STATE OF MINNESOTA
IN COURT OF APPEALS

Minnesota Voters Alliance; Tony Ward; Thomas Polachek; Edward Bailen, Petitioners, v. Office of the Minnesota Secretary of State, Respondent.	**PETITION FOR DECLARATORY JUDGMENT** APPELLATE COURT CASE NUMBER: AGENCY OR BODY NUMBER:

TO: The Court of Appeals of the State of Minnesota:

The above-named petitioners hereby petition the Court of Appeals pursuant to Minn. Stat. § 14.44 for a declaratory judgment determining the validity of Minn. R. 8210.2450, Subps. 2 & 3 (the "Rule"), adopted by the Office of the Minnesota Secretary of State on May 10, 2010 (34 S.R. 1561), April 21, 2014 (38 S.R. 1368), and May 23, 2016 (40 S.R. 1553), upon grounds that the Rule exceeds the statutory authority of the agency under Minn. Stat. §§ 203B.08 and 203B.125, and additionally based on the following allegations:

The Parties

1. Petitioner Minnesota Voters Alliance ("MVA") is a nonpartisan organization which advocates for election integrity and provides research and voter education. MVA advocates for the interests asserted by the individual Petitioners described below, who are each long-time supporters and volunteers with MVA.

2. Petitioner Tony Ward is an individual resident of Ramsey County, Minnesota, who served as an assistant head election judge and on the ballot board for Ramsey County, Minnesota for the 2020 and 2021 elections, and intends to apply for the same position and serve in the same capacity for the 2022 elections. Aff. of Tony Ward, Jan. 20, 2022, ¶¶ 9-14. Mr. Ward has been informed by Mr. David Triplett, Manager of Ramsey County Elections, that he will be selected as an election judge and ballot board member for the upcoming 2022 primary and general elections. *Id.* ¶ 14. Mr. Ward is fully qualified to serve both as an election judge and on the ballot board for Ramsey County.

3. Petitioner Thomas Polachek is an individual resident of Ramsey County, Minnesota, who served as an election judge and on the ballot board for Ramsey County, Minnesota for the 2020 and 2021 elections, and intends to apply for the same position and serve in the same capacity for the 2022 elections. Aff. of Thomas Polachek, January 20, 2022, ¶¶ 8-10. Mr. David Triplett also asked Mr. Polachek to return as a ballot board member in 2022. *Id.* ¶ 10. Mr. Polachek is fully qualified to serve as an election judge and on the ballot board for Ramsey County.

4. Petitioner Edward Bailen is an individual resident of Ramsey County, Minnesota, and has served as an election judge and on the ballot board for Ramsey County, Minnesota for the 2020 and 2021 elections, and intends to apply for the same position and serve in the same capacity for the 2022 elections. Aff. of Edward Bailen, Jan. 14, 2022, ¶¶ 4-6. Mr. Bailen is fully qualified to serve as an election judge and on the ballot board for Ramsey County.

5. Respondent Office of the Minnesota Secretary of State ("SOS") is the

executive agency which promulgated and adopted the Rule at issue.

Minn. Stat. § 203B.121

6. Minn. Stat. § 203B.121, Subdivision 2 requires that "[u]pon receipt from the county auditor, municipal clerk, or school district clerk, two or more members of the ballot board shall examine each signature envelope and shall mark it accepted or rejected in the manner provided in this subdivision."

7. This creates a duty for ballot board members who examine a signature envelope to accept or reject absentee ballots based on subdivision 2 of the statute.

8. Under Subdivision 2(b), to accept a ballot, "a majority of the members of the ballot board examining the envelope" must be satisfied that, among other requirements:

a. "the voter signed the certification on the envelope" (Subd. 2(b)(2)).

b. "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" (Subd. 2(b)(3)).

9. If a majority of the members of the ballot board examining a signature envelope determine that it meets the requirements of Subdivision 2(b), it is marked "Accepted" and treated as such. Minn. Stat. § 203B.121, Subds. 2(b), 4.

10. However, Subdivision 2(c)(1) requires that if "a majority of the members of the ballot board examining a signature envelope find that an absentee voter has failed to meet one of the requirements provided in paragraph (b), they shall mark the signature envelope "Rejected," initial or sign it below the word "Rejected," list the reason for the

rejection on the envelope, and return it to the county auditor."

11. The statute does not limit the reasons for which a ballot board may determine that a signature is not the voter's signature. The statute expressly requires rejection of a ballot if the ballot board determines that the signature on the envelope is not the voter's signature.

Adoption of the Rule

12. On May 10, 2010 (34 S.R. 1561), the SOS adopted with modifications Minn. R. 8210.2450, which had been proposed and published at 34 S.R. 686-720 on November 16, 2009.

13. On April 21, 2014 (38 S.R. 1368), the SOS amended the Rule.

14. On May 23, 2016 (40 S.R. 1553), the SOS amended the Rule by adopting regulations proposed on January 19, 2016 (40 S.R. 816).

