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STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Case Type: Other Civil/Misc.

Minnesota Alliance for Retired Americans Educational Fund, et al.,

Plaintiffs,

vs.

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

Defendant.

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

DEFENDANT'S MEMORANDUM OPPOSING TEMPORARY INJUNCTION

The Court should deny the plaintiffs' motion for a temporary injunction and maintain the status quo that has existed for more than 160 years: Minnesota voters casting absentee ballots require a witness. The plaintiffs failed to prove that an extraordinary remedy like temporary injunctive relief is warranted. No plaintiff has standing, and they are unlikely to succeed on the merits. Under Minnesota law, only voters—and not witnesses—certify eligibility to vote, so no "vouching" is required in violation of the Voting Rights Act. Nor does the witness requirement violate the Civil Rights Act's materiality provision because that provision does not apply to vote-casting regulations. The other injunctive-relief factors also favor the Secretary. The plaintiffs' proposed disruptions to election law would burden election officials and confuse voters.

FACTS

Minnesota has a long and robust history of facilitating voting. Because the plaintiffs focus only on voting by absentee ballot, some background about Minnesota's legal and administrative framework for voting is necessary.

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Eligibility to Vote and Voter Registration

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

Regardless of voting method, every eligible voter must first register to vote. *Id.* § 201.018, subd. 2. A person may register any time more than 20 days before an election, on Election Day at the poll, or when submitting an absentee ballot. *Id.* §§ 201.054, subd. 1(a), .061; *see also id.* § 201.161 (facilitating automatic registration in certain contexts). The registration application requires the applicant to provide identifying information, list the applicant's residence, and certify eligibility to vote. *Id.* §§ 201.061, subd. 1, .071, subd. 1. When registering by paper in advance, the applicant completes the application and an election official completes the rest of the form, documenting how the applicant proved residency. (Maeda Decl. ¶ 10, Ex. 4.)

When registering to vote on Election Day, the applicant must provide proof of residence or have a registered voter in the same precinct attest to their residence. Minn. Stat. § 201.061, subd. 3; Minn. R. 8200.5100, subp. 1.D, .5200, .9939. Election judges complete the registration process by documenting how the voter established residency. (Maeda Decl. ¶ 10, Ex. 5.)

[1] Smaller municipalities may hold elections only by mail, using the same processes outlined above. Minn. Stat. § 204B.45, subds. 1, 3. Federal law provides different processes for absentee voters in the military or outside the United States. Minn. Stat. §§ 203B.02, subd. 2, .16-.27 (implementing Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §§ 20301-10).

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Absentee Ballots

Eligible voters may vote by absentee ballot, either by mail or in person. *Id.* §§ 203B.02, subd. 2, .081. Absentee voting is governed by chapter 203B of the Minnesota Statutes and chapter 8210 of the Minnesota Rules. *See* Minn. Stat. § 203B.09 (directing Secretary to adopt rules). To vote absentee, a person must first apply for an absentee ballot. *Id.* § 203B.04, subd. 1(a).[2] The applicant must provide an identification number (e.g., a driver's license or state identification number, or a partial social-security number). *Id.* Unregistered applicants may request a voter-registration application with the ballot. *Id.* §§ 203B.04, subd. 4, .06, subd. 4, .07, subd. 1. Regardless of registration status, applicants must certify their eligibility to vote and sign the application under penalty of perjury. *Id.* § 203B.04, subd. 1(b), (d); (Maeda Decl. ¶3, Ex. 1).

The appropriate county auditor or municipal clerk then mails the applicant a ballot and, for unregistered applicants, a voter-registration application. Minn. Stat. § 203B.06, subd. 4. Absentee ballots and registration applications come with detailed instructions (including graphical depictions) for completion. *Id.* § 203B.07, subd. 1; Minn. R. 8210.0500, .0710, subps. 6-7. In general, the key materials used in the absentee-ballot process are:

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

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

[2] Voters may also vote absentee in person. Minn. Stat. § 203B.081.

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Witness Requirement for Absentee Voting

When completing an absentee ballot, the voter must have a witness who is a registered voter, a notary public, or a person authorized to administer oaths. *Id.* § 203B.07, subd. 3.[3] The witness's role varies slightly depending on the voter's registration status, but all processes generally mirror those for in-person voters and registrants. (Maeda Decl. ¶¶ 6-8, 10-11.) If not registered, the voter completes a registration application (certifying eligibility to vote) and shows the witness proof of residence in an authorized form. *Id.* §§ 201.061, subd. 3(a), 201.071, 203B.07, subd. 3; Minn. R. 8210.0500, subp. 3, 8200.5100; *see also* Minn. Stat. § 203B.04, subd. 4 (applying section 201.061 residency requirements to absentee ballots).

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

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

Minn. R. 8210.0600, subp. 1a. If a voter is not yet registered, the witness also identifies how the voter proved residence and certifies that:

[3] Pending legislation would allow all 18-year-old citizens to be witnesses. H.F. 4772, § 18, 93d Leg. (Minn. 2024).

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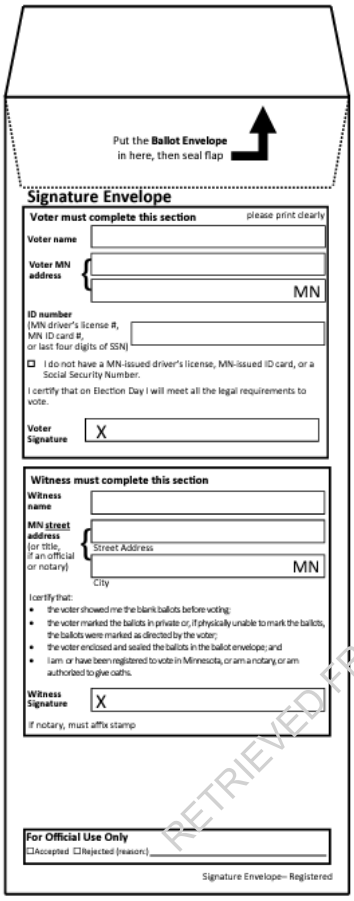
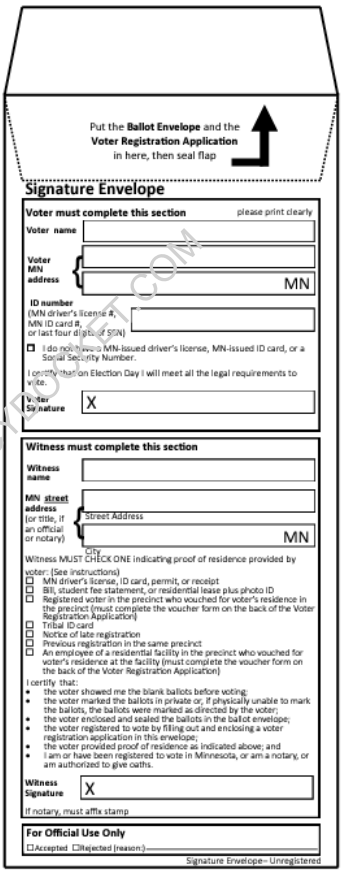
- the voter registered to vote by filling out and enclosing a voter registration application in this envelope; [and]
- the voter provided proof of residence as indicated above.

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





(Maeda Decl. ¶ 4, Exs. 2-1, 3-1.)

