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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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

Plaintiffs,

v.

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

Defendant,

Republican National Committee, Republican Party of Minnesota,

[Proposed] Intervenors.

Case Type: Civil Other/Misc.
Case No. 62-cv-24-854
Judge Edward Sheu

INTERVENORS' PROPOSED MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

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INTRODUCTION

"States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). Accordingly, the Minnesota Legislature, "fully cognizant of the possibilities of illegal voting, frauds, and dishonesty in elections, prescribed many safeguards in the absent[ee] vot[ing] law[s] to prevent such abuses." *Bell v. Gannaway*, 227 N.W.2d 797, 803 (Minn. 1975) (cleaned up). Like at least 11 other States, Minnesota requires individuals voting by mail to have a witness observe their completion of the ballot, thus bolstering "prevention of fraud." *Id.* at 802. Courts around the country have consistently rejected legal challenges to such witness requirements, *see, e.g.*, *Andino v. Middleton*, 141 S. Ct. 9, 9-10 (2020); *Thomas v. Andino*, 613 F. Supp. 3d 926, 959-62 (D.S.C. 2020); *People First of Ala. v. Merrill*, 467 F. Supp. 3d 1179, 1223-25 (N.D. Ala. 2020), and a federal court even rejected a challenge to Minnesota's Witness Requirement premised on the COVID-19 pandemic, *see League of Women Voters of Minn. v. Simon*, No. 20-cv-1205, 2021 WL 1175234 at *1 (D. Minn. 2021).

Plaintiffs' facial challenges to Minnesota's Witness Requirement likewise fail as a matter of law and should be dismissed for at least three reasons. *First*, Plaintiffs have failed to plead facts to establish standing. The Complaint identifies *no* Plaintiff or other individual who has been unable to vote or had a ballot rejected due to the Witness Requirement. Instead, Plaintiffs assert only a generalized interest in precluding the Witness Requirement's enforcement "no different in character than that of the citizenry in general," which is insufficient to confer standing. *Minnesota Voters All. v. State*, 955 N.W.2d 638, 642 (Minn. Ct. App. 2021).

Second, *every* court to have considered the question has concluded that witness requirements do not violate Section 201 of the Voting Rights Act (VRA), which Plaintiffs invoke in Count I. *See, e.g.*, *Thomas*, 613 F. Supp. 3d at 959-62; *People First of Ala.*, 467 F. Supp. 3d at 1223-25. The United States Department of Justice—which has authority to enforce the VRA—agrees that witness requirements

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do not violate Section 201. *See* Brief of the Department of Justice, ECF No. 47 at 9, *Thomas v. Andino*, No. 3:20-cv-1552 (D.S.C. May 11, 2020) ("DOJ Brief").[1] So too here. Minnesota's Witness Requirement does not violate Section 201: the Witness Requirement has nothing to do with proving a voter's "qualifications," does not require a witness to "vouch[]" for a voter's qualifications, permits government officials to serve as witnesses, and does not result in "deny[ing] . . . the right to vote" of any individual. 52 U.S.C. § 10501; *see also Thomas*, 613 F. Supp. 3d at 959-62; *People First of Ala.*, 467 F. Supp. 3d at 1223-25; DOJ Br. 8-15.

Finally, Count II fails as a matter of law because the Witness Requirement also does not violate the federal "Materiality Provision" of the Civil Rights Act of 1964. As the Third Circuit recently explained, the Materiality Provision covers only the rejection of voter *registration* applications based on immaterial paperwork errors, not *post-registration* ballot-casting rules like the Witness Requirement, which govern the completion and casting of mail ballots. *See Pa. State Conf. of NAACP v. Schmidt*, 97 F.4th 120, 132-33 (3d Cir. 2024). Nor does enforcement of the Witness Requirement violate any Minnesotan's "right … to vote" because it governs the validity of a *ballot*, not a determination of an individual's eligibility or *qualifications* to vote. *Id.* at 133-34.

The Court should dismiss the Complaint and uphold Minnesota's Witness Requirement.

BACKGROUND

Minnesota's voting regime is among the Nation's most generous, and Minnesota "has consistently had the highest voter turnout in the United States."[2] Minnesotans can register to vote immediately before casting a ballot.[3] All voters can cast their ballots before Election Day, by either of two routes. First, the State offers up to 46 days of early in-person voting. *See* Vote Early in Person,

[1] https://www.justice.gov/crt/case-document/file/1300816/dl

[2] Becca Most, *Why Does Minnesota Have the Best Voting Record in the U.S.?*, St. Cloud Times (Sept. 2, 2022).

[3] *See* Office of the Secretary of the Minn. Secretary of State, *Register on Election Day* (last visited Apr. 14, 2024), https://www.sos.state.mn.us/elections-voting/register-to-vote/register-on-election-day/.

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Minn. Sec'y of State, https://www.sos.state.mn.us/elections-voting/other-ways-to-vote/vote-early-in-person. Second, Minnesota offers "[a]ny eligible voter" the option to vote by mail. Minn. Stat. § 203B.02, subd. 1.

To vote by mail, Minnesotans must complete a mail-ballot application form "not less than one day before" Election Day, *id.* § 203B.04, subd. 1(a), and submit it to election officials "by mail, email, fax, or in person." *Minnesota Voters All. v. Simon*, 990 N.W. 2d 710, 712 (Minn. 2023). If the applicant is not already registered to vote, she can register simultaneously using the application form. *See* Office of the Minn. Sec'y of State, 2022 Absentee Voting Administration Guide at 23 (July 21, 2022) (the "Guide").[4]

Once election officials receive a vote-by-mail application, they check the applicant's registration status. *Id.* If election officials determine that the applicant is registered or has properly registered using the application, they send the applicant a mail-ballot package consisting of a ballot; a secrecy envelope in which the ballot is placed; a signature envelope in which the secrecy envelope is placed; and an addressed, postage-paid return envelope in which all balloting materials are placed. *See id.*; *Minnesota Voters Alliance*, 990 N.W. 2d at 712-14.

If the applicant is not registered, election officials send the applicant "non-registered absentee materials," which include a registration application and the mail-ballot package. Guide at 23. The applicant must then complete the registration application, show proof of residence to a witness, and have the witness sign a verification regarding the proof of residence. *See id.* at 70. If the applicant properly submits the registration application alongside the applicant's mail ballot by election day, the ballot is counted. *See id.* at 35. As discussed below, Plaintiffs do not appear to challenge this registration application or procedure, including witness procedure, for previously non-registered

[4] https://www.sos.state.mn.us/media/5058/absentee-voting-administration-guide.pdf

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applicants. *See infra* Part III.

