

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil/Misc.

Minnesota Alliance for Retired  
Americans Educational Fund,  
Teresa Maples, and Khalid Mohamed,

Court File No. 62-CV-24-854  
(Judge Edward Sheu)

Plaintiffs,

vs.

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

Defendant.

**DEFENDANT'S MEMORANDUM  
SUPPORTING MOTION  
TO DISMISS**

Minnesota law broadly permits eligible voters to participate in elections by casting a ballot in one of many ways, including by absentee ballot. The plaintiffs claim that Minnesota's witness requirement for casting an absentee ballot violates the Voting Rights Act by imposing a vouching requirement and the Civil Rights Act by adding an immaterial requirement. But the plaintiffs lack standing because they alleged no cognizable injury to their rights under these laws. They also failed to state a claim for relief under the Voting Right Act because under Minnesota law, only voters—and not witnesses—attest to eligibility to vote, so no “vouching” is required. Nor does the witness requirement violate the materiality provision of the Civil Rights Act because that provision does not apply to vote-casting regulations. The Court should dismiss the complaint.

**FACTS**

Minnesota has a long and robust history of facilitating different ways for eligible voters to vote. Because the claims in this case center on voting by absentee ballot, some background about Minnesota's legal and administrative framework for voting in general, and by absentee ballot specifically, is necessary.

### ***Eligibility to Vote and Voter Registration***

In Minnesota, a person is eligible to vote if the person is: (1) at least 18 years of age; (2) a U.S. citizen; (3) a Minnesota resident for at least 20 days immediately before the election; (4) restored to civil rights if convicted of a felony; and (5) not subject to a guardianship order revoking the right to vote or another order finding the person legally incompetent. Minn. Const. art. VII, § 1; Minn. Stat. § 201.014, subs. 1-2. Eligible voters may generally vote by one of three methods: in person on Election Day; by absentee ballot by mail or in person; or through early voting in person. *E.g.*, Minn. Stat. §§ 203B.02, subd. 1, .081, subs. 1, 1a, .30, subd. 2, 204C.10.<sup>1</sup>

Regardless of voting method, every eligible voter must first register to vote. *Id.* § 201.018, subd. 2. A person may register any time more than 20 days before an election, on Election Day at a polling place, or when submitting an absentee ballot. *Id.* §§ 201.054, subd. 1(a), .061; *see also id.* § 201.161 (facilitating automatic registration when applying for drivers' licenses or certain state-issued benefits). Registering requires completing an application in which the applicant provides identifying information and lists the applicant's residence. *Id.* § 201.061, subs. 1, 3. The applicant must also certify the applicant's eligibility to vote. *Id.* § 201.071, subd. 1.

If a person registers to vote on Election Day, the applicant must further provide proof of residence, or have a registered voter in the same precinct attest to where the applicant resides. *Id.* § 201.061, subd. 3; Minn. R. 8200.5100, subp. 1.D, .5200, .9939. Even if registered in advance, when voting at a polling place, a voter must first sign the polling place roster or a voter signature certificate, again attesting to being currently eligible to vote. Minn. Stat. § 204C.10(a).

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<sup>1</sup> Cities with fewer than 400 registered voters and townships may hold elections entirely by mail. Minn. Stat. § 204B.45, subd. 1. Functionally, the same requirements outlined above apply to mail balloting. *Id.*, subd. 3. Federal law provides different processes for people voting absentee when in the military or outside the United States. Minn. Stat. §§ 203B.02, subd. 2, .16-.27 (implementing Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §§ 20301-10). Because these provisions do not apply to the plaintiffs, the Secretary does not discuss them.

### *Absentee Ballots*

Eligible voters may vote by absentee ballot. *Id.* § 203B.02, subd. 2. Absentee voting is governed by chapter 203B of the Minnesota Statutes and chapter 8210 of the Minnesota Rules. *See* Minn. Stat. § 203B.09 (directing Secretary to adopt rules). To vote absentee, a person must first apply for an absentee ballot. *Id.* § 203B.04, subd. 1(a).<sup>2</sup> The applicant must provide an identification number like a driver's license number, a state identification number, or the last four digits of a social-security number. *Id.* An applicant who is not registered to vote may request a voter-registration application with the ballot. *Id.* §§ 203B.04, subd. 4, .06, subd. 4, .07, subd. 1. Regardless of registration status, applicants must certify their eligibility to vote and sign the application under penalty of perjury. *Id.* § 203B.04, subd. 1(b), (d); Behrens Decl. ¶ 2, Ex. 1.

The appropriate county auditor or municipal clerk then mails the applicant a ballot and, for applicants not yet registered to vote, a voter-registration application. Minn. Stat. § 203B.06, subd. 4. Absentee ballots and registration applications come with detailed instructions (including graphical depictions) for how to complete them. *Id.* § 203B.07, subd. 1; Minn. R. 8210.0500, .0710, subs. 6-7. In general, the key materials used in the absentee-ballot process are:

- the ballot, on which the voter marks his or her choices;
- the ballot envelope, in which the voter places the completed ballot;
- the signature envelope, in which the voter places the ballot envelope and on which the voter and witness certify certain information;
- if applicable, a voter-registration application, which goes in the signature envelope; and
- a postage-paid and pre-addressed return envelope, in which the voter places the signature envelope.

Minn. Stat. §§ 203B.06, subd. 4, .07; Minn. R. 8210.0050, .0300-.0600, subs. 1a-1b, .0800.

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<sup>2</sup> The procedures discussed in this section may also be accomplished by voting absentee in person, up to 46 days before the election. Minn. Stat. § 203B.081.

