STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

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

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION

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INTRODUCTION

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 endorse them. *Id.* In response, Congress enacted Section 201 of the Voting Rights Act to protect all voters against the use of voucher requirements, literacy tests, and other devices that were historically used to discriminate against racial minorities. Voting Rights Act of 1965 ("VRA"), Pub. L. No. 89-110, § 4(c), 79 Stat. 437, 438–39 (1965).

Minnesota's absentee voting rules violate Congress's prohibition on vouchers. The state allows any qualified resident to vote absentee; but to have their ballot counted, the voter must first convince another registered voter—or an official authorized to administer oaths—to sign the "certificate of eligibility," which appears on the absentee ballot envelope and states, among other things, that the ballots were displayed to the witness unmarked, that the voter marked the ballot in the individual's presence, and, if the voter was not previously registered, the voter has provided proof of residence. Minn. Stat. § 203B.07. In other words, anyone seeking to vote absentee in Minnesota must "prove [their] qualifications by the voucher of registered voters or members of any other class," 52 U.S.C. § 10501(b), which is precisely what the VRA forbids.

And to the extent that the "certificate of eligibility" can be construed as something other than a voucher of the voter's "qualifications," Minnesota's witness requirement runs headlong into

another federal law: the materiality provision of the Civil Rights Act. That provision prohibits denying the right to vote based on an error or omission on paperwork "relating to any . . . act requisite to voting, if such error or omission is not material in determining" the voter's qualifications. 52 U.S.C.A. § 10101(a)(2)(B). If the witness's signature does not in fact vouch for the voter's qualifications, then the omission of that signature or any other part of the witness certificate is not material in determining the voter's qualifications, and the voter's ballot cannot be rejected consistent with federal law.

Plaintiffs—the Minnesota Alliance for Retired Americans, Teresa Maples, and Khalid Mohamed—brought this lawsuit to enforce the VRA's and Civil Rights Act's protections against arbitrary infringement on their right to vote.[1] Now, Plaintiffs move for a temporary injunction to ensure that their rights are not infringed in the upcoming general election, and they satisfy all the requirements to obtain a temporary injunction. First, Plaintiffs are likely to succeed on the merits because the enforcement of Minnesota's witness requirement violates either the VRA or the materiality provision of the Civil Rights Act. And the remaining temporary injunction factors either weigh strongly in Plaintiffs' favor or are neutral: If an injunction is not issued, Plaintiffs will suffer irreparable harm because the witness requirement violates their rights under federal law and imposes significant obstacles on their ability to vote absentee; Plaintiffs' requested injunction will cause no harm to the Minnesota Secretary of State (the "Secretary") at all and is also in the public interest; as established in prior election-related cases in Minnesota, the relationship between the parties is a neutral factor; and the Court will face no administrative burdens in enforcing the

[1] The Minnesota Alliance for Retired Americans brings this lawsuit on behalf of itself and its members, which include Plaintiff Teresa Maples. All references to Plaintiffs also include members of the Alliance unless otherwise stated.

injunction. The Court should grant Plaintiffs' motion for a temporary injunction to preserve Minnesotans' federal voting rights for the 2024 general election.

FACTUAL BACKGROUND

Under Minnesota law, an "eligible voter" is a person who is (1) at least 18 years of age or older, (2) a citizen of the United States, and (3) a Minnesota resident who has maintained residence in the state for 20 days immediately preceding the election. Minn. Stat. § 201.014, subdiv. 1. All eligible voters are entitled to vote by absentee ballot. Minn. Stat. § 203B.02, subdiv. 1. Indeed, for some Minnesota voters, that is the *only* option because they live in a rural area without an in-person voting location. *See generally* Minn. Stat. §§ 204B.45, 204B.46 (authorizing mail-only balloting for any precinct having fewer than 100 registered voters).