Minnesota has established rules governing the completion and submission of mail ballots that all voters must comply with to have their mail ballots counted. *See* Guide at 44-46. For example, Minnesota has, since 1917, *see* 1917 Minn. Laws 86-88, required a witness to verify the voter's personal completion of a mail ballot, *see* Minn. Stat. § 203B.07, subdiv. 3. The witness can be any registered Minnesota voter, a notary public, or any other individual authorized to administer oaths—including election judges at polling places. *Id.*; Guide at 25 ("An election judge can also serve as a witness … . In most cases, county, municipal, or school election administrators [can serve a witness]."). The witness must sign a certification confirming that "the ballots were displayed to [the witness] unmarked" and that "the voter marked the ballots in [the witness's] presence without showing how they were marked, or, if the voter was physically unable to mark them, that the voter directed another individual to mark them." Minn. Stat. § 203B.07, subdiv. 3. In addition, the witness must either provide the witness's address or, if applicable, a notary stamp or statement of the witness's eligibility to administer oaths. Guide at 44. This collection of rules is referred to as the "Witness Requirement."

If a voter submits a defective mail ballot—including one that fails to comply with the Witness Requirement—the voter can submit a new ballot through a cure process. *Id.* at 43-46. If an election official rejects a mail ballot more than five days before the election, the official sends the voter a replacement ballot and an explanation for the rejection. *Id.* at 45. If an election official rejects a mail ballot within five days of an election, the official must attempt to contact the voter by telephone or email to offer options for casting a replacement ballot. *Id.*

Election officials do not use compliance with the Witness Requirement to determine an individual's eligibility or qualifications to vote. *See id.* at 43-46. Thus, failure to comply with the Witness Requirement does not result either in the individual being deemed unqualified to vote or in

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removal of the individual from the voter rolls. *See id.* Instead, such a failure results only in a determination regarding the ballot's validity (and triggering of the cure process). *See id.*

STANDARD OF REVIEW

Any defendant may move to dismiss a complaint for "lack of jurisdiction" or "failure to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02. A complaint must be dismissed if it fails to allege facts establishing "that the claimant has a legal right to relief." *Walsh v. U.S. Bank*, 851 N.W.2d 598, 604 (Minn. 2014).

ARGUMENT

I. PLAINTIFFS HAVE NOT PLED FACTS ESTABLISHING STANDING

The Complaint must be dismissed because neither of the two individual Plaintiffs nor the organizational Plaintiff has met its burden to plead facts sufficient to establish standing. *See, e.g.*, *In re Custody of D.T.R.*, 796 N.W.2d 509, 512-13 (Minn. 2011).

A. *Individual Plaintiffs Teresa Maples and Khalid Mohamed lack standing.*

To plead standing, Plaintiffs must allege facts that, if proven, would establish an "injury-in-fact"—a requirement on which Minnesota courts generally consult federal law. *See State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). While violations of the right to vote can give rise to a cognizable injury, *see, e.g.*, *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021) (cognizable "traditional harms may … include harms specified by the Constitution itself"), voting-rights plaintiffs must still "demonstrate (1) a direct interest in the [challenged] rule that is different in character from the citizenry in general; (2) the alleged harm is not speculative or hypothetical; and (3) the alleged harm is uniquely attributable to the [challenged] rule." *Minn. Voters All.*, 955 N.W.2d at 642.

Neither individual Plaintiff pleads facts that satisfy that standard. To start, neither Ms. Maples nor Mr. Mohamed alleges that the Witness Requirement has even prevented them from casting a valid ballot. So neither named Plaintiff has alleged a concrete *current* injury.

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Nor do Plaintiffs allege a concrete and imminent *future* injury traceable to the Witness Requirement. They suggest only the "mere possibility of" not having a mail ballot counted, *id.*, because of the hypothesized "difficulty" of "finding someone to witness [an] absentee ballot in the 2024 election," Index # 1, Compl. ¶¶ 9-11. Thus, to find that either named Plaintiff will be injured would demand several levels of speculation—none backed by allegations in the Complaint—calling for guesswork fatal to standing. *See Minn. Voters All.*, 955 N.W.2d at 643 (prohibiting standing premised on "chain of hypothetical claims").

First, the Court would have to assume that Ms. Maples or Mr. Mohamed will indeed vote absentee in a future election—but neither of these Plaintiffs clearly alleges this predicate fact.

Second, the Court would have to assume that either individual Plaintiff will return a completed absentee ballot *by mail* and not submit it *at a polling place*, where an election judge can serve as a witness. *See* Guide at 25.

Third, building on the assumption that Ms. Maples or Mr. Mohamed intends to vote by mail in a future election, the Court would have to assume further that either will be unable to find a notary or any qualified individual willing to serve as a witness. This assumption is particularly implausible when both individual Plaintiffs—like millions of other Minnesotans—have successfully found witnesses in the past. *See* Index # 1, Compl. ¶¶ 10-11. It only takes a moment to ask a friend, family member, neighbor, coworker, or any other person with whom Ms. Maples or Mr. Mohamed routinely interacts to serve as a witness. *Cf. League of Women Voters of Minn.*, 2021 WL 1175234 at *9 (finding that, even during COVID-19 pandemic, Minnesota's witness requirement did not impose a significant burden on voters). Neither Plaintiff does (nor could) allege that they do not regularly interact with registered Minnesota voters. Thus, the Complaint never meaningfully alleges that the Witness Requirement "will be applied to [Plaintiffs'] disadvantage." *Minn. Voters All.*, 955 N.W.2d at 643. The mundane inconvenience of having to ask someone to spend a couple minutes watching the individual

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Plaintiffs complete a mail ballot is *at most* a "usual burden of voting", and thus not an injury-in-fact implicating the right to vote. *Crawford v. Marion Cty. Elec. Bd.*, 553 U.S. 181, 198 (2008); *League of Women Voters of Minn.*, 2021 WL 1175234 at *6-9 (finding Witness Requirement did not implicate right to vote); *Kahn v. Griffin*, 701 N.W.2d 815, 834 (Minn. 2005) (Minnesota Constitution does not "provide greater protection to the right to vote than does the U.S. Constitution"). Because such commonplace inconveniences simply do not implicate the right to vote, they lack the "close relationship" to "traditional[]" constitutional injuries that confer standing. *TransUnion*, 141 S. Ct. at 2203.

Finally, if more were somehow needed, the Court would also have to assume that neither Plaintiff would successfully cure any failure to comply with the Witness Requirement. *See* Guide at 45–46. Either could do so by merely submitting a new, compliant mail ballot or voting in person. *Id.* Such efforts are less onerous than even the trip to the county courthouse that the U.S. Supreme Court found too insignificant to implicate the right to vote in *Crawford*. 553 U.S. at 199-200. As such, compliance with Minnesota's cure procedures bears no "close relationship" to "traditional[ ]" standing injuries. *TransUnion*, 141 S. Ct. at 2203.