### ***Witness Requirement for Absentee Voting***

When completing an absentee ballot, the voter must have a witness who is a registered voter, a notary public, or a person authorized to administer oaths. *Id.* § 203B.07, subd. 3.<sup>3</sup> The witness's role varies slightly depending on whether the voter is registered to vote. If the voter is not registered, the voter must first complete a voter-registration application (in which the voter alone certifies eligibility to vote) and show the witness proof of residence. *Id.* §§ 201.071, 203B.07, subd. 3; Minn. R. 8210.0500, subp. 3. This proof may take one of many authorized forms, including but not limited to a driver's license, a bill, a residential lease, or the affirmation of a registered voter in the precinct. Minn. Stat. § 201.061, subd. 3(a); Minn. R. 8200.5100; *see also* Minn. Stat. § 203B.04, subd. 4 (applying residency requirements in section 201.061 to absentee ballots).

For both unregistered and registered voters, the voter must show the witness the unmarked ballot and then mark the ballot in the witness's presence without revealing how the voter marked the ballot. Minn. Stat. § 203B.07, subd. 3. On the signature envelope, the voter signs a certificate of eligibility that states, "I certify that on Election Day I will meet all the legal requirements to vote." *Id.*; Minn. R. 8210.0600, subps. 1a-1b. The witness does not certify this statement. Rather, the witness provides the witness's address and certifies that:

- the voter showed me the blank ballots before voting;
- the voter marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter;
- the voter enclosed and sealed the ballots in the ballot envelope; and
- I am or have been registered to vote in Minnesota, or am a notary, or am authorized to give oaths.



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<sup>3</sup> Legislation is pending to, effective in 2025, allow anyone who is a U.S. citizen and at least 18 years old by the election to serve as a witness. H.F. 4772, § 18, 93d Leg. (Minn. 2024).

Minn. R. 8210.0600, subp. 1a. In addition to the attestations noted above, a witness for an unregistered voter must identify the form of the voter's proof of residence and certify that:

- the voter registered to vote by filling out and enclosing a voter registration application in this envelope; [and]
- the voter provided proof of residence as indicated above.

*Id.*, subp. 1b. In practice, these statements take the following form on signature envelopes, with the envelope for registered voters on the left and unregistered voters on the right:

<p>Put the <b>Ballot Envelope</b> in here, then seal flap </p>	<p>Put the <b>Ballot Envelope and the Voter Registration Application</b> in here, then seal flap </p>
<p><b>Signature Envelope</b></p>	<p><b>Signature Envelope</b></p>
<p><b>Voter must complete this section</b> <small>please print clearly</small></p> <p>Voter name <input type="text"/></p> <p>Voter MN address <input type="text"/> MN</p> <p>ID number (MN driver's license #, MN ID card #, or last four digits of SSN) <input type="text"/></p> <p><input type="checkbox"/> I do not have a MN-issued driver's license, MN-issued ID card, or a Social Security Number.</p> <p>I certify that on Election Day I will meet all the legal requirements to vote.</p> <p>Voter Signature <input checked="" type="checkbox"/></p>	<p><b>Voter must complete this section</b> <small>please print clearly</small></p> <p>Voter name <input type="text"/></p> <p>Voter MN address <input type="text"/> MN</p> <p>ID number (MN driver's license #, MN ID card #, or last four digits of SSN) <input type="text"/></p> <p><input type="checkbox"/> I do not have a MN-issued driver's license, MN-issued ID card, or a Social Security Number.</p> <p>I certify that on Election Day I will meet all the legal requirements to vote.</p> <p>Voter Signature <input checked="" type="checkbox"/></p>
<p><b>Witness must complete this section</b></p> <p>Witness name <input type="text"/></p> <p>MN street address (or title, if an official or notary) <input type="text"/> MN</p> <p>City <input type="text"/></p> <p>I certify that:</p> <ul style="list-style-type: none"> <li>• the voter showed me the blank ballots before voting;</li> <li>• the voter marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter;</li> <li>• the voter enclosed and sealed the ballots in the ballot envelope; and</li> <li>• I am or have been registered to vote in Minnesota, or am a notary, or am authorized to give oaths.</li> </ul> <p>Witness Signature <input checked="" type="checkbox"/></p> <p>If notary, must affix stamp</p>	<p><b>Witness must complete this section</b></p> <p>Witness name <input type="text"/></p> <p>MN street address (or title, if an official or notary) <input type="text"/> MN</p> <p>City <input type="text"/></p> <p>Witness MUST CHECK ONE indicating proof of residence provided by voter: (See instructions)</p> <p><input type="checkbox"/> MN driver's license, ID card, permit, or receipt</p> <p><input type="checkbox"/> Bill, student fee statement, or residential lease plus photo ID</p> <p><input type="checkbox"/> Registered voter in the precinct who vouched for voter's residence in the precinct (must complete the voucher form on the back of the Voter Registration Application)</p> <p><input type="checkbox"/> Tribal ID card</p> <p><input type="checkbox"/> Notice of late registration</p> <p><input type="checkbox"/> Previous registration in the same precinct</p> <p><input type="checkbox"/> An employee of a residential facility in the precinct who vouched for voter's residence at the facility (must complete the voucher form on the back of the Voter Registration Application)</p> <p>I certify that:</p> <ul style="list-style-type: none"> <li>• the voter showed me the blank ballots before voting;</li> <li>• the voter marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter;</li> <li>• the voter enclosed and sealed the ballots in the ballot envelope;</li> <li>• the voter registered to vote by filling out and enclosing a voter registration application in this envelope;</li> <li>• the voter provided proof of residence as indicated above; and</li> <li>• I am or have been registered to vote in Minnesota, or am a notary, or am authorized to give oaths.</li> </ul> <p>Witness Signature <input checked="" type="checkbox"/></p> <p>If notary, must affix stamp</p>
<p><b>For Official Use Only</b></p> <p><input type="checkbox"/> Accepted <input type="checkbox"/> Rejected (reason: <input type="text"/>)</p> <p style="text-align: right;">Signature Envelope—Registered</p>	<p><b>For Official Use Only</b></p> <p><input type="checkbox"/> Accepted <input type="checkbox"/> Rejected (reason: <input type="text"/>)</p> <p style="text-align: right;">Signature Envelope—Unregistered</p>

(Behrens Decl. ¶ 3, Exs. 2-1, 3-1.)

