

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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

Case Type: Other Civil/Misc.

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

Plaintiffs,

vs.

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

**DEFENDANT'S REPLY
MEMORANDUM SUPPORTING
MOTION TO DISMISS¹**

Defendant.

The Court should dismiss the plaintiffs' complaint. As established in the Secretary's principal memorandum, the plaintiffs lack standing and, as a matter of law, cannot establish that Minnesota's longstanding witness requirement for absentee ballots violates the Voting Rights Act or the Civil Rights Act. The plaintiffs' arguments reinforce these positions. They identify only speculative risks of harms and present no factual or legal basis on which this Court could conclude that the witness requirement requires vouching or is subject to the materiality provision.

FACTS

Since the Secretary filed his principal memorandum, the plaintiffs amended their complaint, primarily amending allegations about Maples and Minnesota Alliance.² (Am. Compl., Index #52.) Maples moved but remains a registered voter. (*Id.* ¶ 11.) She does not yet know her new neighbors. (*Id.*) Minnesota Alliance now asserts that it has direct standing in addition to associational standing. (*Id.* ¶ 10.) It alleges that the witness requirement "frustrates" its mission by

¹ The parties conferred as required by Minn. R. Gen. Prac. 115.10 and have not resolved any issues.

² Because of the minimal changes and the contemporaneous briefing on the plaintiffs' motion for a temporary injunction, the parties agreed that the Court may apply the Secretary's principal memo to the amended complaint. (Am. Not. Mot. & Mot., Index # 58.)

abridging its members' right to vote. (*Id.* ¶ 9.) Its regular activities include contacting members by phone or in person, creating educational materials, and helping members vote. (*Id.* ¶ 8, 10.) Its educational role includes educating members on the witness requirement and sending them postcards. (*Id.* ¶ 10.) The organization generally alleges that these efforts require resources. (*Id.*)

ARGUMENT

As an initial matter, the plaintiffs incorrectly suggest that the Secretary argued that absentee voting is exempt from federal law. (Pls' Mem. Opp'n Mot. Dismiss ("MTD Mem.") 18-19, Index # 61.). He did not. Rather, he noted relevant caselaw recognizing states' broad authority to regulate elections and states' particular interest in regulating absentee voting. (Def.'s MTD Mem. 15, 21.)

The Court should dismiss because the plaintiffs have not identified any basis for their claims to proceed. They instead rely on unpleaded and unsupported allegations, strawman arguments, and false dichotomies about the relationship between the Voting and Civil Rights Act. The plaintiffs continue to identify only speculative harms and lack standing. As to the Voting Rights Act claim, the plaintiffs attempt to elevate form over substance, twisting confirmations of voting conduct into affirmative attestations to a voter's eligibility to vote. As to their Civil Rights Act claim, the plaintiffs' sweeping interpretation is belied by the law's text and legislative history and by persuasive caselaw. The materiality provision does not apply to vote-casting measures and, even if it did, Minnesota's witness requirement complies with it.

I. THE PLAINTIFFS DO NOT CURE THEIR JURISDICTIONAL DEFECTS.³

The amended complaint does not solve the plaintiffs' central jurisdictional defect: No plaintiff has standing. And none even attempts to argue that they have standing to challenge requirements that apply only to unregistered voters.

³ The plaintiffs clarify that they challenge only section 203B.07, yet they continue to ask the Court to invalidate administrative rules. (Pls.' MTD Mem. 14.) Even if a court's ruling about a statute

A. The Individual Plaintiffs Do Not Allege Actual or Imminent Injury.

The individual plaintiffs do not identify any actual or imminent harm. By making no argument about Mohamed’s standing, they apparently concede that he lacks standing. (Pls.’ MTD Mem. 11, 13.) In any case, Mohamed’s allegations that talking to multiple people burdened him are insufficient to confer standing. To the extent that Mohamed’s witnesses needed to “make time” to be witnesses, that burden is on *the witnesses*, not him. *Id.*; see also *League of Women Voters of Minn. v. Simon*, No. 20-cv-1205, 2021 WL 1178234, at *9-10 (D. Minn. Mar. 29, 2021) (holding that plaintiffs lacked standing to assert claims for absentee-ballot witnesses). With respect to past elections, Maples does not allege that she previously struggled to find a witness—she instead only identifies two past witnesses who were easily accessible to her. (Am. Compl. ¶ 11.)

Without actual harm, the plaintiffs are left with the speculative harm that they expect or fear some difficulty with complying with the witness requirement in the future. (*Id.* ¶¶ 11-12.) They seem to argue that any aspect of law that requires them to undertake effort harms them under federal voting laws. That is a sweeping vision of standing that would allow any citizen to challenge nearly every aspect of any state’s voting process. Hypothetical or potential future injury is simply not enough to confer standing. *Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. Ct. App. 2005).