Indeed, Plaintiffs do not allege that their primary example of the "Witness Requirement's Impact on Plaintiffs" applies to them. Index # 1, Compl. at 9. They speculate that some voters might have their mail ballots rejected because election officials could be confused by a witness who is a registered Minnesota voter with an address in a neighboring State. *Id.* ¶ 33. Election officials, however, are instructed on that possibility and how to address it, *see* Guide at 72, and Plaintiffs never allege that any ballot has been rejected on this basis. And neither Ms. Maples nor Mr. Mohamed alleges that it has happened to them, nor offer any reason to think the Witness Requirement "will be applied to their disadvantage" in that way. *Minn. Voters All.*, 955 N.W.2d at 643.

In short, the individual Plaintiffs have not alleged that they will suffer a concrete, imminent injury or that the Witness Requirement "will be applied to their disadvantage." *Id.* The "mere

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possibility" that either Plaintiff will be subject to the Witness Requirement "is not different in character from the possibility that any other citizen" might have to comply. *Minn. Voters All. v. State*, A-20-0469, 2021 WL 416744, at *4 (Minn. Ct. App. Feb. 8, 2021). The individual Plaintiffs lack standing to sue.

B. *The Alliance lacks standing.*

The Alliance also lacks standing. An organizational plaintiff can assert an organizational injury or associational standing on behalf of its members. *See Alliance for Metropolitan Stability v. Metropolitan Council*, 671 N.W.2d 905, 913-15 (Minn. Ct. App. 2003). The Alliance only asserts the latter—an injury on behalf of its members. Index # 1, Compl. ¶ 9 ("The Alliance brings this action on behalf of its members … ."); ¶¶ 31–32 (asserting no organizational injury).

This assertion fails for two reasons. *First*, organizations alleging associational standing must point to *specific* members who have been, or imminently will be, injured by the challenged law. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 498-99 (2009) (rejecting associational standing based on statistical likelihood that an unidentified member would be injured); *NAACP v. City of Kyle*, 626 F.3d 233, 237 (5th Cir. 2010) (requiring plaintiff to identify "specific member" injured by law). But the Alliance identifies only two specific members: Ms. Maples and Mr. Mohamed, who lack standing in their own right. *See supra* Part I.A. The Alliance identifies *no* other member—or anyone else—who has had a ballot rejected, or who faces imminent risk of ballot rejection, under the Witness Requirement. The Alliance's bare assertion that one or more members *might* be injured by the Witness Requirement is plainly inadequate. *See Summers*, 555 U.S. at 498-99.

Second, the Alliance's pleading fails the Minnesota Supreme Court's additional two-factor test for associational standing. That test asks whether, assuming "the[] organization[] were denied standing," (1) "no potential plaintiff would have standing to challenge the regulation in question" and (2) "for whose benefit … the regulation at issue [was] enacted[.]" *Alliance for Metropolitan Stability*, 671 N.W.2d at 914-15. As to the first question, voters whose ballots *have* been rejected under the Witness

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Requirement obviously have standing to challenge the law; this is not a case where it is "very unlikely" anyone could ever sue. *Id.* As to the second question, which focuses on who has the strongest interest in challenging a law, individuals whose votes were not counted are in a far better position than an organization to challenge the Witness Requirement. Those individuals—and not others—have an interest "different in nature from the citizenry in general." *Minn. Voters All.*, 955 N.W.2d at 642.

At least two other factors underscore that the Alliance has not met its burden to plead standing. For one thing, unlike the organization in *Alliance for Metropolitan Stability*, whose mission was laser-focused on the subject of the lawsuit—"affordable housing in metropolitan area communities," 671 N.W.2d at 910, 915—the Alliance's organizational focus is on senior citizens *generally*, with sub-focuses on *many* issues (including voting rights). Index # 1, Compl. ¶ 8; *accord* Alliance for Retired Americans, www.retiredamericans.org (last visited April 13, 2024) (highlighting advocacy related to Social Security, Medicare, and federal congressional voting records). For another, a challenge by voters who were actually injured by the Witness Requirement would allow the court to consider real-world facts about how the law operates in practice. That would be far preferable to litigating this speculation-riddled Complaint, which fails to identify a single person whose vote was prevented or rejected under the Witness Requirement. The Court should dismiss the Complaint.

II. PLAINTIFFS' CLAIMS FAIL AS A MATTER OF LAW

Even if Plaintiffs had sufficiently alleged standing, the Court should still dismiss because Count I and Count II each "fail[] to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02.

A. *Count I fails because the Witness Requirement does not violate Section 201.*

Minnesota's longstanding and commonplace Witness Requirement does not violate Section 201 of the VRA. Section 201 states:

> (a) No citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State.

> (b) As used in this section, the term "test or device" means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) **prove his qualifications by the voucher of registered voters or members of any other class.**

52 U.S.C. § 10501 (emphasis added).

Congress enacted the bolded language to address Jim-Crow era rules requiring "registered voters [to] vouch for new applicants in areas where practically no [African-Americans] are registered and where whites [could not] be found to vouch for [African-Americans]." S. Rep. No. 89-162, pt. 3, at 16 (1965), *as reprinted in* 1965 U.S.C.C.A.N. 2508, 2553; *see* H.R. Rep. No. 89-439, at 15 (1965), *as reprinted in* 1965 U.S.C.C.A.N. 2437, 2446. Shortly before Congress enacted Section 201, several federal courts enjoined such procedures because they were applied in a discriminatory manner. *United States v. Logue*, 344 F.2d 290, 291-93 (5th Cir. 1965) (per curiam); *United States v. Ward*, 349 F.2d 795, 799, 802 (5th Cir. 1965); *United States v. Manning*, 205 F. Supp. 172, 173-74 (W.D. La. 1962). Congress specifically noted these cases and southern States' discriminatory application of vouching laws as the basis for enacting this provision of Section 201. *See* S. Rep. No. 89-162, pt. 3, at 46 app'x G, *as reprinted in* 1965 U.S.C.CA.N. at 2549-50; *see also Davis v. Gallinghouse*, 246 F. Supp. 208, 217 (E.D. La. 1965).

Plaintiffs posit that the Witness Requirement violates Section 201 by requiring voters to "prove [their] qualifications by the voucher of registered voters or members of any other class." Index # 1, Compl. ¶¶ 38-39. But Section 201's plain text forecloses this argument in at least four ways.

First, the Witness Requirement does not violate Section 201 because it does not require any voter to "prove his qualifications"—by witness or otherwise. 52 U.S.C. § 10501(b). When the word "qualifications" appears in federal voting-related statutes, it refers to the formal criteria each State uses to determine *who* is eligible (and therefore may register) to vote, not to the rules governing *how* qualified voters cast their ballots. *See, e.g.*, *Pa. State Conf. of NAACP*, 97 F.4th at 135 (a statute "focus[ed] on voter qualification" addresses the "determin[ation] [of] who may vote" during voter registration); *Fla.*

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State Conf. of NAACP v. Browning, 522 F.3d 1153, 1170 (11th Cir. 2008) (discussing "qualifications necessary to be a registered voter" in context of federal voter-registration laws) (cleaned up).