### ***Processing Absentee Ballots***

Voters may return absentee ballots either through mail, personal delivery, agent delivery, or designated drop boxes. Minn. Stat. § 203B.08, subd. 1. The relevant jurisdiction’s ballot board then processes absentee ballots, either accepting or rejecting them. *Id.* § 203B.121. The ballot board reviews each signature envelope, assessing whether (1) the voter’s information is the same as that in the voter’s ballot application; (2) the voter is registered and eligible to vote, or included a completed registration application; and (3) the certificate on the signature envelope is complete. *Id.*, subd. 2(a)-(b). Failing to meet these requirements is the only ground for rejecting a ballot, and the law further circumscribes when ballots may be rejected. *Id.*, subd. 2(c)(1). For example, a ballot board cannot reject an absentee ballot for lack of an eligible witness if the witness signed the required witness statements and either provided a Minnesota address, provided a title reflecting the authority to administer oaths, or affixed a notarial stamp. Minn. R. 8210.2450, subp. 5.

Minnesota law also provides for curing ballots should any issues surface during this review process. If a ballot is rejected more than five days before Election Day, the official in charge of the ballot board must send the voter a replacement absentee ballot and signature envelope. Minn. Stat. § 203B.121, subd. 2(c)(2). If the rejection is within five days of the election, the official must attempt to contact the voter to provide notice of the rejection. *Id.*, subd. 2(3).

### ***Current Litigation***

In February 2024, Plaintiffs Minnesota Alliance for Retired Americans Educational Fund, Teresa Maples, and Khalid Mohamed sued Secretary of State Steve Simon in his official capacity. (Compl.) They allege that requiring absentee voters to vote with a witness imposes a “vouching” requirement that violates the Voting Rights Act, 52 U.S.C. § 10501, or alternatively adds an immaterial requirement that violates the materiality provision of the Civil Right Act, 52 U.S.C. § 10101(a)(2)(B). (*Id.* ¶¶ 36-47.) The organization represents that its members are

retirees who rely on absentee voting, and that the organization encourages people to vote and engages in community outreach on campaign matters. (*Id.* ¶¶ 8-9.) It asserts that the witness requirement abridges its members' right to vote. (*Id.* ¶¶ 9-10.) Maples alleges that she has successfully voted absentee in past elections, but she intends to move at some unspecified point before the 2024 election and questions whether she will find a witness for the election. (*Id.* ¶ 10.) Mohamed similarly alleges that he has routinely and successfully voted by absentee ballot, and though allegedly difficult, has found a witness each time. (*Id.* ¶ 11.) Nonetheless, he expects to have difficulty finding a witness for the 2024 election.<sup>4</sup> (*Id.*) The plaintiffs seek declaratory and injunctive relief to stop the Secretary from preparing or distributing ballots or instructions that require a witness to vote absentee. (*Id.* at 13-14.)

### ARGUMENT

A court should dismiss a complaint that either asserts non-justiciable claims or fails to state a claim for relief. Minn. R. Civ. P. 12.02(a), (e). Whether a complaint states a claim is a question of law. *Walmart Inc. v. Winona County*, 963 N.W.2d 192, 196 (Minn. 2021). While courts must assume that alleged facts are true, they owe no deference to plaintiffs' legal conclusions or construction of a statute. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014); *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010).

The Court should dismiss the complaint because the plaintiffs lack standing and cannot establish any violation of federal law. No plaintiff alleged a legally cognizable injury; none has

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<sup>4</sup> The plaintiffs broadly cite the "2024 election" without specifying which of the three regularly scheduled 2024 elections they refer to: the March presidential primary election, the August general primary election, or the November general election. The Secretary assumes that they focus on the November election because the presidential primary has since passed and absentee voting for the August 13 primary begins June 28, just weeks after the Court will hear this motion. *See* Minn. Stat. § 203B.06, subd. 3 (providing for delivery of absentee ballots at least 46 days before regularly scheduled elections). Absentee voting for the November 5 election begins September 20. *Id.*



been harmed by, or faces imminent harm from, the witness requirement they challenge. And even if the plaintiffs have standing, dismissal is appropriate on the merits. While the complaint raises questions of first impression in Minnesota, Minnesota law does not require a witness to “vouch” for another person’s eligibility to vote as prohibited by the Voting Rights Act. The only person who attests to a voter’s eligibility to vote is the voter. Nor does the witness requirement does not violate the materiality provision of the Civil Rights Act. That provision does not apply to requirements for how eligible voters cast their vote. But, even if it did, the witness requirement is material to determining whether the intended eligible voter marked the ballot in question.

**I. THE PLAINTIFFS LACK STANDING AND THIS COURT LACKS JURISDICTION OVER ANY CHALLENGES TO ADMINISTRATIVE RULES.**

The Court should dismiss the plaintiffs’ claims on two jurisdictional grounds. First, as to their Voting Rights Act and Civil Rights Act claims, no plaintiff has standing because none alleged a sufficient injury or likelihood of imminent injury. At best, the plaintiffs raise speculative concerns about their ability to comply with the witness requirement, concerns that are undermined by the individual plaintiffs’ admissions that they have repeatedly and successfully voted absentee in prior elections. Second, to the extent that the plaintiffs seek to invalidate administrative rules, the Court lacks jurisdiction because rule challenges must be filed at the Minnesota Court of Appeals.