Processing Absentee Ballots

Local officials handle most election administration; the Secretary's office does not receive or process ballots. (*Id.* ¶ 2.) And while the Secretary's rules are binding, any other guidance is not. (*Id.*) Voters return absentee ballots to their appropriate election officials either through mail, personal delivery, agent delivery, or designated drop boxes. Minn. Stat. § 203B.08, subd. 1. The jurisdiction's ballot board then either accepts or reject ballots. *Id.* § 203B.121. The board reviews

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each signature envelope, assessing whether (1) the voter's information is the same as that in the voter's ballot application; (2) the voter is registered and eligible to vote, or included a completed registration application; and (3) the certificate on the signature envelope is complete. *Id.*, subd. 2(a)-(b). These are the only grounds for rejecting ballots, and the law further circumscribes when ballots may be rejected. *Id.*, subd. 2(c)(1). For example, a ballot board cannot reject a ballot for lack of an eligible witness if the witness signed the witness statement and provided a Minnesota address, a title showing authority to give oaths, or a notarial stamp. Minn. R. 8210.2450, subp. 5.

If a ballot is rejected, the voter may cure their ballot. If a ballot is rejected more than five days before Election Day, the lead ballot-board official sends the voter a replacement ballot and signature envelope. Minn. Stat. § 203B.121, subd. 2(c)(2). If the rejection is within five days of the election, the official must attempt to contact the voter to give notice. *Id.*, subd. 2(3).

Current Litigation

In February 2024, Plaintiffs Minnesota Alliance for Retired Americans Educational Fund, Teresa Maples, and Khalid Mohamed sued Secretary of State Steve Simon in his official capacity. (Compl., Index #1.) They alleged that requiring absentee voters to have a witness imposes a "vouching" requirement that violates the Voting Rights Act, 52 U.S.C. § 10501, or alternatively adds an immaterial requirement that violates the materiality provision of the Civil Right Act, 52 U.S.C. § 10101(a)(2)(B). (*Id.* ¶¶ 36-47.) The Secretary moved to dismiss the complaint. (Def.'s Mot. Dismiss, Index #11.) In May 2024, the plaintiffs amended their complaint and moved for a temporary injunction. (Am. Compl., Index #52; Mot. Temp. Inj., Index # 53.) While adding a few allegations, the amended complaint maintains the same parties and claims and continues to seek equitable relief to prohibit signature envelopes or instructions that require a witness to vote

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absentee.[4] The plaintiffs further ask the Court to order an alternative process for unregistered absentee voters to provide proof of residence. (Am. Compl. 14-15.)

Minnesota Alliance's members are retirees who tend to vote absentee. (Madden Decl. ¶ 4.) Several of its nearly 84,000 members have medical conditions that affect their mobility. (*Id.* ¶ 7.) The organization encourages voting and engages in community outreach on campaign matters. (*Id.* ¶ 6.) It conducts phone banks and door-to-door visits to encourage it members to vote and to assist them with voting. (*Id*.) Before November's election, the organization plans to send its members post cards to "re-educate" them about the witness requirement. (*Id.* ¶¶ 9-10.)

Maples is a regular and successful absentee voter. (Maples Decl. ¶¶ 1, 3.) She recently moved but is already registered at her new address. (*Id.* ¶¶ 1, 8-9.) She has concerns about finding a witness for the November election because she does not yet know anyone in her new building and because her son, who was a past witness for her, passed away. (*Id.* ¶¶ 7-9.) Mohamed is also a registered voter who has regularly and successfully voted by absentee ballot. (Am. Compl. ¶ 12.)

Minnesota Alliance "has heard" that "several members" have had difficulty complying with the witness requirement, but it does not detail the alleged difficulties or provide a declaration from any such member. (Madden Decl. ¶ 7.) Nor does Minnesota Alliance identify unregistered voters whom the witness requirement prevented from registering. (Am. Compl.; Madden Decl.)

ARGUMENT

A temporary injunction is an extraordinary remedy designed to preserve the status quo. *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). Plaintiffs cannot merely raise the possibility

[4] While the complaint broadly cites the "2024 election," the plaintiffs appear to seek relief only for the November general election, not the August primary. (*E.g.*, Maples Decl. ¶ 10 (citing concerns only about voting in November); Madden Decl. ¶ 10 (addressing only November election). Absentee voting for the November 5 election begins September 20. *See* Minn. Stat. § 203B.06, subd. 3 (allowing delivery of absentee ballots 46 days before election).

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that injunctive relief is appropriate; they must demonstrate that the relief is affirmatively required. *Thompson v. Barnes*, 200 N.W.2d 921, 926 (Minn. 1972). Because no merits adjudication has occurred, a court should grant a temporary injunction only when a party's rights will clearly be irreparably injured. *Miller*, 317 N.W.2d at 712. Additionally, courts presume that Minnesota laws are valid and not preempted by federal law. *DSCC v. Simon*, 950 N.W.2d 280, 287 (Minn. 2020). The party seeking an injunction bears the burden of proof. *Thompson*, 200 N.W.2d at 926.

With this high bar in mind, courts consider five factors in assessing a temporary injunction: (1) the nature and background of the parties' relationship; (2) the harm to the parties by denying or granting temporary relief; (3) the likelihood of success on the merits; (4) public policy; and (5) the administrative burdens on the court by supervising and enforcing a temporary decree. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965). Of these factors, two are dispositive. A court cannot grant a preliminary injunction if a party cannot prove a likelihood of success on the merits or irreparable harm. *Haley v. Forcelle*, 669 N.W.2d 48, 58 (Minn. Ct. App. 2003); *Morse v. City of Waterville*, 458 N.W.2d 728, 729 (Minn. Ct. App. 1990). In this case, both factors are fatal to the plaintiffs' motion. And even if the Court reaches the remaining factors, they favor the Secretary. The plaintiffs seek to disrupt the status quo, burden already burdened election officials, and risk confusing voters.

I. THE PLAINTIFFS ARE UNLIKELY TO SUCCEED.

The Court should deny the plaintiffs' motion because they are unlikely to succeed on the merits. The plaintiffs lack standing and, alternatively, their claims fail as a matter of law.

A. The Plaintiffs Lack Standing to Pursue Their Claims.

As a threshold matter, the plaintiffs are unlikely to succeed because they lack standing to bring their claims. Standing requires a party to have a sufficient stake in a justiciable controversy. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). Mere chance of

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injury is insufficient; the injury must be both "actual or imminent, not conjectural or hypothetical" and fairly traceable to the challenged conduct. *Minn. Voters All. v. State*, 955 N.W.2d 638, 642 (Minn. 2021). Merely taking offense to an election law is also insufficient. *See Ind. Dem. Party v. Rokita*, 458 F. Supp. 2d 775, 810-11 (S.D. Ind. 2006) (addressing standing for materiality claim). Injuries must also be particularized, affecting the plaintiff personally. *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 n.1 (1992).

The plaintiffs' vague statements fall far short of establishing an actual or imminent injury and are instead hypothetical and speculative. Because no plaintiff has standing, this Court will likely dismiss their complaint and the Court should deny temporary injunctive relief.

1. Neither individual plaintiff established a sufficient injury.

Maples and Mohamed are registered voters who have regularly and successfully voted absentee. They alleged only speculative concerns about an injury from the witness requirement. Maples's declaration does not cure these defects, and Mohamed submitted no evidence establishing standing.