But an absentee ballot cannot be counted unless it is returned in a designated envelope containing a "certificate of eligibility" that must be completed and signed by both the voter *and* a qualified witness. Minn. Stat. § 203B.07, subdiv. 3. The witness must be either (1) a registered Minnesota voter, (2) a notary public, or (3) another individual authorized to administer oaths. *Id.* The witness section of the signature envelope includes an attestation 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.*

Once submitted, each absentee ballot must be reviewed by two members of the ballot board for compliance with the witness requirement. Minn. Stat. § 203B.121 subdiv. 2; *see also* Minn. R. 8210.2450. To that end, the Secretary has promulgated guidance instructing ballot boards to reject absentee ballots where 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 7, 72, 83–85.[2] A signature envelope that fails to comply with the witness requirement—to the satisfaction of two members of the ballot board—must be marked "rejected" and the ballot inside cannot be opened or counted. Minn. Stat. § 203B.121 subdiv. 2.

Plaintiffs are two Minnesota voters who regularly vote absentee and plan to do so in future elections, and the Minnesota Alliance for Retired Americans—a nonpartisan organization whose members include retirees from public and private sector unions, community organizations, and individual activists. Absentee voting is particularly important for the Alliance's members, many of whom are home-bound or have limited mobility due to medical issues. *See* Decl. of Michel Madden ¶ 7 (Madden Decl.). As a result, an overwhelming majority of the Alliance's members vote by mail. *Id.* ¶ 7. Plaintiff Teresa Maples, for example, cannot drive herself to the polls and suffers from several chronic health conditions that compromise her mobility. Decl. of Teresa Maples ¶¶ 4–7 (Maples Decl.).

Plaintiffs filed their Complaint on February 13, 2024, Dkt. Index No. 2, and on March 5, the Secretary filed a Notice of Motion and Motion to Dismiss with a hearing date of May 23, 2024, Dkt. Index No. 11. Plaintiffs filed an Amended Complaint on May 1, 2024. Dkt. Index No. 52. Plaintiffs filed their Notice of Motion for a Temporary Injunction, this supporting Memorandum, and the accompanying declarations on May 2, 2024.

[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.

LEGAL STANDARD

"A temporary injunction may be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefor." Minn. R. Civ. P. 65.02(b). Whether to grant a temporary injunction is "largely an exercise of judicial discretion." *Hvamstad v. City of Rochester*, 276 N.W.2d 632, 632 (Minn. 1979). "Because a temporary injunction is granted before a trial on the merits, a showing of irreparable harm is required to prevent undue hardship to the party against whom the injunction is issued." *DSCC v. Simon*, 950 N.W.2d 280, 286 (Minn. 2020) (quotation omitted). In considering whether "the rights of a party will be irreparably injured before a trial on the merits is held" so as to justify a temporary injunction, courts consider five factors. *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). Referred to as the *Dahlberg* factors, they are as follows: (1) the "nature and background of the relationship between the parties," (2) the "harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial," (3) the "likelihood that one party or the other will prevail on the merits," (4) the "aspects of the fact situation, if any, which permit or require consideration of public policy," and (5) the "administrative burdens involved in judicial supervision and enforcement of the temporary decree." *DSCC*, 950 N.W.2d at 286–87 (citing *Dahlberg Bros. v. Ford Motor Co.*, 272 Minn. 264, 274–75, 137 N.W.2d 314, 321–22 (Minn. 1965)). A district court "has the power to shape [injunctive] relief in a manner which protects the basic rights of the parties, even if in some cases it requires disturbing the status quo." *N. Star State Bank of Roseville v. N. Star Bank Minn.*, 361 N.W.2d 889, 895 (Minn. Ct. App. 1985) (quoting *Cox v. Nw. Airlines, Inc.*, 319 F. Supp. 92, 95 (D. Minn. 1970)).

ARGUMENT

Application of the *Dahlberg* factors here demonstrates that Plaintiffs are entitled to a temporary injunction. *First*, and most importantly, Plaintiffs are likely to succeed on the merits of

each of their claims. *Second*, Plaintiffs are likely to suffer great harm if the temporary restraint is denied, while no harm will be inflicted on Defendants. *Finally*, the remaining *Dahlberg* factors are either neutral or weigh in favor of granting temporary injunctive relief.

I. Plaintiffs are likely to succeed in showing that the witness requirement violates the Voting Rights Act's prohibition on vouchers.

