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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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

Plaintiffs,

v.

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

Defendant,

Republican National Committee, Republican Party of Minnesota,

[Proposed] Intervenors.

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

INTERVENORS' PROPOSED OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION

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INTRODUCTION

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

Indeed, the Witness Requirement has been the law in Minnesota since 1949. Even now, Plaintiffs are unable to identify a *specific person* who has been unable to vote or had a ballot rejected due to the Requirement. They nonetheless ask the Court to temporarily enjoin the Requirement and to change the Legislature's voting laws in the middle of a crucial election year in which millions of Minnesotans will cast their ballots for President, U.S. Senate, and dozens of other offices.

The Court should reject this extraordinary request. To start, the Court need not even consider Plaintiffs' motion. Both Defendants and Intervenors have moved to dismiss the Complaint due to Plaintiffs' pleading failures. Because Plaintiffs' Amended Complaint does not remedy these defects, the Court should dismiss this case without addressing Plaintiffs' motion for temporary injunction.

In any event, if the Court proceeds to consider Plaintiffs' motion, it should deny the motion for at least four reasons. *See* Minn. R. Civ. P. 65.02. *First*, Plaintiffs lack standing. They have identified

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no individual who has been unable to vote or had a ballot rejected due to the Witness Requirement. Instead, they assert only a generalized interest in precluding the Witness Requirement's enforcement "no different in character than that of the citizenry in general," which is insufficient to confer standing. *Minn. Voters All. v. State*, 955 N.W.2d 638, 642 (Minn. Ct. App. 2021).

Second, Plaintiffs' claims are doomed on the merits. Plaintiffs do not identify a *single case* that has invalidated a witness requirement under either of the federal statutes they invoke—and they simply ignore most of the contrary authority Defendants and Intervenors cited in support of their motions to dismiss. Plaintiffs never mention that *every* court to have considered the question has concluded that witness requirements do not violate Section 201 of the Voting Rights Act (VRA), which Plaintiffs invoke in Count I. *See, e.g.*, *Thomas*, 613 F. Supp. 3d at 959-62; *People First of Ala.*, 467 F. Supp. 3d at 1223-25. The United States Department of Justice—which has authority to enforce the VRA—agrees that witness requirements do not violate Section 201. *See* Brief of the Department of Justice, ECF No. 47 at 9, *Thomas v. Andino*, 613 F. Supp. 3d 926 (D.S.C. 2020) (No. 3:20-cv-1552) ("DOJ Brief").[1] So too here. Minnesota's Witness Requirement does not violate Section 201 because its main application has nothing to do with proving a voter's "qualifications"; none of its applications requires a witness to "vouch[]" for a voter's qualifications; it permits government officials to serve as witnesses; and it never results in "den[ying] . . . the right to vote" of any individual. 52 U.S.C. § 10501; *see also Thomas*, 613 F. Supp. 3d at 959-62; *People First of Ala.*, 467 F. Supp. 3d at 1223-25; DOJ Br. 7-11.

Plaintiffs' claim in Count II that the Witness Requirement violates the Materiality Provision of the Civil Rights Act of 1964 fares no better. As the Third Circuit recently explained, the Materiality Provision covers only the rejection of voter *registration* applications based on immaterial paperwork errors, not *post-registration* ballot-casting rules like the Witness Requirement, which primarily governs

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

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the completion and casting of mail ballots. *See Pa. State Conf. of NAACP v. Schmidt*, 97 F.4th 120, 132-33 (3d Cir. 2024). Plaintiffs have now amended their Complaint in an attempt to challenge the Witness Requirement's convenience allowing previously non-registered voters to register by showing proof of residence to the witness. But that convenience is valid under the Materiality Provision. After all, that convenience *lessens* the burden on registering to vote—and proof of Minnesota residence is plainly "material in determining whether such individual" meets the residency requirement to be "qualified under State law to vote." 52 U.S.C. 10101(a)(2)(B). The Witness Requirement satisfies the Materiality Provision under any conceivable judicial standard. *See Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1173-74 (11th Cir. 2008); *Vote.Org v. Callanen*, 89 F.4th 459, 481 (5th Cir. 2023).

Third, Plaintiffs' failure to identify even a single specific individual unable to vote or whose ballot was rejected due to the Witness Requirement—in the 75 years the Requirement has been on the books—necessarily means they have failed to establish the sort of "great and irreparable injury" required for a temporary injunction. *Cherne Indus., Inc., v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979). Plaintiffs' abrupt suggestion that injunctive relief is urgently needed is insufficient to carry their burden—particularly when an injunction against the Legislature's duly enacted Witness Requirement will irreparably harm the State, Intervenors, and Minnesota voters.

Finally, a temporary injunction would be contrary to the public interest. Plaintiffs' request to change longstanding election rules in the middle of a crucial election year would confuse voters, make the 2024 elections harder to administer, and undermine public confidence in the integrity and fairness of the 2024 elections. The "purpose [of a temporary injunction] is to preserve the status quo until adjudication of the case on its merits." *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). Here, the need to preserve the status quo weighs strongly against Plaintiffs' requested injunction. *See id.* The Court, therefore, should decline Plaintiffs' request to *reverse* the status quo.

The Court should deny Plaintiffs' motion.

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BACKGROUND

Minnesota's voting regime is among the Nation's most generous, and Minnesota "has consistently had the highest voter turnout in the United States."[2] Minnesotans can register to vote immediately before casting a ballot.[3] All voters can cast their ballots before Election Day, by either of two routes. First, the State offers up to 46 days of early in-person voting.[4] Second, Minnesota offers "[a]ny eligible voter" the option to vote by mail. Minn. Stat. § 203B.02, subd. 1.

To vote by mail, Minnesotans must complete a mail-ballot application form "not less than one day before" Election Day, *id.* § 203B.04, subd. 1(a), and submit it to election officials "by mail, email, fax, or in person." *Minn. Voters All. v. Simon*, 990 N.W.2d 710, 712 (Minn. 2023). If the applicant is not already registered to vote, she can register simultaneously using the application form. *See* Off. of the Minn. Sec'y of State, 2022 Absentee Voting Administration Guide at 23 (July 21, 2022) (the "Guide").[5]

Once election officials receive a vote-by-mail application, they check the applicant's registration status. *Id.* If election officials determine that the applicant is registered or has properly registered using the application, they send the applicant a mail-ballot package consisting of a ballot; a secrecy envelope in which the ballot is placed; a signature envelope in which the secrecy envelope is placed; and an addressed, postage-paid return envelope in which all balloting materials are placed. *See id.*; *Minnesota Voters Alliance*, 990 N.W. 2d at 712-13; Minn. Stat. § 203B.08, subd. 2.

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[2] Becca Most, *Why Does Minnesota Have the Best Voting Record in the U.S.?*, St. Cloud Times (Sept. 2, 2022), https://www.sctimes.com/in-depth/news/2022/08/23/minnesota-voting-access-number-1-in-voter-turnout-in-u-s-heres-why/65392204007/.

