

STATE OF MINNESOTA

IN COURT OF APPEALS

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

Respondents,

vs.

Steve Simon,

Appellant.

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**APPELLANT'S BRIEF AND ADDENDUM**

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## LEGAL ISSUES

- I. Are Respondents injured or at imminent risk of injury so as to have standing to challenge Minnesota's requirement that absentee voters have a witness certify certain facts when voting absentee?

*The district court denied the Secretary's motion to dismiss, holding that Respondents sufficiently pleaded an injury that established standing. (Add. 10-14.) The Secretary raised this issue below in his motion and his petition for discretionary review. (Doc. 39, at 8-10; Pet. Disc. Review 7.)*

Most apposite authorities:

*State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490 (Minn. 1996)  
*St. Paul Area Chamber of Com. v. Marzitelli*, 258 N.W.2d 585 (Minn. 1977)

- II. Do these witness certifications violate the Voting Rights Act's prohibition against requiring a voter to prove their qualifications by the voucher of someone else?

*The district court denied the Secretary's motion to dismiss, holding that the certifications appear to violate the Voting Rights Act. (Add. 15-19.) The Secretary raised this issue below in his motion and his petition for discretionary review. (Doc. 39, at 12-16; Pet. Disc. Review 7.)*

Most apposite authorities:

52 U.S.C. § 10501(b)  
Minn. R. 8210.0600, subps. 1a-1b  
*Liebert v. Millis*, No. 23-cv-672, 2024 WL 2078216,  
(W.D. Wis. May 9, 2024)

- III. Do these witness certifications violate the Civil Rights Act's materiality provision, which prohibits denying the right to vote based on paperwork errors that are immaterial to determining a voter's qualifications?

*The district court denied the Secretary's motion to dismiss, holding that the certifications violated the Civil Rights Act. (Add. 19-26.) The Secretary raised this issue below in his motion and his petition for discretionary review. (Doc. 39, at 16-23; Pet. Disc. Review 7.)*

Most apposite authorities:

52 U.S.C. § 10101(a)(2)(B)  
Minn. R. 8210.0600, subps. 1a-1b  
*Penn. State Conf. of NAACP Branches v. Sec'y Commonwealth of Penn.*,  
97 F.4th 120 (3d Cir. 2024)

## STATEMENT OF THE CASE

Since Minnesota first authorized absentee voting in 1862, it has required voters to have a witness. Respondents Minnesota Alliance for Retired Americans Educational Fund, Teresa Maples, and Khalid Mohamed sued Appellant Minnesota Secretary of State Steve Simon, challenging that witness requirement. Respondents alleged that the witness requirement violates the Voting Rights Act's vouching prohibition, 52 U.S.C. § 10501, and the Civil Rights Act's materiality provision, 52 U.S.C. § 10101(a)(2)(B). The Honorable Edward Sheu, Ramsey County District Court, denied the Secretary's motion to dismiss. The district court rejected the Secretary's arguments that Respondents lacked standing and that they failed to state claims as a matter of law. This Court granted discretionary review.

## FACTS

Minnesota has had some form of absentee voting since 1862. 1862 Minn. Laws Spec. Sess. ch. 1, § 1, at 13-14. Originally limited to those enlisted in the military, Minnesota has gradually expanded the right to vote absentee over time. *See id.*; *see also* 1917 Minn. Laws ch. 68, § 1, at 83 (expanding to individuals absent the day election is held); 1929 Minn. Laws ch. 29, § 1, at 26-27 (expanding to illness and physical disability); 1955 Minn. Laws. ch. 830, § 1, at 1354-55 (expanding to voters observing religious holidays). Today, any eligible voter may vote by absentee ballot. Minn. Stat. § 203B.02, subd. 1; *see also* 2013 Minn. Laws ch. 131, art. 1, § 2.

Since it authorized absentee voting in 1862, Minnesota has also required a witness to certify that various procedures were followed. 1862 Minn. Laws Spec. Sess. ch. 1, § 3, at 14-15. The procedural certifications required of the witness today have been

substantially the same since 1949. *Compare* 1949 Minn. Laws ch. 368, § 2, at 606, with Minn. Stat. § 203B.07, subd. 3. Because the absentee process generally adapts in-person voting procedures for absentee voters, the Secretary begins with a description of in-person voting procedures before turning to the procedures for voting absentee and the challenges raised to those absentee procedures in this case.

