

FILED

August 22, 2022

OFFICE OF

OF DECISIONS

STATE OF MINNESOTA
IN SUPREME COURT

Minnesota Voters Alliance, et al.,

**PETITION FOR REVIEW
OF THE COURT OF APPEALS AND
ADDENDUM**

Petitioners,

vs.

APPELLATE COURT CASE NUMBER:
A22-0111

Office of the Minnesota Secretary of
State,

Respondent.

DATE OF FILING OF COURT OF APPEALS
DECISION: August 15, 2022

Petitioners Minnesota Voters Alliance, Tony Ward, Edward Bailen, and Thomas Polachek request Supreme Court review of the above-entitled decision of the court of appeals (the “Decision”). The court of appeals declared valid the challenged rule, Minn. R. 8210.2450 (the “Rule”). Petitioners argue that the Rule conflicts with Minn. Stat. § 203B.121. The interpretation of absentee ballot board members’ duty to ensure that those who apply for absentee ballots are the same people who cast them is important and of statewide impact. The Decision leaves in place a Rule which conflicts with the absentee ballot board statute. This Court should grant review to clarify the duties of absentee ballot board members and then reverse the Decision below.

STATEMENT OF LEGAL ISSUES

- 1. Whether Minn. R. 8210.2450, Subp. 2 exceeds the Secretary of State's statutory authority because it makes compliance with the signature verification requirement of Minn. Stat. § 203B.121, Subd. 2(b)(2) impossible for ballot board members.**

The Decision held that the Rule is valid, as follows: (1) Minn. Stat. § 203B.121 does not require signature comparison to determine if “the voter signed” the certification on an absentee ballot return envelope (Add. 6-7); (2) the use of the definite article “the” instead of the indefinite article “a” before “voter” does not indicate a legislative intent to require ballot-board members to be “satisfied” that “the voter” signed the absentee ballot signature envelope (Add. 7 n.4); and (3) the Rule, which eliminates several reasons for which ballot-board members might reject a mismatched signature, does not conflict with the requirement that the ballot-board member be “satisfied” that “the voter signed” the signature envelope (Add. 8-10).

- 2. Whether Minn. R. 8210.2450, Subp. 3 exceeds the Secretary of State's statutory authority because it makes compliance with the signature verification requirement of Minn. Stat. § 203B.121, Subd. 2(b)(3) impossible for ballot board members.**

The Decision held that the Rule is valid, as follows: (1) election-judge ballot-board members must compare signatures between absentee ballot applications and signature envelopes (Add. 11), *and*; (2) Minn. Stat. § 203B.121 requires “identical” signatures between ballot applications and signature envelopes (Add. 7); *but* (3) even with the requirement of “identical” signatures (Add. 7), and the Rule's forbidding of rejection based on mismatched signatures (Add. 8, quoting Minn. R. 8210.2450, subp. 2), the Rule does not conflict with the statute.

Related to both holdings, the court recognized that Minn. R. 8210.2450, in both subparts 2 and 3, limits a ballot-board member's authority to reject a ballot based on a mismatch to only one narrow reason:

A ballot must be rejected under this subpart on the basis of the signature if the name under this subpart is clearly a different name than the name of the voter as printed on the signature envelope.

(Add. 12, quoting Minn. R. 8210.2450, subp. 2).

CRITERIA GOVERNING REVIEW

Review is appropriate under Minn. R. Civ. App. P. 117, subds. 2(a) and (d)(2-3). First, this case raises important questions on which this Court should rule. Second, a decision by this Court will help develop, clarify, or harmonize the law, and the resolution of the issues raised in this case will certainly have possible statewide impact related to the duties of citizen absentee-ballot-board members across Minnesota with important jobs to do as soon as November 2022.

STATEMENT OF THE CASE

Minn. Stat. § 203B.121 requires that, to accept a ballot, “a majority of the members of the ballot board examining the [ballot] envelope” must be “satisfied” that:

- 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)).

Minn. R. 8210.2450 was created by rulemaking in 2010. OSS1421. It provides that

ballot board members must ignore the following items, which could otherwise lead to their “dissatisfaction” regarding a signature envelope:

If the signature uses or lacks “full names, nicknames, abbreviations, or initials within *either signature*”;

“[E]ven if a voter uses a signature mark on *either or both* documents”;

“[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 (emphasis added). Unlike the statute, the Rule provides for rejection of an absentee ballot on the basis of a signature in only one discrete situation: “if the *name* signed is *clearly* a different *name* than the name of the voter as printed on the signature envelope.” (emphasis added). Thus, even if there is a *signature* mismatch, according to the Rule, the ballot must be accepted unless the *names* are different, contrary to the statute.

Petitioners challenged the Rule via a petition for declaratory judgment filed in the court of appeals on January 28, 2022. The Secretary moved to dismiss, and the court of appeals denied that motion. Order, Mar. 29, 2022. After briefing and a hearing, the court of appeals declared the Rule valid in the Decision, as described above (Add. 1-12).

ARGUMENT

I. Absentee Ballot Processing Has Become Far More Important Since the Advent of No-Excuse Absentee Voting and the COVID-19 Pandemic.

Pursuant to Minn. R. Civ. App. P. 117, subds. 2(a) and (d)(2-3), this Court grants review on matters of statewide importance. As the Court has recognized in recent months,

clarifying Minnesota's absentee balloting process is essential to Minnesota's self-governance.