The Voting Rights Act's prohibition on vouchers squarely prohibits restrictions like the witness requirement. Section 201 of the VRA 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 . . . **(4) prove [their] qualifications by the voucher of registered voters or members of another class**.

52 U.S.C. § 10501 (emphasis added). The voucher rule thus prohibits requirements that: (i) serve as a prerequisite for voting, (ii) compel voters to prove qualifications by voucher of a third party, and (iii) limit the pool of potential vouchers to registered voters or members of another class.

A. The witness requirement is a prerequisite to voting.

The witness requirement is plainly a "prerequisite" to voting absentee in Minnesota. Under Minnesota law, a voter whose absentee ballot fails to satisfy the witness requirement will not be counted. A majority of the members of the ballot board must be satisfied that, among other things, the certificate on the absentee ballot signature envelope "has been completed as prescribed in the directions for casting an absentee ballot." Minn. Stat. § 203B.121, subdiv. 2(b)(5). And the "directions for casting an absentee ballot" prescribe that the voter's "certificate of eligibility" must be signed by a qualified witness. Minn. R. 8210.0500; Minn. Stat. § 203B.07, subdiv. 3. Any absentee ballot that lacks a witness's signature and address on the certificate of eligibility must be

rejected under Minnesota law. Minn. R. 8210.2450; *see also* Minn. Stat. § 203B.121, subdiv. 2(c)(1).

The availability of in-person voting does not change the fact that rejecting an absentee ballot that fails to comply with the witness requirement is a "denial" of the right to vote. It is axiomatic that "[t]he right to vote includes the right to have the ballot counted." *Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964) (quotation omitted). Once a state elects to offer a manner of voting to some class of voters—as Minnesota has offered absentee voting to all Minnesota voters—it must do so in a way that complies with federal law. *See Voto Latino v. Hirsch*, Nos. 1:23-CV-861 & -862, 2024 WL 230931, at *26 (M.D.N.C. Jan. 21, 2024) ("[T]he State, having offered the option of *voting* during [same-day registration], cannot discard [same-day registrants'] *ballots* due to governmental error and without notice and an opportunity to be heard simply on the ground that the voters should have known not to take such a risk."); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 217 (D.N.H. 2018) ("Having induced voters to vote by absentee ballot, the State must provide adequate process to ensure that voters' ballots are fairly considered and, if eligible, counted.").

Minnesota therefore cannot offer no-excuse absentee voting, induce voters to vote absentee, and then disqualify their ballots based on a state-law requirement that violates federal law. Minnesota's decision to allow in-person voting *without* a voucher does not immunize its absentee balloting regime from compliance with the VRA. Consider the reverse scenario: could Minnesota require any voter who wished to vote at the polls to pass a literacy test—another "test or device" barred by Section 201—so long as it offers absentee voting without the need to comply with any such "test or device"? Plainly not. *See Logue*, 344 F.2d at 292–93.

B. The witness requirement forces voters to prove qualifications by voucher of a registered voter or individuals authorized to administer oaths.

Minnesota law also requires absentee voters to prove their qualifications by voucher. Section 203B.07 of the Minnesota Statutes requires "a certificate of eligibility to vote by absentee ballot" to be printed on the back of every absentee ballot signature envelope. Minn. Stat. § 203B.07, subdiv. 3. That "certificate" must contain a "space for a statement signed by" a qualified witness. *Id.* This witness statement is thus part and parcel of the voter's "certificate of eligibility," which Minnesota law requires in order to establish that the person submitting the absentee ballot is in fact an "eligible voter" under Section 201.014 of the Minnesota Statutes. Without a witness's signature, the "certificate of eligibility" is invalid and the ballot will be rejected.