### ***In-Person Voting Procedures***

While the marking of a ballot is a private, solitary event, in-person voters interact with numerous election staff who can observe that only confirmed eligible voters cast a ballot. All voters begin by checking in with an election judge. When a registered voter arrives at a polling place to vote, the voter must confirm their eligibility to vote in that precinct by signing the polling place roster, which is maintained in an election judge's custody. Minn. Stat. § 204C.10(a). Because Minnesota also has same-day registration, unregistered voters<sup>1</sup> instead must complete a voter registration application, take an eligibility oath, and either provide a residency document or have a person with knowledge vouch for their residency. *Id.* § 201.061, subd. 3(a). Regardless, for both types of voters, the election judge in charge of the roster then gives the voter a receipt as proof of eligibility, which the voter in turn gives to a different election judge in exchange for a ballot. *Id.* § 204C.10(d).

Election judges review and initial all ballots before voting begins. *Id.* §§ 204C.08, subd. 1b, 204C.09, subd. 1. And they maintain custody of the blank ballots until they are

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<sup>1</sup> This brief uses “unregistered voters” to refer to voters who are registering to vote when they vote. “Registered voters” refers to people who are already registered before voting.

handed to the voter. *Id.* § 204C.13, subd. 1. Upon receiving the ballot, the voter must then retire alone to an unoccupied voting booth, which must be in the same room where election judges are distributing ballots. *Id.* §§ 204C.09, subd. 2, 204C.13, subd. 2. The voter may not leave the polling place with the ballot. *Id.* § 204C.06, subd. 3(b). Thus, election judges visually confirm that no person other than the eligible voter marks the blank ballot between when the voter receives it and when the voter enters the voting booth.

After the voter is finished marking the ballot, the voter leaves the voting booth and must immediately deposit the ballot into the ballot box.<sup>2</sup> *Id.* § 204C.13, subd. 5. The ballot box must be kept in public view in the polling place. *Id.* § 204C.08, subd. 3. The voter cannot show the ballot to anyone after marking it. *Id.* § 204C.17. Because these activities occur within the polling place, election judges are again able to confirm that only the person who marked the ballot deposits it in the ballot box, and that person does so without disclosing how the ballot was marked. *Id.* § 204C.08, subd. 3. After voters deposit their ballots, they leave the polling place. *Id.* § 204C.13, subd. 7.

### ***Absentee Voting Materials***

Minnesota's absentee voting laws take these in-person voting procedures and translate them to locations where no election judge is present. And, paralleling same-day polling-place registration, unregistered applicants may request a voter-registration application with an absentee ballot. *Id.* §§ 203B.04, subd. 4, .06, subd. 4, .07, subd. 1.

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<sup>2</sup> In practice, most jurisdictions in Minnesota use electronic voting systems where the electronic system serves as both a tabulation machine and a ballot box. *See generally* Minn. Stat. § 206.58 (authorizing use of electronic voting systems).

Absentee ballots and registration applications come with instructions and the following materials:

- the ballot, where the voter marks their choices;
- the ballot envelope, where the voter places the ballot;
- the signature envelope, in which the voter places the ballot envelope and on which the voter and witness certify certain information;
- if applicable, a voter-registration application, which goes in the signature envelope; and
- a postage-paid and pre-addressed return envelope, where the voter places the signature envelope.

Minn. Stat. §§ 203B.06, subd. 4, .07, subd. 1; Minn. R. 8210.0050, .0300-.0600, subps. 1a-1b, .0710, subps. 6-7, .0800.

### ***Witness Requirement for Absentee Voting***

In place of polling-place election judges who observe that only qualified voters vote, and that they do so in a lawful manner, Minnesota requires a witness to certify certain facts as to how absentee voters vote. Absentee voting in Minnesota has always required a witness, and witnesses' role under current law has generally been the same since 1949. *E.g.*, 1862 Minn. Laws Spec. Sess. ch. 1, § 1, at 1314; 1949 Minn. Laws ch. 368, § 2. Today, the witness may be anyone who is a registered voter, notary public, or person authorized to administer oaths. Minn. Stat. § 203B.07, subd. 3.<sup>3</sup>

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<sup>3</sup> Legislation that takes effect January 1 will allow anyone who is a U.S. citizen and at least 18 years old to be a witness. 2024 Minn. Laws, ch. 112, art. 2, § 12.

