STATE OF MINNESOTA
RAMSEY COUNTY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

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

Plaintiffs,

v.

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

Defendant.

62-CV-24-854

ORDER AND MEMORANDUM

This case came before the court on May 23, 2024, for a hearing on Plaintiffs' motion for a temporary injunction, Defendant's motion to dismiss Plaintiffs' amended complaint, and the motions filed by proposed intervenors, the Republican National Committee and the Republican Party of Minnesota.

Amran A. Farah, Esq., Uzoma N. Nkwonta, Esq., Richard A. Medina, Esq., William Hancock, Esq., and Marisa O'Gara, Esq., appeared for Plaintiffs. Assistant Attorneys General Angela Behrens, Madeline DeMeules, Allen Cook Barr, Emily Anderson, and Justin Erickson appeared for Defendant. Benjamin L. Ellison, Esq., John M. Gore, Esq., and Louis J. Capozzi III, Esq., appeared for the proposed intervenors.

Based on the submissions and counsel's arguments, the court issues the following:

Order

1. Plaintiffs' motion for a temporary injunction is denied without prejudice.
2. Defendant's motion to dismiss is denied.
3. The proposed intervenors' motion to intervene is denied without prejudice.

Sheu, Edward (Judge)
Jun 14, 2024 2:18 PM

Edward Sheu
District Court Judge

Summary

When treating Plaintiffs' factual allegations as true, which the court must at this stage, Plaintiffs Minnesota Alliance for Retired Americans Educational Fund and Teresa Maples have shown they have standing to bring their claims and have stated claims for relief.

With respect to registered absentee voters, Minnesota's witness requirement does not violate the Voting Rights Act of 1965, because the witness does not vouch for any of the voter's qualifications. With respect to individuals seeking to both register and vote absentee, the witness requirement appears to violate the Voting Rights Act of 1965, because the witness, who must be a registered voter or member of a class, must vouch for the witness's residency, which is one of the statutory criteria for voting eligibility.

The witness requirement could invalidate a registered absentee voter's ballot due to paperwork mistakes required for voting, namely, the certificate of eligibility form on the absentee ballot envelope the witness must complete for the ballot to be accepted, and such paperwork mistakes are immaterial to the voter's qualifications, thereby violating the Civil Rights Act of 1964. For those seeking to register and vote absentee, a paperwork mistake the witness makes when verifying a voter's residency could be material to determine the voter's qualifications, and rejecting such a ballot would not violate the Civil Rights Act of 1964.

Plaintiffs have shown they are likely to succeed on the merits and may be harmed if the witness requirement is not waived, but, without more information, this court believes the balance of harms does not support temporary injunctive relief at this time.

The proposed intervenors have not shown their status as parties in this action is appropriate at this time, but their filings will be treated as amici.

Memorandum

I. The materiality provision in the Civil Rights Act of 1964, and the vouching prohibition in the Voting Rights Act of 1965.

The Civil Rights Act of 1964 (CRA) provides, among other things,

> 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).

The CRA defines the term "vote" to include "all action necessary to make a vote effective including, but not limited to . . . casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast." 52 U.S.C. §§ 10101(a)(3)(A), 10101(e).

Section 201 of the Voting Rights Act of 1965 (VRA) provides, in part,

> (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 . . . prove his qualifications by the voucher of registered voters or members of any other class.

52 U.S.C. § 10501.

II. Minnesota's witness requirement for absentee voting.

In Minnesota, an eligible voter must be (1) at least 18 years old; (2) a United States citizen; and (3) a Minnesota resident for at least 20 days immediately before the election. Minn. Stat. § 201.014, subd. 1. A person is ineligible to vote if they (1) have been convicted of treason or are incarcerated for a felony conviction, (2) are under a guardianship with

suspended voting rights, or (3) have been found incompetent. *Id.*, subd. 2. Eligible voters may vote in person on election day, by mail or in-person absentee ballot, or in-person early voting. Minn. Stat. §§ 203B.02, subd. 1, .81, subds. 1, 1a, .30, subd. 2, 204C.10. Regardless of how they vote, every eligible voter must first register. Minn. Stat. § 201.018, subd. 2. Each voting method requires proof of residency. Minn. Stat. §§ 201.054, subd. 1, .071, subd. 1.

Under Minn. Stat. § 203B.02, subd. 1, any eligible voter may vote absentee as provided in Minn. Stat. § 203B.04-.12. Under Minn. Stat. § 203B.07, subd. 3, all absentee voters must find a witness who is (1) a registered Minnesota voter, (2) a notary public, or (3) a person authorized to administer oaths. The witness must sign a "certificate of eligibility," printed on the absentee ballot signature envelope, stating that the ballots were displayed to the witness unmarked, 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, and, if the voter was not previously registered, the voter has provided proof of residence as required by Minn. Stat. § 201.061, subd. 3. *Id.* The voter must also sign the "certificate of eligibility," which includes "a statement to be signed and sworn by the voter indicating that the voter meets all of the requirements established by law for voting by absentee ballot." *Id.*

Once received by local officials, each absentee ballot signature envelope is examined by at least two members of the local ballot board. Minn. Stat. § 203B.121, subd. 2(a). The board members must examine each signature envelope and mark it "accepted" or "rejected." *Id.* A signature envelope is only "accepted" if most members agree "the certificate has been completed as prescribed in the directions for casting an absentee ballot." *Id.*, subd. 2(b)(5). If not, the signature envelope, and the ballot, will be rejected. *Id.*, subd. 2(c)(1).

Defendant, the Minnesota Secretary of State, administers this state's election laws, and adopts rules, forms, and procedures for absentee voting. Minn. Stat. § 203B.09. As required by statute, Defendant has promulgated Minn. R. 8210.0500 and Minn. R. 8210.0600.

Rule 8210.0500 prescribes absentee-voting instruction forms. They include a notice that absentee voters require a witness, who must be one described in Section 203B.07, subdivision 3. Rule 8210.0600 prescribes the form of the required statement of an absentee voter. One section of the signature envelope is completed by the voter, and another section states, "Witness must complete this section." *Id.*, subp. 1a. For registered voters, the witness certifies, (1) "the voter showed me the blank ballots before voting," (2) "the voter marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter," (3) "the voter enclosed and sealed the ballots in the ballot envelope," and (4) "I am or have been registered to vote in Minnesota, or am a notary, or am authorized to give oaths." *Id.* If the voter needs to register, the witness must also certify that "the voter registered to vote by filling out and enclosing a voter registration application in this envelope" and "the voter provided proof of residence," choosing from among a list of acceptable forms of proof of residence. *Id.*, subp. 1b.

At least two ballot board members must review the absentee ballots and reject those that fail to comply with the witness requirement. Minn. Stat. § 203B.121 subd. 2(c)(1). An absentee voter's ballot is rejected if the witness (1) omits their signature, (2) omits their street name or number, (3) omits their city, (4) lists an address that appears to be outside of Minnesota, or (5) lists a PO Box. *See* Minn. R. 8210.2450.