The "qualifications" to vote in Minnesota are age, U.S. citizenship, "residenc[y] in Minnesota for 20 days immediately preceding the election," felony status, and legal competence. Minn. Stat. § 201.014. The Witness Requirement does not require witnesses to say anything about *any* of those qualifications. Instead, it requires the witness to observe only one thing: that the voter filled out the blank ballot and attestation. *See id.* § 203B.07 subdiv. 3. In other words, the witness "is only standing in to confirm that the voter completes . . . and signs the document." *Thomas*, 613 F. Supp. 3d at 961; *People First of Ala.*, 467 F. Supp. 3d at 1225 ("The witnesses' signature indicates only that they observed the voter sign the affidavit," not that they vouch for the individual's qualifications); *see also Howlette v. City of Richmond*, 485 F. Supp. 17, 24 (E.D. Va 1978) (upholding against a Section 201 challenge a requirement that each signature on a petition be notarized because "the notary merely administers an oath" and makes no statement regarding the signer's qualifications or registration to vote), *aff'd* 580 F.2d 704 (4th Cir. 1978). The Witness Requirement thus does not violate Section 201.

Second, the Witness Requirement does not require a witness to "vouch[ ]" for anything. *See Thomas*, 613 F. Supp. 3d at 961-62; *People First of Ala.*, 467 F. Supp. 3d at 1225; DOJ Br. 8-15. To "vouch" is to "to be able from your knowledge or experience to say that something is true."[5] Put another way, "vouching" involves reliance on personal knowledge to "answer for (another); to personally assure" someone else's assertion.[6] When someone vouches for a statement in a document, they "personally assure" the validity of that statement. *Id.* A witness or notary to a document, by contrast, "does not attest to the validity of the statement[] made in the document," but instead simply

[5] Vouch, Cambridge Dictionary (last visited Apr. 14, 2024), dictionary.cambridge.org/us/dictionary/english/vouch.

[6] Vouch, Black's Law Dictionary (11th ed. 2019).

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"certif[ies] the validity of the signature." *Butler v. Encyclopedia Brittanica, Inc.*, 41 F.3d 285, 293 (7th Cir. 1994). By the same token, a prosecutor cannot "vouch[] for the credibility of witnesses" at trial—*i.e.*, he cannot assure the jury that he knows the witness is being truthful—but he can attest that the witness in fact made the statements. *United States v. Young*, 470 U.S. 1, 18 (1985).[7]

This ordinary meaning of "vouch" makes particular sense in Section 201 given its historical context. Once more, Section 201 targeted southern States' demands that registered (mostly white) voters "vouch" that new voters were qualified and that they did not know of any reason (like felony status) that would render the applicant ineligible. *See supra* Part II.A. Such vouching requirements relied on the independent knowledge of the already-registered voter. *See, e.g.*, *Ward*, 349 F.2d at 799 (noting example where registrar told African-American voters "they would need two electors to identify them" and would not accept "any other form of identification"); DOJ Br. 8.

By contrast, Minnesota's Witness Requirement does not require the witness to "vouch" for a voter's qualifications. *See Thomas*, 613 F. Supp. 3d at 961-62; *People First of Ala.*, 467 F. Supp. 3d at 1225; DOJ Br. 8-15. The witness does not rely on personal knowledge to assert that anything the voter writes on the ballot is true, let alone that the voter satisfies Minnesota's qualifications to vote. *Compare* Minn. Stat. § 201.014, *with id.* § 203B.07 subdiv. 3. In other words, the only personal knowledge that the witness offers is based on the witness's observation of the voter's completion of the ballot, not of the voter's qualifications. *See id.* § 203B.07 subdiv. 3.

That the voter must complete and sign a certificate that she "meets all of the requirements established by law for voting absentee," *id.*, does not change this fact. After all, the witness does not attest—much less *vouch based on personal knowledge*—that the voter actually meets those requirements. *See id.*; Index # 1, Compl. ¶ 28 (reproducing sample witness statement*); cf. Thomas*, 613 F. Supp. 3d at

[7] The Minnesota Rules of Evidence also illustrate the difference between witnessing and "vouching." Witness testimony that recounts an out-of-court statement is not hearsay if it is not offered for the truth of the matter asserted, *i.e.*, if it does not vouch for the truth of the third-party declarant's statement. Minn. R. Evid. 801(c).

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961 (rejecting Section 201 challenge to witness requirement where "witness is not required to confirm that the voter is registered to vote or 'qualified' … [but] only to confirm that the voter completes the voter's oath and signs the document."); *People First of Ala.*, 467 F. Supp. 3d at 1225 (same).

Nor could the Witness Requirement mandate that the witness vouch for the voter's qualifications. The witness need not even *know* the voter, much less possess personal knowledge regarding her qualifications. *See* Minn. Stat. § 203B.07 subdiv. 3. Instead, the witness may be any "person who is registered to vote in Minnesota or … a notary public or other individual authorized to administer oaths." *Id.*; *see also Thomas*, 613 F. Supp. 3d at 962 ("There would be no need to, and the Witness Requirement does not, require the *witness*, who may not even know the voter, to sign upon the witness line for the purpose of verifying that the voter is registered or 'qualified' to vote.").[8]

Thus, the witness's attestation that she observed the voter complete the ballot bears no resemblance to the targeted Jim Crow practice, which required third parties to offer personal knowledge of an applicant's eligibility to vote. *See Howlette*, 484 F. Supp. at 24; *cf. Ward*, 349 F.2d at 799. Here again, Plaintiffs' challenge to the Witness Requirement does not fit with Section 201's language or history, and the Court should dismiss it.

Third, the Witness Requirement does not violate Section 201 because it does not require anyone to obtain the "voucher of *registered voters* or members of any other class." 52 U.S.C. § 10501(b) (emphasis added). This plain language of Section 201 prohibits conditioning the franchise on proving qualifications through the voucher of registered voters or other categories of *private* individuals. *See Thomas*, 613 F. Supp. 3d at 962 (upholding witness requirement because it did "not limit a witness to another qualified voter" but permits "a myriad of competent individuals" to serve as witnesses). It does not preclude States from requiring a voter's qualifications to be confirmed by government or

[8] For similar reasons, Minnesota's procedure for the witness to attest that a previously non-registered individual showed "proof of residence" to the witness, Minn. Stat. § 203B.07 subdiv. 3—which Plaintiffs do not appear to challenge in any event—does not violate Section 201, *see infra* Part III.

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other public officials. *See, e.g.*, *Davis*, 246 F. Supp. at 217.

