

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
Case Type: Civil Other/Misc.

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.

Case No. 62-cv-24-854

Assigned Judge: Hon. Edward Sheu

**AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

INTRODUCTION

Plaintiffs Minnesota Alliance for Retired Americans Educational Fund, Teresa Maples, and Khalid Mohamed file this Amended Complaint for Declaratory and Injunctive Relief against Defendant Steve Simon, in his official capacity as the Minnesota Secretary of State, and hereby state and allege as follows:

1. This lawsuit challenges Minnesota's requirement that voters using absentee ballots obtain the signature of a registered Minnesota voter, notary, or other official authorized to administer oaths to exercise their right to vote and participate in the political process. *See* Minn. Stat. §§ 203B.07, 203B.121; Minn. R. 8210.0500; Minn. R. 8210.0600; Minn. R. 8210.2450 (together, "the witness requirement").

2. The witness requirement directly contradicts federal law. When Congress enacted the Voting Rights Act in 1965, it took aim "at the subtle, as well as the obvious," discriminatory state voting regulations. *Allen v. State Bd. of Elections*, 393 U.S. 544, 565 (1969). One especially

pernicious practice adopted by southern states after the Civil War required any would-be voter to produce a “supporting witness” willing to “vouch” for the aspiring voter’s qualifications. *United States v. Logue*, 344 F.2d 290, 291 (5th Cir. 1965) (per curiam). Because only someone who was “already a registered voter in the county” could serve as a supporting witness, this rule empowered registered white voters to prevent their otherwise qualified Black neighbors from accessing the franchise by refusing to vouch for their eligibility. *Id.*

3. In response, Congress forbade select jurisdictions from conditioning *any* person’s voting rights on the “voucher” of qualifications by “registered voters or members of any other class.” Voting Rights Act of 1965, Pub. L. No. 89-110, § 4(c), 79 Stat. 437, 438-39 (1965). In 1970, Congress extended this prohibition nationwide. Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, § 6, 84 Stat. 314, 315 (1970). And in 1975, Congress made the prohibition permanent. Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, § 102, 89 Stat. 400, 400 (1975).

4. Today, federal law prohibits *any* state-law “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.” 52 U.S.C. § 10501(b). This is true in every state, regardless of whether the jurisdiction has a history of using voucher requirements to disenfranchise Black or other minority voters. Put simply, Congress has determined that *no* citizen of the United States should be subjected to a voucher requirement in any circumstances.

5. Minnesota’s witness requirement violates the Voting Rights Act’s categorical prohibition on voucher requirements. It requires that a witness who is either (1) a registered Minnesota voter, (2) a notary, or (3) otherwise authorized to administer oaths, vouch for an absentee voter before that voter’s ballot may be counted.

6. Insofar as Minnesota's witness requirement is not an unlawful voucher under the Voting Rights Act, the witness requirement necessarily violates the Civil Rights Act of 1964's prohibition on denying the right of any individual to vote because of an immaterial "error or omission" on a paper "requisite to voting." 52 U.S.C. § 10101(a)(2)(B). If the witness requirement is not meant to vouch for the voter's qualifications under Minnesota law, then it is, by definition, "not material in determining whether [an] individual is qualified under State law to vote." *Id.*

7. Plaintiffs ask the Court to enforce the clear mandates of the Voting Rights Act and the Civil Rights Act by enjoining Minnesota's unlawful absentee-ballot witness requirement.

PARTIES

8. Plaintiff Minnesota Alliance for Retired Americans Educational Fund (the "Alliance") is a nonpartisan organization incorporated in Minnesota as a domestic nonprofit corporation under Chapter 317A of the Minnesota Statutes and is a 501(c)(4) nonprofit, social welfare organization under the Internal Revenue Code. The Alliance has 84,282 members in Minnesota, including more than 9,000 members in Ramsey County. Its members include retirees from public and private sector unions, community organizations, and individual activists. The Alliance is a chartered state affiliate of the Alliance for Retired Americans. Its mission is to ensure social and economic justice and full civil rights that retirees have earned after a lifetime of work. The Alliance achieves its mission through grassroots advocacy, contributions to state and federal labor and electoral campaigns, and participation in "get out the vote" campaigns, including retiree phone banks and door-to-door campaigning, the creation of educational materials, presentations, letter writing campaigns, and email and internet outreach activities.