Defendant has also promulgated an Absentee Voting Guide, which is "designed to aid election officials in the administration of absentee voting," and which instructs how to accept

or reject ballots based on compliance with the witness requirement. This guide includes examples of ballots that should be rejected for failure to comply with the witness requirement. For example, ballots in which the witness omits their street address or city should be rejected even if other address information is included on elsewhere.

According to Defendant, in the 2022 general election, 2,525,873 Minnesotans voted. 687,062 returned absentee ballots. 5,479 absentee ballots were rejected due to failure to comply with the witness requirements: 4,032 were rejected because the witness did not sign; 931 were rejected because the witness did not provide an address; and 516 were rejected because the witness did not indicate on the voter registration application what residency document the voter supplied. May 9, 2024 Maeda Decl. ¶ 19.[1]

III. Plaintiffs' allegations.

Plaintiff Minnesota Alliance for Retired Americans Educational Fund (the Alliance) is a nonpartisan Minnesota nonprofit organization with over 84,000 members in Minnesota and over 9,000 in Ramsey County. Its mission is to ensure social and economic justice and full civil rights for retirees, through grassroots advocacy, contributions to labor and electoral campaigns, and participation in get-out-the vote campaigns. Many of the Alliance's members live alone or have mobility challenges that make in-person voting difficult. The Alliance expends money and volunteer time educating its members on Minnesota's absentee-voting witness requirement and finding members who can serve as witnesses, which money and volunteer time could otherwise be spent on other mission-critical election-related programs.

[1] According to https://www.sos.state.mn.us/election-administration-campaigns/data-maps/absentee-data/ (link to "Download a spreadsheet of statewide absentee voting statistics 2014-2022," last accessed June 14, 2024), 4,592 absentee ballots were rejected because the witness did not sign, 1,224 because the witness did not provide a Minnesota address, title, or notary stamp, and 563 because the witness did not mark any proof.

Plaintiff Teresa Maples is a qualified and registered Minnesota voter and an Alliance member. She is 70 years old and lives alone in Redwing. Her medical conditions present mobility issues making it hard to leave her home and find a witness or notary. In the past, her son or neighbors have served as a witness, but her son has recently passed away, and she has moved into a new building and does not know her neighbors. She will have a hard time finding a witness for her absentee ballot for the November 2024 election.

Plaintiff Khalid Mohamed is a qualified and registered Minnesota voter. He is a member of the Somali-American community and routinely votes absentee. He has struggled to find a registered voter or notary in his community who will witness his ballot. In the past, he has had to have friends or acquaintances locate a witness for him, and expects to have trouble finding a witness for the November 2024 election.

Plaintiffs allege that, by administering and enforcing the witness requirement for absentee voting, Defendant has violated the VRA, or the CRA, and has injured and will continue to injure them and other absentee voters. Plaintiffs assert the witness requirement unlawfully requires vouching by a registered voter or member of a class, in violation of the VRA, or unlawfully invalidates ballots due to errors or omissions in the witness statement that occur through no fault of the voter, and that are immaterial to determining the voter's qualifications, in violation of the CRA. Plaintiffs ask the court to enjoin the witness requirement for absentee ballots and authorize unregistered absentee voters to submit proof of residency without a witness certification.

IV. Procedural history.

Plaintiffs commenced this action on February 15, 2024, to which Defendant filed a motion to dismiss. On March 15, 2024, the Republican National Committee and the

Republican Party of Minnesota (Republican Committees) filed a notice of intervention and proposed answer, to which Plaintiffs objected. On April 25, 2024, the Republican Committees moved to intervene and for leave to file a motion to dismiss. On May 1, 2024, Plaintiffs filed an amended complaint, and on May 2, 2024, a temporary-injunction motion. Defendant renewed its motion to dismiss, and the Republican Committees moved to join in the motion. On May 23, 2024, the court heard argument on all pending motions.

V. Analysis.

A. Rule 12 standard.

Minnesota is a notice-pleading state and requires that a pleading contain only information sufficient to fairly notify the opposing party of the claim against it. *DeRosa v. McKenzie*, 936 N.W.2d 342, 346-47 (Minn. 2019) (complaint may include broad general statements that may be conclusory); Minn. R. Civ. P. 8.01 (pleading to contain a short and plain statement showing the pleader is entitled to relief and a demand for the relief sought).

In considering a motion filed under Minn. R. Civ. P. 12.02(e), the court considers the facts alleged in the complaint as true and must construe all reasonable inferences in favor of the nonmoving party. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). "A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014).

A complaint should not be dismissed unless it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist that would support granting the relief demanded. *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963). It is immaterial whether the plaintiff can prove the facts alleged. *Martens v. Minn. Mining & Mfg.,*

Co., 616 N.W.2d 732, 739 (Minn. 2000). The showing a plaintiff must make in order to survive a Rule 12.02(e) motion is minimal. *State by Smart Growth Mpls. v. City of Mpls.*, 954 N.W.2d 584, 594 (Minn. 2021). "All pleadings must be construed so as to do substantial justice." *Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 501 (Minn. 2021).

But a claim is legally insufficient and must be dismissed if there is no possibility that evidence can be produced that would entitle the plaintiff to the relief demanded. *Forslund v. State*, 924 N.W.2d 25, 33 (Minn. Ct. App. 2019). A complaint alleging mere labels and conclusions cannot survive a Rule 12.02(e) motion, and the court is not bound by legal conclusions or incorrect legal statements. *Bahr v. Cappella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010); *Halva*, 953 N.W.2d at 501-02.

A court may consider documents embraced by a complaint, legislative history, and matters of public record, without converting a Rule 12.02(e) motion into one for summary judgment. *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004); *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995).

B. Temporary injunction standard.

"A temporary injunction may be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefor." Minn. R. Civ. P. 65.02(b). In considering a request for a temporary injunction, courts consider five factors. *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). They are (1) the "nature and background of the relationship between the parties," (2) the "harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial," (3) the "likelihood that one party or the other will prevail on the merits," (4) the "aspects of the fact situation, if any, which permit or require consideration of public policy,"

and (5) the "administrative burdens involved in judicial supervision and enforcement of the temporary decree." *DSCC v. Simon*, 950 N.W.2d 280, 286-87 (Minn. 2020) (citation omitted).

For a temporary injunction, a party must show a likelihood of success or irreparable harm. *DSCC*, 950 N.W.2d at 286 ("Because a temporary injunction is granted before a trial on the merits, a showing of irreparable harm is required to prevent undue hardship to the party against whom the injunction is issued.") (quotation omitted); *Haley v. Forcelle*, 669 N.W.2d 48, 58 (Minn. Ct. App. 2003) (court may consider issuing a temporary injunction if "a plaintiff makes even a doubtful showing as to the likelihood of prevailing on the merits").