**A. The Plaintiffs Alleged No Actual or Imminent Injury.**

The plaintiffs lack standing to assert their claims. Standing requires a party to have a sufficient stake in a justiciable controversy. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). Standing is acquired in two ways: either the plaintiff has suffered an “injury-in-fact,” or the plaintiff is the beneficiary of some legislative enactment granting standing. *Id.* An injury-in-fact is a concrete and particularized “invasion of a legally protected



interest.” *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007). The injury must be both “actual or imminent, not conjectural or hypothetical” and fairly traceable to the conduct challenged. *Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. Ct. App. 2005). The plaintiffs’ sparse pleadings, even when taken as true, do not allege an actual or imminent injury under either the Voting Rights Act or Civil Rights Act. Any harm alleged is only hypothetical and speculative. Because no plaintiff has standing, the Court should dismiss the complaint.

**1. Neither individual plaintiff alleged a sufficient injury.**

Maples and Mohamed lack standing to pursue their claims. Mere chance of an injury is insufficient to maintain standing. *Minn. Voters All. v. State*, 955 N.W.2d 638, 642 (Minn. 2021). Maples and Mohamed have alleged only speculative concerns about an injury stemming from the witness requirement.

The plaintiffs first claim that Minnesota’s witness requirement violates the Voting Rights Act because it “requires” them “as a prerequisite for voting . . . [to] prove [their] qualifications” with a witness’s “voucher.” (Compl. ¶ 38.) While the Secretary disagrees with the merits of this allegation, the plaintiffs nevertheless lack standing to advance this claim because they failed to allege that they have been, or imminently will be, harmed by this alleged requirement. Maples and Mohamed are registered Minnesota voters. (*Id.* ¶¶ 10-11.) Should they opt to vote via absentee ballot, which they are not required to do, a witness would only affirm that they displayed an unmarked ballot and then marked it in the witness’s presence. Minn. Stat. § 203B.07, subd. 3. A witness need not affirm *anything* about their qualifications to vote. *Id.* The plaintiffs thus lack standing because they are not in imminent danger of having to prove their qualifications to vote to a witness as a prerequisite for voting.

The plaintiffs alternatively claim that the witness requirement violates the Civil Rights Act, alleging that their ballots are at risk of being disqualified for non-compliance with the witness

requirement. (Compl. ¶¶ 42-47.) But they again failed to plead facts suggesting an actual or imminent danger of being unable to comply with the witness requirement and having their votes disqualified on that basis. Maples lives in Goodhue County and Mohamed lives in Hennepin County, where there are 31,148 and 791,415 registered voters, respectively, as of April 1. *Voter Registration Counts*, Office of the Minnesota Secretary of State, <https://perma.cc/6KLN-4X34> (last visited Apr. 9, 2024). Although Maples lives alone and intends to move, she pleaded no facts suggesting that she does not interact with even one of the 31,148 registered voters in her county, or the more than 3.5 million other registered Minnesota voters throughout the state. (*Id.*; Compl. ¶ 10.) If she chooses to vote absentee, Maples has months to—as she has done in the past—find a single registered Minnesota voter or other qualified witness or, should she find none, decide to cast a vote absentee in person or vote at a polling place on Election Day. Similarly, Mohamed admits that he has always been able to find a witness and does not face an actual or imminent harm. (Compl. ¶ 11.)

Instead, the plaintiffs' central claim of harm appears to be concern about the potential difficulty of finding a witness. (*Id.* ¶ 34 (framing injury as burden associated with “mere act of complying”).) But neither speculative concerns nor potential difficulties are cognizable harms under the Voting or Civil Rights Acts, both of which protect the right to vote rather than the preferred means of voting. *Hanson*, 701 N.W.2d at 262 (recognizing that “conjectural or hypothetical” injury is insufficient to establish standing). Alternatively, the plaintiffs assert a “substantial threat of disenfranchisement.” (Compl. ¶ 34.) But neither individual plaintiff has ever been disenfranchised in a past election. Nor does either allege any facts suggesting they will face that harm in the next election for the first time. Because neither individual plaintiff alleges a cognizable harm, the Court should dismiss the complaint for lack of standing.

## 2. Minnesota Alliance lacks associational standing.

Minnesota Alliance also lacks standing. An organization may establish standing by alleging either a direct injury to the organization or an injury on its members' behalf. *Humphrey*, 551 N.W.2d at 497. Minnesota Alliance does not allege any direct injury and asserts only associational standing. (Compl. ¶ 9.) But any claim of associational standing fails because its individual members lack standing.

An organization may assert associational standing only when its members would individually have standing to sue. *Byrd v. Indep. Sch. Dist. No. 194*, 495 N.W.2d 226, 231 (Minn. Ct. App. 1993); *St. Paul Police Fed'n v. City of St. Paul*, No. A05-2186, 2006 WL 2348481, at \*2 (Minn. Ct. App. Aug. 15, 2006). Minnesota Alliance does not allege any member in Minnesota is differently situated than Maples or Mohamed. (Compl. ¶¶ 8-9 (alleging only that members must comply with witness requirement, not that they cannot).) For the same reason that Maple and Mohamed's claims fail, Minnesota Alliance lacks associational standing. No member is in imminent danger of being required to find a witness to "vouch" for their qualification to vote or of being denied the right to vote due to an inability to find a witness for an absentee ballot.

### B. This Court Lacks Jurisdiction Over Rulemaking Challenges.

The plaintiffs allege that the Secretary promulgated rules that unlawfully require a witness to vote absentee. (*Id.* ¶¶ 24-29.) To the extent that the plaintiffs intend to independently challenge the validity of Minnesota Rules 8210.0500 and 8210.0600 or the Absentee Voting Guide, this Court lacks jurisdiction. Challenges to the validity of promulgated rules are governed by the Administrative Procedure Act, which gives the Minnesota Court of Appeals original jurisdiction to hear claims that a rule impairs or interferes with a person's rights. Minn. Stat. § 14.44; *see also Minn. Voters All. v. Office of Minn. Sec'y of State*, 990 N.W.2d 710, 716 (Minn. 2023) (addressing election-related rule challenge that started at court of appeals). Accordingly, district courts lack

subject matter jurisdiction to hear challenges to the validity of rules. *See Ellingson & Assocs. v. Keefe*, 410 N.W.2d 857, 861 (Minn. Ct. App. 1987).