The plaintiffs also argue that the Secretary conflates standing with the merits. While standing is distinct from the merits, assessing standing necessarily requires the context of the asserted claim. Plaintiffs must have standing to assert their particular claim. *Minn. Voters All. v. State*, 955 N.W.2d 638, 643 (Minn. Ct. App. 2021). Both the Voting Rights Act and the Civil Rights Act concern the “den[ial]” of the “right to vote.” 52 U.S.C. §§ 10501(a), 10101(a)(2)(B). Neither Mohamed nor Maples alleges that harm. They do not allege that they believe that they

may inevitably affect related rules, the court still lacks jurisdiction to invalidate rules. Minn. Stat. § 14.44 (2022); *Ellingson & Assoc., Inc. v. Keefe*, 410 N.W.2d 857, 861 (Minn. Ct. App. 1987).

need a witness to personally verify their eligibility to vote, or that they are at risk of being denied the right to vote for failing to find a person to witness the process of completing their absentee ballots. (Am. Compl. ¶¶ 11-12.) Accordingly, neither has standing.

The plaintiffs' cited cases do not dictate a different outcome. In those cases, plaintiffs alleged harms contemplated by the statutory or constitutional provisions under which they pleaded their claims. Those were different provisions than those at issue here. For example, in the Eleventh Circuit cases the plaintiffs cite, the court analyzed standing under the National Voter Registration Act. *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1338-39 (11th Cir. 2014); *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005). Similarly, other cases that the plaintiffs cite involved constitutional claims, which required courts to assess the burden on the plaintiffs' voting rights. *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1348 (11th Cir. 2009); *Gonidakis v. LaRose*, 559 F.Supp.3d 642, 658 (S.D. Ohio 2022). In other words, the cases stand for the unremarkable proposition that *some* federal voting laws confer standing when plaintiffs allege harm other than the risk of disenfranchisement, but not that the Voting Rights Act and the Civil Rights Act, which each limit themselves to “vote denial” in their plain text, do.

B. Minnesota Alliance Does Not Have Standing.

Like the individual plaintiffs, Minnesota Alliance does not allege that any member has ever been denied the right to vote because of the witness requirement. (Am. Compl. ¶ 9.) For the same reason that the individual plaintiffs lack standing, Minnesota Alliance lacks associational standing. *Byrd v. Indep. Sch. Dist. No. 194*, 495 N.W.2d 226, 231 (Minn. Ct. App. 1993).

Nor does Minnesota Alliance sufficiently allege direct standing. First, its allegations of direct harm by “frustration of its mission” are tied to a legal conclusion—that complying with a witness requirement necessarily abridges its members' rights to vote. (Am. Compl. ¶ 10.) A court

owes no deference to a plaintiff's alleged legal conclusions. *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010).

Second, Minnesota Alliance fails to assert a direct interest in the statute that is different in character than the interest of citizens in general. *All. for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 913 (Minn. Ct. App. 2003). Minnesota law has required a witness for absentee voters in a manner similar to the law in its current form for at least 75 years. *See* 1949 Minn. Laws ch. 368, § 2. This decades-old requirement does not create new obligations on Minnesota Alliance or require it to newly divert its funds from other aspects of its core mission, as is generally required to create standing in the election context. *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). Because no plaintiff has standing, the Court should dismiss the amended complaint.

I. MINNESOTA'S ABSENTEE WITNESS CERTIFICATIONS DO NOT VIOLATE THE VRA'S PROHIBITION ON VOUCHING.

Whether applied to currently registered voters or same-day registrants, Minnesota's witness requirement does not require witnesses to verify a voter's eligibility to vote. The witness requirement neither implicates nor violates the vouching prohibition of the VRA.

A. Witnesses Do Not Certify Voter Eligibility.

To force Minnesota's witness requirement into the scope of the vouching prohibition, the plaintiffs offer a strained and absurd reading of section 203B.07 that, like other litigants' reading of a similar Wisconsin statute, "simply does not make any sense." *Liebert v. Millis*, No. 23-cv-672, 2024 WL 2078216, at *5 (W.D. Wis. May 9, 2024). Here, the plaintiffs rely exclusively on

section 203B.07's language generally describing the back of the signature envelope as a "certificate of eligibility." Because the same part of the statute that requires this certification also imposes the witness requirement, the plaintiffs argue that the witness's signature constitutes part of that certification. (Pls.' MTD Mem. 15-16.) This interpretation is incorrect. Well-settled principles of statutory construction establish that the voter's eligibility certifications are distinct from the witness statement.