[3] *See Register on Election Day*, Off. of the Minn. Sec'y of State, (last visited May 8, 2024), https://www.sos.state.mn.us/elections-voting/register-to-vote/register-on-election-day/.

[4] See *Vote Early in Person*, Off. of the Minn. Sec'y of State, (last visited May 8, 2024), https://www.sos.state.mn.us/elections-voting/other-ways-to-vote/vote-early-in-person.

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

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Minnesota has established rules governing the completion and submission of mail ballots that all voters must comply with to have their mail ballots counted. *See* Guide at 44-46. Since 1949, 1949 Minn. Laws ch. 368, § 2, Minnesota has required a witness to verify the voter's personal completion of a mail ballot, *see* Minn. Stat. § 203B.07, subdiv. 3. The witness can be any registered Minnesota voter, a notary public, or any other individual authorized to administer oaths—including election judges at polling places. *Id.*; Guide at 25 ("An election judge can also serve as a witness … . In most cases, county, municipal or school election administrators [can serve a witness]."). The witness must sign a certification confirming that "the ballots were displayed to [the witness] unmarked" and that "the voter marked the ballots in [the witness's] presence without showing how they were marked, or, if the voter was physically unable to mark them, that the voter directed another individual to mark them." Minn. Stat. § 203B.07, subdiv. 3. In addition, the witness must either provide the witness's address or, if applicable, a notary stamp or statement of the witness's eligibility to administer oaths. Guide at 44. Intervenors refer to this set of rules as "the Witness Requirement for ballot casting."

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

Election officials do not use compliance with the Witness Requirement for ballot casting to determine an individual's eligibility or qualifications to vote. *See id.* at 43-46. Thus, failure to comply with the Witness Requirement for ballot casting does not result either in the individual being deemed unqualified to vote or in removal of the individual from the voter rolls. *See id.* Instead, such a failure

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results only in a determination regarding the ballot's validity (and triggering of the cure process). *See id.*

The Legislature has also establish a convenience for citizens not previously registered to vote to register through the Witness Requirement. Minn. Stat. § 203B.07, subdiv. 3. Non-registered individuals can, like registered voters, apply for mail ballots; when such applications are received, election officials send the applicant "non-registered absentee materials," which include a registration application and the mail-ballot package. Guide at 23. Rather than requiring that such voters provide proof of residence to an election official—which is what individuals registering on Election Day must typically do, Minn. Stat. § 201.061, subdiv. 3—the Witness Requirement permits them to provide it to a witness, who in turn attests to having seen it. *See* Minn. Stat. § 203B.07, subdiv. 3. The witness does not attest that the proof of residence is genuine or to any personal knowledge regarding the voter's residence or whether the voter satisfies Minnesota's residency requirement to vote. *See id.* If the applicant properly submits the registration application alongside the applicant's mail ballot by election day, the ballot is counted. *See* Guide at 35, 23, 25. Intervenors refer to this convenience as the "voter-registration convenience."

LEGAL STANDARD

Plaintiffs must overcome a daunting legal standard to obtain a temporary injunction. *U.S. Bank Nat'l Ass'n v. Angeion Corp.*, 615 N.W.2d 425, 434 (Minn. Ct. App. 2000). After all, "[a] temporary injunction is an extraordinary equitable remedy." *Miller*, 317 N.W.2d at 712. "Its purpose is to preserve the status quo until adjudication of the case on its merits." *Id.* Thus, a party seeking a temporary injunction must show a "likelihood" of success on the "merits" of its claim. *Id.* Further, the party must make a "clear" showing of irreparable harm. *Id.*; *see Cherne*, 278 N.W.2d at 92. Courts can also consider the "nature and background of the relationship between the parties preexisting the dispute," the degree of irreparable harm to the Plaintiffs "compared to that inflicted on defendant[s],"

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likelihood of success on the merits, public policy considerations, and administrative burdens on the courts. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965).

ARGUMENT

Plaintiffs cannot meet their heavy burden to obtain a temporary injunction for at least four reasons. Plaintiffs lack standing; their claims are doomed on the merits; they have failed to make a meaningful showing of irreparable harm; and the public interest favors maintaining the status quo instead of destabilizing it in the middle of a contentious election year. Accordingly, the Court should deny the motion.

I. PLAINTIFFS HAVE FAILED TO ESTABLISH STANDING.

The Court should deny Plaintiffs' motion at the threshold because they have failed to establish standing. *See, e.g.*, *In re Custody of D.T.R.*, 796 N.W.2d 509, 512-13 (Minn. 2011). Neither the two named individual Plaintiffs nor the organizational Plaintiff has satisfied that burden.

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

Neither Ms. Maples nor Mr. Mohamed has standing. Plaintiffs must prove an "injury-in-fact"—a requirement on which Minnesota courts often consult federal law. *See, e.g.*, *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (citing *Sierra Club v. Morton*, 405 U.S. 727, 731–32 (1972)). The U.S. Supreme Court has recognized that violations of the right to vote can give rise to a cognizable injury. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021) (cognizable "traditional harms may … include harms specified by the Constitution itself"). But voting-rights plaintiffs must still "demonstrate (1) a direct interest in the [challenged] rule that is different in character from that of the citizenry in general; (2) the alleged harm is not speculative or hypothetical; and (3) the alleged harm is uniquely attributable to the [challenged] rule." *Minn. Voters All.*, 955 N.W.2d at 642.

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

Nor can Plaintiffs allege or prove a concrete and imminent *future* injury traceable to the Witness Requirement. The Amended Complaint suggests only the "mere possibility of" not having a mail ballot counted, *id.*, because of the anticipated "difficulty" of "finding someone to witness [an] absentee ballot in the 2024 election." Index # 52, Am. Compl. ¶¶ 11-12. However, finding that either named Plaintiff will be injured demands several levels of speculation—and such guesswork is fatal to standing. *See Minn. Voters All.*, 955 N.W.2d at 643 (prohibiting standing premised on "chain of hypothetical claims").

First, the Court must assume that Ms. Maples or Mr. Mohamed will indeed vote absentee in a future election—which neither Plaintiff clearly alleges in the Amended Complaint. Plaintiffs' declarations only muddy the waters further. Mr. Mohammed did not submit a declaration, and Ms. Maples admits she voted in person in Minnesota's 2024 primary election. *See* Index # 55, Maples Decl. ¶ 10.

Second, the Court must assume that either Plaintiff will vote *by mail*—and not submit an absentee ballot *at a polling place*, where an election judge can serve as a witness, lifting any conceivable burden. *See* Guide at 25. But the Amended Complaint does not allege, and Ms. Maples's declaration does not state, that she would not return her ballot at a polling place such as the one where she voted in person in the 2024 primary election. *See* Index #55, Maples Decl. ¶ 10.