For voters who were not previously registered or must update their registration, the witness is required to confirm that "the voter has provided proof of residence," choosing from among a list of acceptable forms of proof. Minn. Stat. § 203B.07, subdiv. 3(3); Minn. R. 8210.0600, subp. 1b. "Residence" is unquestionably a "qualification" for voting in Minnesota. *See* Minn. Stat. § 201.014, subdiv. 1 (defining an "eligible voter" as someone who, among other things, has maintained "residence in Minnesota for 20 days immediately preceding the election"). In his Motion to Dismiss, the Secretary attempts to avoid this conclusion by arguing that the law merely "deputizes" the witness to "confirm[] that the voter provided a document permitted by law" as proof of residency. Def.'s Mem. in Supp. of Mot. to Dismiss at 15, Dkt. Index No. 39 ("MTD Br."). That is a distinction without a difference. Proof of residence is proof of the witness's eligibility to vote. And the witness requirement requires a witness to vouch that he or she has seen such proof.[3]

[3] As explained below, to the extent that the witness is *not* vouching for the voter's qualifications, then the witness's signature is immaterial, and the witness requirement violates the materiality provision.

C. The witness requirement may be satisfied only by a registered voter or member of a class.

As for the third element of the voucher rule, Minnesota's witness requirement checks that box too. State law limits the class of permissible witnesses to (1) those registered to vote in Minnesota, or (2) notary publics and other individuals authorized to administer oaths. Minn. Stat. § 203B.07, subdiv. 3. The VRA does not define the term "class," so the court "should look to the dictionary definition[]" of the word to determine its "plain and ordinary meaning." *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016); *see also Iverson v. United States*, 973 F.3d 843, 848 (8th Cir. 2020) ("Because the term is not statutorily defined, we consider its ordinary dictionary definition."). Here, the relevant definition of "class" is "a group, set, or kind sharing common attributes." *Class*, Merriam-Webster, https://www.merriam-webster.com/dictionary/class (last updated Feb. 11, 2024); *see also, e.g.*, *Class*, Black's Law Dictionary (11th ed. 2019) ("A group of people, things, qualities, or activities that have common characteristics or attributes."). Although phrased in the disjunctive, the term "notary public *or* other individual authorized to administer oaths" refers to a single class of individuals who share a common characteristic or attribute: they are authorized to administer oaths. And a notary public is a member of that class. Thus, by its plain terms, the statute requires the voucher "of registered voters or members of any other class." 52 U.S.C. § 10501(b).

II. Plaintiffs are likely to succeed on their Civil Rights Act claim.

To the extent that Minnesota's witness requirement does not compel absentee voters to prove their qualifications by the voucher of another registered voter or any other class of individuals, it necessarily violates the materiality provision of the Civil Rights Act, which states in relevant part:

(2) No person acting under color of law shall . . .

> (B) 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). As the statute indicates, a materiality provision violation occurs when: (1) a requirement operates to deny the right to vote based on an "omission" on a "record or paper," (2) the "record or paper" relates to an "application, registration, or other act requisite to voting," and (3) the error or omission is not material in determining a voter's qualifications. If the required witness does not vouch for the absentee voter's qualifications when completing the eligibility certificate, *see supra* I.B, then any missing or incomplete witness information is not material in determining the absentee voter's qualifications to vote in Minnesota. The witness requirement therefore deprives absentee voters of their right to vote based on an immaterial error or omission in violation of federal law. *See* 52 U.S.C. § 10101(a)(2)(B).

A. The witness requirement denies the right to vote based on an error or omission.

In Minnesota, absentee ballots are rejected under the witness requirement "because of an error or omission" on the signature envelope. 52 U.S.C. § 10101(a)(2)(B). Specifically, if a signature envelope omits all or part of the necessary witness information, the ballot must be marked as rejected and ballot boards are prohibited from opening or counting the ballot. *See* Minn. Stat. §§ 203B.121, 203B.07. According to the Secretary's official Absentee Voting Administration Guide, ballot boards should reject absentee ballots where 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. All of these are "error[s] or omission[s] on a[] record or paper." 52 U.S.C. § 10101(a)(2)(B).