The Secretary's interpretation of section 203B.07 is the only reasonable one. The plaintiffs' interpretation elevates the form of isolated statutory terms over the statute's plain function, and unravels as soon as one examines the binding administrative rules and signature envelope that implement the statutory "certificate of eligibility" requirement. Minn. R. 8210.0600, subps. 1a-1b.; Behrens Decl. Exs. 2-3. The voter and the witness provide separate signatures in separate boxes. The separate signatures correspond to separate certifications. Only the voter signs the certification pertaining to the voter's eligibility. The witness box contains no statements confirming the voter's eligibility or endorsing the voter's certifications. The witness statements cannot reasonably be viewed as certifying the voter's eligibility.

B. Witnesses Do Not Verify the Content of Voter-Registration Materials.

As previously noted, the plaintiffs lack standing to challenge provisions that apply to unregistered voters. The Court should therefore hold that the plaintiffs cannot challenge those provisions. But even if the Court considers how the witness requirement applies to unregistered voters, the additional witness certification for same-day registrants does not constitute vouching.

By confirming that a new registrant showed proof of residence, the witness verifies only that a document was shown. The plaintiffs conflate the voter presenting a document with the witness evaluating the document and deciding whether the voter is eligible to vote. Nothing in section 203B.07, the corresponding rules, or the signature envelope's instructions imposes this

requirement. As an analogy, consider submitting a job application: an applicant might present an application packet to a receptionist, who confirms each required component is present—a cover letter, resume, and letter of recommendation. But the receptionist stops there, submitting the completed packet to the hiring manager who then reviews and evaluates the application’s contents. So too with election-day voter registration. The witness simply confirms that the voter provided a proof-of-residency document from the list of options. Minn. Stat. § 203B.07, subd. 3(3) (incorporating Minn. Stat. § 201.061, subd. 3). The registration application is then sent to the relevant ballot board, at which point state law instructs the county auditor to verify “the accuracy of the information on the voter registration application.” Minn. R. 8200.5500, subp. 2. Under the plaintiffs’ interpretation, even election-day-registration at a polling place would violate the Voting Rights Act because voters must produce the same proof of residency to election judges.

In short, no Minnesota law requires a witness to evaluate or certify a voter’s eligibility to vote. Witnesses simply attest that the registrant possesses a proof-of-residency document. Because witnesses do not test these documents for compliance with Minnesota’s voter-eligibility requirements, the witness does not engage in conduct that could constitute vouching.

C. The Plaintiffs’ Remaining Arguments are Inapposite and the Court Need Not Reach Them.

The plaintiffs raise two additional arguments, neither of which the Court needs to reach. First, the plaintiffs assert that the categories of persons eligible to serve as witnesses for absentee voters constitute a “class” of persons within the meaning of the Voting Rights Act. (Pls.’ MTD Mem. 17.) Minnesota law designates multiple, broad, non-arbitrary groups of people who might serve as witnesses; voters are not restricted to a single class of witnesses. Minn. Stat. § 203B.07, subd. 3. Even so, the attestations that witnesses make do not constitute vouching, so the Court need not analyze Minnesota’s witness-eligibility requirements.

Second, the plaintiffs misunderstand the Secretary's references to in-person voting. (*Id.* at 18-19.) Comparing each form of voting illustrates how Minnesota's absentee voting system incorporates the lawful requirements for voting already present at in-person polling places. Just as new registrants must show proof of residency at an in-person polling place so the election judge could note the fact of such documentation, new absentee registrants must show proof of residency to a witness so the witness can note the same. Neither election judges nor witnesses verify the documentation's accuracy; they simply attest that a document was shown. Thus, Minnesota election law does not entail vouching, no matter how a voter votes. The law is a permissible vote-casting regulation and does not deny voting rights under the Voting Rights Act.

II. MINNESOTA'S ABSENTEE WITNESS CERTIFICATIONS DO NOT VIOLATE THE MATERIALITY PROVISION.

The plaintiffs rely on a false dichotomy, claiming that anything that does not violate the Voting Right Act inherently violates the materiality provision. Whether a witness vouches for a voter's eligibility is distinct from whether a witness's certification about voter conduct is material under the materiality provision. *Liebert*, 2024 WL 2078216, at *17. And the plaintiffs provide no compelling argument about the materiality provision's scope. Rather than acknowledging its clear textual limits, the plaintiffs continue to advance an atextual reading that would invalidate numerous laws. For the reasons explained in the Secretary's principal memorandum, the provision applies only to eligibility-determining documents, not vote-casting documents like signature envelopes. Moreover, to the extent that the materiality provision applies, the certifications on signature envelopes are material to determining whether the person casting the ballot in that envelope is the same person that registered (either at the time or previously) to vote.