9. The witness requirement frustrates the Alliance's mission because it abridges its individual members' right to vote and to have their votes counted and threatens the Alliance's ability to support candidates who share its values. The Alliance brings this action on behalf of its

members who rely heavily on absentee voting to participate in the political process and are forced to comply with a burdensome and unlawful witness requirement in order to have their ballots counted. Many of the Alliance's members, for example, either live alone or experience mobility challenges that make it difficult to find an appropriate witness for their absentee ballots. *See infra* ¶ 11.

10. The witness requirement also harms the Alliance directly. Given the risk of disenfranchisement facing its members, the Alliance must expend money and volunteer time to educate its members on the witness requirement. Specifically, the Alliance uses postcard campaigns to inform its members of the witness requirement and how they can comply. The Alliance also attempts to connect its members with other local members who are willing and able to serve as a witness. The resources expended on these efforts must be diverted from the Alliance's other mission critical election-related programs, including phone drives, issue organizing, holding events, and canvassing, which limits the size and scope of those activities.

11. Plaintiff Teresa Maples is a qualified Minnesota voter currently registered in Goodhue County. Ms. Maples is a member of the Minnesota Alliance for Retired Americans and regularly votes absentee in Minnesota. She is 70 years old and lives alone in Redwing. Ms. Maples has medical conditions that present mobility issues, making it difficult to venture out to obtain a witness or notary. In the past, her son or neighbors have served as a witness. However, her son recently passed away and Ms. Maples has moved into a new building, where she does not know her neighbors and will have great difficulty finding a witness for her absentee ballot in the 2024 election.

12. Plaintiff Khalid Mohamed is a qualified Minnesota voter. He currently lives in Minneapolis and is registered to vote in Hennepin County. Mr. Mohamed is a member of the

Somali-American community and routinely votes by absentee ballot. He has struggled to find a registered voter or notary within his community who is willing and able to witness his ballot. In previous elections, he has had to reach out to a range of friends and acquaintances to find someone who can make the time to witness his absentee ballot. Mr. Mohamed expects to have difficulty finding someone to witness his absentee ballot in the 2024 election.

13. Defendant Steve Simon is the Secretary of State of Minnesota and is named as a Defendant in his official capacity. He is the State's chief elections officer and, as such, is responsible for the administration and implementation of election laws in Minnesota. Among many other duties, the Secretary is specifically responsible for "adopt[ing] rules establishing the form, content, and type size and style for the printing of blank applications for absentee ballots, absentee voter lists, return envelopes, certificates of eligibility to vote by absentee ballot, ballot envelopes, and directions for casting an absentee ballot." Minn. Stat. § 203B.09.

JURISDICTION AND VENUE

14. Plaintiffs bring this action under the laws of the United States. As a court of general jurisdiction, this Court has authority to hear these claims. *See* Minn. Const. art. VI, § 3; Minn. Stat. § 484.01.

15. This Court is authorized to grant declaratory relief pursuant to the Uniform Declaratory Judgments Act. *See* Minn. Stat. § 555.01; Minn. R. Civ. P. 57. This Court also has the authority to grant injunctive relief under the Minnesota Rules of Civil Procedure. *See* Minn. R. Civ. P. 65.

16. This Court has personal jurisdiction over Defendant, who is sued in his official capacity and resides within this State.

17. Venue in Ramsey County is proper because the cause of action arose in part in Ramsey County, and Defendant's offices are in Ramsey County. *See* Minn. Stat. §§ 542.03, 542.09.

GENERAL ALLEGATIONS

A. Absentee Voting in Minnesota

18. In Minnesota, “[a]ny eligible voter may vote by absentee ballot as provided in sections 203B.04 to 203B.12 [(the general absentee voting statute)].” Minn. Stat. § 203B.02, subdiv. 1.

19. Minnesota law defines “eligible voter” as an individual who is (1) 18 years of age or older; (2) a citizen of the United States; and (3) has maintained residence in Minnesota for 20 days immediately preceding the election. Minn. Stat. § 201.014, subdiv. 1.

20. All absentee voters must procure the assistance of a witness to validly complete and return the ballot.¹ The witness must be either (1) a registered Minnesota voter, (2) a notary public, or (3) another individual authorized to administer oaths. Minn. Stat. § 203B.07, subdiv. 3.

21. The witness must sign a “certificate of eligibility,” which is printed on the absentee ballot signature envelope, stating that “(1) the ballots were displayed to that individual unmarked; (2) the voter marked the ballots in that individual’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; and (3) if the voter was not previously registered, the voter has provided proof of residence as required by section 201.061, subdivision 3.” *Id.*

¹ Minnesota does not require a witness for two categories of absentee voters: military or overseas voters and any voter who requests a presidential-only absentee ballot. *See* Minn. Stat. § 203B.21; Minn R. 8210.0800; Minn. R. 8210.0100.