There can be no doubt that failure to comply with Minnesota's witness requirement—by error or omission—results in a denial of the right to vote. Absentee voting is a critical option for voters who are absent or who have limited mobility. *See* Madden Decl. ¶ 7. And for thousands of Minnesota voters, absentee voting is the *only* option because their jurisdiction conducts its elections entirely by mail. *See* Minn. Stat. §§ 204B.45, 204B.46. Moreover, the Civil Rights Act expressly defines the right to "vote" as extending to "all action necessary to make a vote effective including, but not limited to, . . . having such ballot counted." 52 U.S.C. § 10101(e). As such, the Civil Rights Act's protection reaches Minnesota's refusal to count ballots based on these errors or omissions because, under the literal and logical meaning of the statute, such refusal constitutes a denial of the right to vote. *Id.*

B. The certificate of eligibility "relates to" an "act requisite to voting."

Under the plain terms of the Civil Rights Act, the signature envelope of an absentee ballot—on which the certificate of eligibility is printed—is a "record or paper relating to an[] . . . act requisite to voting." 52 U.S.C. § 10101(a)(2)(B). Put simply, the signature envelope is a paper that must be examined and approved before the ballot it contains may be counted. In Minnesota, absentee ballots are not placed in the ballot box to be counted until a prerequisite is met: ballot boards must certify that the signature envelope satisfies all statutory requirements, including the presence of a signature and address from an acceptable witness on the certificate of eligibility. *See* Minn. Stat. §§ 203B.121, 203B.07. Because Minnesota has decided to add additional paperwork as a prerequisite to voting an absentee ballot, it cannot reject those ballots based on errors or omissions in completing that paperwork when such errors or omissions are immaterial in determining the voter's qualifications.

Recently, a divided Third Circuit Court of Appeals panel ignored the plain language of the materiality provision to hold that the provision applies only to the voter registration process. *Penn. State Conf. of NAACP Branches v. Sec'y Commonwealth of Penn*., 97 F.4th 120, 131 (3d Cir. 2024) ("*Penn. NAACP*"). No other Circuit has adopted this view, and multiple federal district courts have applied the materiality provision outside the voter registration context. *See, e.g.*, *League of Women Voters of Ark. v. Thurston*, No. 5:20-CV-05174, 2023 WL 6446015, at *16 (W.D. Ark. Sept. 29, 2023) (holding the materiality provision applies to absentee ballot applications); *Vote.org v. Ga. State Election Bd.*, 661 F. Supp. 3d 1329, 1340 (N.D. Ga. 2023) ("Based on the plain language of the statute, the Court finds that the absentee ballot application squarely constitutes a 'record or paper' relating to an 'application' for voting."); *In re Ga. Senate Bill 202*, No. 1:21-mi-55555-JPB, 2023 WL 5334582, at *8 (N.D. Ga. Aug. 18, 2023); *La Union del Pueblo Entero v. Abbott*, No. 5:21-CV-0844-XR, 2023 WL 8263348, at *18–22 (W.D. Tex. Nov. 29, 2023) (stayed pending appeal); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308 (N.D. Ga. 2018) (applying materiality provision to absentee ballot materials).

In reaching its discordant position, the majority made at least two fundamental errors. *First*, it rendered express statutory language superfluous by collapsing the terms "application, registration, or other act requisite to voting" into only inquiries into a voter's registration. *Compare Penn. NAACP*, 97 F.4th at 131–33, *with* 52 U.S.C. § 10101(a)(2)(B). The Supreme Court has recently rejected similar attempts to use surrounding language to narrow the meaning of broad terms used in the Voting Rights Act to describe election procedures. *See Allen v. Milligan*, 599 U.S. 1, 39–40 (2023) (declining to change the meaning of the term "procedure" based on the terms that precede it in 52 U.S.C. § 10301(a)). *Second*, its interpretation deforms the meaning of the primary clause (i.e., no person shall be denied the right to vote based on an omission on a paper

related to an act requisite to voting) based on the subordinate clause permitting denial of the right to vote *if the error* is material in determining the voter's qualifications—a reading the majority itself characterizes as the "tail that wags the dog." *Penn. NAACP*, 97 F.4th at 136.