Early precedent construing Section 201 confirms this point. The plaintiffs in *Davis* argued that a documentary proof-of-residence requirement violated Section 201 because it required the "voucher of members of a class," in the form of the document such as a driver's license or library card, to prove that the voter satisfied the State's residency qualification for voting. *See id.* The court rejected this "ingenious theory" attempting to shoehorn "the class of people who issue driver's licenses, library cards, rent receipts, postmarked envelopes, etc." into Section 201's proscription. *See id.* The court specifically declined to extend Section 201 to a requirement to furnish proof of residence to election officials even where such proof required previously establishing residency to government officials or even certain classes of private individuals. *See id.*

Here as well, Minnesota's Witness Requirement does not transgress Section 201 because it permits "a myriad of competent individuals to witness the oath," including notaries and election officials. *Thomas*, 613 F. Supp. 3d at 962; *see* Minn. Stat. § 203B.07 subdiv. 3; Guide at 25. This is the functional equivalent of what all individuals voting in person have always had to do: be supervised by government officials. Indeed, the fact that Minnesota offers its citizens the *option* of enlisting a registered voter instead of an election official merely makes voting *easier*. *Cf. Greater Birmingham Ministries v. Merrill*, 992 F.3d 1299, 1335 (11th Cir. 2021).

Fourth, the Witness Requirement does not "den[y] … the right to vote" in any election. 52 U.S.C. § 10501(b). This is so in two respects.

To begin with, the statutory "right to vote," as understood when Section 201 was enacted, did not encompass mail voting, so mail-voting rules like Minnesota's Witness Requirement do not deny any individual that right. *See* Order Granting Stay Pending Appeal at 5, *United States v. Paxton*, No. 23-50885, ECF 80-1 (5th Cir. Dec. 15, 2023) ("Paxton Stay Order") (mail voting rules "do not deny anyone the right to vote" under the 1964 Civil Rights Act "because they only affect the ability of some

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individuals to vote by mail"). When the VRA was passed, the "right to vote" meant the right to register to vote and to cast a ballot on equal terms with other registered voters. *See McDonald v. Bd. of Election Comm'rs*, 394 U.S. 802, 807 (1969). It was *not* understood to entail a right to vote by mail, since mail voting was limited to a small number of situations. *See, e.g.*, *id.* at 804. And just a few years after Section 201 became law, the U.S. Supreme Court unanimously held that "the right to vote" does not encompass the "right to receive absentee ballots." *Id.* at 807. The Minnesota Supreme Court reached the same conclusion a few years later. *See Bell*, 227 N.W.2d at 352–53 ("The opportunity of an absentee voter to cast his vote … by mail has the characteristic of a privilege rather than of a right. Since the privilege of absentee voting is granted by the legislature, the legislature may mandate the conditions and procedures for such voting."). Thus, rejecting a defective mail ballot under the Witness Requirement does not deny any individual the "right to vote" under Section 201.

In addition, mandatory ballot-casting rules do not deny anyone "the right to vote" under federal election statutes. *Pa. State Conf. of NAACP*, 97 F.4th at 133-35. By the mid-1960s, the "right to vote" was understood to compel election officials to count any "lawful and regular" ballot "entitled to be counted" under state law. *United States v. Mosley*, 238 U.S. 383, 385-86 (1915). It did not then—and does not now—contemplate freedom from neutral, generally applicable state laws governing the act of casting a ballot. *See, e.g.*, *id.*; *Brnovich v. Democratic Nat'l Comm.,* 141 S. Ct. 2321, 2340-41 (2021). As the Third Circuit recently confirmed, there is "no authority that the 'right to vote' encompasses the right to have a ballot counted that is defective under" a state "vote-casting rule." *Pa. State Conf. of NAACP*, 97 F.4th at 133. "If state law provides that ballots completed in different colored inks, or secrecy envelopes containing improper markings, or envelopes missing a date, must be discounted, that is a legislative choice that federal courts might review if there is unequal application, but they have no power to review" such choices when a statute merely protects the "right to vote." *Id.*

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The Witness Requirement—a neutral, generally applicable "vote-casting rule" applied evenhandedly—does not implicate the right to vote. Moreover, it is commonplace, easy to comply with, and "eminently sensible." *Middleton v. Andino*, 990 F.3d 768, 772 (4th Cir. 2020) (en banc) (Wilkinson and Agee, JJ., dissenting from denial of stay), *stay granted by* 141 S. Ct. 9. "Just think of all the areas in which law requires witnesses and notaries to inspire trust in official documents and acts to convey their authenticity." *Id.* Minnesotans have to get documents notarized all the time. Like other such requirements, the Witness Requirement is transparently "designed to combat voter fraud, a fight which 'the State indisputably has a compelling interest' in winning." *Id.* (cleaned up).

That reality helps explain why at least 11 States have requirements like Minnesota's.[9] Some, including Minnesota's, existed both long before and after Section 201 was enacted. Yet, no court has ever held that a witness requirement violates Section 201. Indeed, the Department of Justice told a federal court in 2020 that it was unaware of any Section 201 challenges to witness requirements filed before that year. *See* DOJ Br. 10. The U.S. Supreme Court recently vacated a preliminary injunction against South Carolina's witness requirement. *See Andino*, 141 S. at 9-10 (unanimously staying injunction against South Carolina's witness requirement). And "the courts of appeals have resisted overturning [witness] laws" when presented with various legal theories. *Middleton*, 990 F.3d at 772 (op. of Wilkinson and Agee, JJ.); *see Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 3619499 at *2 (7th Cir. Apr. 3, 2020) (staying injunction against Wisconsin's witness requirement). But according to Plaintiffs, Congress invalidated all witness requirements almost 70 years ago—everyone simply missed the message. That is not plausible. After all, Congress does not "hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). And the fact that the Department of Justice has *never* challenged a witness requirement under Section 201, *see* DOJ Br. 10—and that no private plaintiff

[9] *See* Ala. Code § 17-11-7; Alaska Stat. § 15.20.203(b)(2); La. Stat. Ann. § 18:1306(E)(2); Miss. Code Ann. § 23-15-627; Mo. Rev. Stat. § 115.283; N.C. Gen. Stat. § 163-321(a)(5); Okla. Stat. tit. 26, § 14-108; R.I. Gen. Laws § 17-2023(c); S.C. Code §§ 7-15-220, -380; Va. Code Ann. § 24.2-706; Wis. Stat. § 6.87(4)(b).

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attempted to do so until 2020—only underscores that Section 201 does not extend to these longstanding rules. *See, e.g.*, *West Virginia v. EPA*, 597 U.S. 697, 725 (2022) ("[J]ust as established practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred." (cleaned up)).