"A temporary injunction is an extraordinary remedy. Its purpose is to preserve the status quo until adjudication of the case on its merits." *Miller*, 317 N.W.2d at 712 (citation omitted). But a court "has the power to shape [injunctive] relief in a manner which protects the basic rights of the parties, even if in some cases it requires disturbing the status quo." *N. Star State Bank of Roseville v. N. Star Bank Minn.*, 361 N.W.2d 889, 895 (Minn. Ct. App. 1985) (citation omitted). Whether to grant a temporary injunction is "largely an exercise of judicial discretion." *Hvamstad v. City of Rochester*, 276 N.W.2d 632, 632 (Minn. 1979).[2]

C. Plaintiffs have standing.

Defendant first argues Plaintiffs lack standing to bring their claims. To have standing, a party must have "a sufficient stake in a justiciable controversy to seek relief from a court." *Growe v. Simon*, 2 N.W.3d 490, 499 (Minn. 2024) (citation omitted). A party can obtain standing (1) if it has "suffered some injury in fact," or (2) if it is the beneficiary of

[2] Defendant argues that a temporary injunction cannot be based on inadmissible evidence. *See Lumbar v. Welsh*, No. A06-1232, 2007 WL 1531971, at *5 (Minn. Ct. App. May 29, 2007). Plaintiffs argue it can. *See Dexon Comput., Inc. v. Modern Enter. Sols., Inc.*, No. A16-10, 2016 WL 4069225, at *4 (Minn. Ct. App. Aug. 1, 2016).

"some legislative enactment granting standing." *Id.* Mere chance of injury is insufficient, rather, the injury must be both actual or imminent, not conjectural or hypothetical, and fairly traceable to the challenged conduct. *Minn. Voters All. v. State*, 955 N.W.2d 638, 642 (Minn. 2021). An injury in fact is a concrete and particularized invasion of a legally protected interest. *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007).

For purposes of ruling on a motion to dismiss for lack of standing, courts must accept as true all material allegations in the complaint and must construe the complaint in favor of the complaining party. *Stone v. Invitation Homes, Inc.*, 986 N.W.2d 237, 248 (Minn. Ct. App. 2023), *aff'd* 4 N.W.3d 489 (Minn. 2024); *Forslund*, 924 N.W.2d at 32 (at pleading stage, general allegations of injury suffice).

An organization can assert associational standing on its members' behalf if its members' interests are directly at stake or if they have suffered an injury-in-fact. *Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 301 Minn. 28, 33, 221 N.W.2d 162, 165 (1974); *Builders Ass'n of Minn. v. City of St. Paul*, 819 N.W.2d 172, 177 (Minn. Ct. App. 2012). Direct standing requires a direct injury beyond an abstract interest or concern. *Byrd v. Indep. Sch. Dist. No. 194*, 495 N.W.2d 226, 231 (Minn. Ct. App. 1993). When challenging a law, an organization typically must show the law caused the organization to divert resources or impaired its mission or services. *Rukavina v. Pawlenty*, 684 N.W.2d 525, 533 (Minn. Ct. App. 2004); *In re Trade Secret Designations*, No. A20-827, 2021 WL 1247948, at *5 (Minn. Ct. App. Apr. 5, 2021). In Minnesota, there is a "liberal standard for organizational standing." *All. for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 913 (Minn. Ct. App. 2003).

Further, "the constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules

of justiciability, even when they address issues of federal law . . . ." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617, 109 S. Ct. 2037, 2045 (1989); *Growe*, 2 N.W.3d at 499 n.6 ("Our court is not bound by the standing constraints of Article III . . . ."). *See also* Miriam Seifter and Adam B. Sopko, *Standing for Elections in State Courts*, 102 Univ. of Ill. L. Rev. Vol. 2024 at 117 (DRAFT—April 2024) (suggesting that at least 35 states have relaxed the requirement for individualized injury in the context of elections).[3]

Defendant argues the individual Plaintiffs have not shown sufficient injury because they are registered voters who have successfully voted absentee in the past and only speculate about having trouble finding a witness to vote absentee again. Defendant contends these Plaintiffs need only have a witness observe them voting, and not affirm anything regarding qualifications, so there is no imminent danger Plaintiffs will have to prove their qualifications to vote absentee. Defendant argues neither individual Plaintiff can show they will be unable to find a witness by November, if they choose to vote absentee, and each resides in counties with thousands of registered voters. Defendant states that only 5,479 absentee ballots were rejected in the 2022 election, no Plaintiff previously had a rejected absentee ballot, and federal laws protect the right to vote not the preferred means of voting.

Defendant further contends the Alliance lacks standing because the witness requirement is not a new law the Alliance must divert resources to address, the Alliance has not identified the resources it must divert for the witness requirement, and the Alliance has not identified with admissible evidence any member injured by the witness requirement.

Plaintiffs argue they are qualified voters, have voted absentee in the past and intend to do so again, and will face the witness requirement this year. *See Common Cause/Ga. v.*

[3] Available at https://ssrn.com/abstract=4803103, last accessed on June 3, 2024.

Billups, 554 F.3d 1340, 1352 (11th Cir. 2009) (voters who would have to present photo identification have standing). Plaintiffs allege it would be burdensome to find a witness and do not have to show they have already been disenfranchised. *See Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005) (plaintiff need not have the franchise wholly denied to suffer injury). And Plaintiffs argue their claims on the merits do not relate to standing. *See FEC v. Cruz*, 596 U.S. 289, 298, 142 S. Ct. 1638, 1647-48 (2022).

Further, the Alliance points out at least one of its members, Ms. Maples, has standing, and its remaining 84,281 Minnesota members, who are retired, rely heavily on absentee voting, and many live alone and have mobility challenges. The Alliance has to divert resources to help its members navigate the witness requirement in order to vote, and need not quantify how much it has spent to do so. The Alliance's membership grows as people retire, and some must register in Minnesota for the first time, so the fact the witness requirement has been in effect for decades is irrelevant. Plaintiffs further note that *Liebert v. Millis*, Civ. No. 23-672-JDP, 2024 WL 2078216 (W.D. Wis. May 9, 2024), which Defendant and proposed intervenors heavily rely on, found adequate standing.

This court concludes Plaintiffs have sufficiently alleged standing. Ms. Maples is 70 years old, lives alone, has numerous, serious health conditions, and must vote absentee (or risk her health trying to go to the polls in November). She does not know anyone in her new apartment building and does not have any family in the area, as her son died last year. It is hardly a choice that she must vote absentee, she need not wait until she has been unable to vote absentee before seeking relief from the court, and it appears speculative to say that she can find a witness to come to her apartment to certify her ballot. The court finds Ms. Maples is an appropriate person to bring these claims. *See Citizens for Rule of Law v. Senate Comm.*

on Rules & Admin., 770 N.W.2d 169, 174 (Minn. Ct. App. 2009) ("Standing focuses on whether the plaintiff is the proper party to bring a particular lawsuit.").