The plaintiffs appear to assert that the Secretary's rules violate federal law and are preempted. *See Minn. Voters All.*, 990 N.W.2d at 716 (recognizing rules cannot violate federal law). Because only the court of appeals has original jurisdiction to hear a rule challenge, the Court should dismiss any claims that seek to challenge the validity of administrative rules.

## **II. THE PLAINTIFFS FAILED TO STATE A CLAIM UNDER THE VOTING RIGHTS ACT.**

The Voting Rights Act prohibits denying the right to vote for “failure to comply with any test or device.” 52 U.S.C. § 10501(a). Relevant to the plaintiffs' claims, a “test or device” is “any requirement that a person as a prerequisite for voting or registration for voting . . . prove his qualifications by the voucher of registered voters or members of any other class.” *Id.* § 10501(b). The plaintiffs claim that Minnesota's witness requirement requires vouching. Because the voter is the only person who attests to the voter's eligibility to vote, it does not.

The signature envelope for an absentee ballot contains a certification signed by the voter and a statement signed by a witness. Minn. Stat. § 203B.07, subd. 3. The witness statement consists of four attestations: (1) that the vote displayed an unmarked ballot; (2) that the voter marked the ballot in the witness's presence without disclosing the voter's choices, or if the voter could not physically mark the ballot, that the voter instructed another individual to mark the ballot on their behalf; (3) that, if the voter was not already registered, the voter provided proof of residence as required by Minnesota's voter-registration laws; and (4) the voter sealed the ballot in the ballot envelope. *Id.* Additionally, the witness must be a registered Minnesota voter, a notary public, or another person authorized to administer oaths. *Id.*; Minn. R. 8210.0600, subps. 1a-1b. None of these attestations constitute vouching. Three attestations (the first, second, and fourth) pertain only to how voters complete their ballots. The remaining attestation, addressing proof of residence,

simply facilitates same-day registration for absentee voters not already registered to vote. As such, section 203B.07 is not a vouching requirement.

**A. Three Witness Attestations Pertain to the Process of Voting.**

Three of the four witness attestations made by absentee-ballot witnesses—that a voter used a blank ballot and marked it with their own votes, and then sealed the ballot in the ballot envelope—unambiguously pertain to the mechanics of the voting process. Put differently, confirming that an individual used a blank ballot, marked that ballot, and then put the ballot in an envelope is not vouching for the individual’s eligibility to vote.

This reading of section 203B.07 comports with its plain text. Proper interpretation of statutes always begins with the plain language. *City of Circle Pines v. County of Anoka*, 977 N.W.2d 816, 823 (Minn. 2022); *see also Bostock v. Clayton County*, 590 U.S. 644, 674 (2020) (providing same for federal statutes). Section 203B.07 contains language about certifying an absentee voter’s qualifications but plainly locates that certification with the voter. Minn. Stat. § 203B.07, subd. 3. (“The certificate must also contain a statement *to be signed and sworn by the voter* indicating that the voter meets all of the requirements established by law for voting by absentee ballot . . . .” (emphasis added)). This language differs markedly from a century-old predecessor statute. From 1917 to 1949, witnesses attested to the accuracy of a voter’s statement about the voter’s qualifications to vote. *See* 1917 Minn. Laws. ch. 68, § 6; 1949 Minn. Laws ch. 368, § 2.<sup>5</sup> But under current law, a witness makes no such attestation. In each step of the voting

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<sup>5</sup> Some form of a witness requirement dates back even further in Minnesota history to when absentee balloting was first introduced in 1862 but limited to military members. 1862 Minn. Laws Spec. Sess. ch. 1, § 1, at 13-14. Those voters had to present their ballot envelope to a designated commissioner and take an oath. The commissioner then certified the voter’s identity, and also certified that the voter “has personally acknowledged before me that the enclosed ballot is his free and voluntary vote which he desires to cast at the [specified election]” and that the voter took the required oath. *Id.* § 3, at 14-15.

process—whether registering to vote, voting in person at a polling place, or voting absentee—the voter is the only person who attests to the voter’s eligibility to vote.

Thus, these attestations are better understood as neutral, permissible tools to ensure routine aspects of election administration, such as secret balloting and confirming that the same person who applied for, received, and returned an absentee ballot also marked the ballot. *See Bell v. Ganaway*, 227 N.W.2d 797, 802-03 (Minn. 1975) (recognizing unique election-integrity role of absentee-ballot laws). The plaintiffs cannot contend that any of these attestations constitutes vouching within the meaning of the Voting Rights Act because the witnesses simply do not certify the voter’s eligibility. *Cf. Liebert v. Wisc. Elec. Comm’n*, No. 23-cv-672-jdp, 2024 WL 181494, at \*6 (W.D. Wis. Jan. 17, 2024) (noting that plaintiffs did not claim that certifying proper absentee-voting procedure constituted vouching ).<sup>6</sup>

**B. The Final Witness Attestation is a Same-Day Registration Tool, Not a Vouching Requirement.**

The final attestation a witness may be required to make applies only when the absentee voter is not yet registered to vote. Minn. Stat. § 203B.07, subd. 3(3). In such cases, the witness must attest that the voter provided proof of residence consistent with Minnesota’s election-day-registration requirements. *Id.* (referencing Minn. Stat. § 201.061, subd. 3); *accord* Minn. R. 8210.0500, subp. 3 (instructing absentee voters how to transmit registration at same time as ballot). As previously discussed, the individual plaintiffs lack standing to challenge this attestation

