Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
Case Type: Civil Other/Misc.

MINNESOTA ALLIANCE FOR RETIRED AMERICANS EDUCATIONAL FUND, TERESA MAPLES, and KHALID MOHAMED,

Plaintiffs,

v.

STEVE SIMON, in his official capacity as Minnesota Secretary of State,

Defendant.

Case No. 62-cv-24-854

Assigned Judge: Hon. Edward Sheu

**PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION**

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

## TABLE OF CONTENTS

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

# TABLE OF AUTHORITIES

**Page(s)**

**Cases**

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

**Statutes**



**Other Authorities**

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

## ARGUMENT

The Secretary of State's Opposition to Plaintiffs' Motion for a Temporary Injunction, Index No. 69 ("TI Opp."), repeats the same arguments put forth in his Motion to Dismiss, Index No. 39 ("MTD Br."). They are no more persuasive here. The Secretary misunderstands the requirements of standing, misconstrues the relevant federal statutes, and repeatedly offers contradictory characterizations of Minnesota's unlawful witness requirement for absentee voters. Worse still, the Secretary admits that over 5,000 Minnesota voters had their ballots rejected because of the witness requirement in 2022 alone. That is reason enough to enjoin the witness requirement before any further harm can be done. Because Plaintiffs are likely to succeed on the merits of their claims, the balance of harms weighs in favor of an injunction, and the remaining *Dahlberg* factors either favor an injunction or are neutral, Plaintiffs' Motion should be granted.



### I. Plaintiffs have standing.

As Plaintiffs explained in their Opposition to the Secretary's Motion to Dismiss, Index No. 61 ("MTD Opp."), the Secretary's standing arguments misunderstand the relevant law. MTD Opp. at 10–14.

*First*, there is nothing "speculative" or "hypothetical" about the burdens individual voters, including Plaintiff Teresa Maples, face—in fact, they are so severe for Ms. Maples that during the March primary election she believed she would be unable to vote. Maples Decl. ¶ 10, Index No. 55. While the Secretary continues to demand evidence of ballot rejections as a prerequisite to establishing injury, it is well settled that a voter subject to an unlawful burden on her right to vote need not demonstrate complete disenfranchisement to have standing. *See, e.g.*, *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014) (holding voters were injured by violation of federal voting statutes "[e]ven though they were ultimately not prevented from voting"); MTD Opp. at 10–11.

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

*Second*, the Alliance has standing to sue on behalf of its members like Ms. Maples. Maples Decl. ¶ 2. The Secretary's suggestion that the Alliance "offers only inadmissible hearsay" about its members ignores the first-hand declaration that Ms. Maples submitted outlining the numerous burdens she faces as a direct result of the witness requirement. *Id.* ¶¶ 4–10. Michael Madden, the Alliance's President, provides additional examples. Madden Decl. ¶ 7, Index No. 56. And in any event, the Court of Appeals has recognized that courts may consider hearsay evidence in granting temporary injunctions. *Dexon Comput., Inc. v. Modern Enter. Sols., Inc.*, No. A16-0010, 2016 WL 4069225, at *4 (Minn. Ct. App. Aug. 1, 2016) (unpublished) (finding persuasive the reasoning of federal courts of appeals that have permitted hearsay to support preliminary injunctive relief).

*Third*, the Alliance also has standing in its own right under the Minnesota Supreme Court's "liberal standard for organizational standing," *All. for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 913 (Minn. Ct. App. 2003). The Secretary confusingly suggests that diversion of resources must be in response to "a new law," but cites no authority for that proposition. TI Opp. at 11. New laws often require diversion of resources, to be sure, but that is not the *only* circumstance in which a diversion of resources might occur. Instead, "impediments to an organization's activities and mission" are "injur[ies] sufficient for standing," *Rukavina v. Pawlenty*, 684 N.W.2d 525, 533 (Minn. Ct. App. 2004).