Under Plaintiffs' theory, Congress missed the memo, too. In 2010, it enacted the Military and Overseas Voter Empowerment Act, which prohibits States from rejecting absentee ballots cast by servicemembers whose ballots violate state witness requirements. 52 U.S.C. § 20302(i)(1). Of course, if Section 201 already prohibited such requirements nationwide, Congress wasted its time. But Congress is presumed *not* to enact redundant laws. *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990). Here, that rule confirms that Section 201 does not reach the Witness Requirement.

The Court should reject Plaintiffs' rewriting of Section 201 and invitation to second-guess the longstanding consensus among the States, Congress, the courts, and the Department of Justice that state witness requirements comply with federal law. The Court should dismiss Count I.

B. *The Witness Requirement does not violate the Materiality Provision.*

The Court should also dismiss Count II because the Witness Requirement does not even implicate, let alone violate, the Materiality Provision.

1. The Materiality Provision's plain text forecloses Plaintiffs' claims.

Plaintiffs' argument that the Witness Requirement violates the Materiality Provision of the Civil Rights Act of 1964 is equally meritless. The Materiality Provision directs:

> No person acting under color of law shall … 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).

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As the Third Circuit recently explained in a comprehensive opinion, the Materiality Provision applies only to state voter-registration rules governing who can vote. *Pa. State Conf. of NAACP*, 97 F.4th at 129-133. The statute's limited reach corresponds with the limited (but important) problem Congress sought to solve: southern States' "practice of disqualifying potential voters for their failure to provide information irrelevant to determining their eligibility to vote" during the voter-registration process. *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003); *Pa. State Conf. of NAACP*, 97 F.4th at 133 ("The legislative history shows the enacting Congress was concerned with discriminatory practices during voter registration, thus in line with what the text reflects."). In particular, Congress addressed "the practice of requiring unnecessary information for voter registration"—such as the "exact number of months and days in [the registrant's] age"—"with the intent that such requirements would increase the number of errors or omissions on the application forms, thus providing an excuse to disqualify potential voters." *Schwier*, 340 F.3d at 1294. "Such trivial information served no purpose other than as a means of inducing voter-generated errors that could be used to justify rejecting applicants." *Browning*, 522 F.3d at 1173. The Materiality Provision thus guards against discriminatory application of voter qualification and registration rules. *Id.*; *Pa. State Conf. of NAACP*, 97 F.4th at 131.

Of course, States must enact many voting laws that have nothing to do with qualifications or registration. *See, e.g.*, *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (distinguishing between state laws that "govern[ ] the registration and qualifications of voters, the selection and eligibility of candidates, [and] the voting process itself"). "Casting a vote, whether by following the directions for using a voting machine or completing a paper ballot, requires compliance with certain rules." *Brnovich*, 141 S. Ct. at 2338. As the Third Circuit recently confirmed, the Materiality Provision does not apply to such ballot-casting rules. *See Pa. State Conf. of NAACP*, 97 F.4th at 134-35.

In this suit—filed before the Third Circuit decisively rejected the theory that the Materiality Provision extends to ballot-casting rules—Plaintiffs contend that the Witness Requirement violates

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the Materiality Provision. Index # 1, Compl. ¶¶ 40-47. But for at least three reasons, the Materiality Provision's plain text defeats Plaintiff's claim.

First, the Witness Requirement is not related to an "application, registration, or other act requisite to voting." These terms refer to documents used "during voter *registration*," and do "not cover records or papers provided during … *vote-casting*." *Pa. State Conf. of NAACP*, 97 F.4th at 133 (emphases added); *accord Ritter v. Migliori*, 142 S. Ct. 1824, 1825-26 (2022) (Alito, J., dissental); *Vote.Org v. Callanen*, 39 F.4th 297, 305 n.6 (5th Cir. 2022). The legislative history confirms that Congress used "application" and "registration" interchangeably to refer to voter registration. *See, e.g.*, H.R. Rep. No. 88-914, pt. 1, at 19 (1963), *as reprinted in* 1964 U.S.C.C.A.N. 2391, 2394 (provision bars "registration officials" from "disqualifying an applicant for immaterial errors or omissions"); *id.* at 77, 1964 U.S.C.C.A.N. at 2445 (referring to "application to register"); *id.*, pt. 2, at 5, 1964 U.S.C.C.A.N. at 2491 (referring to efforts to "defeat [African-American] registration" by "rejecting [African-American] applications" to vote); *Pa. State Conf. of NAACP*, 97 F.4th at 132-33. And States still do so today.[10]

The catch-all phrase "other act requisite to voting" likewise refers only to voter registration and similar procedures by which States determine eligibility to vote. 52 U.S.C. § 10101(a)(2)(B); *see Pa. State Conf. of NAACP*, 97 F.4th at 131-32. "[W]here general words follow an enumeration of specific items," they reach "other items akin to those specifically enumerated." *Harrison v. PPG Indus.*, 446 U.S. 578, 588 (1980). Thus, the catch-all phrase must be "controlled and defined by reference to the enumerated categories," *Circuit City Stores v. Adams*, 532 U.S. 105, 115 (2001), of "application" and "registration," *see Pa. State Conf. of NAACP*, 97 F.4th at 131-32; *Ball v. Chapman*, 289 A.3d 1, 38 n.11 (Pa. 2023) (opinion of Brobson, J.).

[10] *E.g.*, *Voter Registration*, Md. State Bd. of Elections ("Voter Registration Application"), https://perma.cc/FXC6-QKUD (last visited Apr. 19, 2024); *Voter Registration Application*, D.C. Bd. of Elections, https://perma.cc/B8GX-K4E7 (last visited April 19, 2024); *National Voter Registration Application Form for U.S. Citizens*, U.S. Election Assistance Comm'n, https://perma.cc/GEU2-9SNN (last visited April 14, 2024).

The Materiality Provision's limited application to voter registration dooms Plaintiffs' challenge because the Witness Requirement has nothing to do with registration. As Minnesota's Absentee Voting Administration Guide makes clear, standard mail ballot materials are sent *only* to "registered" voters. Guide at 23. When registered voters like Ms. Maples or Mr. Mohamed submit mail ballots and accompanying envelopes, those documents are not part of the voter-registration process and thus not covered by the Materiality Provision. *See Pa. State Conf. of NAACP*, 97 F.4th at 132-33.