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<sup>6</sup> Multiple courts have held that laws do not amount to “vouching” even when a witness must certify that a voter attested to the voter’s identity. *E.g., People First of Ala. v. Merrill*, 467 F. Supp. 3d 1179, 1224 (N.D. Ala. 2020) (concluding that witnesses certifying that voters attested to their identity certified only whether voters made the underlying identity attestation, not whether the voter meets voter-eligibility requirements); *Thomas v. Andino*, 613 F. Supp. 3d 926, 961-62 (D.S.C. 2020) (concluding that witness does not vouch by confirming that voter completed the voter oath and signed the ballot).

because it does not apply to them as registered voters. (Compl. ¶¶ 10-11.) But even if the Court considers this attestation, it is not a vouching requirement.

Section 203B.07's cross-reference to Minnesota's election-day registration statute establishes that the purpose of this attestation is to relieve absentee voters from certain in-person requirements that would otherwise attend their election-day-registration efforts. Specifically, Minnesota law permits election-day registration, but typically requires voters to appear "*in person* at the polling place for the precinct in which the individual maintains residence." Minn. Stat. § 201.061, subd. 3 (emphasis added). Absentee voting inherently requires different procedures than in-person voting or registration. *E.g.*, *Bell*, 227 N.W.2d at 352-53 (discussing balance between benefits of absentee voting and need "not to let down the bars necessary for honest elections"); *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 840 (S.D. Ind. 2006) ("[A]bsentee voting is an *inherently* different procedure from voting in person."). Requiring an absentee voter to appear in person at a precinct polling place to register would defeat the purpose of absentee voting and unduly restrict the benefits of Minnesota's flexible voter-registration process to non-absentee voters. The law instead permits absentee voters to still register to vote on the same day they cast their ballot, and simply deputizes certain people to take the role that an election judge would if registering a person at the polling place. Similar to the other attestations, the witness does not attest to the voter's eligibility to vote (e.g., by stating the person has lived at the residence for the requisite number of days), but merely confirms that the voter provided a document permitted by law.

Because the proof-of-residency attestation is a same-day registration tool to ensure absentee voters have access to Minnesota's full slate of voter-registration options, it does not constitute vouching within the meaning of the Voting Rights Act. *See, e.g., Liebert*,



2024 WL 181494, at \*6; *People First.*, 467 F. Supp. 3d at 1224 (N.D. Ala. 2020); *Thomas*, 613 F. Supp. 3d at 961-62; *cf. Ne Ohio Coal. for the Homeless*, 837 F.3d 612, 629 (6th Cir. 2016) (concluding that requiring absentee voters to accurately complete address and birthdate fields on ballot envelopes did not constitute “test or device”). The plaintiffs’ claim that section 203B.07 violates the Voting Rights Act thus fails.

### **III. THE PLAINTIFFS FAILED TO STATE A CLAIM UNDER THE CIVIL RIGHTS ACT.**

The Civil Rights Act prohibits a person acting under color of law from denying the right to vote “because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.” 52 U.S.C. § 10101(a)(2)(B). This prohibition is commonly referred to as the “materiality provision.” *E.g.*, *Common Cause v. Thomsen*, 574 F. Supp. 3d 634, 638 (W.D. Wis. 2021). The plaintiffs allege that Minnesota’s witness requirement violates the materiality provision. (Compl. ¶¶ 40-47.)

Even if the Court concludes that the plaintiffs have standing, the Court should dismiss this claim because the materiality provision applies only to errors and omissions on documents used to determine a person’s eligibility to vote. It does not apply to documents or procedures that eligible voters use to cast votes. Because the witness requirement relates to the mechanics of vote-casting, it does not fall within the scope of the materiality provision.

#### **A. The Materiality Provision Applies Only to Documents Used to Determine Voters’ Eligibility to Vote.**

The materiality provision’s plain language applies only to documents used to determine whether a voter is qualified to vote. This interpretation is reinforced by other courts’ interpretation of the provision and the legislative history leading to its enactment. The plaintiffs nevertheless seek to apply the materiality provision to regulations governing how qualified voters vote, which

is surprising given that myriad laws exist and are necessary to ensure the orderly administration of fair elections but may not bear directly on a voter's eligibility to vote. If the plaintiffs were correct that the materiality provision applied to election laws governing how eligible voters vote, voters could invoke the materiality provision to challenge numerous reasonable election-administration requirements, from using markings that are unreadable by tabulation machines to destroying ballot secrecy by writing the voter's name on the ballot. The Court should reject this unadministrable and overbroad interpretation.

**1. The plain language of the materiality provision applies only to documents related to voter qualifications.**

Courts interpret federal statutes to give effect to every clause and word and presume that Congress deliberately chose particular words. *Polselli v. Internal Revenue Serv.*, 598 U.S. 432, 441 (2023); *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 353 (2013). The materiality provision states that no person acting under color of law may:

deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material *in determining* whether such individual is *qualified* under State law to vote in such election.

52 U.S.C. § 10101(a)(2)(B) (emphases added). The last clause provides the critical limitation: the materiality provision applies only to paperwork errors and omissions that are “not material in determining whether [an] individual is qualified” to vote. *Id.* If an error relates to a voter's qualification but is immaterial to determining that voter's qualification (i.e., eligibility to vote), it cannot be the basis for denying the right to vote. In other words, the error or omission must be in a document that serves a gatekeeping function between qualified and unqualified individuals, such as “minor misspelling errors or mistakes in age or length of residence” on voter-registration applications. H.R. Rep. No. 88-914, pt. 2, at 5 (1963), *as reprinted in* 1964 U.S.C.C.A.N. 2391, at 2491. The materiality provision does not apply to errors *after* election officials have

“determine[ed] whether [an] individual is qualified.” 52 U.S.C. § 10101(a)(2)(B). As a result, the materiality provision applies to documents like voter applications or registrations, but it does not apply to documents that qualified voters use for casting votes, such as absentee-ballot envelopes.