The witness requirement frustrates the Alliance's mission because it must divert resources and volunteer time away from the organization's mission-critical "get out the vote" work, such as phone banking and door to door canvassing, Madden Decl. ¶ 8, and towards efforts to educate its members about the witness requirement and how to comply with it. *Id.* ¶ 10. For example, Alliance will divert money and volunteer time to a postcard campaign related to the witness requirement before the 2024 general election. *Id.* That is enough. The Alliance need not provide a formal

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

accounting of its resources to establish organizational injury. *See, e.g.*, *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) ("The fact that the added cost has not been estimated . . . does not affect standing[.]"), *aff'd*, 553 U.S. 181 (2008); *OCA-Greater Hous. v. Texas*, 867 F.3d 604, 610–12 (5th Cir. 2017) (explaining injury in fact is "qualitative, not quantitative, in nature" (quotation omitted)).

Finally, the age of the witness requirement is irrelevant. TI Opp. at 11. As Mr. Madden explained, the Alliance's membership is always growing—new people retire within the state, new members come from out of state, and preexisting members become new absentee voters as they age and their health declines. Madden Decl. ¶ 7. Educating recently retired members who are newer to absentee voting in Minnesota is critical to ensure they can exercise their right to vote. *Id.* ¶ 10.



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

The Secretary's defense to the Plaintiffs' VRA claim fail for the same reasons Plaintiffs explained in their Opposition to the Secretary's Motion to Dismiss. MTD Opp. at 14–19. A few points, however, bear emphasizing.

*First*, and most significantly, the Secretary continues to assert that the witness attestation is a tool for "confirming that the same person who applied for, received, and returned an absentee ballot also marked [the ballot]." TI Opp. at 14. Elsewhere, the Secretary has argued that identity verification—"confirming that *the voter* (as opposed to someone else) was the one who completed the registration and showed proof of residence in a form provided by law"—is in fact material in determining the voter's qualifications. *See* MTD Br. at 23. But the Secretary still has not explained how the witness certificate has nothing to do with the voter's qualifications, and yet is "material in determining" whether the "individual is qualified . . . to vote." 52 U.S.C. § 10101(a)(2)(B).

*Second*, the Secretary's comparison to *in person* same-day registration is inapt. Minnesota law requires absentee voters who were not previously registered (or need to update their

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

registration) to find a witness to verify their proof of residency. In-person registrants, in contrast, need only provide such proof to an election official. Minn. Stat. § 201.061, subdiv. 3. Minnesota could accomplish the same goals by allowing a voter to submit a copy of their proof of residence directly to the election official, rather than having to find a witness to vouch for them.

*Finally*, *Liebert v. Millis*, decided the same day the parties served their respective opposition memoranda, misapplied the relevant provisions of the VRA and is further distinguishable because it relied entirely on that court's construction of the challenged Wisconsin statute, which is materially different than the Minnesota statute challenged here. *See* No. 23-cv-672-JDP, 2024 WL 2078216, at *4 (W.D. Wis. May 9, 2024) ("The key dispute is over the interpretation of the portion of § 6.87(2) that describes what the witness must certify."). Unlike its Wisconsin counterpart, the Minnesota statute requires *both* the voter and witness to sign a "certificate of eligibility," which attests that "the voter meets all of the requirements established by law for voting by absentee ballot." Minn. Stat. § 203B.07, subdiv. 3. And for unregistered absentee voters, it requires the witness to certify that the voter has shown proof of residence—which plainly "prove[s the voter's] qualifications" under the VRA. 52 U.S.C. § 10501(b).