The majority's reading not only defied basic principles of statutory interpretation, but also cleaved a gap in the statute that swallows the rule. Rather than *preventing* states from denying the right to vote based on paperwork errors that have nothing to do with a voter's qualifications, the majority's reading goes out of its way to *condone* disenfranchisement based on paperwork errors that have nothing to do with a voter's qualifications: declaring them exempt from the materiality provision entirely. *Compare Penn. NAACP*, 97 F.4th at 139 (Shwartz, J., dissenting) (explaining that the materiality provision exists "to ensure that States' immaterial voting requirements [do] not prevent otherwise qualified voters from . . . having their votes counted."). This turns the materiality provision on its head and invites states to accomplish every evil sought to be prevented by openly denying qualified voters access to the ballot—so long as they do not pretend it has anything to do with verifying eligibility. But in the same way that states cannot "circumvent the Materiality Provision by defining all manner of requirements, no matter how trivial, as being a qualification to vote," they also cannot erect additional prerequisites to voting, no matter how trivial, by declaring them unrelated to a voter's qualifications. *Vote.org v. Callanen*, 89 F.4th 459, 487 (5th Cir. 2023).

C. The witness requirement is not material in determining whether an individual is qualified to vote.

If the witness's signature on a certificate of eligibility is *not* considered to be a voucher of the voter's "qualifications," *see supra* I.B, then errors or omissions on the witness portion of the certificate cannot be material in determining anyone's eligibility to vote. Under Minnesota law, an eligible voter must be (1) 18 years of age or older; (2) a citizen of the United States; and (3) have

maintained residence in Minnesota for 20 days immediately preceding the election. Minn. Stat. § 201.014, subdiv. 1. But the presence or absence of a witness's signature and address provides no insight into the absentee voter's age, citizenship, or residency. Indeed, unless the witness is vouching for the voter's qualifications, the requirement that an absentee ballot be witnessed *at all* has no bearing on the voter's qualifications. *Cf. Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1175 (11th Cir. 2008) (explaining that an error or omission is only material if "accepting the error as true and correct, the information contained in the error is material to determining the eligibility of the applicant" (emphasis omitted)).

This is true regardless of any other state interest that a witness requirement purportedly serves. "[W]hatever sort of fraud deterrence or prevention this requirement may serve, it in no way helps the [state] determine whether a voter's age, residence, [or] citizenship . . . qualifies them to vote." *Migliori v. Cohen*, 36 F.4th 153, 163 (3d Cir.), *cert. granted, judgment vacated sub nom. Ritter v. Migliori*, 143 S. Ct. 297 (2022). Any other interest served by the witness requirement is irrelevant under the Civil Rights Act because only one type of paperwork error serves as a permissible basis to disenfranchise a voter: an error "material in determining whether such individual is qualified under State law to vote." 52 U.S.C. § 10101(a)(2)(B).

In his Motion to Dismiss, the Secretary does not seem to contest this point as it pertains to already-registered absentee voters. Indeed, the Secretary forthrightly admits that the witness certifications "are not used 'in determining' whether the voter is eligible to vote." MTD Br. at 22. But for first-time registrants, the Secretary argues that the witness requirement *is* material to determining the voter's qualifications because it is used to verify the voter's identity. That is directly contrary to the Secretary's argument, addressed *supra*, that a witness "does not attest to the voter's eligibility to vote." *Id.* at 15. Both cannot be true. Either the witness certification is

used to determine the voter's eligibility, in which case it is a voucher, or it is not, in which case it violates the materiality provision of the Civil Rights Act.

III. The balance of harms supports granting a temporary injunction.

In addition to Plaintiffs' likelihood of success on the merits, the balance of harms weighs in favor of granting temporary injunctive relief. Because the witness requirement burdens Plaintiffs' right to vote and violates their federal rights under the Voting Rights Act and the Civil Rights Act—and those burdens and violations cannot be remedied after the election—Plaintiffs will suffer grave and irreparable injury absent an injunction. The Secretary, on the other hand, will suffer no injury at all if an injunction is issued.[4]

"[I]rreparable harm is harm not compensable by money damages." *Griffin Cos., Inc. v. First Nat'l Bank of St. Paul*, 374 N.W.2d 768, 770–71 (Minn. App. 1985). Burdens on the right to vote constitute such harm. *See, e.g., League of Women Voters of N.C. v. North Carolina*, 769 F. 3d 244, 247 (4th Cir. 2014) ("Courts routinely deem restrictions on fundamental voting rights irreparable injury." (citations omitted)) (collecting cases). In the election context, harm is always irreparable because "once the election occurs, there can be no do-over and no redress." *Id.* at 247. And courts have regularly applied that principle to violations of the VRA. *E.g.*, *Lower Brule Sioux Tribe v. Lyman County*, 625 F. Supp. 3d 891, 926 (D.S.D. 2022) (collecting cases). "[T]here is