The witness's certifications vary depending on whether the voter is registered. For both registered and unregistered voters, the witness certifies that:

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

Minn. R. 8210.0600, subps. 1a-1b. These certifications mirror what election judges observe when voting takes place in a polling place: that a ballot is blank before the voter marks it, that only the specific voter who received a ballot marks it, and that the ballot is then placed in the sealed ballot envelope without tampering or improper contact between the voter and third parties.

Witnesses for unregistered voters make two additional certifications:

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

*Id.*, subp. 1b. Again, these certifications mirror what in-person election judges observe about same-day registrants who register in polling places: the person who filled out the registration application is the same person who voted, and that person was also the same person to provide proof of residence. Like an election judge, the witness does not certify that the voter is qualified to vote; that certification is made by the voter alone. *Id.*, subps. 1a-1b; Minn. Stat. § 203B.07, subd. 3. The witness also does not independently verify or attest to the authenticity of whatever proof of residence a registrant provides, nor do they

affirm that such document establishes voter eligibility (i.e., that the voter has lived at whatever address they provide for the requisite twenty days or is otherwise eligible to vote).

Minn. R. 8210.0600, subps. 1a-1b.

Sample signature envelopes for registered and unregistered voters appear below:

Put the Ballot Envelope in here, then seal flap

**Signature Envelope**

**Voter must complete this section** please print clearly

Voter name

Voter MN address  MN

ID number (MN driver's license #, MN ID card #, or last four digits of SSN)

☐ I do not have a MN-issued driver's license, MN-issued ID card, or a Social Security Number.

I certify that on Election Day I will meet all the legal requirements to vote.

Voter Signature ☒

**Witness must complete this section**

Witness name

MN street address (or title, if an official or notary)  MN

City

I certify that:

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

Witness Signature ☒

If notary, must affix stamp

**For Official Use Only**

☐ Accepted ☐ Rejected (reason):

Signature Envelope—Registered

Put the Ballot Envelope and the Voter Registration Application in here, then seal flap

**Signature Envelope**

**Voter must complete this section** please print clearly

Voter name

Voter MN address  MN

ID number (MN driver's license #, MN ID card #, or last four digits of SSN)

☐ I do not have a MN-issued driver's license, MN-issued ID card, or a Social Security Number.

I certify that on Election Day I will meet all the legal requirements to vote.

Voter Signature ☒

**Witness must complete this section**

Witness name

MN street address (or title, if an official or notary)  MN

City

Witness MUST CHECK ONE indicating proof of residence provided by voter: (See instructions)

☐ MN driver's license, ID card, permit, or receipt

☐ Bill, student fee statement, or residential lease plus photo ID

☐ Registered voter in the precinct who vouched for voter's residence in the precinct (must complete the voucher form on the back of the Voter Registration Application)

☐ Tribal ID card

☐ Notice of late registration

☐ Previous registration in the same precinct

☐ An employee of a residential facility in the precinct who vouched for voter's residence at the facility (must complete the voucher form on the back of the Voter Registration Application)

I certify that:

- the voter showed me the blank ballots before voting;
- the voter marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter;
- the voter enclosed and sealed the ballots in the ballot envelope;
- the voter registered to vote by filling out and enclosing a voter registration application in this envelope;
- the voter provided proof of residence as indicated above; and
- I am or have been registered to vote in Minnesota, or am a notary, or am authorized to give oaths.

Witness Signature ☒

If notary, must affix stamp

**For Official Use Only**

☐ Accepted ☐ Rejected (reason):

Signature Envelope—Unregistered

(Add. 52, 54.)

### ***Processing Absentee Ballots***

Voters may return absentee ballots either through mail, personal delivery, agent delivery, or designated drop boxes. Minn. Stat. § 203B.08, subd. 1. The relevant jurisdiction's ballot board then processes absentee ballots, either accepting or rejecting them. *Id.* § 203B.121. The ballot board reviews each signature envelope, assessing whether (1) the voter's information is the same as that in the voter's ballot application; (2) the voter is registered and eligible to vote, or included a completed registration application; and (3) the certificate on the signature envelope is complete. *Id.*, subd. 2(a)-(b). Failing to meet these requirements is the only ground for rejecting a ballot, and the law further circumscribes when ballots may be rejected. *Id.*, subd. 2(c)(1). For example, a ballot board cannot reject an absentee ballot for lack of an eligible witness if the witness signed the required witness statements and either provided a Minnesota address, provided a title reflecting the authority to administer oaths, or affixed a notarial stamp. Minn. R. 8210.2450, subp. 5.