*Liebert's* conclusion that the witness does not vouch for the voter's qualifications also distorts the VRA's plain language by creating additional loopholes that Congress did not authorize. *Liebert*, 2024 WL 2078216, at *5. Section 201's prohibition is not limited to vouchers of qualifications, but rather prohibits any requirement that an individual "prove his qualification by the voucher" of another. 52 U.S.C. § 10501(b). Thus, election officials violate the VRA when they require voters to provide *any* third-party voucher in proving their eligibility, regardless of what the voucher says—and Minnesota's witness requirement does exactly that. TI Opp. at 24–27. It is no

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

defense that the witness's voucher is substantively irrelevant to qualifications; rather, it underscores why such arbitrary requirements are unlawful under the VRA and Civil Rights Act.

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

Plaintiffs are likely to succeed on their challenge to Minnesota's witness requirement under the materiality provision of the Civil Rights Act because every statutory element has been met: the witness requirement disenfranchises absentee voters (1) based on an error or omission, (2) on a paper requisite to voting, and (3) the error or omission is not material in determining the absentee voter's qualifications. 52 U.S.C. § 10101(a)(2)(B). The Secretary does not dispute that the challenged witness certification appears on a paper document—specifically, the absentee signature envelope. The Secretary also does not dispute that the signature envelope is an act requisite to voting; nor could he, because election officials are statutorily required to examine the signature envelope and confirm compliance with the witness requirement before depositing the ballot (but not the envelope) into the ballot box. Minn. Stat. § 203B.121, subdiv. 4; *see also* Maeda Decl., Ex. 6 at 50, Index No. 70 (instructing election officials to "separate the absentee ballot signature envelope from the ballot," if the envelope is accepted, before placing the ballot into the tabulator).



Instead, the Secretary maintains two contradictory propositions: (1) the materiality provision has no application to the witness requirement because it is not "used to determine whether a voter is qualified," TI Opp. at 17, and (2) the witness requirement "is material to determining whether a qualified absentee voter completed the ballot" because it is in fact used to determine voter qualifications. *Id.* at 24–26. Not only do these propositions contradict each other, but they also contradict the Secretary's prior statement that the "witness certifications . . . are not used 'in determining' whether the voter is eligible to vote." MTD Br. at 22.

Each of the Secretary's shifting positions lacks merit. The materiality provision applies to the witness requirement no matter how you read it: either as a plain application of the terms

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

"requisite to voting," 52 U.S.C. § 10101(a)(2)(B), or as an application of the Secretary's invented category of documents "used to determine whether a voter is qualified," TI Opp. at 17, because the certificate of eligibility, which includes the witness certification, falls under both categories. And errors or omissions in the witness certification are not material in determining a registered voter's qualifications because the certification verifies neither the voter's identity nor any other qualification to vote.[1] Even if the witness could be considered material, the witness's address information certainly is not. Therefore, the witness requirement—as a whole and in terms of its strict requirements for witness address information—violates the materiality provision.

### A. The materiality provision applies to all documents that stand between voters and the ballot.

All parties agree that the materiality provision protects voters only from immaterial errors on documents—i.e., "record[s] or paper[s]." 52 U.S.C. § 10101(a)(2)(B). But to which documents does it apply? The statute provides a plain, straightforward answer: it applies to all documents "relating to any application, registration, or other act requisite to voting." *Id.* That is the beginning and end of the statute's discussion of *which* documents fall within its scope. These statutory terms do not draw a distinction between documents "used to determine whether a voter is qualified" and other documents, as the Secretary suggests. *See* TI Opp. at 17. Instead, the statute only draws a distinction between documents "requisite to voting" and the vote itself—such that the latter cannot be denied because of an immaterial error on the former. 52 U.S.C. § 10101(a)(2)(B). In that way, the materiality provision does not apply to the paper ballot itself, but it does apply to every other paper that stands between a voter and the ballot.



[1] When the witness requirement is applied to unregistered voters, the witness certification is not only material in determining the voter's qualifications, it is the *only* way an absentee voter may prove their qualifications. As a result, it facially constitutes a voucher under the VRA. 52 U.S.C. § 10501(b).