Third, assuming Ms. Maples or Mr. Mohamed intends to vote by mail in a future election, the Court must further assume that they will be unable to find any qualified individual willing to serve as a witness. This assumption is particularly implausible. Both individual Plaintiffs, like millions of other Minnesotans, have successfully found witnesses in the past. *See* Index # 52, Am. Compl. ¶¶ 10-11. It

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only takes a moment to ask a friend, family member, neighbor, coworker, or any other person with whom Ms. Maples or Mr. Mohamed interacts to serve as a witness. *Cf. League of Women Voters of Minn.*, 2021 WL 1175234, at *2 (finding that, even during the pandemic, Minnesota's witness requirement did not impose a serious burden on voters). Neither Plaintiff does (or could) allege that they do not regularly interact with registered Minnesota voters. Thus, the Amended Complaint never meaningfully alleges that the Witness Requirement "will be applied to [Plaintiffs'] disadvantage." *Minn. Voters All.*, 955 N.W.2d at 643. The mundane inconvenience of having to ask an acquaintance to spend a couple minutes watching you complete a mail ballot is *at most* a "usual burden[]" of voting, which does not implicate voting rights. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008); *League of Women Voters of Minn.*, 2021 WL 1175234, at *6-9 (finding Witness Requirement did not implicate right to vote); *Kahn v. Griffin*, 701 N.W.2d 815, 833 (Minn. 2005) (Minnesota Constitution does not "provide[ ] greater protection to the right to vote than does the U.S. Constitution"). Because such commonplace inconveniences do not implicate the right to vote, they bear no "close relationship" to "traditional[]" constitutional injuries that confer standing. *TransUnion*, 594 U.S. at 424.

For its part, Ms. Maples's declaration states that there "is no guarantee" that she will be able to find a witness in the 2024 general election because she has recently moved. Index #55, Maples Decl. ¶ 7. Her affidavit, however, does not explain why she could not ask one of her medical caregivers, an employee in a medical office, an employee at a store she visits, a delivery person, or a fellow member of the Minnesota Alliance for Retired Americans Educational Fund to serve as a witness. *See id.* Indeed, it is at best "speculative" that she will not meet anyone in her new building, or otherwise interact with someone, who can serve as a witness in the general election still six months away. *Minn. Voters All.*, 955 N.W.2d at 642.

Finally, if more were somehow needed, the Court would have to assume that neither Plaintiff would successfully cure any failure to comply with the Witness Requirement. *See* Guide at 45–46.

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Either could do so by merely submitting a new, compliant mail ballot or voting in person. *Id.* Such efforts are even less onerous than the trip to the county courthouse the U.S. Supreme Court found too insignificant to implicate the right to vote in *Crawford*. *See* 553 U.S. at 198. As such, compliance with Minnesota's cure procedures bear no "close relationship" to "traditional[ ]" standing injuries. *TransUnion*, 594 U.S. at 424..

Indeed, Plaintiffs do not allege, and Ms. Maples's declaration does not state, that their primary example of the "Witness Requirement's Impact on Plaintiffs" applies to them. Index # 52, Am. Compl. at 9; Index #55, Maples Decl. They speculate that some voters might have their mail ballots rejected because election officials could be confused by a witness who is a registered Minnesota voter with an address in a neighboring State. Index #52, Am. Compl. ¶ 35. Election officials, however, are instructed on that possibility and how to avoid it, *see* Guide at 72, and Plaintiffs never allege that any ballot has been rejected on this basis. Even assuming that could happen, neither Ms. Maples nor Mr. Mohamed alleges that it has happened to them, nor any reason to think the Witness Requirement "will be applied to their disadvantage" in that way. *Minn. Voters All.*, 955 N.W.2d at 643.

In short, the individual Plaintiffs have not alleged or proven that they will suffer a concrete, imminent injury or that the Witness Requirement "will be applied to their disadvantage." *Id.* The "mere possibility" that either Plaintiff will be subject to the Witness Requirement "is not different in character from the possibility that any other citizen" might be subject to the Witness Requirement. *Minn. Voters All. v. State*, 2021 WL 416744, at *4 (Minn. Ct. App. Feb. 8, 2021). Thus, the individual Plaintiffs lack standing to sue.

B. *The Alliance lacks standing.*

The Alliance also lacks standing. An organizational plaintiff can assert an organizational injury or associational standing on behalf of its members. *See All. for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 913-15 (Minn. 2003). The Alliance has failed to establish either type of injury.

The Alliance's assertion of associational standing fails for two reasons. *First*, organizations alleging associational standing must point to *specific* members that have been, or imminently will be, injured by the challenged law. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 498-99 (2009) (rejecting organization's assertion of associational standing based on statistical likelihood that an unidentified member would be injured); *NAACP v. City of Kyle*, 626 F.3d 233, 237 (5th Cir. 2010) (requiring plaintiff to identify "specific member" injured by law). In the Amended Complaint, the Alliance points only to Ms. Maples and Mr. Mohamed, who lack standing in their own right. *See supra* Part I.A. In a new declaration, the Alliance identifies two more individuals—Mary Sansom and Louise Sundin—but neither has been harmed by the Witness Requirement. Index # 56, Madden Decl. ¶ 7. The Alliance claims that, because of the Witness Requirement, Ms. Sansom has "at times" voted in person, while Ms. Sundin, on one occasion, successfully completed her mail ballot after a delay. *Id.* The Alliance, however, does not claim either was unable to vote or had a ballot rejected due to the Witness Requirement—so neither has suffered a cognizable injury. The Alliance also makes a bare assertion that one or more of its unnamed members *might* be injured by the Witness Requirement, *id.* ¶ 8, but that is plainly inadequate, *see Summers*, 555 U.S. at 498-99.

Second, the Alliance fails the additional two-factor test established by the Minnesota Supreme Court for associational standing. That test asks whether, assuming "the[] organization[] were denied standing," (1) whether "no potential plaintiff would have standing to challenge the regulation in question" and (2) "for whose benefit … the regulation at issue [was] enacted[.]" *All. for Metro. Stability*, 671 N.W.2d at 914-15. As to the first question, voters whose ballots *have* been rejected under the Witness Requirement obviously have standing to challenge the law; this is not a case where it is "very unlikely" anyone could ever sue. *Id.* As to the second question, which focuses on who has the strongest interest in challenging a law, individuals whose votes were not counted are in a far better

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position to challenge the Witness Requirement. Those individuals—and not others—have an interest "different in nature from the citizenry in general." *Minn. Voters All.*, 955 N.W.2d at 642.