[4] The irreparable injuries likely to be suffered by Plaintiffs also suffice to establish their standing. Although the Secretary's Motion to Dismiss suggests that Plaintiffs must show they will be entirely disenfranchised to demonstrate standing, that is incorrect. *E.g.*, *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005) ("A plaintiff need not have the franchise wholly denied to suffer injury."); *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1352 (11th Cir. 2009) (holding voters who would be required to present photo identification in order to vote suffered sufficient injury for standing); *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014) (holding voters were injured by violation of federal voting statutes "[e]ven though they were ultimately not prevented from voting"); *Stringer v. Hughes*, No. SA-20-CV-46-OG, 2020 WL 6875182 at *9 (W.D. Tex. Aug. 28, 2020) (same); *Gonidakis v. LaRose*, 599 F. Supp. 3d 642, 655 (S.D. Ohio 2022).

simply no remedy at law for [violations of the VRA] other than an injunction." *Spirit Lake Tribe v. Benson County, N.D.*, No. 2:10-cv-095, 2010 WL 4226614, at *4 (D.N.D. Oct. 21, 2010).

Plaintiffs suffer acutely from Minnesota's violation of federal law. Members of the Alliance, who overwhelmingly vote by mail, must endure numerous burdens associated with identifying an individual to "prove [their] qualifications" to vote, 52 U.S.C. § 10501(b), or in the alternative, to ensure their right to vote is not denied based on an immaterial error or omission—all in violation of federal law. Madden Decl. ¶ 7. Complying with the witness requirement is especially burdensome for the Alliance's members because they often live alone and therefore cannot easily rely on family or housemates to witness their ballots. *Id.* ¶ 4, 7. Even when they can identify a witness outside the home, traveling to meet the witness presents yet another obstacle they must overcome to vote, as many Alliance members cannot drive and/or have difficulty walking due to compromised mobility. *Id.* ¶ 4.

Plaintiff (and Alliance member) Teresa Maples, for instance, usually votes by mail because she suffers from numerous chronic health and autoimmune conditions that impact her mobility, such as osteoporosis and rheumatoid and osteo-arthritis. Those conditions make it challenging for her to complete daily tasks and activities, like driving and walking up and down stairs, that are necessary to vote in person. Maples Decl. ¶¶ 4–7. Because she plans to vote by mail in the 2024 general election, Ms. Maples will need to identify a witness, but she does not know whom she will be able to ask. *Id.* ¶ 10. She lost her son last year, and she no longer has any family in the area. *Id.* ¶ 9. And because she recently moved to a new building, she does not know any of her neighbors. *Id.* ¶ 8. Even if Ms. Maples is able to identify a potential witness, any need to travel to them would be immensely burdensome for her given the severity of her mobility-related health conditions. *Id.*

¶ 5. These burdens and violations cannot be redressed after the election passes, nor can they be redressed by money damages.

The Alliance itself will also suffer irreparable harm absent an injunction. "Courts routinely recognize that organizations suffer irreparable harm when a defendant's conduct causes them to lose opportunities to conduct election-related activities." *League of Women Voters of Mo. v. Ashcroft*, 336 F. Supp. 3d 998, 1005 (W.D. Mo. 2018). *See also League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012) (similar); *Project Vote, Inc., v. Kemp*, 208 F. Supp. 3d 1320, 1350 (N.D. Ga. 2016) (similar). Because the Alliance's members are disproportionately impacted by the witness requirement, the Alliance has had to divert resources away from other activities—such as the retiree phone banks and door-to-door canvassing events it regularly organizes to "get out the vote"—to educate its members about the witness requirement and to help them comply with it. Madden Decl. ¶ 10. For example, the Alliance must spend money and volunteer resources on a postcard operation in advance of the 2024 general election to make sure its members—and particularly its recently retired members who may be newer to absentee voting—are aware of the witness requirement and know how to adhere to it. *Id.* Courts have routinely recognized that organizations suffer irreparable harm when forced to divert resources in this manner. *See N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections*, No. 16-cv-1274, 2016 WL 6581284, at *9 (M.D.N.C. Nov. 4, 2016) (finding irreparable harm when NAACP "had to divert its finite and limited resources away from its planned voter-protection and education efforts").