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

The Secretary's contrived reading of the materiality provision and his arguments in support of it largely mirror his arguments in the motion to dismiss—often word-for-word. *Compare* MTD Br. at 16–22, *with* TI Opp. at 17–23. Plaintiffs have already explained in detail why those arguments are unavailing and will avoid repeating those points here. *See* MTD Opp. at 19–27. Here, Plaintiffs will focus on a few distinct points made in the Secretary's most recent brief.

*First*, the Secretary's proposed reading of the materiality provision renders statutory language superfluous. By narrowing the scope of the materiality provision to voter registration documents, the Secretary's reading makes the phrase "other act requisite to voting" wholly unnecessary. 52 U.S.C. § 10101(a)(2)(B). The Secretary's suggestion that this phrase could be intended to prevent "recasting registration or application requirements under some other name" does not withstand scrutiny and only proves Plaintiffs' point. TI Opp. at 19. Implicitly, the Secretary recognizes that Congress intended to protect voters from barriers that function similarly even if they are not called "voter registration"—which corroborates Plaintiffs' view that the statute is intended to reach *all* prerequisites to voting which may erect a paperwork barrier.



If Congress meant to narrow the statute's reach to "voter eligibility" documents, it could have used language akin to the neighboring provisions, such as: "any application, registration, or other [determination of an individual's qualifications]." *Compare* 52 U.S.C. § 10101(a)(2)(A), *with* § 10101(a)(2)(B). Instead, Congress chose language to protect voters from paperwork errors on *any* paper requisite to voting, and the separate specification of the term "registration," 52 U.S.C. § 10101(a)(2)(B), was "simply intended to remove any doubt that" the provision also applies to voter registration paperwork. *See Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 226–27 (2008).

*Second*, the Secretary's policy arguments misconstrue the text and purpose of the materiality provision. Giving the provision its plain meaning would not threaten rules governing

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

the marking of paper ballots because, unlike the signature envelope, the ballot is not a "requisite to voting"—it is the vote itself. 52 U.S.C. § 10101(a)(2)(B). Similarly, the Secretary's invocation of Minnesota's interest in designing absentee voting procedures to approximate procedures applied to in-person voting is unavailing. TI Opp. at 25. The legislative history of the materiality provision belies the Secretary's assumption that in-person procedures may be converted into paperwork without issue under the Civil Rights Act. In contrast to in-person requirements—which can be explained, negotiated, repeated, or fixed in the moment—paperwork requirements are uniquely dangerous because voters often do not have an opportunity to address or correct errors in real time. As the legislative history explains, this creates opportunities to "apply more rigid standards of accuracy" to some voters, handle paperwork in a dilatory fashion, or fail to timely notify voters of issues with their paperwork. H.R. Rep. No. 88-914 (1963), *as reprinted in* 1964 U.S.C.C.A.N. 2391, 2491. In any event, none of the policy interests identified by the Secretary relieve Minnesota of its duty to comply with federal law.



*Finally*, the cases cited by the Secretary do not stand for the propositions attributed to them. The Eleventh Circuit did not "similarly recognize" that the materiality provision *only* applies to voter registration documents, TI Opp. at 20; instead, the Eleventh Circuit merely held that the materiality provision *does* apply to voter registration papers, *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003). And the lower federal court cases cited by the Secretary *also* did not "reach[] similar holdings" regarding the scope of the materiality provision. TI Opp. at 20. *Two* of the four cases cited by the Secretary applied the materiality provision to absentee ballot envelopes. *See Org. for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790, 803 (W.D. Mo. 2020); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1309 (N.D. Ga. 2018).