At least two other factors underscore that the Alliance has not met its burden to plead and prove standing. For one thing, unlike the organization in *Alliance for Metropolitan Stability*, whose mission was laser-focused on the subject of the lawsuit—"affordable housing in metropolitan area communities," 671 N.W. 2d at 910, 915—the Alliance's organizational focus is on senior citizens *generally*, with sub-focuses on *many* issues (including voting rights). Index # 52, Am. Compl. ¶ 8; *accord* Index #56, Madden Decl. ¶ 5; Alliance for Retired Americans, www.retiredamericans.org (last visited May 8, 2024) (highlighting advocacy related to Social Security and Medicare). For another, a challenge led by voters who were actually injured by the Witness Requirement would allow the court to consider real-world facts about how the law operates in practice. That would be far preferable to litigating this speculation-riddled Amended Complaint, which fails to identify a single person whose vote was prevented or rejected under the Witness Requirement.

The Alliance has also failed to prove an organizational injury. The Alliance vaguely claims that it will divert resources to "educate its members on the witness requirement." Index # 52, Am. Compl. ¶ 10; Index #56, Madden Decl. ¶¶ 9-10. But when organizations spend resources on "routine" activities, such spending is not a cognizable injury. *La. Fair Hous. Action Ctr. v. Azalea Garden Props.*, 82 F.4th 345, 351 (5th Cir. 2023) (citing other cases for proposition). Here, the Alliance regularly educates its members about applicable election rules—including the Witness Requirement, which is older than the Alliance. Index # 56, Madden Decl. ¶¶ 9-10. The Alliance's decision to continue educating members about longstanding election rules cannot establish standing. *See, e.g.*, *Azalea Garden Props.*, 82 F.4th at 351-52. Otherwise, an organization would have standing to challenge any law—no matter how longstanding—it tells its members about.

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C. *Plaintiffs lack standing to challenge the Witness Requirement's voter-registration convenience.*

Even if the Court finds Plaintiffs have established standing to challenge the Witness Requirement for ballot casting, Plaintiffs lack standing to challenge the Witness Requirement's voter-registration convenience. *See supra* 5-6. Individual Plaintiffs Ms. Maples and Mr. Mohammed lack standing to challenge that convenience because they are both registered voters and, thus, are entirely unaffected by it. Index # 52, Am. Compl. ¶¶ 11-12; Index #55, Maples Decl. ¶ 1. Nor does the Alliance identify any non-registered voter who will even be subject to—let alone injured by—this convenience. *See Summers*, 555 U.S. at 498-99. Indeed, the two individuals identified in the Alliance's declaration, Ms. Sansom and Ms. Sundin, are presumably registered to vote since they have voted in the past. Index #56, Madden Decl. ¶ 7. This omission is especially striking because Intervenors' dismissal brief highlighted this pleading failure, *see* Index # 49 at 25, and Plaintiffs did not fix it in the Amended Complaint.

The Alliance has also not alleged that it will divert resources *specifically* to educating non-registered voters about the voter-registration convenience. In fact, Plaintiffs' affidavits say *nothing* about non-registered voters or the convenience. *See, e.g.*, Index #56, Madden Decl. The Court must therefore conclude Plaintiffs lack standing to challenge this portion of the Witness Requirement. *See Summers*, 555 U.S. at 498-99; *NAACP v. City of Kyle*, 626 F.3d at 237 (requiring plaintiff to identify "specific member" injured by law).

II. PLAINTIFFS' CLAIMS FAIL AS A MATTER OF LAW.

Even if the Court concludes that Plaintiffs have standing, it still should deny their motion because Plaintiffs' claims fail on the merits. Accordingly, there is not only a "likelihood," but a certainty, that Defendants and Intervenors "will prevail on the merits." *Miller*, 317 N.W.2d at 712; *see also Haley v. Forcelle*, 669 N.W.2d 48, 58 (Minn. Ct. App. 2003) (temporary injunction foreclosed for meritless claim).

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A. *The Witness Requirement does not violate Section 201.*

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

> (a) No citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State.
>
> (b) As used in this section, the term "test or device" means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) **prove his qualifications by the voucher of registered voters or members of any other class.**

52 U.S.C. § 10501 (emphasis added).

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

Plaintiffs posit that the Witness Requirement violates Section 201 by requiring voters to "prove [their] qualifications by the voucher of registered voters or members of any other class. Index #54, Mot. at 7. But Section 201's plain text forecloses this argument in at least four ways.

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First, the Witness Requirement for ballot casting does not violate Section 201 because it does not require any voter to "prove his qualifications"—by witness or otherwise. 52 U.S.C. § 10501(b). When the word "qualifications" appears in federal voting-related statutes, it refers to the formal criteria each State uses to determine *who* is eligible (and therefore may register) to vote, not to the rules governing *how* qualified voters cast their ballots. *See, e.g.*, *Pa. State Conf. of NAACP*, 97 F.4th at 135 (a statute "focus[ed] on voter qualification" addresses the "determin[ation] [of] who may vote" during voter registration); *Browning*, 522 F.3d at 1170 (discussing "qualifications necessary to be a registered voter" in context of federal voter-registration laws) (cleaned up).

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

As relevant to registered voters, Plaintiffs' only response is to mischaracterize the Witness Requirement, insisting that the witness somehow attests to the voter's "qualifications" referred to in the "certificate of eligibility." Index # 54 at 14. A simple look at the sample ballots provided in Plaintiffs' Amended Complaint exposes their error. Index # 52, Am. Compl. at 9. As the Secretary's

dismissal brief explained, the witness does not sign the "certificate of eligibility"—the voter does. Index # 39 at 4. Indeed, the voter's certificate of eligibility is in a different "section"—walled off in a separate box—than the "section" the witness fills out. Index # 52, Am. Compl. at 9. The witness's separate section merely requires the witness to attest that he watched the voter fill out the ballot. *Id.* That is in line with how witness requirements in other States work as well. *See, e.g.*, *Thomas*, 613 F. Supp. 3d at 961. And the fact that a particular person filled out the ballot is not a "qualification[]" under Minnesota law. 52 U.S.C. § 10501(b). The Witness Requirement thus does not violate Section 201.

Second, the Witness Requirement does not require a witness to "vouch[ ]" for anything. *See Thomas*, 613 F. Supp. 3d at 961-62; *People First of Ala.*, 467 F. Supp. 3d at 1225; DOJ Br. 8-15. To "vouch" is to "to be able from your knowledge or experience to say that something is true."[6] Put another way, "vouching" involves reliance on personal knowledge to "answer for (another); to personally assure" someone else's assertion.[7] When someone vouches for a statement in a document, they "personally assure" the validity of that statement. *Id.* A witness or notary to a document, by contrast, "does not attest to the validity of the statement[] made in the document," but instead simply "certif[ies] the validity of the signature." *Butler v. Encyclopedia Brittanica, Inc.*, 41 F.3d 285, 293 (7th Cir. 1994). By the same token, a prosecutor cannot "vouch[] for the credibility of witnesses" at trial—*i.e.*, he cannot assure the jury that he knows the witness is being truthful—but he can attest that the witness in fact made the statements. *United States v. Young*, 470 U.S. 1, 18 (1985).[8]