22. The voter must also sign the “certificate of eligibility,” which includes “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.” *Id.*

23. Once received by local officials, each absentee ballot signature envelope is examined by two or more members of the local ballot board, who are chosen from among the locality’s election judges. Minn. Stat. § 203B.121, subdiv. 2(a). The members of the ballot board must examine each signature envelope and mark it “accepted” or “rejected.” *Id.* A signature envelope may only be marked “accepted” if a majority of the members of the ballot board are satisfied that, among other things, “the certificate has been completed as prescribed in the directions for casting an absentee ballot.” *Id.* subdiv. 2(b)(5). If that requirement is not met, the signature envelope will be rejected. *Id.* subdiv. 2(c)(1).

24. Minnesota statutes require that an absentee ballot with an incomplete witness statement be rejected. Minn. R. 8210.2450. *See also* Minn. Stat. § 203B.121 subdiv. 2(c)(1).

B. Defendant’s Role in Administering the Witness Requirement

25. The Secretary of State is required to “adopt rules establishing the form, content, and type size and style for the printing of . . . return envelopes, certificates of eligibility to vote by absentee ballot, ballot envelopes, and directions for casting an absentee ballot.” Minn. Stat. § 203B.09. Pursuant to that statutory obligation, the Secretary has promulgated Minn. R. 8210.0500 and Minn. R. 8210.0600.

26. Minnesota Rule 8210.0500 prescribes the form of instructions to absentee voters. Among those instructions is a notice that absentee voters require a witness, who may be (1) anyone registered to vote in Minnesota, (2) a notary public, or (3) a person with the authority to administer oaths.

27. Minnesota Rule 8210.0600 prescribes the form of the required statement of an absentee voter. One section of the signature envelope is completed by the voter, and another section of the form states: “Witness must complete this section.” *Id.* subp. 1a. For existing registrants, the Secretary requires the witness to certify that (1) “the voter showed me the blank ballots before voting,” (2) “the voter marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter,” (3) “the voter enclosed and sealed the ballots in the ballot envelope,” and (4) “I am or have been registered to vote in Minnesota, or am a notary, or am authorized to give oaths.” *Id.* If the voter is a new registrant or needs to update their registration, the witness must further 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,” choosing from among a list of acceptable forms of proof of residence. *Id.* subp. 1b.

28. Minnesota Rule 8210.2450, promulgated by the Secretary, requires two or more members of a local ballot board to “review the absentee ballots returned for the precinct under Minnesota Statutes, section 203B.121.”

29. The Secretary has also promulgated a guide “designed to aid election officials in the administration of absentee voting,” which includes specific guidance for accepting and rejecting ballots based on compliance with the witness requirement. *See* Absentee Voting Guide at 7.² The Absentee Voting Guide includes examples of ballots that should be rejected for failure to comply with the witness requirement. *Id.* at 83-85. For example, ballots in which the witness omits their street address or city are included by the Secretary as examples of ballots that should be rejected even though other address information is included on both ballots:

² Office of the Minn. Sec’y of State, 2022 Absentee Voting Administration Guide (July 21, 2022) [hereinafter “Absentee Voting Guide”], available at: <https://www.sos.state.mn.us/media/5058/absentee-voting-administration-guide.pdf>.

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Signature Envelope

Voter must complete this section please print clearly

Voter name

Voter MN address } 425882 STG 11/02/2010 IP PCT R B549767
02 1280 0011-01 ANOKA P-6
JOHN ADAMS
325 E MAIN ST ENVK2

ID number (MN driver's license #, MN ID card #, or last four digits of SSN) **M12349876543210**

I do not have a MN-issued driver's license, MN-issued ID card, or a Social Security Number.

I certify that on Election Day I will meet all the legal requirements to vote.

Voter Signature **X John Adams**

Witness must complete this section

Witness name **Abigail Adams**

MN street address (or title, if an official or notary) **Anoka MN**

I certify 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 endorsed 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.

Witness Signature **X Abigail Adams**

If notary, must affix stamp

For Official Use Only
 Accepted Rejected (reason): **No MN Address**

Signature Envelope - Registered

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Signature Envelope

Voter must complete this section please print clearly

Voter name

Voter MN address } 425882 STG 11/02/2010 IP PCT R B549767
02 1280 0011-01 ANOKA P-6
JOHN ADAMS
325 E MAIN ST ENVK2

ID number (MN driver's license #, MN ID card #, or last four digits of SSN) **M9876543210123**

I do not have a MN-issued driver's license, MN-issued ID card, or a Social Security Number.