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

It is simply not accurate to claim that courts "that have addressed the issue conclude" that the materiality provision does not apply outside the voter registration context. TI Opp. at 21. For example, in one case cited by the Secretary himself, the court considered and thoroughly dismantled the Secretary's proposed interpretation of the materiality provision. *See La Union del Pueblo Entero v. Abbott*, No. 5:21-CV-0844-XR, 2023 WL 8263348, at *18–22 (W.D. Tex. Nov. 29, 2023) ("*LUPE*") (rejecting argument that the materiality provision only applies to voter registration); *see also Common Cause v. Thomsen*, 574 F. Supp. 3d 634, 636 (W.D. Wis. 2021) (rejecting similar argument because the text of the materiality provision "isn't limited to . . . voter registration"). Indeed, aside from the recent Third Circuit decision, only one federal court has followed suit by simply adopting the Third Circuit's interpretation. *See* Op. & Order, *Liebert v. Wis. Elections Comm'n*, No. 3:23-cv-00672-JDP (W.D. Wis. May 9, 2024), ECF No. 102. But in doing so, that court demonstrated the incoherence of the Secretary's position by reaching contradictory conclusions akin to the Secretary's own: (1) "the Materiality Provision applies any time an election official determines whether a person is qualified," *id.* at 29, (2) Wisconsin's witness requirement "is 'material' to determining whether a voter is qualified," *id.* at 33, and, *inexplicably*, (3) that the "witness requirement is not a process for determining voter qualifications, so the Materiality Provision simply does not apply," *id.* at 21.



**B. Minnesota's witness requirement is not material in determining the qualifications of registered voters.**

Three weeks ago, in his motion to dismiss, the Secretary said that the "witness certifications . . . are not used 'in determining' whether the [registered] voter is eligible to vote." MTD Br. at 22. Last week, in opposing Plaintiffs' temporary injunction, the Secretary appeared to say the opposite, claiming that the witness certification "is material to determining whether a qualified absentee voter completed the ballot," TI Opp. at 26. The Secretary's fluid position illustrates that his

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

proposed interpretation of the materiality provision is incoherent and impossible to administer because there is no stable distinction between "determinations of *who* may vote" and "*how* qualified voters cast their ballots." TI Opp. at 18.

Despite the Secretary's attempted about-face, he has not established that the witness requirement is material in determining whether absentee voters are qualified to vote. *First*, the witness requirement, as the Secretary interprets it, does not actually verify voters' identity or any other qualification; it is purely a procedural confirmation that the absentee ballot was completed in secret by a single individual. *Second*, even if the witness certification *could* shed light on a voter's identity, it is not material to Minnesota's procedures for determining a voter's qualifications. *Third*, even if the certification by a witness is material in determining a voter's qualifications, the witness's address information is *not* material to that determination, and the rejection of ballots for errors or omissions in witness address information separately violates the materiality provision.



Minnesota's witness certification, as the Secretary argues, does not concern identity or qualifications. Instead, it only certifies two things: (1) the procedure followed by the voter and (2) the witnesses' eligibility to serve as a witness. *See* Minn. Stat. § 203B.07, subdiv. 3; *see also* Maeda Decl., Ex. 3-1. These certifications do not shed light on any information pertinent to the voter's identify or qualifications, including who the person is, whether they are known to the witness personally, whether they are registered to vote, whether it is the same person who requested the absentee ballot, or whether the person satisfies Minnesota's qualifications to vote (age, residency, and citizenship). As the Secretary himself explained, these certifications "pertain only to how voters complete their ballots." TI Opp. at 13. This is a far cry from establishing that a "qualified absentee voter completed the ballot." *Id.* at 26.

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

Even if a witness certification could conceivably provide information about an absentee voter's identity, it is not used that way under Minnesota law. Minnesota's witness requirement is wholly unlike the photo identification cases cited by the Secretary, where election officials "compare the individual's face to the identification tendered to ensure the individual is who he/she professes to be." *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 841–42 (S.D. Ind. 2006). In Minnesota, neither the witness nor election officials endeavor to verify the individual's identity or qualifications in any way. In the absence of even attempted verification, that information cannot be considered material in determining whether a voter is qualified. *See Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406, at *37 (D. Ariz. Feb. 29, 2024). Moreover, materiality must be evaluated relative to all the information provided by the voter: where that other information establishes the voter's identity, the witness certification is not material. *See LUPE*, 2023 WL 8263348, at *18 (stayed pending appeal). Here, the voter has already provided their name, address, and identification number—which is more than sufficient for identification. Minn. Stat. § 203B.07, subdiv. 3.