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

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

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

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

By contrast, Minnesota's Witness Requirement for ballot casting—as well as the voter-registration convenience—do not require the witness to "vouch" for a voter's qualifications. *See Thomas*, 613 F. Supp. 3d at 961-62; *People First of Ala.*, 467 F. Supp. 3d at 1225; DOJ Br. 8-9. The witness does not rely on personal knowledge to assert that anything the voter writes on the ballot is true, let alone that the voter satisfies Minnesota's qualifications to vote. *Compare* Minn. Stat. § 201.014, *with id.* § 203B.07 subdiv. 3. In other words, the only personal knowledge that the witness offers for a registered voter is based on the witness's observation of the voter's completion of the ballot, not of the voter's qualifications. *See id.* § 203B.07 subdiv. 3. And the only additional piece of personal knowledge that the witness offers for a previously non-registered voter is based on the witness's observation of the voter's proof of residence. *See id.* In that scenario, however, the witness offers no personal knowledge regarding the truthfulness of the proof of residence, nor whether the voter actually resides at the place indicated on the proof or satisfies Minnesota's residency requirement. *See id.* Thus, even a witness for a previously non-registered voter does not "vouch" to anything, let alone the voter's qualifications.

That the voter must complete and sign a certificate that she "meets all of the requirements established by law for voting absentee," *id.*, does not change this fact. After all, the witness does not attest—much less *vouch based on personal knowledge*—that the voter actually meets those requirements.

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See id.; Index # 52, Am. Compl. at 9 (reproducing sample witness statement*); cf. Thomas*, 613 F. Supp. 3d at 961 (rejecting Section 201 challenge to witness requirement where "witness is not required to confirm that the voter is registered to vote or 'qualified' … [but] only … to confirm that the voter completes the voter's oath and signs the document."); *People First of Ala.*, 467 F. Supp. 3d at 1225 (same).

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

Thus, the witness's attestation that she observed the voter complete the ballot and/or show proof of residence bears no resemblance to the targeted Jim Crow practice, which required third parties to offer personal knowledge of an applicant's eligibility to vote. *See Howlette*, 485 F. Supp. at 24; *cf. Ward*, 349 F.2d at 799. Here again, Plaintiffs' challenge to the Witness Requirement does not fit with Section 201's language or history, and the Court should reject it.

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

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

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

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

Plaintiffs' attempt to rebut this point is untenable and unpersuasive. Plaintiffs argue that the term "class" in Section 201 refers to *any* group of people "who share a common characteristic or attribute." Index # 54 at 15. But by that logic, States could not even require individuals to prove qualifications to or by government officials, who share official status as "a common characteristic or attribute." *Id.* That makes no sense, which is why courts have rejected similar arguments in the past. *See Thomas*, 613 F. Supp. 3d at 962; *Davis*, 246 F. Supp. at 217.

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

To begin with, the statutory "right to vote," as understood when Section 201 was enacted, did not encompass mail voting, so mail-voting rules like Minnesota's Witness Requirement do not deny any individual that right. *See* Order Granting Stay Pending Appeal at 5, *United States v. Paxton*, No. 23-50885, ECF 80-1 (5th Cir. Dec. 15, 2023) ("Paxton Stay Order") (mail voting rules "do not deny anyone the right to vote" under the 1964 Civil Rights Act "because they only affect the ability of some individuals to vote by mail"). When the VRA was passed, the "right to vote" meant the right to register to vote and to cast a ballot on equal terms with other registered voters. *See McDonald v. Bd. of Election Comm'rs*, 394 U.S. 802, 807 (1969). It was *not* understood to entail a right to vote by mail, since mail voting was limited to a small number of situations. *See, e.g.*, *id.* at 804. And just a few years after Section 201 became law, the U.S. Supreme Court unanimously held that "the right to vote" does not encompass the "right to receive absentee ballots." *Id.* at 807. The Minnesota Supreme Court reached the same conclusion a few years later. *See Bell*, 227 N.W.2d at 353 ("The opportunity of an absentee voter to cast his vote … by mail has the characteristics of a privilege rather than of a right. Since the privilege of absentee voting is granted by the legislature, the legislature may mandate the conditions and procedures for such voting."). Thus, rejecting a defective mail ballot under the Witness Requirement does not deny any individual the "right to vote" under Section 201.

In addition, mandatory ballot-casting rules do not deny anyone "the right to vote" under federal election statutes. *Pa. State Conf. of NAACP*, 97 F.4th at 133-35. By the mid-1960s, the "right to vote" was understood to compel election officials to count any "lawful and regular" ballot "entitled to be counted" under state law. *United States v. Mosley*, 238 U.S. 383, 385-86 (1915). It did not then—and does not now—contemplate freedom from neutral, generally applicable state laws governing the act of casting a ballot. *See, e.g.*, *id.*; *Brnovich v. DNC,* 141 S. Ct. 2321, 2340-41 (2021). As the Third

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Circuit recently confirmed, there is "no authority that the 'right to vote' encompasses the right to have a ballot counted that is defective under" a state "vote-casting rule." *Pa. State Conf. of NAACP*, 97 F.4th at 133. "If state law provides that ballots completed in different colored inks, or secrecy envelopes containing improper markings, or envelopes missing a date, must be discounted, that is a legislative choice that federal courts might review if there is unequal application, but they have no power to review" such choices when a statute merely protects the "right to vote." *Id.*

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

That reality helps explain why at least 11 States have requirements like Minnesota's.[9] Some, including Minnesota's, existed both long before and after Section 201 was enacted. Yet, no court has ever held that a witness requirement violates Section 201. Indeed, the Department of Justice told a federal court in 2020 that it was unaware of any Section 201 challenges to witness requirements filed before that year. *See* DOJ Br. 10. The U.S. Supreme Court recently vacated a preliminary injunction against South Carolina's witness requirement. *See Andino*, 141 S. at 9-10 (unanimously staying injunction against South Carolina's witness requirement). And "the courts of appeals have resisted

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

overturning [witness] laws" when presented with various legal theories. *Middleton*, 990 F.3d at 772 (op. of Wilkinson and Agee, JJ.); *see DNC v. Bostelmann*, 2020 WL 3619499, at *2 (7th Cir. Apr. 3, 2020) (staying injunction against Wisconsin's witness requirement). But according to Plaintiffs, Congress invalidated all witness requirements almost 70 years ago—everyone simply missed the message. That is not plausible. After all, Congress does not "hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). And the fact that the Department of Justice has *never* challenged a witness requirement under Section 201, *see* DOJ Br. 10—and that no private plaintiff attempted to do so until 2020—only underscores that Section 201 does not extend to these longstanding rules. *See, e.g.*, *West Virginia v. EPA*, 597 U.S. 697, 725 (2022) ("[J]ust as established practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred." (cleaned up)).