On the other side of the ledger, the Secretary will "not suffer at all" if the temporary injunction is issued because the State has no interest in enforcing laws that violate federal statutes, and "an injunction preventing the State from enforcing the challenged statute does not irreparably

harm the State." *Pavek v. Simon*, 467 F. Supp. 3d 718, 762 (D. Minn. 2020) (cleaned up); *see also DSCC*, 950 N.W.2d at 291 n.12 (finding that district court did not abuse its discretion in concluding that the balance of harms weighs in favor of temporarily enjoining a preempted state election law). Moreover, the requested injunction presents no risk of voter confusion or disruption. *Cf. DSCC v. Simon*, No. 62-CV-20-585, 2020 WL 4519785, at *20 (Minn. Dist. Ct. July 28, 2020), *aff'd in part, rev'd in part on other grounds* 950 N.W.2d 280 (Minn. 2020). It would simply require that Minnesota elections officials count absentee ballots with or without a completed witness attestation, in compliance with federal law.

IV. The remaining *Dahlberg* factors favor granting a temporary injunction.

Each of the remaining *Dahlberg* factors is either neutral or weighs in favor of granting a temporary injunction.

First, public policy considerations weigh strongly in favor of granting a temporary injunction here. Absent a temporary injunction, it is likely that Plaintiffs will be unable to obtain relief from the witness requirement before the 2024 general election, in which the individual Plaintiffs and many Alliance members plan to vote absentee. As explained above, the witness requirement is an unlawful burden on the rights of Minnesota voters, including Plaintiffs. No sound public policy weighs in favor of allowing such a restriction to remain in place for yet another election, in violation of federal law. Protecting federal statutory rights is always in the public interest. *Rodgers v. Bryant*, 942 F.3d 451, 458 (8th Cir. 2019); *see also Obama for Am. v. Husted*, 697 F.3d 423, 436–37 (6th Cir. 2012) ("[T]he public has a strong interest in exercising the fundamental political right to vote. That interest is best served by favoring enfranchisement and ensuring that qualified voters' exercise of their right to vote is successful. The public interest therefore favors permitting as many qualified voters to vote as possible." (cleaned up)); *DSCC*, 2020 WL 4519785, at *30 (same).

Second, the nature of the previous relationship between the parties is not "a consideration relevant to the issuance of injunctive relief" in a lawsuit challenging voting restrictions. *DSCC*, 2020 WL 4519785, at *20; *DSCC*, 950 N.W.2d at 291 n.12 (finding no abuse of discretion). Plaintiffs are individual voters and an organization representing the interests of its individual voter-members, while Defendant is the state official charged with enforcing and implementing Minnesota's election laws, including the witness requirement. To the extent an injunction could be viewed as altering the relationship between the parties, courts "have the power to shape relief in a manner which protects the basic rights of the parties, even if in some cases it requires disturbing the status quo." *N. Star State Bank*, 361 N.W.2d at 895 (quoting *Cox*, 319 F. Supp. at 95). Thus, this factor neither favors nor disfavors injunctive relief.

Finally, there would be no "administrative burdens involved in judicial supervision and enforcement of the temporary decree." *Dahlberg*, 137 N.W.2d at 322. As Minnesota's chief elections officer, the Secretary enforces and implements the state's election laws. Any administrative oversight stemming from an injunction of the witness requirement would fall to the Secretary, not the Court. *See DSCC*, 2020 WL 4519785, at *31 ("It does not appear that there will be any administrative responsibility to the court if it issues a temporary injunction."); *DSCC*, 950 N.W.2d at 291 n.12 (finding no abuse of discretion).

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion and temporarily enjoin the enforcement of Minnesota's witness requirement to prevent the irreparable violation of Plaintiffs' rights.

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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*
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