Minnesota law also provides for curing ballots should any issues surface during this review process. If a ballot is rejected more than five days before Election Day, the official in charge of the ballot board must send the voter a replacement absentee ballot and signature envelope. Minn. Stat. § 203B.121, subd. 2(c)(2). If the rejection is within five days of the election, the official must attempt to contact the voter to provide notice of the rejection. *Id.*, subd. 2(3).

### ***District Court Proceedings***

In 2024, Respondents sued the Secretary. They alleged that requiring a witness when voting absentee violates the vouching prohibition of the Voting Rights Act, 52 U.S.C. § 10501, and the materiality provision of the Civil Right Act, 52 U.S.C. § 10101(a)(2)(B). (Add. 46-49.) The Alliance alleged that its members are retirees who frequently vote absentee, that it advocates to ensure social and economic justice and full civil rights for retirees, and that it educates its members regarding the requirements for absentee voting. (*Id.* at 38-39.) Maples and Mohamed are registered voters and Alliance members. (*Id.* at 39-40.) Both expressed concerns about finding a witness when voting this fall, but they have always found witnesses in past elections and did not allege any efforts to find one for future elections. (*Id.*) The Alliance did not allege that it had any unregistered members. (*See generally id.* at 38-39, 44-46.)

Respondents sought to stop the Secretary from preparing or distributing ballots or instructions that require a witness to vote absentee in the 2024 general election. (*Id.* at 49-50.) They further asked the district court to create an unspecified new process for unregistered absentee voters to provide proof-of-residency documents when voting absentee. (*Id.*)

The Secretary moved to dismiss because Respondents lack standing and failed to state claims. (*Id.* at 7-8.) The district court denied the motion, holding that Minnesota's absentee voting procedures likely violated the Voting Rights Act for unregistered voters

and the Civil Rights Act for registered voters.<sup>4</sup> (*Id.* at 18-19, 25-26.) Despite holding that Respondents failed to state claims under the Voting Rights Act for registered voters and the Civil Rights Act for unregistered voters, and recognizing that Mohamed lacked standing, the district court denied the motion in its entirety. (*Id.* at 1, 18-19, 26.)

## ARGUMENT

The Secretary appeals the district court's refusal to dismiss Respondents' claims for lack of standing and failing to state a claim. This Court reviews both issues de novo. *Minn. Voters All. v. Hunt*, 10 N.W.3d 163, 167 (Minn. 2024) (standing); *Sterry v. Minn. Dep't of Corr.*, 8 N.W.3d 224, 235 (Minn. 2024) (failure to state a claim). In reviewing these issues, the Court must assume the alleged facts are true, but it does not defer to Respondents' legal conclusions. *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010).

The Court should reverse because Respondents lack standing. Respondents have never been injured by Minnesota's witness requirement, nor are they at risk of imminent injury. And if the Court reaches the merits, Respondents' claims fail as a matter of law. Witnesses do not vouch for voters' eligibility, so the witness certifications do not violate the Voting Rights Act. And the Civil Rights Act's materiality provision is inapplicable to the witness certifications for already-registered voters. Finally, in cases where the materiality provision does apply to the witness certifications, those certifications are

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<sup>4</sup> The parties developed a limited record in conjunction with Respondents' motion for a preliminary injunction. Because this appeal is only from the denial of the Secretary's motion to dismiss, the Secretary relies only on the amended complaint for the underlying facts.

material to determining that a ballot was cast by an eligible voter, so the witness requirement still does not violate the Civil Rights Act.<sup>5</sup>

## **I. RESPONDENTS LACK STANDING.**

Standing is essential for jurisdiction. *Hunt*, 10 N.W.3d at 167. Standing requires a party to have a sufficient stake in a justiciable controversy. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). A party must have standing for each individual claim it presents to the court. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 335 (2006). Mere chance of injury is insufficient; the injury must be both “actual or imminent, not conjectural or hypothetical” and fairly traceable to the challenged conduct. *Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. Ct. App. 2005) (granting standing based on risk of concrete, specific harms). A party lacks standing if its claims amount to a “generalized grievance[]” shared with the public at large. *Id.* Instead, standing requires an interest “distinguished from the general public” and not merely a “general concern for the welfare.” *St. Paul Area Chamber of Com. v. Marzitelli*, 258 N.W.2d 585, 588, 590 (Minn. 1977).

