ballot board members to accept a ballot when the name on the signature envelope does not match the name on the application. *Id.* Rather, it provides some flexibility in how a voter writes their name on different documents over a span of time. The rule also clarifies that the only time a ballot must be rejected because of a signature is when “the name signed is *clearly* a different name than the name of the voter as printed on the signature envelope.” *Id.* (emphasis added). Thus, the challenged rule, which allows for some variation in name usage and signatures, does not directly conflict with the statutory requirement that ballot board members be satisfied that “the voter signed the certification on the [signature] envelope.” *See* Minn. Stat. § 203B.121, subd. 2(b)(1)-(3).

Petitioners also argue the challenged rule prevents ballot board members from fulfilling their statutory obligations because it “requires acceptance of ballots with another

person's signature on 'either or both' documents," essentially allowing anyone to sign for the voter for any reason. This argument is not persuasive. The challenged rule lists only one circumstance in which another person may sign for the voter, which must occur upon the voter's request and in the voter's presence: when the other person signs in accordance with Minn. Stat. § 645.44, subd. 14 (2020). Minn. R. 8210.2450, subp. 2. Under section 645.44, subdivision 14, if a person "is unable to write," another individual may sign on the person's behalf in the person's presence.

Allowing another person to sign the signature envelope on the voter's behalf complies with chapter 203B, which allows a voter to direct another person to mark the absentee ballot itself. When "the voter was physically unable to mark" the ballot, Minn. Stat. § 203B.07, subd. 3, requires the voter's witness to certify that "the voter directed another individual to mark" the ballot. Thus, the challenged rule's allowance of signature by proxy adheres to sections 645.44, subdivision 14, and 203B.07, subdivision 3. We therefore reject the argument that the rule's provision that "another individual . . . [may] sign the voter's name in their presence on either or both the application and the signature envelope in accordance with Minnesota Statutes, section 645.44, subdivision 14," prevents a ballot board member from determining that the voter signed the certification.

In summary, the examples of acceptable variations in names and signatures within Minn. R. 8210.2450, subp. 2, do not conflict with the statute, which does not require exact conformity between a signature envelope and application.

**C. Minn. R. 8210.2450, subp. 3**

Minnesota Rule 8210.2450, subpart 3, provides more guidance for examination of signature envelopes, specifically, “identification number review”:

Ballot board members must determine whether the identification number provided by the voter on the certificate is the same as the identification number provided by the voter on the absentee ballot application or the voter’s record in the statewide voter registration system.

If the numbers do not match or the voter did not provide identification numbers on both documents, *the ballot board members must compare the signatures* on the absentee ballot application and on the signature envelope to determine whether the ballots were returned by the same person to whom they were transmitted. Use of, or lack of, full names, nicknames, abbreviations, or initials within either signature are not a reason for rejection. A signature is considered the voter’s even if a voter uses a signature mark on either or both documents, or if a voter has another individual or different individuals sign the voter’s name in their presence on either or both the application and the [signature] envelope in accordance with Minnesota Statutes, section 645.44, subdivision 14.

Minn. R. 8210.2450, subp. 3 (emphasis added).

Petitioners argue that the second paragraph of subpart 3, which allows for “ballot board members” to compare signatures, violates the statute because the statute makes clear that *only* election judges can compare signatures. *See* Minn. Stat. § 203B.121, subd. 2(b)(3) (“If the number does not match, the election judges must compare the signature provided by the applicant . . .”).

Petitioners are correct that only election judges can compare signatures. *See id.*; *Minn. Voters All.*, 971 N.W.2d at 280 (determining task of signature comparison “is committed to election judges alone”). Even so, the broad language of the challenged rule

does not conflict with the specific language of the ballot board statute because ballot boards must include “a sufficient number of election judges.” Minn. Stat. § 203B.121, subd. 1(a). Thus, a ballot board can comply with both the statute and the rule by having ballot board members who are election judges perform signature comparison. While the language of subpart 3 could track section 203B.121, subdivision 2(b)(3), more closely, the rule does not preclude compliance with the statute.

Petitioners also suggest that limitations in subpart 3 on review of voter signatures prohibit election judges from making an informed decision based on their training and expertise that the signature envelope meets statutory requirements. *See* Minn. Stat. § 203B.121, subd. 2(b). For the reasons discussed above related to limitations in subpart 2, we are not persuaded.

In conclusion, the unambiguous language of the ballot board statute provides that a majority of examining ballot board members must be satisfied that six statutory criteria are met before accepting an absentee ballot. Minn. Stat. § 203B.121, subd. 2(b). The challenged rule provides guidance regarding the examination of signature envelopes, including how to evaluate variations in names and signatures. The challenged rule and statute do not conflict because ballot board members can comply with both.

**Rule declared valid.**