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

Finally, it is even more clear that the Witness Requirement's voter-registration convenience does not violate the "right to vote." State requirements that individuals register to vote—and that individuals seeking to vote are residents of the State—are valid and do not violate the "right to vote." *See, e.g.*, *Rosario v. Rockefeller*, 410 U.S. 752, 757-58 (1973). Indeed, federal law specifically anticipates that States will require applicants to provide proof of their address to government officials. *See* 52 U.S.C. § 21803(b)(3). The Witness Requirement's voter-registration convenience makes it *easier* for

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such individuals to satisfy Minnesota's registration and proof-of-residence requirements. In fact, allowing Minnesotans to show a family member, friend, neighbor, or other witness such proof *instead of* using the traditional voter-registration process makes voter registration *easier* than in virtually all other States. After all, as the Secretary's dismissal brief observed, the convenience spares such individuals from the burdens of having to present proof of residence to an election official, particularly when the individual may be attempting to register on or near Election Day. *See* Index # 39 at 15.

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

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

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

The Materiality Provision directs:

> No person acting under color of law shall … deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.

52 U.S.C. § 10101(a)(2)(B). Plaintiffs' claim that the Witness Requirement violates the Materiality Provision of the Civil Rights Act of 1964 is meritless and, thus, cannot be the basis for a temporary injunction.

a. The Witness Requirement for ballot casting does not even implicate, let alone violate, the Materiality Provision. As the Third Circuit recently explained in a comprehensive opinion, the Materiality Provision applies only to state voter-registration rules governing who can vote. *Pa. State Conf. of NAACP*, 97 F.4th at 129-133. The statute's limited reach corresponds with the limited (but important) problem Congress sought to solve: southern States' "practice of disqualifying potential voters for their failure to provide information irrelevant to determining their eligibility to vote" during

the voter-registration process. *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003); *Pa. State Conf. of NAACP*, 97 F.4th at 133 ("The legislative history shows the enacting Congress was concerned with discriminatory practices during voter registration, thus in line with what the text reflects."). In particular, Congress addressed "the practice of requiring unnecessary information for voter registration"—such as the "exact number of months and days in [the registrant's] age"—"with the intent that such requirements would increase the number of errors or omissions on the application forms, thus providing an excuse to disqualify potential voters." *Schwier*, 340 F.3d at 1294. "Such trivial information served no purpose other than as a means of inducing voter-generated errors that could be used to justify rejecting applicants." *Browning*, 522 F.3d at 1173. The Materiality Provision thus guards against discriminatory application of voter qualification and registration rules. *Id.*; *Pa. State Conf. of NAACP*, 97 F.4th at 131.

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

Plaintiffs boldly ask this Court to disagree with the Third Circuit and extend the Materiality Provision to a ballot-casting rule: the Witness Requirement for ballot casting. Index # 54 at 18. But for at least three reasons, the Materiality Provision's plain text defeats Plaintiffs' claim.

First, the Witness Requirement for ballot casting is not related to an "application, registration, or other act requisite to voting." These terms refer to documents used "during voter *registration*," and do "not cover records or papers provided during … *vote-casting*." *Pa. State Conf. of NAACP*, 97 F.4th

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at 133 (emphases added); *accord Ritter v. Migliori*, 142 S. Ct. 1824, 1825-26 (2022) (Alito, J., dissental); *Vote.Org*, 39 F.4th at 305 n.6 (5th Cir. 2022). The legislative history confirms that Congress used "application" and "registration" interchangeably to refer to voter registration. *See, e.g.*, H.R. Rep. No. 88-914, pt. 1, at 19 (1963), *as reprinted in* 1964 U.S.C.C.A.N. 2391, 2394 (provision bars "registration officials" from "disqualifying an applicant for immaterial errors or omissions"); *id.* at 77, 1964 U.S.C.C.A.N. at 2445 (referring to "application to register"); *id.*, pt. 2, at 5, 1964 U.S.C.C.A.N. at 2491 (referring to efforts to "defeat [African-American] registration" by "rejecting [African-American] applications" to vote); *Pa. State Conf. of NAACP*, 97 F.4th at 132-33. And States still do so today.[10]

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

Plaintiffs resist the application of the *eiusdem generis* canon, insisting it renders the residual phrase "or other act requisite to voting" superfluous. Index # 52 at 18. As the Third Circuit explained, Plaintiffs' reading would render "application" and "registration" superfluous. *Pa. State Conf. of NAACP*, 97 F.4th at 138. In any event, applying the canon still leaves the residual phrase work to do: preventing state and local election officials from circumventing the Materiality Provision through

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

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creative labeling. Calling a qualification-determining practice something other than a voter "application" or "registration" does not lift the ban on disqualifying voters for immaterial "error[s] or omission[s]" on paperwork. 52 U.S.C. § 10101(a)(2)(B). The residual phrase may also cover forms that citizens must submit to remain registered to vote once deemed qualified, such as a declaration by a released felon that he has paid all outstanding fines or by an inactive voter that she remains at her registered address.

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

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

The structure of Section 10101 underscores this point. *See id.* The immediately preceding provision—subparagraph (a)(2)(A)—requires "uniform standards *for voter qualifications*" within political subdivisions. 52 U.S.C. § 10101(a) (emphasis added). That provision also uses materially identical language—"in determining whether any individual is qualified under State law or laws to vote in any election"—to limit its scope to qualification determinations. *Id.* § 10101(a)(2)(A). And the

subparagraph following the Materiality Provision, which bans literacy tests formerly used in southern States during voter registration, is likewise limited to "qualification" determinations. 52 U.S.C. § 10101(a)(2)(C).[11]

Subsection 10101(e) reinforces the qualification-and-registration focus of Subsection 10101(a). It empowers courts to address systemic violations of "*any* right or privilege secured by subsection (a)," including the Materiality Provision. *Id.* § 10101(e) (emphasis added). Yet, the only remedy it authorizes is "an order declaring [an applicant] qualified to vote." *Id.* It thus confirms that the "right" secured by the Materiality Provision is the right of qualified individuals to *register*.

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

Third, because the Materiality Provision prohibits "deny[ing] the right of any individual to vote," it does not reach mandatory ballot-casting rules like the Witness Requirement for ballot casting. 52 U.S.C. § 10101(a)(2)(B); *see Pa. State Conf. of NAACP*, 97 F.4th at 133-34; *Ritter*, 142 S. Ct. at 1825–26 (Alito, J., dissental). As with Section 201, the Witness Requirement cannot violate the statutory "right to vote" for two reasons. To start, the Materiality Provision does not protect a (nonexistent) "right" to vote *by mail*. *See supra* Part II.A. The Witness Requirement only regulates mail voting and

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

thus cannot violate the "right to vote." Further, as explained above, application of mandatory ballot-casting rules like the Witness Requirement for ballot casting does not violate the "right to vote." *See Pa. State Conf. of NAACP*, 97 F.4th at 133-34; *supra* Part II.A. Election officials enforcing the Witness Requirement in that aspect do not "disqualify potential voters," remove them from registration rolls, or prevent future voting. *Schwier*, 340 F.3d at 1294. Instead, they simply decline to count defective ballots because a "voter failed to follow a rule." *Pa. State Conf. of NAACP*, 97 F.4th at 135. No right to vote has been denied. *Id.*

b. The Witness Requirement's voter-registration convenience also complies with the Materiality Provision. Residency is a qualification to vote under Minnesota law. Minn. Stat. § 201.014. Thus, under any definition of "material,"—whether it be mere relevance or something more demanding—requiring an individual seeking to register to vote to provide proof of residence is obviously "material in determining whether [an] individual is qualified under State law to vote." 52 U.S.C. § 10101(a)(2)(b); *see also Browning*, 522 F.3d at 1173-74.