Respondents lack standing to challenge the witness certifications for unregistered voters because neither individual respondent is an unregistered voter, and the organizational respondent did not allege any unregistered members. And Respondents lack

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<sup>5</sup> The district court concluded that the witness requirement does not violate the Voting Rights Act for registered voters or the Civil Rights Act for unregistered voters. (Add. 18-19, 26.) Because the district court nevertheless wholly denied the Secretary’s motion to dismiss, the Secretary addresses them both for completeness and for context for the claims that the district court thought had merit.

standing to challenge the certifications for registered voters because their pleadings fall far short of alleging an actual or imminent injury.

**A. No Respondent Has Standing to Challenge the Witness Certifications Specific to Unregistered Voters.**

Respondents lack standing to challenge the certifications for unregistered voters. Beginning with the individual respondents, Maples and Mohamed are indisputably registered voters. (Add. 39.) They did not plead that they ever used, or will have to use, the process of registering to vote when voting absentee. Consequently, they cannot be injured by witness certifications required for unregistered voters. Without such an injury, they lack standing to challenge those certifications.

The district court notably did not address how Mohamed had standing for any claim. As to Maples, the court held that the mere possibility that Maples might struggle to find someone to certify her ballot was sufficient to establish standing “to bring these claims.” (*Id.* at 13.) But the district court did not explain how, as a registered voter, Maples could have standing to bring claims specific to concerns of unregistered voters.

The Alliance fares no better. The Alliance alleged that it has associational standing based on supposed injuries to its members and direct standing based on alleged injuries to itself directly. As an organization, it may assert associational standing on behalf of members’ injuries only when the members would individually have standing. *Byrd v. Indep. Sch. Dist. No. 194*, 495 N.W.2d 226, 231 (Minn. Ct. App. 1993); *St. Paul Police Fed’n v. City of St. Paul*, No. A05-2186, 2006 WL 2348481, at \*2 (Minn. Ct. App. Aug. 15, 2006). But despite pleading that it has 84,242 members, it did not plead that a single

member is unregistered. Notably, the Alliance did not plead that fact when filing an amended complaint after the Secretary identified that jurisdictional flaw. (*Compare* Doc. 1 at 3-4, 9-10, *and* Doc. 39 at 9, 23, *with* Add. 38-40, 44-46.) Accordingly, the Alliance lacks associational standing. In holding otherwise, the district court relied on Maples having standing to bring claims on behalf of unregistered voters. (Add. 14.) As addressed above, Maples lacks standing. The Alliance therefore also lacks standing to bring claims on behalf of unregistered voters.

The Alliance similarly lacks direct standing to challenge requirements for unregistered voters. The alleged direct injuries it attempted to plead were that it spends money and time to tell its members what the law is and to connect members to serve as witnesses. The district court found these allegations of resource expenditure sufficient, even though the allegations the district court relied upon were not specific to unregistered voters. (Add. 14.) Because the Alliance did not plead it has any unregistered members, that time and money goes toward educating and connecting *registered* voters. Thus, its alleged injury was not caused by the certifications specific to unregistered voters. Accordingly, the Alliance also lacks direct standing to challenge the certifications for unregistered voters, and the Court should reverse the district court's grant of standing for those claims.

**B. Respondents Allege Only Hypothetical and Speculative Injuries to Registered Voters, and Therefore Lack Standing.**

Respondents also lack standing to challenge the certifications applicable to registered voters. The individual respondents' alleged injuries are shared by all absentee voters. And the Alliance's alleged injuries are entirely hypothetical and speculative.