Since Ms. Maples is an Alliance member with standing, the Alliance has standing too. Further, the Alliance will have to continue to spend its time and resources on educating and assisting is members regarding the witness requirement rather than other aspects of its mission. The Alliance incurs time and expense on a postcard campaign to ensure its members, including those registering to vote here for the first time, know about and can try to comply with the witness requirement. May 2, 2024 Madden Decl. ¶ 10. The membership changes with the population, and general elections occur only every other year, so the fact that the witness requirement has existed a long time is not relevant to whether injury has been alleged, as ongoing absentee-voting education, outreach, and support is constantly necessary. It is understandable that the Alliance's members, like Ms. Maples, including those past retirement age and with health problems, seek to vote absentee, and Plaintiffs have adequately shown they will struggle to find witnesses to vote absentee, and will divert resources to assist its members comply with the witness requirement. Most authority the parties have cited regarding challenges to the VRA and the CRA did not address standing, largely concluded the challengers had standing, or rely on stricter federal standards for standing. This court concludes Plaintiffs have sufficiently alleged standing.[4]

D. Plaintiffs have not brought a rule-making challenge.

Defendant contends Plaintiffs' allegations appear to challenge the validity of Rules 8210.0500 and 8210.0600, which may only be challenged through a petition to the

[4] Plaintiffs do not address whether Mr. Mohamed has asserted a sufficient injury. The court agrees he may lack standing, but that does not require dismissal of all Plaintiffs' claims.

Minnesota Court of Appeals under Minn. Stat. § 14.44. Plaintiffs point out their claims do not directly challenge the Rules but rather whether Section 203B.07 violates federal law. The court agrees with Plaintiffs' characterization of its claims. Plaintiffs' references in the amended complaint to the rules governing the absentee-voting process relate to Plaintiffs' challenge to the enabling statute. To the extent Section 203B.07 is invalid, then its corresponding rules are also invalid. This court has jurisdiction over Plaintiffs' claims.

E. Plaintiffs have stated a VRA claim for those seeking to register to vote absentee.

Plaintiffs allege the witness requirement is a "prerequisite for voting" because an absentee voter who fails to satisfy the requirement will have their ballot rejected, and the witness requirement forces such voters to prove their "qualification by . . . voucher of [a] registered voter[] or" a class of those who can administer oaths. For all absentee voters, the witness must sign a "certificate of eligibility," or the ballot will be rejected, and if the voter is also registering absentee, the witness must also attest that the voter provided proof of residence. In either scenario, the absentee voter's exercise of their right to vote is subject to the voucher of a registered voter or class of persons authorized to administer oaths.

Defendant argues the witness requirement is not unlawful vouching, because the voter is the sole person attesting to their eligibility to vote. The witness attests only that the witness observed the voter mark a previously unmarked ballot and place it in the ballot envelope, and for a first-time voter, that the voter showed the witness proof of residency. Defendant argues that the witness attestations for registered voters clearly relate only to observing the mechanics of voting, and the witness merely certifies routine election administration—secret balloting, and confirming the same person who applied for, received, and returned the ballot, is the same person who marked the ballot. Defendant argues the

term "certificate of eligibility" is not controlling.[5] Further, the witness attestation for same-day registration is designed to mirror the process that would occur in person for a first-time voter: the witness acts as an election judge to verify the voter has maintained a Minnesota residence for the last twenty days, from a specified list of documents, which is not a determination the voter actually has such residency but merely whether the voter provided the requisite proof. In this way, the absentee ballot scheme is merely lawful vote-casting regulation, and no voter must have their eligibility vouched for.

Plaintiffs argue a qualified witness must sign the certificate for an absentee ballot to be accepted. The witness requirement is therefore a prerequisite to voting absentee, because ballots are rejected that lack a witness signed "certificate of eligibility." Further, for those registering to vote, the witness verifies one of the criteria for a voter's eligibility, namely, Minnesota residency; since the witness must verify eligibility, the witness must vouch for the voter's qualifications to vote. This voucher must be done by a registered voter or member of another class (since notaries and those who administer oaths are a "class" because they are groups with unique qualifications under Minnesota law). And having made absentee voting available, Plaintiff argues Defendant may not administer it in a way that violates the VRA.

No Minnesota case has addressed application of the VRA to Minnesota's witness requirement. The parties mostly point to decisions from other jurisdictions, regarding other states' absentee voting procedures, and regarding overall interpretation of the VRA.

Defendant first points to *Bell v. Gannaway*, 303 Minn. 346, 345, 227 N.W.2d 797, 803 (1975), where the Court held that absentee voting was a privilege, its procedures were

[5] Minn. Stat. § 203B.07, subd. 3, is entitled, "Eligibility certificate." Minn. Stat. § 645.49 directs that statutory headings are mere catchwords indicating only the statute's subject matter.

mandatory and to be strictly construed, and courts must balance the benefits of absentee voting with the need to ensure honest elections. *Bell* did not involve a challenge under the VRA or the CRA, relied on caselaw from 1937, predating the federal voting laws from 1964 and 1965, and seems inapplicable when considering claims under the VRA.

In response, Plaintiffs cite *Voto Latino v. Hirsch*, Civ. Nos. 23-861, 23-862, 2024 WL 230931, at *26 (M.D.N.C. Jan. 21, 2024), and *Saucedo v. Gardner*, 335 F. Supp.3d 202, 217 (D.N.H. 2018), for the proposition that a state, having offered a particular method of voting, must ensure that method counts all eligible votes.

Defendant cites *Ind. Democratic Party v. Rokita*, 458 F. Supp.2d 775, 840 (S.D. Ind. 2006), which noted that absentee voting is inherently different from in-person voting. And *Ne. Ohio Coal. for the Homeless*, 837 F.3d 612, 629 (6th Cir. 2016), which held that requiring absentee voters accurately provide their address and birthdate on ballot envelopes is not a "test or device" under the VRA. But these cases refer to information the voter provides.

Defendant next cites *People First of Ala. v. Merrill*, 457 F. Supp.3d 1179, 1224 (N.D. Ala. 2020), where a witness certification that a voter attested to their identity was not a voter-eligibility requirement, and *Thomas v. Andino*, 613 F. Supp.3d 926, 961-62 (D.S.C. 2020), which similarly held that a witness observing the voter complete and sign the ballot was not improper vouching. Plaintiffs argue that *People First of Ala.* held that while the witness requirement did not violate the VRA, the notary requirement did, and that *Andino* held that a device required for the voter's identification was a voucher. In *People First of Ala.*, a notary had to verify the voter's identity, and it was legally required that a voter prove their identity in order to vote. 457 F. Supp.3d at 1225. In *Thomas*, the witness did not have to be a registered voter or class member, and only had to confirm the voter completed and signed

the document. 613 F. Supp.3d at 961-62. By contrast here, the witness must be a registered voter or class member, and there is no voter identification aspect to the witness requirement.