Finally, even if one treated the witness certification as material in determining the voter's qualifications, the witness's address information has no relevance and does not bear on the certification itself or the absentee voter's qualifications. Nevertheless, election officials are advised to reject absentee ballots for immaterial errors or omissions in the witness's address information, including if the witness (1) omits their street name or number, (2) omits their city, (3) lists an address that appears to be outside of Minnesota, or (4) lists a PO Box as an address. *See* Maeda Decl., Ex. 6 at 7, 72, 83–85. These are immaterial errors that do not indicate that an absentee voter is unqualified, or that the absentee voter is not who they say they are.

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

Notably, election officials do not use this witness address information beyond confirming compliance with the witness requirement. The Secretary only identifies theoretical uses for the witnesses' address information, such as potentially "investigat[ing] whether the witness was a real person or a forged signature" or "contacting a witness if necessary." TI Opp. at 26. But neither Minnesota law nor the declaration of David Maeda mention ever using a witnesses' address for either of these administrative functions. *See* Maeda Decl. Even so, the administrative utility of this information does not make it material in determining a voter's qualifications. *Fontes*, 2024 WL 862406, at *38.

## IV. The balance of harms favors an injunction.

The Secretary has failed to demonstrate that any harm he might suffer outweighs the ongoing irreparable harm to Plaintiffs' voting rights caused by the witness requirement. The Secretary argues that Plaintiffs have not, and will not, suffer irreparable harm because they have "not allege[d] that a single member's ballot has been rejected for noncompliance with the witness requirement." TI Opp. at 29–30. In other words, the Secretary believes that Plaintiffs must be completely disenfranchised for an injunction to be appropriate. Once again, the Secretary misses the point. To establish irreparable harm, Plaintiffs must show that (1) they have suffered an injury, and (2) that injury is irreparable—meaning incapable of being remediated by monetary damages. *Griffin Cos., Inc. v. First Nat'l Bank of St. Paul*, 374 N.W.2d 768, 770–71 (Minn. Ct. App. 1985).



As Plaintiffs have explained, they need not "have the franchise wholly denied to suffer injury." *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F. 3d 1349, 1352 (11th Cir. 2005). The burdens individual Plaintiffs have suffered are not rooted in "fears or apprehensions," nor are they "mere possib[ilities]," as the Secretary suggests, TI Opp. at 29 (cleaned up); they are Plaintiffs' actual lived experiences. Ms. Maples has testified that she can no longer rely on the person she has used as a witness in the past, Maples Decl. ¶ 8, that the other person she would typically have

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

asked—her son—recently passed away, *id.* ¶ 9, and that it will be incredibly burdensome for her to identify and meet another person because she has difficulty driving, walking up and down stairs, and standing for long periods of time, *id.* ¶ 5. In fact, these burdens were so significant in March that Ms. Maples "did not think [she] would be able to vote at all." *Id.* ¶ 10. The burdens Ms. Maples has faced and will continue to face, are "real and substantial." *St. Jude Medical, Inc. v. Carter*, 913 N.W.2d 678, 684 (Minn. 2018) (quotation omitted). They are also irreparable—because they cannot be remediated through money damages.