I certify that on Election Day I will meet all the legal requirements to vote.

Voter Signature **X John Adams**

Witness must complete this section

Witness name **Abigail Adams**

MN street address (or title, if an official or notary) **100 Main ST MN**

I certify 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 endorsed 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.

Witness Signature **X Abigail Adams**

If notary, must affix stamp

For Official Use Only
 Accepted Rejected (reason): **No MN Address**

Signature Envelope - Registered

30. By preparing and disseminating guidance for accepting and rejecting absentee ballots based on compliance with the witness requirement to local election officials, Defendant Secretary of State administers and enforces the Witness Requirement.

C. The Witness Requirement's Impact on Plaintiffs

31. By enforcing and administering the witness requirement, Defendant has injured and will continue to injure Minnesota's absentee voters, including the individual Plaintiffs and the Alliance's members.

32. In the 2022 general election alone, Minnesota rejected almost 2,000 absentee ballots for failure to comply with the witness requirement. *See* EAVS Report.³ This constituted over a quarter of all absentee ballot rejections. *Id.*

33. The requirement that the individual Plaintiffs locate a qualified witness willing and able to certify their absentee ballots is, in itself, a concrete and particularized burden on the individual Plaintiffs' legally protected rights under the Voting Rights Act and/or the Civil Rights Act and those of the Alliance's members.

34. The witness requirement also injures voters—including the individual Plaintiffs and the Alliance's members—by subjecting them to the added risk of disenfranchisement due to errors or omissions in the witness statement that occurred by no fault of their own.

35. For instance, state law requires absentee ballot witnesses to provide their "Minnesota street address," Minn. R. 8210.0500, and the absentee ballot envelope prompts the witness to list their address but does not specify how much address information the witness must include to be considered compliant with the witness requirement. Yet the Absentee Voting Guide directs ballot boards to reject absentee ballots with witness statements missing *any* part of a street address. *See supra* ¶ 29. Some Minnesota voters who live in border townships may have Iowa, North Dakota, or South Dakota mailing addresses. *See* Absentee Voting Guide at 72. When those voters serve as a witness, there is a heightened risk of disenfranchisement as a result of technical, nonmaterial failures because the guidelines generally instruct county officials to reject ballots where the witness lists an out-of-state address. *Id.*

³ Election Administration and Voting Survey 2022 Dataset, United States Election Assistance Commission, Version 1.1 dated December 18, 2023, available at: <https://www.eac.gov/research-and-data/studies-and-reports>.

36. In sum, Minnesota’s witness requirement injures Plaintiffs in several concrete ways. The mere act of complying with the requirement burdens the individual Plaintiffs and the Alliance’s members who vote absentee. And the requirement to provide specific witness details exposes Plaintiffs to a substantial threat of disenfranchisement based on technical noncompliance with nonmaterial requirements.

CLAIMS FOR RELIEF

COUNT I

Voting Rights Act § 201

52 U.S.C. § 10501; 42 U.S.C. § 1983; 28 U.S.C. §§ 2201, 2202

37. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Amended Complaint and the paragraphs in the counts below as though fully set forth herein.

38. Minnesota’s witness requirement for absentee voters violates Section 201 of the Voting Rights Act of 1965.

39. Section 201 of the Voting Rights Act provides that:

(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).

40. Minnesota’s witness requirement is a “test or device” because it requires “that a person as a prerequisite for voting . . . prove his [or her] qualifications by the voucher of [a] registered voter[] or [a] member[of a] class.” The witness requirement is a “prerequisite for voting” because a voter who fails to satisfy the requirement will have their ballot rejected rather

than counted. *See* Minn. Stat. § 203B.121, subdiv. 2(c)(1). And the witness requirement forces voters to prove their “qualification by . . . voucher of [a] registered voter[] or” a notary or other official authorized to administer oaths.

41. For all absentee voters, the witness must sign the “certificate of eligibility,” otherwise the absentee ballot will be rejected. Minn. Stat. § 203B.07. If the voter is also registering absentee, the witness must go a step further and attest that the absentee voter has provided proof of residence. *Id.* In either scenario, the absentee voter’s exercise of their right to vote is subject to the voucher of a registered voter or a notary.