The parties largely contest the application of *Liebert*, where the court granted summary judgment on VRA and CRA challenges to Wisconsin's absentee-voting scheme, and concluded that a witness-certification requirement was not unlawful vouching, nor an immaterial voter-qualification restriction. In *Liebert*, the court found the witness certification, stating "the above statements are true," with respect to whether the absentee voter was entitled to vote and had properly completed the absentee ballot, was not a certification of the voter's qualifications. *Id.*, at *5. That is because it would be virtually impossible for any witness to do so, and past absentee ballots might have to be rejected. The *Liebert* court interpreted the text, purpose, and history of the Wisconsin statute, and concluded the witness certification must refer only to the witness's observations of the voting procedures, and was not improper vouching. *Id.*, at *6-7.

Plaintiffs argue *Liebert* misapplied the applicable portions of the VRA, and dealt with a Wisconsin statute that is materially different from Minnesota's in significant respects. Plaintiffs contend the VRA prohibits any requirement that a person "prove his qualifications by the voucher" of another regardless of whether the witness's voucher is substantively irrelevant to qualifications. Plaintiffs also argue that, in *Liebert*, the parties had agreed the witness signature was not used to determine eligibility, whereas here that is contested.

Having considered all arguments and authorities, including those filed by the Republican Committees, this court concludes that, for a registered Minnesota voter seeking to vote absentee, the witness requirement merely certifies that a witness observed that the voter—as opposed to someone else—completed the ballot. Only the absentee voter certifies

they are eligible to vote, that is, that he or she meets all the statutory criteria under Section 201.014. The witness does not verify any aspect of the registered voter's qualifications. In fact, for a registered voter, it is unclear if the witness would even know if the voter was the one who had applied for or received the absentee ballot, is an eligible or registered voter, or is who they claim to be. The witness, in any event, merely certifies observing a person completing the absentee ballot. The fact the witness completes an eligibility certificate, for a registered absentee voter, does not mean, substantively, that the witness is actually certifying any aspect of the voter's eligibility to vote.

For those registering to vote absentee, however, the witness does more than merely observe a person completing a ballot. Here, the witness also verifies the voter's residency, which is an eligibility criterium under Section 201.014, subdivision 1. The witness must therefore vouch for the fact that the absentee voter is, in part, eligible to vote, and the witness must be a registered voter, or member of a class of unique individuals. *Cf. People First of Ala.*, 457 F. Supp.3d at 1225 n.50 (holding that notaries were a class). The court agrees that absentee voting, now used by more than a quarter of Minnesota voters, must comply with the VRA. Plaintiffs have validly stated a claim that the witness requirement for absentee voter registration violates the VRA's vouching prohibition.

F. Plaintiffs have stated a CRA claim for registered absentee voters.

Plaintiffs contend that Minnesota's witness requirement violates the CRA's materiality provision because it denies the right to vote due to paperwork mistakes that are immaterial in determining voter qualifications. Even for new registrants and voters updating their registration, the witness attestation is immaterial to the voter's qualifications, as the witness merely attests that a document was presented and performs no other examination,

comparison, or authentication of the document. Unless the witness serves to "prove [the] qualifications" of the registrant by voucher—in contravention of the VRA—then the attestation of a witness is not material in determining eligibility. The certificate on the absentee ballot signature envelope is a record or paper, and completing this certificate is an act necessary for voting. Failing to comply with the witness requirement is an "error or omission on any record or paper," and neither a signed witness statement nor a witness's address, title, or notary stamp are material to determining whether a voter is eligible.

Defendant argues the materiality provision applies only to mistakes on documents used to determine voter eligibility, not documents or procedures that eligible voters use to cast votes. Defendant argues this conclusion is supported by the CRA's plain language and legislative history, other courts' interpretation, and the fact other laws exist and are necessary to ensure the orderly administration of fair elections without bearing directly on a voter's eligibility. Defendant argues absentee voting is a privilege,[6] and a broad reading of the materiality provision would thwart reasonable policy choices regarding the fair and orderly administration of elections, and require the state to disregard other voting errors that relate to how people vote. *See In re Contest of Gen. Election of Nov. 8, 2008*, 767 N.W.2d 453, 462 (Minn. 2009) (absentee voters must strictly comply with statutory provisions).

Defendant characterizes the witness requirement as solely an attestation of the voter's conduct, and the CRA refers only to mistakes such as minor misspellings or mistakes in age or length of residence, not errors after election officials have determined an individual

[6] Plaintiffs argue absentee voting is not a privilege, since the state has made it available and therefore must do so in a way that complies with federal law, and it is not always a choice. *See Voto Latino*, 2024 WL 230931, at *26; *Saucedo*, 335 F. Supp.3d at 217; *see also* Minn. Stat. §§ 204B.45-.46 (mail ballots may be only means of voting for some).

is qualified. Defendant points to the surrounding provisions in Section 10101(a), which refer to voter-qualification procedures and determinations, not vote-casting documents like absentee-ballot envelopes. Defendant contends the materiality provision serves to prevent discrimination in voter-registration procedures, rather than post-registration activities.

No Minnesota authority has addressed whether the witness requirement for absentee voting conflicts with the CRA. The parties refer the court to other jurisdictions' authority and seem to agree with a test articulated in *Fl. State Conference of NAACP v. Browning*, 522 F.3d 1153, 1175 (11th Cir. 2008), where the court suggested the correct interpretation of the materiality provision "asks whether, accepting the error as true and correct, the information contained in the error is material to determining the eligibility of the applicant."

Defendant relies primarily on *Liebert*, and the majority opinion in *Penn State Conf. of NAACP Branches v. Sec'y Commonwealth of Penn.*, 97 F.4th 120, 127, 131 (3d Cir. 2024), *pet. for rehr'g filed* (Apr. 10, 2024), which interpreted the CRA's materiality provision as inapplicable to vote-casting rules, noted that voter qualification determinations and voting procedures are different, and a state's election administration would be unduly burdened by a contrary interpretation. Defendant cites *Schwier v. Cox*, 340 F.3d 1284, 1297 (11th Cir. 2003), which held the materiality provision applied to registration forms, and federal district court cases similarly interpreting the materiality provision as applicable to paperwork relating to initial eligibility determinations. Defendant agrees some courts have applied the materiality provision to vote-casting measures, but distinguishes them as not addressing whether the provision applies after an individual has been determined eligible to vote.[7]

[7] But for those both voting and registering to vote absentee, without a compliant witness certification, the ballot will be rejected regardless of whether they are already deemed eligible or without an eligibility determination.

For those registering to vote absentee, Defendant argues the witness certifications are material to determining voter qualifications under Minnesota law, because the witness in that instance acts as an election judge verifying the voter furnished appropriate proof of residency. *See Ind. Democratic Party*, 458 F. Supp.2d at 841 ("verifying an individual's identity is a material requirement.").