Second, the Witness Requirement is not used by state officials "in determining" whether anyone is "qualified" to vote. 52 U.S.C. § 10101(a)(2)(B). Those statutory words "describe a process—namely, determining whether an individual is qualified to vote." *Pa. State Conf. of NAACP*, 97 F.4th at 131. For voting papers to be covered by the Materiality Provision, they must be used *during that process* and "only in that context," not to vote or to determine a ballot's validity. *Id.*

The structure of Section 10101 underscores this point. *See id.* The immediately preceding provision—subparagraph (a)(2)(A)—requires "uniform standards *for voter qualifications*" within political subdivisions. 52 U.S.C. § 10101(a)(2)(A) (emphasis added). That provision also uses materially identical language—"in determining whether any individual is qualified under State law or laws to vote in any election"—to limit its scope to qualification determinations. *Id.* And the subparagraph following the Materiality Provision, which bans literacy tests formerly used in southern States during voter registration, is likewise limited to "qualification" determinations. 52 U.S.C. § 10101(a)(2)(C).[11]

Subsection 10101(e) reinforces the qualification-and-registration focus of Subsection 10101(a). It empowers courts to address systemic violations of "*any* right or privilege secured by subsection (a)," including the Materiality Provision. *Id.* § 10101(e) (emphasis added). Yet, the only

[11] Congress reinforced that § 10101(a) is limited to voter registration when it later enacted Section 201, which bans literacy tests at all other steps of the election process. *See* 52 U.S.C. § 10501.

remedy it authorizes is "an order declaring [an applicant] qualified to vote." *Id.* It thus confirms that the "right" secured by the Materiality Provision is the right of qualified individuals to *register*.

Minnesota, like virtually every State, determines whether an "individual is qualified to vote," 52 U.S.C. § 10101(a)(2)(B), during a voter-registration process, *see* Minn. Stat. § 201.018. That some Minnesotans are allowed to register at the same time they vote does not change the fact that registration and voting are separate processes with different rules. *See* Guide at 23-24 (laying out different procedures for individuals who want to register to vote at same time as casting mail ballot). As a regulation of mail-in voting for registered voters, the Witness Requirement has nothing to do with determining a voter's *qualifications* but, instead, is used to determine a ballot's *validity* only after election officials have *already* found the voter qualified through the voter-registration process.

Third, because the Materiality Provision prohibits "deny[ing] the right of any individual to vote," it does not reach mandatory ballot-casting rules like the Witness Requirement. 52 U.S.C. § 10101(a)(2)(B); *see Pa. State Conf. of NAACP*, 97 F.4th at 133-34; *Ritter*, 142 S. Ct. at 1825–26 (Alito, J., dissental). As with Section 201, the Witness Requirement cannot violate the statutory "right to vote" for two reasons. To start, the Materiality Provision does not protect a (nonexistent) "right" to vote *by mail*. *See supra* Part II.A. The Witness Requirement only regulates mail voting and thus cannot violate the "right to vote." Further, as explained above, application of mandatory ballot-casting rules like the Witness Requirement does not violate the "right to vote." *See Pa. State Conf. of NAACP*, 97 F.4th at 133-34; *supra* Part II.B. Election officials enforcing the Witness Requirement do not "disqualify potential voters," remove them from registration rolls, or prevent future voting. *Schwier*, 340 F.3d at 1294. Instead, they simply decline to count defective ballots because a "voter failed to follow a rule." *Pa. State Conf. of NAACP*, 97 F.4th at 135. No right to vote has been denied. *Id.*

2. Plaintiffs' likely counterarguments fail.

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Plaintiffs will likely offer two counter-arguments, but both fail and were recently rejected by the Third Circuit. *First*, Plaintiffs have already contended that the Witness Requirement is "not material" to determining an individual's qualifications to vote. Index # 1, Compl. ¶ 44. That is correct—but it *defeats* Plaintiffs' claim. Because the Witness Requirement is not used to determine any individual's qualifications to vote, it does not implicate, let alone violate, the Materiality Provision. Upon "first glance," the Materiality Provision might seem to ban all vote-casting rules that are not material to determining whether an individual is qualified to vote. *Pa. State Conf. of NAACP*, 97 F.4th at 131. But a closer look reveals that the statute only applies to rules governing the voter-registration process that are used to assess voter qualifications. *Id.* at 131-33.

Plaintiffs' contrary reading is startlingly broad and, unsurprisingly, incorrect. Under it, States cannot enact mandatory paper-based rules unless those rules "determine whether a voter meets State law qualifications to vote." Index # 1, Compl. ¶ 44. That theory would doom a vast swath of state election laws—many of which have nothing to do with confirming voter qualifications. *Pa. State Conf. of NAACP*, 97 F.4th at 134-35. States must provide a "complete' election code, regulating not only voter qualifications, but also "supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns," among others. *Smiley v. Holm*, 285 U.S. 355, 366 (1932); *Anderson*, 460 U.S. at 788 (distinguishing state laws that "govern[ ] the registration and qualifications of voters" from those regulating "the voting process itself"). Many of these are paper-based rules.

But Plaintiffs' theory would "tie state legislatures' hands in setting voting rules unrelated to voter eligibility." *Pa. State Conf. of NAACP*, 97 F.4th at 134. Indeed, if Plaintiffs are correct, many state election rules have been invalid since Congress enacted the Materiality Provision nearly 60 years ago. That defies not only the statute's plain text, but also the rule that "[i]f Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its

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intention to do so unmistakably clear in the language of the statute." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (cleaned up). Congress did not "hide [this] elephant[] in [the] mousehole[]" of the Materiality Provision. *Whitman*, 531 U.S. at 468; *FTC v. Bunte Bros., Inc.*, 312 U.S. 349, 352 (1941).

Consider just a few categories of rules doomed under Plaintiffs' revised Materiality Provision:

- Requirements that voters sign certifications on mail ballots, *e.g.*, Minn. St. 203B.07 subdiv. 3; Tex. Elec. Code. § 86.005(c); 25 P.S. §§ 3146.6(a), 3150.16(a); N.J. Stat. § 19:62-11(c);
- Rules prohibiting voters from making marks on secrecy envelopes, *e.g.*, 25 P.S. § 3146.8; *but see Pa. State Conf. of NAACP*, 97 F.4th at 139 (affirming validity of such laws);
- Overvote prohibitions, *e.g.*, 25 P.S. § 3063(a); Ariz. Rev. Stat. § 16-611; 15 Del. Code § 4972(b)(6);
- Pollbook requirements, *e.g.*, 25 P.S. § 3050; Va. Code Ann. § 24.2-611; Tex. Elec. Code § 63.003;
- Voter identification requirements for mail ballots, *e.g.*, Minn. St. § 203B.07 subdiv. 3; *but see Paxton* Stay Order (suggesting Texas's equivalent rule is legal); and
- Voter-assistance form requirements, *e.g.*, 25 Pa. Cons. Stat. § 3058; Ind. Code § 3-11.5-4-13.

Plaintiffs' interpretation would also render the Materiality Provision constitutionally suspect. Congress enacted the Materiality Provision using its Fifteenth Amendment enforcement power. *United States v. Mississippi*, 380 U.S. 128, 138 (1965). Under that power, Congress may pass laws "to remedy … violation[s] of rights" guaranteed by the Fifteenth Amendment and "enact so-called prophylactic legislation that proscribes facially constitutional conduct, in order to prevent and deter unconstitutional conduct." *Tennessee v. Lane*, 541 U.S. 509, 518 (2004). But Congress *lacks* power to redefine "the substance" of the Fifteenth Amendment's guarantee. *City of Boerne v. Flores*, 521 U.S. 507, 519 (1997). Thus, there "must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *Id.* at 520.