The plaintiffs first claim that the witness requirement violates the Voting Rights Act because it "requires" them to "prove [their] qualifications" with a witness's "voucher." (Am. Compl. ¶ 40.) But these plaintiffs established no actual or imminent harm from this alleged requirement. As registered voters, if Maples and Mohamed opt to vote absentee, a witness would affirm only that they displayed an unmarked ballot and then marked it. Minn. Stat. § 203B.07, subd. 3. A witness need not affirm *anything* about their eligibility to vote. *Id.* The individual plaintiffs thus lack standing to advance their Voting Rights Act claim.

The plaintiffs alternatively claim that the witness requirement violates the Civil Rights Act and that they risk disenfranchisement for non-compliance with the witness requirement. (*Id.* ¶¶ 36, 43-52.) But they again did not establish an actual or imminent danger. Neither has ever been

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disenfranchised and no evidence suggests they will be in November. Maples lives in Goodhue County and Mohamed lives in Hennepin County, where there are 31,150 and 789,286 registered voters, respectively, as of May 1. *Voter Registration Counts*, Office of the Minnesota Secretary of State, https://perma.cc/FPM8-HHH6 (last visited May 6, 2024). Although Maples lives alone and recently moved, no evidence suggests that she cannot interact with even one registered voter in her county, or the more than 3.5 million other registered voters throughout the state. (Maples. Decl. ¶ 1.) If they choose to vote absentee, the plaintiffs have months to—as they have done in the past—find a single registered voter or other qualified witness, or vote in person.

During the 2022 election, less than one percent of returned absentee ballots (5,479 of 687,062) were rejected for noncompliance with witness requirements. (Maeda Decl. ¶ 19.) The plaintiffs conspicuously provide no evidence that Maples, Mohamed, or any other Minnesota Alliance member has had a ballot rejected. This omission collides headfirst with the requirement that injuries conferring standing be particularized.

The plaintiffs' central claim of harm appears to be concerns about the potential difficulty of finding a witness. (Am. Compl. ¶ 36.) But neither speculative concerns nor potential difficulties are cognizable harms under the Voting or Civil Rights Acts, both of which protect the right to vote rather than the preferred means of voting.

2. Minnesota Alliance lacks standing.

An organization may establish either direct standing or associational standing. *Humphrey*, 551 N.W.2d at 4 490, 497 (Minn. 1996). Minnesota Alliance fails to establish either.

Direct standing requires a direct injury beyond an abstract interest or concern. *Byrd v. Indep. Sch. Dist. No. 194*, 495 N.W.2d 226, 231 (Minn. Ct. App. 1993). When challenging a law's validity, an organization typically must show that the challenged law caused the organization to divert resources or otherwise impaired its mission or services. *Rukavina v. Pawlenty*, 684 N.W.2d

525, 533 (Minn. Ct. App. 2004); *In re Trade Secret Designations of 2019 Cogeneration & Small Power Prod. Reps.*, No. A20-0827, 2021 WL 1247948, at *5 (Minn. Ct. App. Apr. 5, 2021).

In the election context, standing based on resource diversion has typically been granted when a new law required diversion of resources or a state otherwise targeted an organization. For example, the Fifth and Eleventh Circuits allowed organizations to bring materiality claims when complying with new state laws required diverting resources and, in the Fifth Circuit case, the challenged law targeted the organization's voter-registration efforts. *E.g.*, *Vote.org v. Callenen*, 89 F.4th 459, 470-71 (5th Cir. 2023); *Fla. State Conf. of the NAACP v. Browning*, 522 F.3d 1153, 1165-66 (11th Cir. 2008); *see also In re Georgia Senate Bill 202*, 2023 WL 5334582, at *4 (N.D. Ga. 2023) (finding standing to bring materiality claim when new state law required diverting resources), *appeal filed* No. 23-13245 (11th Cir. Oct. 3, 2023). A mere "setback to [an] organization's abstract social interests" is an insufficient injury. *Trade Secret Designations*, 2021 WL 1247948, at *5.

Here, Minnesota Alliance baldly states that it has had to "divert resources previously allocated for other activities . . . to re-educate its members about the witness requirement, and to assist them in complying with it." (Madden Decl. ¶ 9.) But it does not explain why it purportedly spent any resources "re-educating" members about a 75-year-old requirement that predates the organization. *See* 1949 Minn. Laws ch. 368, § 2; 1862 Minn. Laws Spec. Sess. ch.- 1, § 1, at 1314. Even taking its claim at face value, Minnesota Alliance provides little detail about resources purportedly diverted. It does not describe with any specificity what resources it actually spent in the past that are traceable to the witness requirement. Nor does it describe any resources actually expended and traceable to the witness requirement for the elections at issue. (Madden Decl. ¶ 10.) Instead, Minnesota Alliance asserts only *speculative* injury—that it "plan[s]" to spend resources

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sometime in the future, in an unspecified amount and form. That is not enough to confer direct standing, and certainly not enough to meet the high burden to obtain a temporary injunction.

Minnesota Alliance also lacks associational standing. An organization may assert associational standing only when its members would individually have standing. *Byrd*, 495 N.W.2d at 231; *St. Paul Police Fed'n v. City of St. Paul*, No. A05-2186, 2006 WL 2348481, at *2 (Minn. Ct. App. Aug. 15, 2006). And courts cannot grant a temporary injunction based on inadmissible evidence. *Lumbar v. Welsh*, No. A06-1232, 2007 WL 1531971, at *5 (Minn. Ct. App. May 29, 2007); Minn. R. Evid. 801(c), 802 (defining and addressing admissibility of hearsay).

Minnesota Alliance provides no evidence of any member with standing. As previously addressed, Maple and Mohamed lack standing. The organization purports to identify two members who have had unspecified difficulty complying with the witness requirement in the past. (Madden Decl. ¶ 7.) But it admits that both successfully voted (one by mail). (*Id.*) And even if the abstract struggle to find a witness could confer standing, Minnesota Alliance offers only inadmissible hearsay about such struggles, which does not satisfy its high burden to obtain temporary injunctive relief. Because no admissible evidence establishes an actual or imminent injury, the plaintiffs lack standing and are unlikely to succeed.

B. The Plaintiffs' Voting Rights Act Claim Fails as a Matter of Law.

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

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The witness statement on an absentee ballot signature envelope contains four certifications: (1) that the voter displayed an unmarked ballot; (2) that the voter marked the ballot in the witness's presence without disclosing the voter's choices, or if the voter could not physically mark the ballot, that the voter instructed another individual to mark the ballot on their behalf; (3) that, if not already registered, the voter provided proof of residence as required by Minnesota's voter-registration laws; and (4) the voter sealed the ballot in the ballot envelope. Minn. Stat. § 203B.07, subd. 3. The witness must be a registered Minnesota voter, a notary public, or another person authorized to administer oaths. *Id.*; Minn. R. 8210.0600, subps. 1a-1b.

No certification constitutes vouching. Three (the first, second, and fourth) pertain only to how voters complete their ballots. The remaining one, addressing proof of residence, simply facilitates same-day registration for unregistered absentee voters.