Plaintiffs argue that Defendant admits the witness requirement is material for determining the qualifications of those seeking to register absentee. Both scenarios, absentee voters who are registered and those seeking to both register and vote absentee, employ the same "certificate of eligibility" documents, and the materiality provision's plain language applies to a paper or record required for voting. Section 10101(a)(2)(B) covers all papers relating to any application, registration, or other act requisite to voting, without distinguishing papers related to eligibility from papers related to vote casting. Plaintiffs argue Defendant's interpretation is circular (applying where an "error relates to a voter's qualification but is immaterial in determining the voter's qualification"), and would render superfluous the phrase "any . . . act requisite to voting," when it ought to be given meaning.[8]

Plaintiffs contend the divided Third Circuit panel, and *Liebert*, the only cases adopting Defendant's interpretation, are incorrect, and other courts have agreed the materiality provision covers voting requirements unrelated to registration. *See, e.g., Vot.org. v. Ga. State Elec. Bd.*, 661 F. Supp.3d 1329, 1340 (N.D. Ga. 2023) (denying Rule 12 motion and construing materiality clause as plausibly applicable to pen-and-ink requirement on absentee ballot); *La Union del Pueblo Entero v. Abbott*, Civ. No. 21-844-XR, 2023 WL 8263348, *14 (W.D. Tex.

[8] "Requisite" means "[r]equired either by rule or by the nature of things; necessary." Black's Law Dictionary (11th ed. 2019).

Nov. 29, 2023) (law requiring absentee ballot have ID matching voter-registration ID violated materiality provision); *Common Cause v. Thomsen*, 574 F. Supp.3d 634, 636 (W.D. Wis. 2021) (materiality provision not limited to voter registration, and under Wisconsin law, voter was not qualified without compliant ID, so having ID was material); *Org. for Black Struggle v. Ashcroft*, 493 F. Supp.3d 790, 803 (W.D. Mo. 2020) (absentee ballot applicant's identifying information on ballot application and envelope material to voter qualification); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308 (N.D. Ga. 2018) (materiality violation when statute required elector's birth year on absentee ballot).

Further, *Liebert* diverged from *In re Ga. Senate Bill 202*, Civ. Nos. 21-1284, 21-1259, 2023 WL 5334582, at *8 (N.D. Ga. Aug. 18, 2023), where the court held, "the determination whether an individual is qualified to vote occurs through the absentee ballot application process and is therefore complete before a voter ever receives an absentee ballot." In that case, an absentee voter having to list their birthdate on the ballot envelope was immaterial to determining their qualifications to vote, and according to the defendants only to determine identification. *Id.* The court invalidated a requirement that rejected absentee ballots where the already qualified voter failed to put their birthdate on the ballot envelope. *Id.* The court also rejected the argument that completing the outer envelope of the absentee ballot was not an act requisite to voting, since the materiality provision prohibits the denial of the right to vote, defined broadly, and completing the outer envelope was an act necessary to vote "because without it, the vote will not count." *Id.* at *10.

Plaintiff argues Defendant's slippery-slope concerns are unfounded, as other cases have shown the materiality provision is limited to paperwork errors. *See, e.g., Friedman v. Snipes*, 345 F. Supp.2d 1356, 1370-71 (S.D. Fla. 2004) (late ballot not being counted is not

covered by materiality provision); *Common Cause/Ga. v. Billups*, 439 F. Supp.2d 1294, 1358 (N.D. Ga. 2006) (photo ID requirement not covered by materiality provision). The phrase "other act requisite to voting" must have been deliberately added to include more than just voter application and registration paperwork, and Congress was in fact concerned with other paperwork necessary to vote. *See Allen v. Milligan*, 599 U.S. 1, 39-40, 143 S. Ct. 1487, 1515 (2023) (declining to use surrounding language to narrow the meaning of a statute's broad term describing VRA election procedures). Plaintiffs argue the materiality provision only covers the denial of the right to vote, and only paperwork that is necessary for voting (e.g., not the ballot). The "certificate of eligibility" envelope fits squarely under the materiality provision as paperwork necessary for determining voter eligibility.

Plaintiffs acknowledge *Vote.Org. v. Callanen*, 89 F.4th 459, 487-88 (2023), where a voter signature requirement was material for identification, and *League of Women Voters of Ark. v. Thurston*, Civ. No. 20-5174, 2023 WL 6446015, at *17 (W.D. Ark. Sept. 29, 2023), where proving voter identity was material to determining eligibility. But for those already registered, proving a voter's identity is immaterial to determining the voter's eligibility to vote. *See Mi Familia Vota v. Fontes*, Civ. No. 22-509-PHX-SRB, 2024 WL 862406, at *37-38 (D. Ariz. Feb. 29, 2024) (birthplace requirement on voter application immaterial to voter qualifications even if used to verify registered voter's identity). Similarly here, a registered Minnesota absentee voter has already proven their eligibility to election officials.

Plaintiffs also point to *Ford v. Tenn. Senate*, Case No. 06-2031DV, 2006 WL 8435145, at *11-12 (W.D. Tenn. Feb. 1, 2006), which reasoned that, because "vote" is defined in the CRA, Section 10101(e), to include all actions necessary to make a vote effective, including but not limited to registration or other action required by law prerequisite to voting, casting

a ballot, and having such ballot counted, a law invalidating votes where a voter had failed to sign both an application for a ballot and the poll book, was an immaterial error.

This court believes the CRA's plain language, when considering its broad definition of "vote," compels the conclusion that paperwork errors on documents necessary to have a vote counted must be disregarded unless the errors are material to determining the voter's eligibility to vote. Examining the surrounding text of the CRA's materiality provision is necessary only if the plain language of the materiality clause is ambiguous, and here the CRA broadly defines the term "vote" to include "all action necessary to make a vote effective," including without limitation "casting a ballot, and having such ballot counted and included." If there is any kind of mistake on any record or paper, relating to any act required to vote, and if that mistake is immaterial to determining whether the voter is eligible under state law to vote, the mistake must be disregarded. The CRA does not specify who may have made the mistake, nor the type of document, so long as the document relates to an act necessary to having a vote counted, and is not material to the voter's qualifications. A contrary interpretation would render meaningless the phrase "other act requisite to voting."

Mistakes that may properly result in rejection of absentee ballots are those that are material in determining whether the person is eligible to vote, and mistakes that are not on documents relating to any act needed for voting. For example, according to Defendant's website, in the 2022 general election, 13,698 absentee ballots were rejected, and most were based on paperwork mistakes that are material to the voter's qualifications or the voter having properly completed the absentee ballot (e.g., insufficient or defective voter registration information, voter number and signature not matching, voter failed to sign ballot, etc.). The certificate of eligibility is on a document needed for having an absentee

voter's ballot accepted and counted. The signature envelope on which the certificate of eligibility is printed is a record or paper, and it relates to act necessary for voting, but the witness portion is immaterial to the voter's qualifications. *See In re Contest of Gen. Election Held on Nov. 4, 2008*, 767 N.W.2d at 461-62 (absentee voters held to strict compliance but election officers' mistakes should not result in rejection).