After all, an individual who can produce proof of residence is more likely to be a Minnesota resident who satisfies the residency qualification than an individual who cannot. The Witness Requirement's voter-registration convenience is a straightforward and easy way for Minnesotans to provide proof of residence as part of one of the Nation's most accommodating voter-registration processes. *See, e.g.*, S. Karnowski, *Minnesota takes steps to make it even easier to vote*, AP (Apr. 26, 2023).[12] In fact, in many instances it is *more* convenient than the alternative, which is presenting proof of residence to an election official. That is especially true when individuals are seeking to register near or on Election Day. *See* Minn. Stat. § 201.061, subdiv. 3 (providing for in-person registration on Election Day). Such a convenience that makes registration and voting *easier* cannot "*deny*" any

[12] https://apnews.com/article/minnesota-legislature-elections-voting-973701a333e981eb14fc3845569f155a.

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individual "the right . . . to vote" and, thus, cannot violate the Materiality Provision. 52 U.S.C. § 10101(a)(2)(B) (emphasis added).

To the extent the Court harbors any doubt on this point, "considerable deference" is owed to the Minnesota Legislature's policy choice as to how individuals should prove their qualifications while registering to vote. *See Vote.Org*, 89 F.4th at 481. Plaintiffs prefer a policy allowing submission of proof of residence by mail. *See* Index # 52, Am. Compl. at 14-15. But the Legislature can justifiably conclude that requiring a witness—who actually sees the applicant live, unlike the election officials receiving materials in the mail—adds a layer of security to deter fraud and helps confirm that "the individuals who are trying to register actually [are] who they say they are[.]" *Vote.Org*, 89 F.4th at 487. The Witness Requirement's voter-registration convenience is well within the Legislature's "considerable discretion in establishing rules for [the State's] own elections" and "in deciding what is an adequate level of effectiveness to serve its important interests in voter integrity." *Id.* at 480, 485. It therefore easily complies with the Materiality Provision. *See, e.g.*, *id.*

2. Plaintiffs' counterarguments fail.

Plaintiffs offer three main counter-arguments, all of which fail. *First*, Plaintiffs contend that the Witness Requirement for ballot casting is "not material" to determining an individual's qualifications to vote. Index # 54 at 19-21. That is correct—but it *defeats* Plaintiffs' claim. Because the Witness Requirement for ballot casting is not used to determine any individual's qualifications to vote, it does not implicate, let alone violate, the Materiality Provision. Upon "first glance," the Materiality Provision might seem to ban all vote-casting rules that are not material to determining whether an individual is qualified to vote. *Pa. State Conf. of NAACP*, 97 F.4th at 131. But a closer look reveals that the statute only applies to rules governing the voter-registration process that are used to assess voter qualifications. *Id.* at 131-33.

Plaintiffs' contrary reading is startlingly broad and, unsurprisingly, incorrect. Under it, States can adopt "only one type of paperwork" rule—one used to determine whether a voter meets State law qualifications to vote. Index # 54 at 20. That theory would doom a vast swath of state election laws—many of which have nothing to do with confirming voter qualifications. *Pa. State Conf. of NAACP*, 97 F.4th at 134-35. States must provide a "complete" election code, regulating not only voter qualifications, but also "supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns," among others. *Smiley v. Holm*, 285 U.S. 355, 366 (1932); *Anderson*, 460 U.S. at 788 (distinguishing state laws that "govern[] the registration and qualifications of voters" from those regulating "the voting process itself"). Many of these are paper-based rules.

But Plaintiffs' theory would "tie state legislatures' hands in setting voting rules unrelated to voter eligibility." *Pa. State Conf. of NAACP*, 97 F.4th at 134. Indeed, if Plaintiffs are correct, many state election rules have been invalid since Congress enacted the Materiality Provision nearly 60 years ago. That defies not only the statute's plain text, but also the rule that "[i]f Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (cleaned up). Congress did not "hide [this] elephant[] in [the] mousehole[]" of the Materiality Provision. *Whitman*, 531 U.S. at 468; *FTC v. Bunte Bros., Inc.*, 312 U.S. 349, 352 (1941).

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

- Requirements that voters sign certifications on mail ballots, *e.g.*, Minn. St. 203B.07 subdiv. 3; Tex. Elec. Code. § 86.005(c); 25 Pa. Con. Stat. §§ 3146.6(a), 3150.16(a); N.J. Stat. § 19:62-11(c);

- Rules prohibiting voters from making marks on secrecy envelopes, *e.g.*, 25 Pa. Cons. Stat. § 3146.8; *but see Pa. State Conf. of NAACP*, 97 F.4th at 139 (affirming validity of such laws);

- Overvote prohibitions, *e.g.*, 25 Pa. Cons. Stat. § 3063(a); Ariz. Rev. Stat. § 16-611; 15 Del. Code § 4972(b)(6);

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- Pollbook requirements, *e.g.*, 25 Pa. Cons. Stat. § 3050; Va. Code Ann. § 24.2-611; Tex. Elec. Code § 63.003;
- Voter identification requirements for mail ballots, *e.g.*, Minn. St. § 203B.07 subdiv. 3; *but see Paxton* Stay Order (suggesting Texas's equivalent rule is legal); and
- Voter-assistance form requirements, *e.g.*, 25 Pa. Cons. Stat. § 3058; Ind. Code § 3-11.5-4-13.

Plaintiffs' interpretation would also render the Materiality Provision constitutionally suspect.

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

Plaintiffs do not (and cannot)—claim that the Witness Requirement violates the Fifteenth Amendment's ban on discrimination in voting laws. Therefore, the Materiality Provision must be justified as prophylactic legislation. When properly limited to voter registration, it is a reasonably tailored prophylactic measure. Indeed, to assess congruence and proportionality, courts examine the "record" compiled by the enacting Congress, *id.* at 531–32, and the Congress that enacted the Materiality Provision compiled a substantial record of Fifteenth Amendment violations by southern States with respect to "voter *registration*." *Pa. State Conf. of NAACP*, 97 F.4th at 126 (emphasis added). The Materiality Provision respects States' control over voter eligibility, while keeping registrars honest by forbidding them from relying on irrelevant considerations when determining eligibility.