42. Accordingly, the Voting Rights Act prohibits the enforcement of the witness requirement as a test or device under Section 201 because it requires another registered Minnesota voter or a member of another class to vouch for an absentee voter before their ballot can be counted.

COUNT II

Civil Rights Act Materiality Provision

52 U.S.C. § 10101(a)(2)(B); 42 U.S.C. § 1983; 28 U.S.C. §§ 2201, 2202

43. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Amended Complaint and the paragraphs in the counts below as though fully set forth herein.

44. Under Minnesota’s witness requirement, an absentee voter’s ballot is rejected if the witness (1) omits their signature, (2) omits their street name or number, (3) omits their city, (4) lists an address that appears to be outside of Minnesota, or (5) lists a PO Box as an address. *See* Absentee Voting Guide at 72, 83–85. But these errors and omissions are not material in determining whether that absentee voter is qualified to vote, and, therefore, the materiality provision of the Civil Rights Act of 1964 prohibits disenfranchisement based off those errors and omissions.

45. Moreover, insofar as Minnesota’s witness requirement is not an unlawful voucher requirement under the Voting Rights Act, the witness requirement as a whole violates the materiality provision because it denies individuals the right to vote for failing to complete a witness statement that is not material in determining the absentee voter’s qualifications.

46. Even for new registrants and voters updating their registration, the attestation by a witness is not material in Minnesota’s determination of the voter’s qualifications. The witness merely attests that a document was presented; witnesses perform no other examination, comparison, or authentication of the document. Minn. Stat. § 203B.07, subdiv. 3. Unless the witness serves to “prove [the] qualifications” of the registrant by voucher—in contravention of the Voting Rights Act, 52 U.S.C. § 10501(b)—then the attestation of a witness is not material in determining whether the registrant is eligible to vote.

47. The Civil Rights Act prohibits any person acting under color of law from “deny[ing] 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).

48. The required certificate on the absentee ballot signature envelope is a record or paper, and completing this certificate is an act requisite to voting absentee in Minnesota.

49. Failing to comply with the witness requirement when preparing an absentee ballot certificate is an “error or omission on any record or paper.” 52 U.S.C. § 10101(a)(2)(B). But neither a signed witness statement nor a witness’s Minnesota address, title, or notary stamp are material to determining whether a voter meets State law qualifications to vote. Minn. Stat. §§ 201.014, 203B.02.

50. Minnesota law and regulations promulgated by the Secretary require members of the ballot board to reject the absentee ballots of voters who have not complied with the witness requirement. Minn. R. 8210.2450; *see also* Minn. Stat. § 203B.121 subdiv. 2(c)(1).

51. Specifically, if a witness statement is not completed “as prescribed in the directions for casting an absentee ballot,” then members of the ballot board must reject the corresponding ballot. Minn. Stat. § 203B.121 subdiv. 2(c)(1).

52. Accordingly, insofar as the Voting Rights Act does not prohibit enforcement of Minnesota’s witness requirement for absentee voting, the Civil Rights Act prohibits its enforcement because it requires rejection of mail ballots due to errors or omissions that are not material in determining whether individuals are qualified to vote in Minnesota.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendant, and:

- (a) Declare that Minnesota’s witness requirement for absentee voting violates the Voting Rights Act, 52 U.S.C. § 10501, or, in the alternative, violates the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B);
- (b) Enjoin Defendant, his respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from rejecting absentee ballots that fail to comply with the witness requirement;
- (c) Order Defendant, his respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, to permit first-time registrants to submit a copy of a proof of residence document under Minn. Stat. § 201.061, subdiv.

3 with their absentee registration application as an alternative to complying with the witness requirement;

- (d) Enjoin Defendant from preparing and distributing absentee ballot instructions, signature envelopes, or other forms that include the witness requirement;
- (e) Enjoin Defendant from preparing and distributing absentee ballot instructions, signature envelopes, or other forms that instruct or require any election official or local ballot board to reject absentee ballots due to errors or omissions in the witness's address, notary stamp, or other information reflected in the witness statement;
- (f) Award Plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988(b) and other applicable laws; and
- (g) Grant any such other and further relief as this Court deems just and proper.

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Dated: May 1, 2024

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/s/ Sybil L. Dunlop

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ACKNOWLEDGEMENT

The undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.211, subdiv. 3, sanctions may be imposed if, after notice and a reasonable opportunity to respond, the Court determines that the undersigned has violated the provisions of Minn. Stat. § 549.211, subdiv. 2.

/s/ Sybil L. Dunlop

Sybil L. Dunlop