Plaintiffs do not (and cannot)—claim that the Witness Requirement violates the Fifteenth Amendment's ban on discrimination in voting laws. Therefore, the Materiality Provision must be

justified as prophylactic legislation. When properly limited to voter registration, it is a reasonably tailored prophylactic measure. Indeed, to assess congruence and proportionality, courts examine the "record" compiled by the enacting Congress, *id.* at 531–32, and the Congress that enacted the Materiality Provision compiled a substantial record of Fifteenth Amendment violations by southern States with respect to "voter *registration*." *Pa. State Conf. of NAACP*, 97 F.4th at 126 (emphasis added). The Materiality Provision respects States' control over voter eligibility, while keeping registrars honest by forbidding them from relying on irrelevant considerations when determining eligibility.

In contrast, Plaintiffs' theory unmoors the Materiality Provision from the Fifteenth Amendment. Congress did not consider practices beyond the registration process, including the application of ballot-casting rules when officials cannot observe the voter's race. *Id.* Plaintiffs' interpretation would thus render the Materiality Provision *not* "congruent and proportional" to the record of constitutional violations assembled by Congress, rendering the statute unconstitutional. *Boerne*, 521 U.S. 520. Constitutional avoidance therefore provides yet another reason to reject Plaintiffs' novel and destabilizing interpretation of the Materiality Provision.

Second, Plaintiffs will likely put heavy weight on the statutory definition of "vote," which includes "having [one's] ballot counted and included in the appropriate totals of votes cast." 52 U.S.C. § 10101(a)(3)(A). This argument is multiply flawed. *See Pa. State Conf. of NAACP*, 97 F.4th at 132-34 (addressing and rejecting argument). To start, the Materiality Provision confers the "right … to vote." As discussed above, that right has long been understood to guard "the opportunity to access the ballot in the first instance—not … the right to cast a defective ballot." *Id.*; *supra* Part II.A.

In any event, the statutory definition is easily harmonized with the meaning of "right to vote." In 1965, the "right to vote" included "the right to have one's vote counted." *Reynolds v. Sims*, 377 U.S. 533, 554 (1964) (cleaned up). But then as now, that right abides only so long as the individual complies with ballot-casting rules. *See, e.g., Mosley*, 238 U.S. at 386. Indeed, the definition of "vote" refers to

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"all action necessary to make a vote effective." 52 U.S.C. § 10101(e). Nothing in that definition liberates voters from compliance with all rules "necessary to make a vote effective." *Id.*

III. MINNESOTA'S WITNESS PROCEDURE FOR NON-REGISTERED VOTERS IS UNCHALLENGED AND LAWFUL IN ANY EVENT

Plaintiffs' Complaint mentions only in passing the witness procedure for previously non-registered individuals who vote by absentee ballot, under which the individual "provide[s] proof of residence" to the witness and the witness attests to that fact. Minn. Stat. § 203B.07, subdiv. 3; *see* Index #1, Compl. ¶¶ 20, 26. The Complaint gives no indication that Plaintiffs seek relief from this procedure, which applies to only a subset of voters, rather than from the Witness Requirement applicable to all absentee voters. *See, e.g.*, Index #1, Compl. ¶¶ 35-47. If Plaintiffs do intend to challenge that distinct procedure, their Complaint fails to give adequate notice of that intent and, thus, fails to state any claim. *See Walsh*, 851 N.W.2d at 604-05 (explaining that complaint must give "information sufficient to fairly notify the opposing party of the claim[s] against it").

In all events, any challenge to the distinct witness procedure for non-registered voters would fail for the same three reasons that Plaintiffs' challenges to the Witness Requirement fail. *First*, no Plaintiff has standing to challenge that procedure. Ms. Maples and Mr. Mohamed are *registered* voters, Index # 1, Compl. ¶¶ 10-11, meaning they will not be required to have someone witness proof of their residency. Nor does the Alliance identify any non-registered voter who will even be subject to—let alone injured by—this procedure. *See, e.g.*, *id.* And the Complaint identifies no one who has been unable to register to vote because of this procedure. *See, e.g.*, *id.* Plaintiffs thus cannot (and do not) allege that the procedure "will be applied to their disadvantage." *Minn. Voters All.*, 955 N.W.2d at 643.

Second, the witness procedure for previously non-registered voters does not violate Section 201. In the first place, the witnesses is not "vouch[ing]" for a voter's residency; the witness merely certifies that the voter showed proof of residence. *See* Minn. Stat. § 203B.07, subdiv. 3. Indeed, the witness may not even know the voter, much less have personal knowledge regarding the voter's

residency. *See id.*; *Thomas*, 613 F. Supp. 3d at 961-62; *People First of Ala.*, 467 F. Supp. 3d at 1225. Moreover, previously non-registered voters are not required to present their proof of residency to "registered voters or members of any other class," 52 U.S.C. § 10501(b) (emphasis added), because they may present it to election officials instead, *see Thomas*, 613 F. Supp. 3d at 962. And in all events, requiring "proof of residence that can be accomplished by a variety of documents" does not violate Section 201 or the "right . . . to vote." *Davis*, 246 F. Supp. at 217. To the contrary, federal law specifically anticipates that States will require applicants to provide proof of their address to government officials. *See* 52 U.S.C. § 21803(b)(3). This conclusion is particularly apt here: by effectively deputizing private witnesses to attest to the existence of proof of residence, Minnesota law makes voter registration *easier* than in virtually all other States, where voters must supply their proof of residence to election officials only. Such an accommodation compared to the prevailing practice across the country cannot deny any individual's "right to vote" under Section 201.

Third, the witness procedure for previously non-registered voters does not violate the Materiality Provision. Requiring unregistered voters to show proof of residence to *either* an election official or a witness, and requiring that reviewing individual to confirm that such proof was shown, is "material in determining whether [an] individual is qualified under State law to vote." 52 U.S.C. § 10101(b). Residency is a qualification under Minnesota law. Minn. Stat. § 201.014. Under any definition of "material," requiring proof of residence is obviously "material" to establishing residence. *Browning*, 522 F.3d at 1173-74; *see Vote.Org v. Callanen*, 89 F.4th 459, 481 (5th Cir. 2023) (establishing materiality test for voter-registration rules but cautioning that courts must give "considerable deference" to States' "election procedures so long as they do not constitute invidious discrimination").

CONCLUSION

The Court should dismiss the Complaint.

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Respectfully submitted,

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

DATED: April 25, 2024

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