Ballot board members reject absentee ballots if there are mistakes on the certificate of eligibility the witness completes, and for registered voters those mistakes do not relate to whether the voter was eligible to vote, because their eligibility was already determined when they applied for and received their absentee ballot. For them, the witness does not attest to the voter's qualifications—only that the voter in fact completed the ballot. Although Minnesota law does not require voter identification, the witness does not even attest to the voter's identity, or that the voter is the one who applied for or received the absentee ballot forms. The witness merely attests to witnessing a person fill out the ballot. The registered voter attests to his or her own qualifications to vote, and signs the ballot under penalty of perjury (and subject to felony charges if done falsely). If a registered voter's witness's errors were corrected, the correct information would be immaterial to whether the voter is eligible.

For a first-time registrant, the witness attestation is material to the absentee voter's eligibility. By inspecting the voter's proof of residency, and therefore confirming or rejecting that the first-time absentee voter has displayed one of the required proofs of residence, the witness is necessarily determining that one of the statutory criteria is met for whether the voter is qualified. This is material to the voter's qualifications, so a paperwork mistake in this instance is not a CRA violation.

G. Whether a temporary injunction should be granted.

Plaintiffs primarily argue a temporary injunction should be granted because they are likely to succeed on the merits of their claims and will suffer great irreparable harm. As to the merits, for those reasons stated above, the court believes Plaintiffs are likely to prevail on their VRA claims as to those seeking to register to vote absentee, and on their CRA claims as to those already registered seeking to vote absentee.

As to the balance of harms, Plaintiffs argue that restrictions on fundamental voting rights constitute irreparable injury, and once disenfranchisement occurs there can be no redo. "There is no doubt that the right to vote is fundamental." *Schroeder v. Simon*, 985 N.W.2d 529, 545 (Minn. 2023). It is "a fundamental and personal right essential to the preservation of self-government." *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 730 (Minn. 2003) (citation omitted). Further, "all qualified voters have a constitutionally protected right . . . to have their votes counted . . . ." *Reynolds v. Sims*, 377 U.S. 533, 554, 84 S. Ct. 1362, 1378 (1964), *rehr'g denied*, 379 U.S. 870, 85 S. Ct. 12 (Oct. 12, 1964). The harm of voter disenfranchisement may outweigh concerns of confusion and disrupting an election. *La Union del Pueblo Entero*, 2023 WL 8263348, at *26. Plaintiff also argues that public policy favors protecting federal statutory rights, the fundamental right to vote, and permitting as many qualified voters to vote as possible. Plaintiffs argue the nature of the parties' relationship, and administrative burdens, are not particularly relevant factors.

Defendant argues the individual Plaintiffs are registered voters and have never had trouble voting absentee, the Alliance has not identified any of its members who have yet to be disenfranchised due to the witness requirement, and Plaintiffs' claims are not urgent.

Further, Minnesota's election system would be disrupted and unduly burdened by an untimely change to the witness requirement. *See Def.'s May 9, 2024 Br.; Maeda Decl.*

For purposes of Defendant's motion to dismiss, the court accepts as true that the Alliance's members are all retirees, overwhelmingly vote by mail, and will have a hard time finding a witness to vote absentee. Some live alone, would have to travel to vote, or have mobility problems. The Alliance will have to continue diverting time and resources to assisting its over 84,000 Minnesota members try to comply with the witness requirement. And Ms. Maples has numerous serious health issues, lives alone, has no nearby family, and recently moved to a building where she does not know any neighbors.

The court also agrees the witness requirement could result in the unlawful disenfranchisement of many eligible voters. Based on 2022 numbers, more than 25% of Minnesota voters may now rely on absentee voting. Although a small number of the 2022 absentee ballots were rejected, over 5,000 were rejected due to paperwork mistakes by the witness and had nothing to do with the voter's errors or qualifications. *See Contest of Gen. Election of Nov. 8, 2008*, 767 N.W.2d at 462 (vote "should not be rejected because of irregularities, ignorance, inadvertence, or mistake . . . on the part of the election officers."). The witness certificate of eligibility is required for an absentee vote to be counted, and the absentee voter's ballot will be rejected and not even examined for eligibility, much less counted, unless the witness certification on the ballot envelope is completed correctly and thoroughly. There is a risk that many eligible Minnesota voters will be disenfranchised through no fault of their own, solely based on immaterial defects on the envelope containing their otherwise correctly completed absentee ballot.

At the same time, if the witness requirement were eliminated now, the court appreciates that Defendant will have to scramble for the November 2024 general election. Absentee voting begins September 20, 2024. Defendant would incur substantial expense to reprint absentee voting ballots, commence a state-wide public education campaign for voters and election officials, develop new voter outreach materials, and other time and expense. *See Madea Decl.* Defendant would not suffer harm insofar as it must comply with the VRA or CRA, but the court agrees with Defendant's concerns regarding the balance of harms, at least at this stage, before the parties have completed discovery and, presumably, moved for summary judgment.

Further, Plaintiffs have been on notice of the witness requirement for years, brought this action at the beginning of the 2024 election year, and brought their temporary-injunction motion on for hearing just seven months before the general election, with even less time for Defendant to change absentee ballot packages and a wide array of preelection procedures. The court remains open to revisiting Plaintiffs' motion, but believes at this time the balance of harms does not support temporary injunctive relief.

H. The Republican Committees have not shown a right to intervene as parties.

The Republican Committees have sought to intervene as parties in this action, oppose Plaintiffs' temporary-injunction motion, and support Defendant's Rule 12 motion. Plaintiffs oppose intervention, and Defendant has no objection.

Minn. R. Civ. P. 24.01 establishes four requirements for intervention as of right: (1) a timely application; (2) an interest in the subject of the action; (3) an inability to protect that interest unless the applicant is a party to the action; and (4) the applicant's interest is not adequately represented by existing parties. *Mpls. Star & Tribune Co. v. Schumacher,* 392

N.W.2d 197, 207 (Minn. 1986). Rule 24.01 was designed to protect non-parties from having their interests adversely affected by litigation conducted without their participation. *BE & K Const. Co. v. Peterson,* 464 N.W.2d 756, 758 (Minn. Ct. App. 1991). The purpose of Rule 24.01 is to encourage more extensive use of intervention. *Englerup v. Potter,* 302 Minn. 157, 162, 224 N.W.2d 484, 487 (1974).

But an application for intervention as of right must do more than assert an interest in independent representation. The applicant must also carry a minimal burden of showing that the existing parties may not adequately represent their interests. *Jerome Faribo Farms, Inc. v. Cnty. of Dodge,* 464 N.W.2d 568, 570 (Minn. Ct. App. 1990), *rev. denied* (Minn. Mar. 15, 1991) (applicants for intervention of right must show their interests in a proceeding "are imperiled by the existing parties"). A non-party's interests can be adequately represented by a real party in interest who vigorously pursues the matter. *See State ex rel. Donnell v. Jourdain,* 374 N.W.2d 204, 206 (Minn. Ct. App. 1985) (applicant's interests were adequately represented by real stakeholder who vigorously pursued the suit).