1. Three of the four witness certifications pertain to the process of voting.

Three of the four witness certifications—that a voter used a blank ballot, marked it with their own vote, and sealed it in the ballot envelope—clearly pertain to voting mechanics. Put differently, confirming that a voter used a blank ballot, marked it, and put it in an envelope is not vouching for the voter's eligibility. It merely confirms that the integrity of the voting process was akin to that which election judges would observe during in-person voting. (Maeda Decl. ¶¶ 6-8.)

This reading of section 203B.07 tracks its plain text. Proper interpretation of statutes begins with the plain language. *City of Circle Pines v. County of Anoka*, 977 N.W.2d 816, 823 (Minn. 2022). The law locates certification of voter eligibility with the voter. Minn. Stat. § 203B.07, subd. 3. (requiring statement "*to be signed and sworn by the voter* indicating that the voter meets all of the requirements" (emphasis added)). This language differs markedly from a century-old predecessor statute. From 1917 to 1949, witnesses certified the accuracy of a voter's statement about the voter's qualifications to vote. 1917 Minn. Laws. ch. 68, § 6; 1949 Minn. Laws ch. 368,

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§ 2.[5] Under current law, witnesses make no such certification. In each step of the process—registering to vote, voting in person, or voting absentee—only the voter certifies eligibility.

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

2. The final witness certification is a same-day registration tool, not a vouching requirement.

The remaining certification applies only when the absentee voter is not yet registered to vote. Minn. Stat. § 203B.07, subd. 3(3). The witness certifies that the voter provided proof of residence consistent with Minnesota's election-day-registration requirements. *Id.* As registered voters, the plaintiffs lack standing to challenge this requirement. But even if the Court considers it, the certification does not constitute vouching.

Section 203B.07 cross-references to Minnesota's election-day registration statute, section 201.061. *Id.* The certification's purpose is clearly to relieve absentee voters from in-person

[5] Some form of a witness requirement dates to 1862, when Minnesota introduced absentee voting for military members. 1862 Minn. Laws Spec. Sess. ch. 1, § 1, at 13-14.

[6] Multiple courts recognize that laws do not amount to "vouching" even when witnesses certify that a voter attested to their own identity. *E.g.*, *People First of Ala. v. Merrill*, 467 F. Supp. 3d 1179, 1224 (N.D. Ala. 2020) (concluding certification addressed only whether voter made attestation, not voter's eligibility); *Thomas v. Andino*, 613 F. Supp. 3d 926, 961-62 (D.S.C. 2020) (concluding that witness did not vouch by confirming voter completed oath and signed ballot).

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requirements that otherwise attend election-day-registration. Specifically, Minnesota law permits election-day registration, but typically requires voters to appear "*in person* at the polling place for the precinct in which the individual maintains residence." Minn. Stat. § 201.061, subd. 3 (emphasis added). Applying this requirement to absentee voters would defeat the purpose of absentee voting by requiring all unregistered absentee voters to appear in person to register.

The law instead permits absentee voters to still register to vote on the same day they cast their ballot, but adapts the process. Just as absentee voting inherently requires different procedures than in-person voting, absentee same-day registration necessarily requires different procedures than in-person registration. *Cf. Bell*, 227 N.W.2d at 352-53 (discussing balance between benefits of absentee voting and need "not to let down the bars necessary for honest elections"); *Rokita*, 458 F. Supp. 2d at 840 ("[A]bsentee voting is an *inherently* different procedure from voting in person."). Some form of paperwork exists whenever and however someone registers to vote. If a person registers to vote in advance or at a polling place, an election official documents that the person provided proof of residency and notes the form. *Id.* § 201.061, subd. 3; Maeda Decl. ¶¶ 10. The witness requirement simply deputizes certain people to take the role that an election judge has during in-person registration. Like the other certifications, the witness does not certify to the voter's eligibility (e.g., by independently confirming the voter's residence or length of residency), but merely confirms that they provided a document permitted by law.

The same requirement applies to same-day registration for in-person voters and serves the same purpose. Notably, the plaintiffs do not challenge the requirement as applied to in-person voters, and in fact try to paint the in-person voting as a foil to absentee voting in the context of this same-day registration requirement. (Pls.' Mem. 13.) Rather than illuminating some sort of hidden flaw in Minnesota's absentee voting process, however, this comparison simply underscores the

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plaintiffs' misapprehension of Minnesota's election laws, which fairly balance access and integrity for all voters, no matter how, where, and when they register.

Because the proof-of-residency certification is a same-day registration tool to ensure absentee voters have access to Minnesota's full slate of voter-registration options, it does not constitute vouching within the meaning of the Voting Rights Act. *See, e.g.*, *Liebert*, 2024 WL 181494, at *6; *People First*, 467 F. Supp. 3d at 1224 (N.D. Ala. 2020); *Thomas*, 613 F. Supp. 3d at 961-62; *cf. Ne Ohio Coal. for the Homeless*, 837 F.3d 612, 629 (6th Cir. 2016) (concluding that requiring absentee voters to accurately complete address and birthdate fields on ballot envelopes did not constitute "test or device"). Because none of Minnesota's witness certifications are vouching requirements, the plaintiffs' Voting Rights Act claim is unlikely to succeed. The Court should deny their temporary-injunction motion on this basis.

C. The Plaintiffs' Civil Rights Act Claim Fails as a Matter of Law.

The Civil Rights Act prohibits a person acting under color of law from denying the right to vote "because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 52 U.S.C. § 10101(a)(2)(B). This prohibition is commonly referred to as the "materiality provision." *E.g.*, *Common Cause v. Thomsen*, 574 F. Supp. 3d 634, 638 (W.D. Wis. 2021). The plaintiffs allege that Minnesota's witness requirement violates the materiality provision. But the materiality provision applies only to errors and omissions on documents used to determine a person's eligibility to vote. It does not apply to the certifications for previously registered voters. And the one additional certification for new registrants is material to determining qualifications. Accordingly, the plaintiffs are unlikely to succeed on their Civil Rights Act claim.

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1. The Materiality Provision Applies Only to Documents Used to Determine Voters' Eligibility to Vote.

The materiality provision's plain language applies only to documents used to determine whether a voter is qualified to vote. This interpretation is reinforced by other courts' interpretation of the provision and legislative history. The plaintiffs nevertheless seek to apply the materiality provision to regulations governing how qualified voters vote. If the plaintiffs were correct about the scope of the provision, voters could invoke the materiality provision to challenge numerous election-administration requirements, from requirements to use markings that tabulation machines can read to requirements to protect ballot secrecy by prohibiting writing the voter's name on the ballot. The Court should reject this unadministrable and overbroad interpretation.

a. The materiality provision's plain language applies only to documents related to voter qualifications.

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

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

52 U.S.C. § 10101(a)(2)(B) (emphases added). The last clause is critical, limiting the provision to paperwork errors and omissions "not material in determining whether [an] individual is qualified" to vote. *Id.* If an error relates to a voter's qualification but is immaterial to determining that voter's qualification (i.e., eligibility to vote), it cannot be the basis for denying the right to vote. In other words, the error or omission must be in a document that serves a gatekeeping function between qualified and unqualified individuals, such as "minor misspelling errors or mistakes in age or

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length of residence" on voter-registration applications. H.R. Rep. No. 88-914, pt. 2, at 5 (1963), *as reprinted in* 1964 U.S.C.C.A.N. 2391, at 2491. The materiality provision does not apply to errors *after* an individual has been determined qualified. *See* 52 U.S.C. § 10101(a)(2)(B). Thus, the materiality provision applies to documents such as voter applications or registrations, but not to documents that qualified voters use for casting votes, such as absentee-ballot envelopes.