In 2013, the Legislature moved away from the traditional Minnesota requirement that an absentee voter must have an excuse to vote absentee instead of at the polls on Election Day. Laws of Minnesota 2013, ch. 131, art. 1, sec. 2; Minn. Stat. § 203B.02 (2013). Then, in the 2020 general election, Minnesotans voted absentee in historic fashion during the height of the COVID-19 pandemic: over 1.9 million of 3.3 million votes (58%) were cast absentee. This sea change in voter behavior has made absentee voting significantly more important to Minnesota. That increased importance, in turn, has led to increased scrutiny on the procedures applicable to absentee voting.

Presumably recognizing that importance, this Court granted review on and decided *Minnesota Voters Alliance v. County of Ramsey*, 971 N.W.2d 269 (Minn. 2022), just this March. This Court issued a decision that clarified the specific roles played by deputy county auditors and party-balanced election judges on absentee ballot boards. Important to this case, the Court recognized that only party-balanced election judges may “compare the signature” when a signature envelope and an absentee ballot application have identification numbers which do not match one another:

"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." *Id.* (emphasis added). This task is committed to election judges alone, and the absentee ballot board must therefore include a sufficient number of election judges to handle this duty.

Minn. Voters All., 971 N.W.2d at 280 (emphasis in original) (quoting Minn. Stat. § 203B.121).

This case picks up where *Minnesota Voters Alliance* left off: after those election judges and deputy county auditors are selected according to the procedures explained by the Court, what do they *do* while on the absentee ballot board? Without clarity as to the duties of absentee ballot board members, their existence on the ballot boards themselves is a sort of non-sequitur. The Court should provide needed clarity by granting this Petition and deciding this case.

II. The Decision Below Contradicts Itself and Failed to Address Key Conflicts Between the Statute and Rule at Issue.

In addition to this being an important case, the Court should grant the Petition to clarify and harmonize the law.

The Decision held as follows, in contradictory fashion:

- (a) Minn. Stat. § 203B.121 requires “identical” *signatures* between ballot applications and signature envelopes (Add. 7) (emphasis added); and
- (b) Minn. R. 8210.2450 allows rejection only “on the basis of the signature if the *name* under this subpart is *clearly* a *different name* than the *name* of the voter as printed on the signature envelope.” (Add. 12, quoting Minn. R. 8210.2450, subp. 2) (emphasis added).

This is a flagrant contradiction; the words “name” and “signature” are different and thus have different meanings. *Dereje v. State*, 837 N.W.2d 714, 720 (Minn. 2013) (“when different words are used in the same context, we assume that the words have different meanings”). The Rule rewrites the “signature matching” requirement of Minn. Stat. §

203B.121 into a “name matching” requirement. Under the Rule, the signatures on the documents can be completely different, yet as long as the names match, the ballot must be accepted. It is impossible for an election judge performing a signature match under Minn. Stat. § 203B.121, Subd. 2(b)(3) to comply with both the statute and the Rule. And the Rule requires a “clear” difference to reject, as opposed to just a difference, further eroding election judges’ “satisfaction” that “the voter” signed their ballot.

Second, the Decision brushed aside the use of the definite article “the” related to Minn. Stat. § 203B.121, Subd. 2(b)(2). The Rule itself in subpart 2 admits that Subdivision 2(b)(2) requires a ballot-board signature match¹ by discussing what is allowed and what is not allowed when matching two different pieces of paper. But the Decision merely evaded that admission in a footnote and incorrectly claimed that the distinction between “the voter signed” the ballot, as opposed to “a voter signed” the ballot, is “semantical.” Add. 7 n.4. This Court recognizes the important substantive distinction between the use of definite and indefinite articles in context. *State v. Hohenwald*, 815 N.W.2d 823, 830 (Minn. 2012) (“The definite article ‘the’ is a word of limitation that indicates a reference to a specific object.”). In this situation, the use of “the” instead of “a” before “voter” indicates legislative intent to require determination of who signed the envelope. That determination is made by a signature match.

¹ Here, because no identification number mismatch has occurred yet, the match would be conducted by the members of the ballot board reviewing the signature envelope, whether deputy county auditors or election judges. *See* Minn. Stat. § 203B.121, Subd. 2(b).

Finally, the Decision mischaracterized the Rule's several limitations on how a ballot-board member can be "satisfied" that there is a signature match. The Decision first admits that Minn. Stat. § 203B.121 requires an "identical" signature for there to be a match. (Add. 7). Then, in contrary fashion, the Decision claims the Rule's limitations merely provide voters "flexibility" to write their name differently on two different documents. (Add. 9). The Rule does much more than that: it forces ballot-board members whose judgment and training tell them that two different people signed an application and a signature envelope to accept a ballot even if they are not "satisfied" that the voter signed it. The Rule expressly allows two different people to sign on behalf of a voter, whether disabled or not, as quoted in the statement of the case above.

The Rule eliminates a ballot-board member's use of wisdom, training, experience, and judgment in reviewing absentee ballots, and replaces it with a set of confusing and contradictory qualifications. As the individual Petitioners have explained in the Petition, this makes it impossible for them to do their important jobs without violating either the Rule or the statute. The Court should grant review and reverse the Decision.

CONCLUSION

Petitioners respectfully request that this Court grant review on the two legal issues in this case.

Dated: August 22, 2022

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE
WITH MINN. R. APP. P. 117, SUBD. 3**

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Dated: August 22, 2022

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