A. The Materiality Provision Covers Only Qualification-Determining Documents.

Beginning with the materiality provision's scope, the plaintiffs make two linguistic arguments. First, they argue the Secretary's interpretation "leav[es] nothing for [the statute] to protect." (Pls.' MTD Mem. 21.) It does not. Under a correct reading, the materiality provision addresses exactly what it was intended to: denial of the right to vote due to immaterial errors in voter registrations and similar documents. Far from leaving nothing to protect, this includes "misspelling errors or mistakes in age or 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 plaintiffs also argue that limiting the materiality provision to qualification-determining documents renders superfluous the catchall phrase "other act requisite to voting" that follows "application" and "registration." (Pls.' MTD Mem. 21-22.) The plaintiffs are wrong. The catchall phrase importantly ensures that states cannot evade the materiality provision merely by recasting registration or application requirements under a different name (such as "enrollment" or "sign-up"). But it does not expand the materiality provision's scope to include important election-security regulations related to casting votes.

The plaintiffs' attempts to distinguish caselaw limiting the scope of the materiality provision also fail. They make much of the Third Circuit "stand[ing] alone as the only court to adopt the Secretary's position." (*Id.* at 22.) Since the plaintiffs filed their memorandum, a federal court in Wisconsin rejected claims nearly identical to those in this case. That court likewise held that the materiality provision is limited to "a process for determining voter qualifications." *Liebert*, 2024 WL 2078216, at *11. Moreover, none of the contrary cases cited by the plaintiffs actually analyzed the provision's scope; instead, each assumed without discussion that it applied. The only two courts to address the issue in depth agreed that its scope is narrow.

Turning to the materiality provision's legislative history, the plaintiffs claim that registration "was not [Congress's] exclusive focus." (Pls.' MTD Mem. 23.) But they identify no supporting legislative history; instead they only reiterate their linguistic arguments. Because the plaintiffs identify no supporting history, insofar as the materiality provision is ambiguous, the Court should resolve the ambiguity in favor of a narrow construction.

Finally, the plaintiffs cannot square their broad reading of the materiality provision with its the absurd consequences. In addition to the absurdities previously identified by the Secretary, the plaintiffs' briefing creates a new one. They insist that because the witness certification is on the same piece of paper as the (unchallenged) voter certification, the materiality provision applies to those witness certifications. (*Id.* at 25.) It would be absurd to hold that states requiring the same witness certifications could avoid a materiality violation by splitting a document into pages but (as here) efforts to efficiently print multiple certifications on the same paper violate the materiality provision.

The plaintiffs also concede the absurdity of "the dangers posed by a supposedly overbroad materiality provision," but argue that some of the Secretary's points are unsound because they relate to the ballot. (*Id.* at 24-25.) But the plaintiffs do not explain why marking a ballot (and consequent errors therein) would not be an "act requisite to voting" under their broad interpretation of the materiality provision. The plaintiffs' broad reading would bar Minnesota from regulating "making a mark in the wrong place, marking more than one candidate for the same office, failing to make any mark, using the wrong type of writing utensil, or even using an unauthorized ballot." *Liebert*, 2024 WL 2078216, at *12. These absurd consequences show that the plaintiffs' interpretation of the materiality provision cannot be correct.

B. The Witness Certifications Are Material to Ensuring Voter Identity.

Even if the Court applies the materiality provision beyond voter-registration documents, it should still dismiss because the witness certifications are material to determining that the person marking the ballot and a (either previously registered or presently registering) known qualified voter are the same person. The plaintiffs' arguments to the contrary ignore the reality of what the witness actually attests to when signing the signature envelope. For registered voters, witnesses certify four things: the ballot was blank, the voter marked it, the voter sealed it, and the witness is qualified. (Behrens Decl. Ex. 2.) For unregistered voters, the witness also certifies that the voter completed the registration form and provided proof of residence. (*Id.* Ex. 3.)

While none of these certify the voter's eligibility; they certify discrete facts about *how* the ballot was cast and *who* cast it. They are material to ensuring that the qualified voter, as opposed to someone else, cast the ballot. These mirror the ballot-secrecy measures that would occur in a polling place when poll workers distribute ballots and generally observe the conduct in a polling place. Ensuring unity of identity is material to whether the ballot in the envelope was cast by a qualified individual, but the witness certifications do not themselves determine qualifications; only the voter's certification does. *See Vote.org*, 89 F.4th at 489 (recognizing state regulations aimed at reducing fraud do not violate materiality provision even if reduction "may not be dramatic"). Additionally, for unregistered voters, residency is a qualification to vote. While the witness does not attest to or vouch for a witness's residency, confirming that voter provided the document is material to the election-day-registration system that Minnesota has established.

CONCLUSION

Because the plaintiffs failed to state any claim, the Court should dismiss the complaint.

Dated: May 16, 2024

Respectfully submitted,

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