In assessing a statute's plain language, a court may also consider surrounding provisions. *United States v. Morton*, 467 U.S. 822, 828 (1984). Other provisions of subsection 10101(a)(2) confirm that the focus of the materiality provision is registration-related paperwork. The paragraph preceding the materiality provision prohibits discriminatory standards, practices, or procedures "in determining whether any individual is qualified . . . to vote." 52 U.S.C. § 10101(a)(2)(A). And the succeeding paragraph addresses literacy tests "as a qualification for voting." *Id.* § 10101(a)(2)(C). Thus, the thrust of the materiality provision's subsection is clear: it governs voter qualification determinations and does not apply to documents used for the act of voting itself.

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

Other courts considering the materiality provision have likewise concluded that it applies only to determinations of *who* may vote, not to *how* qualified voters cast their ballots. For example, the Third Circuit recently rejected a materiality challenge to a requirement that voters write a date on absentee-ballot envelopes, despite the state's concession that it did not use the date for any substantive purpose. *Penn. State Conf. of NAACP Branches v. Sec'y Commonwealth of Penn.*, 97 F.4th 120, 127, 131 (3d Cir. 2024), *reh'g denied* (Apr. 30, 2024). The court held that "it makes no sense to read the Materiality Provision to prohibit enforcement of vote-casting rules that are divorced from the process of ascertaining whether an individual is qualified to vote." *Id.* at 134. It further recognized that rules governing voter eligibility and rules governing how votes are cast

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serve different purposes; limiting states' ability to regulate the latter would tie states' hands from enforcing regulations necessary to administer elections. *Id.* at 134-35.

The plaintiffs' three arguments that the Third Circuit was wrong are unpersuasive. First, they argue that the court "collapse[d]" the phrase "application, registration, or other act requisite to voting" into only errors in voter applications. (Pls.' Mem. 18.) But the Third Circuit explicitly and persuasively addressed this argument, explaining that its reading is not limited to "registration." *Penn. NAACP*, 97 F.4th at 132, 138 (noting scope includes not only "registration" and "application," but also "acts like" those two acts). Properly read, "other acts" targets states that might otherwise attempt to evade the materiality provision by recasting registration or application requirements under some other name; it does not target neutral rules governing how eligible voters cast votes. Moreover, the Third Circuit recognized that the plaintiffs' interpretation would lead to superfluidity problems of its own: if "act requisite to voting" were as broad as the plaintiffs claim, there would be no reason to separately include "application" or "registration." Finally, the plaintiffs' citation of *Allen v. Milligan*, where the Court declined to limit the scope of a different phrase in a different law, is not to the contrary. 599 U.S. 1, 38-39 (2023). There, the Court had already interpreted the phrase in question, such that changing it would have overruled numerous past cases. *Id.* at 39. And the law at issue in *Allen* had no language with which to qualify the scope of the term in question. Here, by contrast, the materiality provision explicitly requires that the documents in question play a role "in determining" voter qualifications. For all these reasons, the plaintiffs' first critique of the Third Circuit's analysis is unpersuasive.

Second, the plaintiffs argue that the Third Circuit improperly elevated the "in determining" clause to limit the scope of what the plaintiffs dub the primary clause ("no person shall be denied the right of any individual to vote because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting"). (Pls.' Mem. 18-19.) To begin,

the plaintiffs do not explain why "if such error or omission is not material in determining whether such individual is qualified" is not a subclause of the clause "because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting." It appears to be so, in which case their argument collapses because the "in determining" language is clearly linked to the clause identifying which errors or omissions are covered. But more fundamentally, the plaintiffs' argument ignores the rule that statutes are not read as a collection of isolated phrases. *Abuelhawa v. United States*, 556 U.S. 816, 819 (2009). Indeed, subordinate clauses may illuminate the meaning of the primary clauses that they modify. *E.g., N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 539 n.30 (1982).

Third, the plaintiffs make policy arguments against the Third Circuit's interpretation. (Pls.' Br. 19.) But they ignore countervailing policy arguments, especially (as described in more detail below) that if the materiality provision were as broad as the plaintiffs allege, states would be unable to legislate on basic, necessary procedural matters regarding elections. Put simply, far from such regulation "pretend[ing] it has anything to do with verifying eligibility," the mere fact that a law imposes non-eligibility procedural protections does not mean the law is invalid.

The Third Circuit does not stand alone. The Eleventh Circuit has similarly recognized that the materiality provision's purpose is to "address the practice of requiring unnecessary information *for voter registration*." *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003) (emphasis added). Congress necessarily addressed those practices because "such requirements would increase the number of errors or omissions *on the application forms*." *Id.* (emphasis added). Lower federal courts have reached similar holdings. *E.g.*, *Org. for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790, 803 (W.D. Mo. 2020); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308 (N.D. Ga. 2018); *Common Cause/Ga. v. Billups*, 439 F. Supp. 2d 1294, 1358 (N.D. Ga. 2006); *Friedman v. Snipes*, 345 F. Supp. 2d 1356, 1370-71 (S.D. Fla. 2004); *cf. Condon v. Reno*, 913 F. Supp. 946, 949-50

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(D.S.C. 1995) (discussing impetus for materiality provision: "Congress has repeatedly attempted to deal with the problem of registering as a deterrent to voting").

Unlike the Third and Eleventh Circuits, some district courts have applied the materiality clause to vote-casting measures such as the content of absentee-ballot envelopes. *E.g.*, *Vote.org v. Ga. State Election Bd.*, 661 F. Supp. 3d 1329 (N.D. Ga 2023); *La Union del Pueblo Entero v. Abbott*, 604 F. Supp. 3d 512 (W.D. Tex. 2022); *Martin v. Crittenden*, 347 F. Supp. 3d 1302 (N.D. Ga. 2018). None of these cases is persuasive, however, because each court assumed without discussion that the materiality provision applied. Indeed, it appears that no defendant in these cases even raised whether the materiality provision applies after an individual's voting qualifications have been determined. *See* State Defs.' Br. Supp. Mot. Dismiss 16-25, *Vote.org*, 661 F. Supp. 3d 1329 (No. 1:22-cv-01734), ECF No. 36-1; Mot. Dismiss Fed. Gov't's Claims 1013, *La Union*, 604 F. Supp. 3d 512 (No. 5:21-cv-00844), ECF No. 145; Sec'y of State's Resp. Prop. Pl. Intervenor's Mot. TRO 5-7, *Martin*, 347 F. Supp. 3d (No. 1:18-cv-04776), ECF No. 52. Courts that have addressed the issue conclude that the materiality provision does not have such an extensive reach.

c. Legislative history shows that the materiality provision focused on addressing disparate treatment of voter-registration errors.

When a statute is ambiguous, courts may consider its legislative history. *Delaware v. Pennsylvania*, 598 U.S. 115, 138-39 (2023). Should the Court find the materiality provision ambiguous, its legislative history reinforces that its scope is limited to voter qualifications, specifically voter registration. In discussing the voting sections of the Civil Rights Act, the House Judiciary Committee uniformly focused on how the act was intended to tackle discrimination in voter-registration procedures; the committee did not discuss post-registration activities. *See generally* H.R. Rep. No. 88-914 (1963), *as reprinted in* 1964 U.S.C.C.A.N. 2391. The Committee

explained that it designed the section with the materiality provision "to insure nondiscriminatory practices in the *registration* of voters." *Id.* pt. 1, at 19, *as reprinted* at 2394 (emphasis added).