In assessing a statute’s plain language, a court may also consider surrounding provisions. *United States v. Morton*, 467 U.S. 822, 828 (1984). Other provisions of subsection 10101(a)(2) confirm that the focus of the materiality provision is registration-related paperwork. The paragraph preceding the materiality provision prohibits discriminatory standards, practices, or procedures “in determining whether any individual is qualified . . . to vote.” 52 U.S.C. § 10101(a)(2)(A). And the succeeding paragraph addresses literacy tests “as a qualification for voting.” *Id.* § 10101(a)(2)(C). Thus, the thrust of the materiality provision’s subsection is clear: it governs voter qualification determinations and has no applicability to documents used for the act of voting itself.

**2. Other courts have recognized the materiality provision reaches only documents related to voter qualifications.**

Other courts considering the materiality provision have likewise concluded that it applies only to processes for determining *who* may vote, not to the processes on *how* qualified voters cast their ballots. For example, the Third Circuit recently rejected a materiality challenge to a requirement that voters write a date on absentee-ballot envelopes, despite the state’s concession that it did not use the date for any substantive purpose. *Penn. State Conf. of NAACP Branches v. Sec’y Commonwealth of Penn.*, 97 F.4th 120, 127, 131 (3d Cir. 2024), *petition for reh’g filed* (Apr. 10, 2024). The court held that “it makes no sense to read the Materiality Provision to prohibit enforcement of vote-casting rules that are divorced from the process of ascertaining whether an individual is qualified to vote.” *Id.* at 134. It further recognized that rules governing voter eligibility and rules governing how votes are cast serve different purposes, and limiting states’ ability to

regulate the latter would tie states' hands from enforcing regulations necessary to administer elections. *Id.* at 134-35.

The Eleventh Circuit has similarly held that the materiality provision “was intended to address the practice of requiring unnecessary information *for voter registration.*” *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003) (emphasis added). The court recognized that Congress necessarily addressed those practices because “such requirements would increase the number of errors or omissions *on the application forms.*” *Id.* (emphasis added). Lower federal courts have reached similar holdings. *E.g.*, *Org. for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790, 803 (W.D. Mo. 2020); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308 (N.D. Ga. 2018); *Common Cause/Ga. v. Billups*, 439 F. Supp. 2d 1294, 1358 (N.D. Ga. 2006); *Friedman v. Snipes*, 345 F. Supp. 2d 1356, 1370-71 (S.D. Fla. 2004); *cf. Condon v. Reno*, 913 F. Supp. 946, 949-50 (D.S.C. 1995) (noting that “Congress has repeatedly attempted to deal with the problem of registering as a deterrent to voting” when discussing impetus for the materiality provision).

In contrast to the Third and Eleventh Circuits, some district courts have applied the materiality clause to vote-casting measures such as the content of absentee-ballot envelopes. *E.g.*, *Vote.org v. Ga. State Election Bd.*, 661 F. Supp. 3d 1329 (N.D. Ga. 2023); *La Union del Pueblo Entero v. Abbott*, 604 F. Supp. 3d 512 (W.D. Tex. 2022); *Martin v. Crittenden*, 347 F. Supp. 3d 1302 (N.D. Ga. 2018). None of these cases is persuasive, however, because each court assumed without any discussion that the materiality provision applied. Indeed, it appears that no defendant in these cases even raised whether the materiality provision applies after an individual's qualifications to vote have been determined. *See* State Defs.' Br. Supp. Mot. Dismiss 16-25, *Vote.org*, 661 F. Supp. 3d 1329 (No. 1:22-cv-01734), ECF No. 36-1; Mot. Dismiss Fed. Gov't's Claims 10-13, *La Union*, 604 F. Supp. 3d 512 (No. 5:21-cv-00844), ECF No. 145; Sec'y of State's

Resp. Prop. Pl. Intervenor's Mot. TRO 5-7, *Martin*, 347 F. Supp. 3d (No. 1:18-cv-04776), ECF No. 52. And as the preceding paragraph demonstrates, courts that have addressed the issue have concluded that the materiality provision does not have such an extensive reach.

**3. Legislative history reflects that the materiality provision focused on addressing disparate treatment of voter-registration errors, not errors while voting.**

When a statute is ambiguous, courts may consider its legislative history. *Delaware v. Pennsylvania*, 598 U.S. 115, 138-39 (2023). Should the Court find the materiality provision ambiguous, its legislative history reinforces that its scope is limited to voter qualifications, specifically voter-registration activities. In discussing the voting sections of the Civil Rights Act, the House Judiciary Committee uniformly focused on how the act was intended to tackle discrimination in voter-registration procedures; the committee did not discuss the law's application to post-registration activities. *See generally* H.R. Rep. No. 88-914 (1963), *as reprinted in* 1964 U.S.C.C.A.N. 2391. For example, the Committee explained that it designed the section with the materiality provision "to insure nondiscriminatory practices in the *registration* of voters." *Id.* pt. 1, at 19, *as reprinted at* 2394 (emphasis added).

In writing separately about the voting-rights section of the Civil Rights Act, the committee's ranking member (a longtime civil rights advocate) focused primarily on voter *registration*, citing the low number of voting-age Black citizens who were "*registered to vote*," "the employment of involved *registration* techniques," and disparities in voter registrations. *Id.* pt. 2, at 2-4, *as reprinted at* 2488-90 (emphasis added). Moreover, when specifically discussing the materiality provision, he stated that the reasons for that provision were the "intricate methods employed by some State or county voting officials to defeat [Black] registration," as well as evidence that "registrars will overlook minor misspelling errors or mistakes in age or length of residence of white applicants, while rejecting a [Black] application for the same or more trivial

reasons.” *Id.* at 5, *as reprinted* at 2491. This legislative history confirms that any ambiguity should be resolved by reading the materiality provision to apply only to voter registration and qualification.