The Secretary is also wrong that the Alliance's diversion of "unspecified" resources cannot constitute irreparable harm because it is a "monetary concern." TI Opp. at 30. Because its members are disproportionately impacted by the witness requirement, the Alliance must divert volunteer time and money away from specific mission-critical activities such as retiree phone banks and door-to-door canvassing events to a postcard operation to educate its members about the witness requirement in advance of the 2024 general election. Madden. Decl. ¶ 10. This diversion impairs Alliance's ability to pursue its mission. *N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections*, No. 1:16-cv-1274, 2016 WL 6581284, at *9 (M.D.N.C. Nov. 4, 2016) (citing *Havens Realty v. Coleman*, 455 U.S. 363, 379 (1982)). That injury, once incurred, cannot be remediated by monetary damages. *See, e.g., E. Bay Sanctuary Covenant v. Garland*, 994 F.3d 962, 984 (9th Cir. 2020) (holding that the plaintiffs "established a sufficient likelihood of irreparable harm through diversion of resources" (quotation omitted)).



The Secretary's complaint about Plaintiffs' purported delay in seeking a temporary injunction incorrectly assumes that the witness requirement presents identical burdens in every election. Ms. Maples, for instance, had access to potential witnesses in prior elections, including her former landlady and her son. Maples Decl. ¶ 8–9. But Ms. Maples's son recently passed away,

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

and she moved to an apartment where she knows no one. *Id*. While Ms. Maples also suffered injury by having to secure a witness to vote in prior elections, the requirement poses an even greater hurdle in 2024 as Ms. Maples has become more isolated and less mobile. *Id*. ¶¶ 5–9. This is not a case involving a single continuous and undifferentiated injury, but rather the infringement of federally protected voting rights that may impact voters with different levels of severity in each election. And Plaintiffs here sought a temporary injunction more than six months before the next general election, which leaves plenty of time to implement an injunction before November 2024. *See DSCC v. Simon*, 950 N.W.2d 280 (Minn. 2020) (affirming in part, in October 2020, a July 2020 injunction against statutory limitations on assisting individuals in marking a ballot).

Finally, the Secretary's claim that Plaintiffs' proposed relief would harm voters and elections officials falls flat. TI Opp. at 30. The requested injunction will only *benefit* voters by eliminating the risk that their ballots will be unnecessarily discarded for failure to comply with an unlawful and immaterial requirement. Nor would it impose any significant costs on election officials—they would merely be prohibited from tossing out absentee ballots with incomplete witness certifications. And any such concerns about administrative burdens must yield in the face of an ongoing violation of Plaintiffs' federal rights. *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("The burden on non-military Ohio voters' ability to cast ballots . . . outweighs any corresponding burden on the State, which has not shown that local boards will be unable to cope" with changes to election procedures.). Ultimately, the principle that a "State has no interest in enforcing laws that are unconstitutional," *Pavek v. Simon*, 467 F. Supp. 3d 718, 762 (D. Minn. 2020) (quotation omitted), applies with equal force here, where Plaintiffs have established a likelihood of success on the merits of their federal statutory claims. *See DSCC v. Simon*, No. 62-CV-20-585, 2020 WL 4519785, at *21 (Minn. Dist. July 28, 2020) ("Minnesota has no interest in

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

enforcing unenforceable laws."); *DSCC,* 950 N.W.2d at 291 n.12 (finding no abuse of discretion in determining balance of harms favored injunctive relief where VRA claim was likely to succeed).

## V. The remaining *Dahlberg* factors favor granting a temporary injunction.

The remaining *Dahlberg* facts favor injunctive relief or are at least neutral. Although temporary injunctions are often used to maintain the status quo, Minnesota courts also "ha[ve] the power to shape relief in a manner which protects the basic rights of the parties, even if in some cases it requires disturbing the status quo." *N. Star State Bank of Roseville v. N. Star Bank Minn.*, 361 N.W.2d 889,895 (Minn. Ct. App. 1985) (quotation omitted); *see also Chi. United Indus., Ltd. v. City of Chicago*, 445 F.3d 940, 944 (7th Cir. 2006) (explaining that limiting preliminary relief to preserving the status quo is "much, and rightly criticized" because preliminary relief is "properly sought only to avert irreparable harm to the moving party. Whether and in what sense the grant of relief would change or preserve some previous state of affairs is neither here nor there." (internal citations omitted)). And, as Minnesota courts have found in past elections cases, concerns about maintaining the "status quo" yield when an injunction is necessary to prevent ongoing irreparable harm to the basic rights of Minnesota voters. *DSCC*, 2020 WL 4519785, at *20–21.