Alternatively, Minn. R. Civ. P. 24.02 allows for permissive intervention and requires that the proposed intervenors timely apply, their interests have "a common question of law or fact" with the action, and there would be no undue delay or prejudice to existing parties.

Besides supporting Defendant's position entirely with respect to dismissal of Plaintiffs' claims and opposition to temporary injunctive relief, the Republican Committees claim a separate interest in this action, specifically, seeking and winning political office and doing so with the existing witness-requirement rules in place. The Republican Committees argue that eliminating the witness requirement would give their opponents a competitive advantage, an interest Defendant does not share, and the Republican Committees do not

have to manage additional administration concerns like Defendant does, and therefore can guarantee their interest in this action is protected if granted party status.

The Republican Committees claim that, if Plaintiffs succeed in this action, the Republican Committees will necessarily be impaired because they and their members will be forced to participate in an illegally structured competitive environment, and a broader array of competitive tactics than state law would otherwise allow. The Republican Committees claim changing the rules for absentee voting would disadvantage them and their members because more Democrats vote absentee or by mail than Republicans. Further, the Republican Committees argue Defendant may not defend the existing absentee-ballot rules as forcefully or zealously as the Republican Committees would, for administrative, policy, or other reasons, the Republican Committees have strategic reasons for defending existing rules while Defendant is merely tasked with carrying out the rules, and the Republican Committees may wish to defend against Plaintiffs' claims differently than Defendant would.

The Republican Committees further argue Defendant does not object to intervention, the standard for intervention is minimal, and their interest could be harmed absent intervention as a party. The Republican Committees contend there would be no prejudice by permissive intervention, and sound policy supports their participation in this action.

Plaintiffs argue the Republican Committees do not have a unique and cognizable interest in this action that would be impaired by its disposition, the record shows Defendant is adequately representing the Republican Committees' interests, and a generalized interest in fair elections, the integrity of the election process, a generalized grievance, and a desire to maintain existing law, are insufficient interests to intervene. Plaintiffs point to *Liebert*, where the Republican Party affiliates were denied intervention, and the *DSSC* case involved

intervention when Defendant had acquiesced to change the voting rules, which is not the case here. Plaintiffs argue the authorities the Republican Committees have cited either involve no objection to intervention, or situations where intervention was appropriate given the politicized nature of the issues and existing parties.

The Republican Committees have filed a timely application to intervene, and there appears to be minimal prejudice to existing parties if the Republican Committees were parties. The Republican Committees support the existing absentee-balloting rules as Defendant does, so the issues are whether they have additional interests that may only be protected by their intervention, and whether Defendant will adequately represent them.

The court finds the Republican Committees do not show how they will be harmed if intervention is denied. The Republican Committees do not show how the outcome of this action, in their absence as a party, might make it harder for their members to vote or have ballots counted, or require them to divert resources to educate or assist impacted voters comply with voting requirements. *See, e.g., Issa v. Newsom*, Civ. No. 20-1044-MCE-CKD, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020); *Paher v. Cegavske*, Civ. No. 20-243-MMD-WGC, 2020 WL 2042365, at *2-3 (D. Nev. Apr. 28, 2020); *cf. La Union del Pueblo Entero*, 29 F.4th at 306 (intervention appropriate when party's committees would expend significant resources to poll watch). Here, the relief Plaintiffs seek would make absentee voting easier for all Minnesotans, including from among Plaintiffs' members who cannot go to the polls due to mobility or other limitations, and those in smaller municipalities where absentee voting is the only way to vote. Further, an interest tied to competitive advantage must be tied to an ongoing, unfair advantage. *Mecinas v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022).

Relieving absentee voters of the witness requirement, if required by federal law, would not harm the Republican Committees' interests.

The Republican Committees cite *Growe*, 2 N.W.3d 490, however, that case originated in the Minnesota Supreme court and did not address Rule 24, the Republican Party clearly had a direct interest in whether one of its candidates could appear on a ballot, and there was no analysis of the standards for intervention. The Republican Committees also cite *DSCC*, 950 N.W.2d at 284, but again there was no Rule 24 analysis in that case. And *Erlandson*, 659 N.W.2d at 726, and *Reiter v. Kiffmeyer*, 721 N.W.2d 908, 910 (Minn. 2006), where there was also no discussion of the intervention standards. Here, Plaintiffs are not DFL or Democratic committees, and permitting the Republican Committees' intervention would tacitly invite such committees to also move to intervene, which would threaten to make this action a political dispute rather than a legal one involving application of federal voting laws to state voting law, equally applicable to all political parties.

The Republican Committees also fail to show how their interests will be impaired in this action. Plaintiffs seeks to enforce federal voting laws, which the Republican Committees cannot reasonably assert they have an interest in opposing. *See Short v. Brown*, 893 F.3d 671, 677 (9th Cir. 2018) (a law that "makes it easier for some voters to cast their ballots by mail" does not burden anyone's right to vote). If successful, Plaintiffs' action benefits all Minnesotans needing to vote absentee regardless of party affiliation, so the Republican Committees cannot show any interest that will be impaired. The Republican Committees argue that the relief Plaintiffs seek will require the Committees to divert resources to reeducate voters and staff that the witness requirement is now waived, which will cause harm, expense, confusion, or result in some people not voting. But as to reeducation, time,

and expense, Defendant would face the same consequences, the court is not granting immediate temporary injunctive relief at this time, and the court does not find credible the notion that some people may not vote if absentee voting is made easier.

Finally, Defendant has adequately, and vigorously, defended against Plaintiffs' claims. While Defendant is not and will not represent partisan interests, Defendant represents the sovereign interest of fair elections where all valid ballot regulations are enforced, which is what the Republican Committees argue as their primary goal. The court agrees with Plaintiffs that this action involves only two sides—those who claim the witness requirement violates federal voting laws and those who do not.

Further, the Republican Committees need not be an additional defendant at this time, and the court does not find disposition of this action may impair the Committees' ability to protect their interest or that Defendant is not already representing their interest. The Republican Committees seek no relief in this action that is different than what Defendant seeks, and the court could grant no relief against the Republican Committees nor enjoin or compel them in any way if made parties. At this time, there is no concern Defendant is not vigorously defending against Plaintiffs' claims.

The court agrees the Republican Committees have added legal arguments Defendant has not, and therefore the Republican Committees' briefs and arguments ought to remain part of the record and may be considered amici in this action. *See Fletcher Props., Inc. v. City of Mpls.*, 2 N.W.3d 544, 561 (Minn. Ct. App. 2024) (citation omitted), *rev. granted* (Minn. May 14, 2024) (purpose of amicus is "to inform the court as to facts or situations which may have escaped consideration or to remind the court of legal matters which have escaped its notice and regarding which it appears to be in danger of making a wrong interpretation.").

VI. Conclusion

For the foregoing reasons, the court denies Defendant's motion to dismiss, and denies for now Plaintiffs' temporary-injunction motion and the Republican Committees' intervention motion.