Current Language of the Rule

15. The Rule, as currently written, states as follows:

> **Subp. 2. 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. Use of, or lack of, full names, nicknames, abbreviations, or initials on either document are not a reason for rejection.
>
> 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.

Subp. 3. 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 return envelope in accordance with Minnesota Statutes, section 645.44, subdivision 14.

The Rule Contradicts Minnesota Election Law

16. There is no provision in Minn. Stat. §§ 203B.08 or 203B.125 which authorizes the SOS to issue rules restricting the reasons for which a ballot board member may decide that a voter did or did not sign the signature envelope of an absentee ballot.

17. The Rule requires that "Ballot board members must determine whether the signature envelope was signed by the voter," and "[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."

18. The Rule also requires that "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[1] 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."

19. However, in conflict with the statute, the Rule restricts the reasons for which a ballot board member may reject a ballot based on signature verification to only where "the name signed is clearly a different name than the name of the voter as printed on the return envelope." Minn. R. 8210.2450, Subps. 2 & 3; 34 S.R. 1571.

20. Minn. Stat. § 203B.121 contains no such restriction.

21. The Rule further restricts ballot board members from finding that the signature is not the voter's in three other circumstances:

a. If the signature uses or lacks "full names, nicknames, abbreviations, or initials within either signature";

b. "[E]ven if a voter uses a signature mark on either or both documents";

c. "[I]f a voter has another individual or different individuals sign the voter's name in their presence on either or both the application and the return envelope in accordance with Minnesota Statutes, section 645.44, subdivision 14." Minn. R. 8210.2450, Subps. 2 & 3; 34 S.R. 1571.

22. While another rule, Minn. R. 8210.0500, directs only those "with a disability" to have another individual sign the absentee ballot envelope for them, the Rule's plain language does not allow ballot board members to limit the use of Minn. Stat. § 645.44,

[1] As noted above in paragraph 8(b), the statute requires "election judges" to compare the signatures, not ballot board members.

Subd. 14 to those voters with a motor disability or those who are unable to write. The Rule further provides no guidance for a ballot board member to verify that the voter using this procedure has a motor disability qualifying under Minn. Stat. § 645.44 (consistent with federal law) or is unable to write.

23. The Rule thus impermissibly restricts the reasons that a ballot board member may reject an absentee ballot under subparts 2 and 3, in conflict with Minn. Stat. § 203B.121, and creates irreconcilable confusion as to when a ballot board member may lawfully accept or reject a ballot, making compliance with both the statute and the rule impossible.

24. The Rule therefore exceeds the statutory authority of the agency under Minn. Stat. §§ 203B.08 and 203B.125 because (1) there is no provision in those statutes authorizing rules which restrict the reasons for which a ballot board member may decide that a voter did not sign the signature envelope of an absentee ballot, and (2) the Rule conflicts with Minn. Stat. § 203B.121. The Rule should be declared invalid.

Petitioners Are Specifically Harmed by the Rule Because It Makes Ballot Board Members' Compliance with Both the Statute and the Rule Impossible

25. As alleged above, Petitioners are individuals who have served as election judges and ballot board members, and a nonprofit association (MVA) which advocates for their interests and with which the individual Petitioners agree and support.

26. The individual Petitioners fully intend to serve once again as Ramsey County election judges and as members of Ramsey County's ballot board. Petitioners Ward and Polachek have specifically been asked to serve in those capacities in 2022 or have been

told that they would be selected for those roles. Ward Aff.; Polachek Aff.; Bailen Aff. Each of the individual Petitioners fully expect to be selected for these roles based on their prior experience and indicated desire to serve in these roles.

27. The individual Petitioners, in their role as members of the Ramsey County Ballot Board, have regularly reviewed and been required to decide whether to accept or reject absentee ballots. The individual Petitioners, in their forthcoming role as 2022 election judges and ballot board members, will be required to review absentee ballots to determine whether they may be accepted or rejected under Minn. Stat. § 203B.121 and the Rule.

28. The individual Petitioners are harmed by the Rule because it makes it impossible for them to do their jobs as election judges and ballot board members. If they comply with Minn. R. 8210.2450, they will violate Minn. Stat. § 203B.121. If they comply with Minn. Stat. § 203B.121, they will violate Minn. R. 8210.2450.

29. Petitioner MVA advocates for the interests asserted by the individual Petitioners described below, who are each long-time supporters of and volunteers with MVA.

Prayer for Relief

Based on the foregoing allegations, the administrative record, and the forthcoming briefs and arguments of counsel, Petitioners respectfully request that the Court declare and adjudge the Rule to be invalid. Petitioners also request an award of attorney fees and costs under Minn. Stat. §§ 15.471, *et seq.* because the SOS' position is not substantially justified.

Respectfully submitted,

DATED: January 25, 2022

Petitioners Minnesota Voters Alliance, Tony Ward, Thomas Polachek, and Edward Bailen, by their attorneys:

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