In writing separately about the voting-rights section of the Civil Rights Act, the committee's ranking member (a longtime civil rights advocate) focused on voter *registration*, citing the low number of voting-age Black citizens who were "*registered* to vote," "the employment of involved *registration* techniques," and disparities in voter registrations. *Id.* pt. 2, at 2-4, *as reprinted* at 2488-90 (emphasis added). When discussing the materiality provision, he identified the reason for the provision as addressing some states and local governments' efforts to "defeat [Black] registration," and evidence that "registrars will overlook minor misspelling errors or mistakes in age or length of residence of white applicants, while rejecting a [Black] application for the same or more trivial reasons." *Id.* at 5, *as reprinted* at 2491. Any ambiguity should be resolved by reading the materiality provision to apply only to voter registration and qualification.

d. Applying the materiality provision to vote-casting documents would create absurd results, undermining fair and orderly election administration.

Finally, interpreting the materiality provision to encompass all potential vote-casting laws like the witness requirement would lead to absurd results, which courts should avoid when possible. *See McNeill v. United States*, 563 U.S. 816, 822 (2010) (rejecting interpretation to avoid absurd result). States generally have broad authority to regulate elections. *Storer v. Brown*, 415 U.S. 724, 730 (1974) ("[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes."). Because voting by absentee ballot is a privilege, not a right, states have a particular interest in enacting absentee-voting procedures that balance protecting eligible voters' rights with preserving election integrity. *DSCC*, 950 N.W.2d at 293; *see also, e.g.,* In *re Contest*

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of Gen. Election of Nov. 8, 2008, 767 N.W.2d 453, 462 (Minn. 2009); *Bell*, 227 N.W.2d at 802; *see also Wichelmann v. City of Glencoe*, 273 N.W.2d 638, 639-40 (Minn. 1937).

A broad reading of the materiality provision would lead to absurd results and prevent states from making reasonable policy choices about the absentee-voting process and requirements for fair and orderly election administration. Under the plaintiffs' interpretation, numerous errors or omissions in voting would have to be disregarded. For example, a voter might sign the voter's name on the ballot, destroying the ballot's secrecy. *See* Minn. Stat. § 204C.18, subd. 2 (criminalizing placing identifying marks on a ballot). Such markings are an "error or omission" on a paper (the ballot) requisite to voting, but they are not material to determining the voter's eligibility. Likewise, if a voter cast a vote for some but not all offices on a ballot, and then tried to obtain a second ballot to vote for those other offices, the plaintiffs' theory of the materiality provision would suggest the election officials must accommodate under- or over-voting paperwork errors, functionally destroying the ability to administer elections in an orderly manner.[7] *See, e.g.*, *id*. § 204B.36, subd. 2 (providing direction about how many candidates voter may select). Or a voter might refuse to complete a ballot in a way that can be read by a tabulation machine or election judge but demand the vote be counted. *See, e.g.*, Minn. R. 8210.0500, subps. 2-3 (directing voters to use black ink).

Myriad election regulations promote election integrity and administration by regulating *how* people vote, but that are unrelated to *who* may vote. If the materiality provision applies to how people vote, such regulations would be impermissible. It would be absurd to conclude that, in enacting the materiality provision, Congress intended to nullify all such longstanding and reasonable election-administration regulations.

[7] Notably, the first ballot could not be spoiled because once inserted into a tabulation machine, there is no way to correlate a ballot to its voter. Minn. Stat. § 204C.18, subd. 2.

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2. Even if the Materiality Provision Applies, No Witness Certification Violates the Materiality Provision.

Even if the materiality provision applies to the ballot-handling certifications, those certifications are permissible under the materiality provision. Those certifications are material to determining *who* cast that ballot, which in turn is material to whether that *who* is a qualified voter.

a. Voter identity is material to absentee voting.

States have broad authority to regulate elections and have a particular interest in regulating absentee voting. *Storer*, 415 U.S. at 730; *DSCC*, 950 N.W.2d at 293. Absentee-voting laws balance qualified voters' right to vote with the preservation of election integrity by not "let[ting] down the bars necessary for honest elections." *Wichelmann*, 273 N.W.2d at 639-40. Voters must strictly comply with state laws regulating voters' conduct. *Contest of Gen. Election of 2008*, 767 N.W.2d at 460-62; *Bell*, 227 N.W.2d at 803. This includes a voter submitting a properly completed voter certificate to ensure eligibility. *Bell*, 227 N.W.2d at 803.

With this in mind, the materiality provision does not preclude states from enforcing election regulations. Materiality is determined within the context of each state's election system. *See id.* § 10101(e) (defining "qualified under State law" as "qualified according to the laws, customs, or usages of the State"); *Penn. NAACP*, 97 F.4th at 128, 130-31. An error is material if, "accepting the error as true and correct, the information contained in the error is material to determining the eligibility of the applicant." *Fla. N.A.A.C.P.*, 522 F.3d at 1175.

In light of these established principles, other courts have broadly construed what constitutes material information. In general, courts have held that requirements related to a voter's identity are material. In other words, states may enact procedures aimed at ensuring that the person who is eligible to vote is the same person actually casting the ballot. For example, recognizing that whether a voter is who they claim to be is material to whether the person is eligible to vote, the

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Fifth Circuit upheld a "wet" (ink) signature requirement. The court credited the legislature's policy decision that such a requirement could reduce fraudulent eligibility certifications, even if that reduction "may not be dramatic." *Vote.Org.*, 89 F.4th at 489. Other courts have upheld photo-identification requirements that are more onerous than the witness requirements present here. For example, one court reasoned that, because "verifying an individual's identity is a material requirement of voting . . . the state may establish procedures to verify this requirement." *Rokita*, 458 F. Supp. 2d at 841; see also *Common Cause/Ga.*, 439 F. Supp. 2d at 1357-58 (following *Rokita* to reject materiality challenge to photo-identification requirement).

b. The ballot-handling certifications ensure the identity of the person who voted that ballot.

Within Minnesota's absentee-voting process, the witness requirement is material. By having a witness certify to the voting process used by the person casting the ballot, the witness corroborates that the intended eligible voter cast the submitted ballot by making four important certifications: (1) the ballot was blank before the voter marked it; (2) the ballot was marked in private; (3) the ballot was sealed in the ballot envelope; and (4) the voter was the one who perform the marking and sealing. Together, these certifications are material to determining that the voter returning a ballot is the same person who cast it.

The Eleventh Circuit's materiality test is persuasive and reinforces the conclusion that these certifications are material. With respect to the witness certifications, "accepting the error as true and correct" would mean accepting ballots where no one saw who marked the ballot, which "is material to determining" whether the voter (as opposed to an unqualified person or a different person) marked the ballot. *Browning*, 522 F.3d at 1175. Moreover, these certifications reflect Minnesota's policy decisions about how to operate its elections, specifically to allow absentee witnesses to mirror the role of election judges in ensuring ballot-handling integrity. *See Storer*,

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415 U.S. at 730 (recognizing authority of states to establish procedural regulations). Accordingly, the witness requirement is material to determining whether a qualified absentee voter completed the ballot.