**4. Applying the materiality provision to documents used in the act of voting would create absurd results, undermining fair and orderly election administration.**

Finally, adopting an interpretation of the materiality provision that sweeps up all potential vote-casting errors like the witness requirement would lead to absurd results, which courts should avoid when possible. *See McNeill v. United States*, 563 U.S. 816, 822 (2010) (rejecting interpretation to avoid absurd result). States generally have broad authority to regulate elections. *Storer v. Brown*, 415 U.S. 724, 730 (1974) (“[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.”). Voting by absentee ballot is a privilege, not a right. *E.g., In re Contest of Gen. Election of Nov. 8, 2008*, 767 N.W.2d 453, 462 (Minn. 2009); *Bell*, 227 N.W.2d at 802 (Minn. 1975). To that end, states have a particular interest in enacting procedures surrounding absentee voting to balance qualified voters’ rights with preserving election integrity. *DSCC v. Simon*, 950 N.W.2d 280, 293 (Minn. 2020); *see also Wichelmann v. City of Glencoe*, 273 N.W.2d 638, 639-40 (Minn. 1937). Minnesota courts have required strict compliance with absentee-balloting procedures. *Contest of Gen. Election*, 767 N.W.2d at 460.

A broad reading of the materiality provision would lead to absurd results and thwart the state’s ability to make reasonable policy choices regarding the absentee-voting process and requirements for fair and orderly election administration. Under the plaintiffs’ interpretation, numerous errors or omissions in voting would have to be disregarded. For example, a voter might sign the voter’s name on the ballot, destroying the secrecy of the ballot. *See Minn. Stat. § 204C.18, subd. 2* (2022) (criminalizing placing identifying marks on a ballot). Such markings are an “error

or omission” on a paper (the ballot) requisite to voting, but they are not material to determining whether the voter is qualified. Likewise, if a voter cast a vote for some offices on a ballot, but neglected to vote for other offices, and then tried to obtain a second ballot to vote for those other offices, the plaintiffs’ theory of the materiality provision would suggest the election officials must accommodate under- or over-voting paperwork errors, functionally destroying the ability to administer elections in an orderly manner.<sup>7</sup> *See, e.g., id.* § 204B.36, subd. 2 (providing direction about how many candidates a voter may select in particular races). Or a voter might complete a ballot in a way that cannot be read by a tabulation machine or election judge. *See, e.g.,* Minn. R. 8210.0500, subps. 2-3 (directing voters to use black ink).

There are myriad election regulations that promote election integrity and administration by regulating *how* people vote, but that are unrelated to *who* may vote. Nevertheless, under the plaintiffs’ theory that the materiality provision applies to how people vote, such prohibitions would be impermissible under the materiality provision. It would be absurd to conclude that Congress intended to nullify all such reasonable regulations regarding administration of elections when it enacted the materiality provision.

**B. As a Voting-Casting Requirement, the Witness Requirement Does Not Violate the Materiality Provision.**

Under the proper interpretation of the materiality provision, the provision does not apply to the witness requirements that the plaintiffs challenge. The witness certifications relate to verifying *how* a voter cast the voter’s ballot and *who* cast the ballot. But they are not used “in determining” whether the voter is eligible to vote. Because the materiality provision does not apply, the Court should dismiss the plaintiffs’ complaint.

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<sup>7</sup> Notably, the first ballot could not be spoiled because once inserted into a tabulation machine, there is no way to correlate a ballot to its voter. Minn. Stat. § 204C.18, subd. 2 (2022).



It is unclear whether the plaintiffs also challenge the additional witness certifications for unregistered voters that relate to providing proof of residence and completing a voter-registration application. As discussed above, these certifications do not apply to the plaintiffs as registered voters. But to the extent that the Court finds that they have standing and are challenging these certifications, it should still dismiss because those certifications are material to determining voter qualifications within the context of Minnesota law and the meaning of the materiality provision. *See* 52 U.S.C. § 10101(e) (defining “qualified under State law” to mean “qualified according to the laws, customs, or usages of the State”); *see also Penn. NAACP*, 97 F.4th at 135 (addressing voting rule in context of what state determined necessary for casting ballot); *Vote.Org v. Callanen*, 89 F.4th 459, 481, 487-88 (5th Cir. 2023) (giving weight to state’s policy choice and recognizing that materiality provision did not eliminate states’ “considerable discretion in establishing rules for their own elections”).

As previously addressed, Minnesota law deputizes others to essentially act as election judges to assist in registering voters who cast absentee ballots, and the absentee registration process generally mirrors that of election-day registration at the polling place. Because such voters are not physically present before the election official, the process is done on paper. The witness facilitates this registration process by confirming that *the voter* (as opposed to someone else) was the one who completed the registration and showed proof of residence in a form provided by law. For such registrations, the witness merely stands in for the role an election judge would play if registering the voter in person at a polling place. *See Vote.org*, 89 F.4th at 487 (deferring to state’s policy judgment and rejecting materiality challenge to requiring wet signature on registration application); *Rokita*, 458 F. Supp. 2d at 841 (“[V]erifying an individual’s identity is a material requirement.”).

## CONCLUSION

The Court should dismiss the plaintiffs' complaint because they lack standing and they failed to state a claim. Because Minnesota's witness requirement for absentee ballots does not require vouching, it does not violate the Voting Rights Act. And because the requirement is a vote-casting regulation that applies only after an individual has been determined to be a qualified voter, it does not violate the materiality provision of the Civil Rights Act.

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