Public policy weighs in Plaintiffs' favor because it is always in the public interest to protect federal statutory rights, *Rodgers v. Bryant*, 942 F.3d 451, 458 (8th Cir. 2019), and there is no public interest in maintaining an unlawful voting practice. As the Secretary admits, "5,479 absentee ballots were rejected for failure to comply with the witness requirement in the 2022 general election." TI Opp. at 32 (citing Maeda Decl. ¶ 19). Each one of those ballots represents a Minnesota voter who has suffered unnecessary and irreparable injury because of the unlawful witness requirement. The public interest "is best served by favoring enfranchisement and ensuring that qualified voters' exercise of their right to vote is successful" and "favors permitting as many qualified voters to vote as possible." *Husted*, 697 F.3d at 436–37 (cleaned up).

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

Finally, the Secretary's complaint about "administrative burdens" misapprehends the nature of that *Dahlberg* factor, which asks whether the *court* would face "administrative burdens" from "judicial supervision and enforcement of the temporary decree." *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 264, 275, 283 (Minn. 1965). For instance, in *DSCC v. Simon*, the court found that there would not be "any administrative responsibility to the court if it issues a temporary injunction." 2020 WL 4519785, at *31. The injunction in that case, like the relief sought here, simply enjoined the Secretary from enforcing limitations on voter assistance and directed the Secretary to provide written notice that the challenged laws were unenforceable. *Id.* at *1. Beyond such written notification, no administrative burdens would be incurred by simply requiring election officials to accept absentee ballots with or without a witness requirement. And despite the Secretary's assertion that local election officials are not his "agents," TI Opp. at 33, the Secretary has promulgated regulations instructing local ballot boards on how to review absentee ballots. Minn. R. 8210.2450. He has also published an "Absentee Voting Guide" with specific guidance on accepting or rejecting absentee ballots based on compliance with the Witness Requirement. *See* Maeda Decl., Ex. 6 at 7, 72, 83-85. As for the Secretary's concerns about accepting a copy of a proof of residence in lieu of a witness statement, TI Opp. at 33, that is exactly what state elections officials *already* do with respect to in person same-day registrants, as the Secretary acknowledges. *See id.* at 15 (citing Minn. Stat. § 201.061, subdiv. 3). And to the extent that procedure would impose an administrative burden, that burden would fall upon the Secretary and not the Court.



## CONCLUSION

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

Filed in District Court
State of Minnesota
5/16/2024 6:50 PM

Dated: May 16, 2024

**GREENE ESPEL PLLP**

*/s/ Sybil L. Dunlop*
Sybil L. Dunlop, Reg. No. 0390186
Amran A. Farah, Reg. No. 0395354
222 S. Ninth Street, Suite 2200
Minneapolis, MN 55402
sdunlop@greeneespel.com
afarah@greeneespel.com
(612) 373-0830

**ELIAS LAW GROUP LLP**

Uzoma N. Nkwonta,* DC Reg. No. 975323
Richard A. Medina,* DC Reg No. 90003752
William K. Hancock,* DC Reg No. 90002204
Marisa A. O'Gara,* DC Reg No. 90001096
250 Massachusetts Ave NW, Suite 400
Washington, DC 20001
unkwonta@elias.law
rmedina@elias.law
whancock@elias.law
mogara@elias.law
(202) 968-4490

*Attorneys for Plaintiffs*

*Admitted *Pro Hac Vice*



**ACKNOWLEDGMENT**

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

/s/ *Sybil L. Dunlop*
Sybil L. Dunlop