The requirement that the witness provide a Minnesota address, title (if authorized to administer oaths), or notary stamp is similarly material. Just as the witness's certifications regarding the voter ensure the identity of voter, the additional identifying information provided by the witness ensures that those certifications are not falsely made. Without this information, there would be little to no way to investigate whether the witness was a real person or a forged signature. But with an address, election officials have a means of contacting a witness if necessary. The office of someone with authority to administer oaths or the validity of a notary's commission can be similarly verified. Thus, the witness-identifying information is material to determining whether the witness's certifications (which are material to the voting process) are valid.

c. The registration certifications ensure the identity of the person who registered.

As discussed above, the plaintiffs lack standing to challenge provisions that apply to unregistered voters. Even if a plaintiff had standing, any challenge to the additional certifications for unregistered voters is also unlikely to succeed on the merits. These witness certifications are material for reasons similar to those for the ballot-handling certifications.

In the context of unregistered voters, the witness also certifies that "the voter registered to vote by filling out and enclosing a voter registration application in this envelope" and "the voter provided proof of residence as indicated above." Minn. R. 8210.0600, subp. 1b. Both certify the identity of the person filling out the registration and providing information. Put another way, they ensure that the voter (as opposed to someone else) was the one who completed the registration and

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showed proof of residence. This is no different than a person who registers to vote in person at a polling place on Election Day. Those certifications are material.

In summary, Minnesota law deputizes others to essentially act as election judges to assist in registering voters who cast absentee ballots, and the absentee registration process generally mirrors that at the polling place. Because such voters are not physically present before the election official, the process is done on paper. The witness facilitates this process by ensuring that *the voter* (as opposed to someone else) is the one to vote (and if necessary, register). Ensuring this identity is clearly material to determining whether a ballot has been cast by a qualified voter, and thus the plaintiffs' materiality provision challenges to the witness certifications fail.

3. The Materiality Provision's Limited Scope Does Not Create Inconsistencies in the Secretary's Position or Otherwise Create Risks of Arbitrary Disenfranchisement.

The plaintiffs create a false dichotomy, suggesting that if the witness requirement survives their materiality challenge, the requirement necessarily constitutes an illegal "vouch" violating the Voting Rights Act, and vice versa. (Pls.' Mem. 15-16.) Not so. At its core, the witness requirement serves the narrow purpose of ensuring that a subject voter is the person who actually casts a particular ballot. And establishing that someone is who they say they are does not establish whether that person meets voter-eligibility criteria. The witness requirement is thus categorically distinct from the "tests and devices" that the Voting Rights Act prohibits because this requirement is not a standalone verification of voter eligibility.

But the mere fact that confirming identity is not a standalone verification of voter eligibility does not mean that confirming identity is wholly *immaterial* to later or separate eligibility determinations. At some point, election officials may need to determine if ballot errors or omissions implicate voter identity and/or eligibility. In such circumstances, knowing who someone is—and whether that someone is the same human who cast the ballot—is plainly material to

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determining whether that ballot was cast by an eligible voter. The witness requirement thus serves an important, nonarbitrary role in evaluating ballots. Rather than collapsing into each other as the plaintiffs suggest, the vouching prohibition and the materiality provision serve distinct purposes. The vouching prohibition targets the vetting of a specific voter's qualifications by arbitrary classes of persons. And the materiality provision, when properly construed, focuses on adding other irrelevant hurdles to registration. But even if construed more broadly, the materiality provision functions in the separate sphere of evaluating ballots. Certifying that the qualified voter cast the ballot and the ballot reflects its voter's vote is material to that evaluation. This construction harmonizes the laws and confirms that they are not fatally interconnected.

Nor does the limited scope of the materiality provision invite arbitrary disenfranchisement. (Pls' Mem. 19.) The claim before this Court is narrow: whether Minnesota's witness requirement violates the materiality provision. The plaintiffs do not assert a constitutional claim that requires a "least-restrictive-alternative" analysis. Should the state impermissibly burden the right to vote, enact discriminatory laws, or implement laws in discriminatory ways, the plaintiffs would likely have other claims that they could assert to remedy those harms. Upholding the witness requirement under the materiality provision does not endorse or otherwise invite disenfranchisement. At their core, the plaintiffs raise policy concerns better addressed to the legislature. *See Schroeder v. Simon*, 985 N.W.2d 529, 557 (Minn. 2023) (emphasizing that legislature, not court, was appropriate body to address public-policy concerns); *State v. Empie*, 204 N.W. 572, 573-74 (Minn. 1925). While the legislature could change the witness requirement, its current policy is valid. Federal law does not mandate that it enact the plaintiffs' preferred law.

II. THE PLAINTIFFS HAVE NOT SHOWN THEY WILL SUFFER IRREPARABLE HARM.

To secure an injunction, the moving party must prove they will suffer irreparable harm absent the injunction. *AMF Pinspotters, Inc. v. Harkins Bowling, Inc.*, 110 N.W.2d 348, 351

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(Minn. 1961). The risk of injury must be real and substantial. *St. Jude Med., Inc. v. Carter*, 913 N.W.2d 678, 684 (Minn. 2018). This is not a small burden: the moving party must show that irreparable injury is *likely*, not merely *possible*. *Id.* General concerns about potential future harm do not suffice; the purpose of injunctive relief "is not to allay a litigant's fears or apprehensions." *Id.* (quotation omitted). Here, neither the individual plaintiffs nor Minnesota Alliance established a likelihood of irreparable harm.

A. The Individual Plaintiffs Failed to Establish Irreparable Harm.

Neither individual plaintiff established a likelihood of irreparable harm from the witness requirement in the 2024 elections. Mohamed and Maples are already registered to vote, so they only need witnesses to certify that their ballots have been marked with their own votes. Both have successfully found a witness in every prior election in which they have voted absentee.

Mohamed submitted no evidence to even attempt to establish irreparable harm. And while Maples submitted a declaration, she failed to establish that she is unlikely to find a witness. Maples implies she could not find a witness for the March primary, but notably does not aver that she *tried* to find one. She did not even request an absentee ballot for the March primary. (Maples Decl. ¶ 10.) She similarly does not state what steps—if any—she has taken to locate a witness for either of the upcoming 2024 elections, or if those attempts have been or are likely to be unsuccessful over the next six months. Instead, both individual plaintiffs assert harms best described as generalized "fears and apprehensions" about a possible future harm, which is insufficient to confer standing for temporary injunctive relief. *St. Jude*, 913 N.W.2d at 684.

B. Minnesota Alliance Does Not Establish It—or Any of Its Members—Will Likely Suffer Irreparable Harm.

Minnesota Alliance similarly fails to establish irreparable harm on behalf of any of its members. The organization does not allege that a single member's ballot has been rejected for

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noncompliance with the witness requirement. (Am. Compl.; Pls' Mem.) Despite bearing the burden of proof, the organization has presented no admissible evidence of a single member who lacked a witness for any past election. *See* Minn. R. Civ. P. 65.02(a) (requiring competent evidence to grant temporary injunction).

Nor has Minnesota Alliance established that it will suffer irreparable direct harm. The only direct harm claimed is some unspecified resource-allocation harm. As noted above, those resource issues are nonspecific and are theoretically unchanged in decades of Minnesota elections. Purely monetary concerns like resource issues are generally inadequate to establish irreparable harm. *See Miller*, 317 N.W.2d at 713. The plaintiffs' request should be denied. *Morse*, 458 N.W.2d at 729.