In contrast, Plaintiffs' theory unmoors the Materiality Provision from the Fifteenth Amendment. Congress did not consider practices beyond the registration process, including the

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application of ballot-casting rules when officials cannot observe the voter's race. *Id.* Plaintiffs' interpretation would thus render the Materiality Provision *not* "congruen[t] and proportional[]" to the record of constitutional violations assembled by Congress, rendering the statute unconstitutional. *Boerne*, 521 U.S. 520. Constitutional avoidance therefore provides yet another reason to reject Plaintiffs' novel and destabilizing interpretation of the Materiality Provision.

Second, Plaintiffs rely on the statutory definition of "vote," which includes "having [one's] ballot counted and included in the appropriate totals of votes cast." 52 U.S.C. § 10101(a)(3)(A); *see* Index # 54 at 17. This argument is multiply flawed. *See Pa. State Conf. of NAACP*, 97 F.4th at 132-34 (addressing and rejecting argument). To start, the Materiality Provision confers the "right … to vote." As discussed above, that right has long been understood to guard "the opportunity to access the ballot in the first instance—not … the right to cast a defective ballot." *Id.*; *supra* Part II.A.

In any event, the statutory definition is easily harmonized with the meaning of "right to vote." In 1965, the "right to vote" included "the right to have one's vote counted." *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). But then as now, that right abides only so long as the individual complies with ballot-casting rules. *See, e.g., Mosley*, 238 U.S. at 386. Indeed, the definition of "vote" refers to "all action necessary to make a vote effective" under state ballot-casting rules. 52 U.S.C. § 10101(e). Nothing in that definition liberates voters from compliance with all rules "necessary to make a vote effective." *Id.*

III. PLAINTIFFS' ALLEGED IRREPARABLE HARM IS INSUFFICIENT.

Even if Plaintiffs' claims could survive on the merits, the Court still should deny the motion because Plaintiffs have failed to establish "great and irreparable injury." *Cherne*, 278 N.W.2d at 92. Indeed, Plaintiffs' failure to prove an injury sufficient to prove standing, *see supra* Part I, necessarily means they have failed to prove an injury sufficient for the extraordinary relief of a temporary injunction.

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But even if the Court finds that Plaintiffs have standing, their injury is still insufficient to sustain a temporary injunction. The Witness Requirement in its current form has been the law since 1949. Countless Minnesotans have successfully complied with it—even during a once-in-a-century pandemic. *League of Women Voters*, 2021 WL 1175234, at *9. Even now, Plaintiffs have failed to identify a *single person* unable to vote or whose ballot was rejected due to the Witness Requirement. A temporary injunction is therefore not "necessary to prevent great and irreparable injury." *Cherne*, 278 N.W.2d at 92.

Further, any harm to Plaintiffs from denying the injunction is outweighed by the harm to Minnesota, Intervenors, and Minnesota voters from granting one. Invalidating a sovereign state's law "clearly inflicts irreparable harm," *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018), and does irreparable "damage … to the authority of" the Minnesota Legislature, *DNC v. Wis. State Legislature*, 141 S. Ct. 28, 30 (2020) (Gorsuch, J., concurral). Enjoining the Witness Requirement would also impose irreparable harm on Intervenors. Indeed, Intervenors have invested substantial time and resources in a statewide effort to encourage Republican voters to vote by mail in 2024. *See* Mathews Decl. ¶ 12; Latcham Decl. ¶ 11. That effort has included the Republican Party of Minnesota's get-out-the vote activities and voter education programs related to the rules for absentee voting, including the Witness Requirement. *See* Mathews Decl. ¶¶ 12-14. That effort will be wasted—and cannot be recovered—if the Witness Requirement is enjoined. *See id.* ¶¶ 21-28. At the same time, the Republican Party of Minnesota will be required to divert resources from other activities to update their training programs and voter education materials to reflect any injunction against the Witness Requirement. *See id.*

Moreover, an injunction against the Witness Requirement—particularly in the middle of an election year when the Requirement already was in place for a primary election—will lead to candidate and voter confusion and an erosion of trust in the State's election administration. *See id.* ¶¶ 29-38; Latcham Decl. ¶¶ 14-21. This, in turn, would likely decrease turnout by Republican voters—which

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would harm Intervenors, their candidates, and their voters—and could even change the outcome in one or more general election races in November. *See* Mathews Decl. ¶¶ 39-53; Latcham Decl. ¶¶ 22-36. And more generally, invalidating the Witness Requirement will irreparably harm Intervenors by illegitimately altering the competitive environment in the middle of an election cycle. *See* Mathews Decl. ¶¶ 39-53; Latcham Decl. ¶¶ 22-36; Index # 43 at 9-10. The Court should deny the motion.

IV. THE PUBLIC INTEREST FAVORS MAINTAINING THE STATUS QUO.

Finally, the Court should also deny Plaintiffs' motion because it undermines the public interest. Many courts have recognized that judicial changes to election rules in the middle of an election cycle damages the public interest. *See, e.g.*, *Purcell v. Gonzales*, 549 U.S. 1, 4 (2006) (explaining that they undermine "[c]onfidence in the integrity of our electoral processes"). Judicial interference in elections confuses voters, confounds election administrators, erodes confidence in election outcomes, and causes many other "unanticipated consequences." *DNC*, 141 S. Ct. at 31 (Kavanaugh, J., concurral). If this Court enjoins the Witness Requirement, all those harms will be unleashed.

Instead of destabilizing Minnesota's election rules, the public interest lies in preserving the status quo. The "purpose [of a temporary injunction] is to preserve the status quo until adjudication of the case on its merits." *Miller*, 317 N.W.2d at 712. Here, Plaintiffs do not seek to maintain the status quo, but to dramatically alter it. The Witness Requirement has existed in its current form since 1949. Minnesotans have long successfully complied with the Witness Requirement, and Minnesota consistently has the highest voter turnout in the country. Because a temporary injunction would reverse rather than "preserve the status quo," the Court should not enter it. *Id.*

CONCLUSION

The Court should deny Plaintiffs' motion for a temporary injunction.

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Respectfully submitted,

/s/Benjamin L. Ellison

Benjamin L. Ellison (#392777)
JONES DAY
90 South Seventh Street, Suite 4950
Minneapolis, MN 55402
Phone: (612) 217-8800
Fax: (844) 345-3178
bellison@jonesday.com

John M. Gore *
E. Stewart Crosland *
Louis J. Capozzi III*
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Phone: (202) 879-3939
Fax: (202) 626-1700
jmgore@jonesday.com
scrosland@jonesday.com
lcapozzi@jonesday.com

Counsel for Intervenors the Republican Party of Minnesota and Republican National Committee

*Admitted *pro hac vice*

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DATED: May 9, 2024

/s/Benjamin L. Ellison
Benjamin L. Ellison (#392777)