C. The Plaintiffs' Delay Indicates They Will Not Suffer Irreparable Harm.

Unreasonable delay in seeking a temporary injunction may bar a party from obtaining one. *Pickerign v. Pasco Mktg. Co.*, 228 N.W.2d 562, 444 (Minn. 1975). This is so because the delay in seeking a remedy "belies any claim of irreparable injury pending trial." *Hubbard Feeds, Inc. v. Animal Feed Supplement, Inc.*, 182 F.3d 598, 603 (8th Cir. 1999).

Here, Minnesota's witness requirement has existed in its current form for the past 75 years and in some form for more than 160 years. Thus, the Voting and Civil Rights Acts have applied to the current witness requirement for the entirety of its existence. The plaintiffs, however, waited until February 2024 to bring suit, and then waited another three months before moving for a temporary injunction. These delays, particularly accompanied by the plaintiffs' successes in voting in the past, indicate that preliminary relief is not required to prevent irreparable harm.

D. The Plaintiffs' Proposed Relief Would Harm Election Officials and Voters.

While denying the plaintiffs' motion would not irreparably harm the plaintiffs, granting the motion would harm Minnesota's election system. Most directly, if election officials were required to disregard the witness requirement, then the Court would be imposing a significant policy change

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without the benefit of the legislature considering alternatives to achieve its policy goals. As previously discussed, the legislature structured the witness requirements to generally adapt in-person processes and safeguards to the absentee context. (Maeda Decl. ¶¶ 6, 8, 10, 11.) An injunction would remove these safeguards in toto, without establishing any replacement.

Additionally, Minnesota's election officials would incur the costs of complying with the proposed injunction. The plaintiffs' suggestion that an injunction would have no impact is notably unsupported, and unfounded. Depending on the injunction's scope, election officials would have to reorder signature envelopes to remove the witness requirement—at a cost of at least $500,000—or, at a minimum engage in a public-information campaign to ensure voters are accurately informed that they do not need a witness. (*Id.* ¶ 13.) Moreover, the alternative proof-of-residence procedure the plaintiffs propose is impractical. Signature envelopes are sized to fit only their intended contents, ballot envelopes, and thus may need to be printed in a larger size to accommodate additional documentation. (*Id.* ¶ 15.) Election officials would also have to implement new procedures to address the submissions, including storage of personal information like driver's license numbers, as well as making provision for individuals who submit originals rather than copies. (*Id.*) All of these changes would have to take place during what is already an incredibly busy time for election officials as they prepare for a general election that includes a (historically high turnout) presidential election. (*Id.* ¶ 16.)

III. THE REMAINING *DAHLBERG* FACTORS FAVOR THE SECRETARY.

Each of the three remaining *Dahlberg* factors favors denying a temporary injunction.

A. Nature and Background of the Parties' Relationship

The parties' relationship weighs against the plaintiffs' request. This factor generally asks whether an injunction will preserve the status quo until adjudication of the case on the merits. *See,*

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e.g., *Pac. Equip. & Irr., Inc. v. Toro Co.*, 519 N.W.2d 911, 915 (Minn. Ct. App. 1994); *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship*, 638 N.W.2d 214, 221 (Minn. Ct. App. 2002).

While the law's contours have changed over time, Minnesota has required a witness to vote absentee since 1862. The current form of the witness requirement has been law for at least seventy-five years. *See* 1949 Minn. Laws ch. 368, § 2. This longstanding, continuous practice establishes that the status quo for absentee voting in Minnesota encompasses precisely what the plaintiffs seek to change. Thus, abruptly removing the witness requirement after decades of orderly administration, right as election officials are preparing for the state primary election and then the general election—in a presidential year, no less—would significantly alter the status quo and turn the purpose of a temporary injunction on its head. *See Metro. Sports*, 519 N.W.2d at 221. This factor weighs strongly against granting the plaintiffs' request for temporary injunctive relief.

B. Public Policy Weighs Against Injunctive Relief.

Public policy—as established by the Legislature and as recognized by the Minnesota Supreme Court—also weighs against upending the longstanding witness requirement. Requiring a witness to absentee ballots is a legislative choice, which this Legislature has relaxed over the years but never abolished. As important election-integrity tools, absentee-voting regulations further an interest that is compelling as a matter of law and public policy of this state. *See Bell*, 227 N.W.2d at 803; *DSCC*, 950 N.W.2d at 293; *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 730 (Minn. 2003).

On the other hand, 5,479 absentee ballots were rejected for failure to comply with the witness requirement in the 2022 general election. (Maeda Decl. ¶ 19.) That is approximately 0.8% of all mail ballots returned by Minnesota voters, and less than 0.3% of all ballots ultimately cast in Minnesota in that election. (*Id.*) Those small percentages do not upend the well-established public policy benefits of ensuring election integrity and the legislature's prerogative to do so by

enforcing a witness requirement. Accordingly, public policy weighs against granting the plaintiffs' requested injunctive relief.

C. The Administrative Burdens Involved in Supervising Injunctive Relief Weigh Against Granting the Plaintiffs' Motion.

Finally, the Court should deny the plaintiffs' motion because the administrative burdens this Court would incur in overseeing the relief the plaintiffs seek would be significant. The plaintiffs seek wide-ranging relief that involves multiple parts of the election process, yet they gloss over this factor with the conclusory assertion that no administrative burden would follow. (Pls.' Mem. 25.) But the nature of the relief sought belies this statement.

Specifically, plaintiffs seek to force the Secretary to instruct election officials in all 87 Minnesota counties to change their ballot-counting processes, and ostensibly inform Minnesota voters of this change to a decades-old process. And it is the county election officials—*not* the Secretary—who accept or reject ballots. (Maeda Decl. ¶ 2.) Nor are county or other local election officials agents of the Secretary. (*Id.*) Accordingly, the plaintiffs apparently ask the Court to oversee the work of those county officials in all 87 Minnesota counties to achieve the relief they seek, even though those officials are not parties to this lawsuit.

The plaintiffs also seek to implement an *entirely new* voting process: allowing voters to submit a copy of proof of residence with their absentee voter registration application. (Pls' Mot.; Pls' Proposed Order ¶ D.) They seek this broad relief though they have not identified any unregistered voter who actually seeks this relief. Nor did they submit any admissible evidence that such a process would be feasible. The process would require new instructions, new envelopes to fit further documentation, new voting materials, and new processes to be approved by this Court, along with instructions and an education campaign to inform voters of this new process and how

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to comply, both tasks that are also likely to be supervised by this Court. (Maeda Decl. ¶¶ 13-17.) Such a process would burden election officials, and risk confusing voters. (*Id.* ¶¶ 2, 13-17.)

All this represents a monumental administrative task for election officials to accomplish and this Court to supervise in a relatively short amount of time. Especially when weighed against the decades in which the plaintiffs *could* have brought their lawsuit, these administrative burdens weigh heavily against granting the plaintiffs' motion for temporary injunctive relief.

CONCLUSION

The Court should dismiss the plaintiffs' motion for temporary injunction. The plaintiffs lack standing, they are unlikely to succeed on the merits of their claims, they have not proved irreparable harm, and the remaining injunctive-relief factors favor the Secretary.

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