As to the individual respondents, the interest they allege is shared by all Minnesota voters. Neither alleged any unique injury. For example, they did not allege that they were ever unable to find a witness or unable to vote in the past because of the witness requirement or that they had made unsuccessful efforts to secure a witness for this year. To the contrary, Mohamed alleged that he successfully found witnesses for past elections, and he did not allege any changed circumstances that would make him unable to do so for the 2024 election. (Add. 39-40.) Maples asserted that she previously used her son or neighbors as witnesses, but her son had passed away and she had recently moved and not yet met her new neighbors. (Add. 39.) Witnesses, however, do not need to know a voter to serve as a witness. Maples' new neighbors can serve as a witness just as well as her old neighbors did, as could any registered voter with whom she interacts. Nor is the universe of witnesses limited to neighbors. Any registered Minnesota voter Maples interacts with could serve as a witness, from medical-service providers to her attorneys in this case. She could also visit a notary or hire a mobile notary.

Both her and Mohamed's risk of disenfranchisement is therefore hypothetical and certainly not "actual or imminent." *Hanson*, 701 N.W.2d at 262. Rather, they appear to express only a general worry about difficulty of finding a witness.<sup>6</sup> This is the same, generalized position that every other Minnesotan absentee voter is in: needing to find a

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<sup>6</sup> To be clear, the Secretary is not arguing, and has never argued, that a plaintiff has standing only if the right to vote was actually denied. But under well-established standing rules, such injury must be at least "imminent."

witness to vote absentee. Such alleged concerns are insufficient to establish standing under Minnesota law. *Id.*

The district court nevertheless concluded that the individual respondents had standing. But the district court made no findings with respect to Mohamed, and even noted that “he may lack standing,” though it did not dismiss him from the case. (Add. 10-14) And it determined that Maples had standing because “it appears speculative to say that she can find a witness to come to her apartment to certify her ballot.” (*Id.* at 13.) But as discussed above, Maples pleaded no facts suggesting that she will not interact in person with a registered voter prior to the election such that she would be required to have a witness come to her apartment. Nor did she plead any facts suggesting that securing a witness will actually be difficult for her to such a degree that it distinguishes her from any other member of the electorate. *Cf. DSCC v. Simon*, 950 N.W.2d 280, 293 (Minn. 2020) (rejecting burdens arising “from life’s vagaries” as burden on voting). The district court erred by finding that mere speculation about inconvenience associated with finding a witness, rather than allegations establishing actual or imminent disenfranchisement, was sufficient to establish standing.

The Alliance also lacks standing. With respect to associational standing, the Alliance did not plead any facts suggesting its members are situated differently than Maples or Mohamed. The district court based its finding that the Alliance had standing on its finding that Maples had standing, making its conclusion with respect to associational standing error for the same reason its conclusion with respect to Maples’ standing was error. (Add. 14.) The Alliance lacks associational standing for the same reasons the

individual respondents lack standing—it has failed to plead allegations showing actual or imminent harm to any of its members. *Byrd*, 495 N.W.2d at 231.

The Alliance also lacks direct standing. To establish an injury granting standing, the Alliance must show a “concrete and particularized invasion of a legally protected interest.” *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007). Abstract concern is insufficient. *Byrd*, 495 N.W.2d at 231. In cases where election organizations have been granted direct standing, the organizations have identified “specific projects during a specific period of time” that will be frustrated by the law. *Fla. State Conf. of the N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1166 (11th Cir. 2008). Organizations have also been able to demonstrate that they “diverted significant resources to counteract the defendant’s conduct” as opposed to their response already being a part of the “routine activities” of the organization. *Vote.org v. Callanen*, 89 F.4th 459, 471 (5th Cir. 2023).

Here, the district court held that the Alliance had direct standing, reasoning that it would have to continue to spend resources educating and assisting its members regarding the witness requirement instead of other aspects of its mission. (Add. 14.) This was error because the only injury the Alliance alleged were vague statements about expending resources educating on Minnesota’s longstanding law and connecting its members. (Add. 38-39, 44-46.) But merely educating people about what the law requires is the sort of abstract concern that is insufficient to establish standing; otherwise, anyone would have standing to challenge any law merely by publishing materials about it. *Cf. Hunt*, 10 N.W.3d at 169 (rejecting taxpayer standing theory that “would render the very concept of taxpayer standing meaningless”).

Moreover, the Alliance's allegations regarding spending resources to connect members were also insufficient. The Alliance vaguely asserted that the resources it expends due to the witness requirement are diverted from other programs and broadly lists several program types like "phone drives, issue organizing, holding events, and canvassing," (Add. 39.) These unspecified projects fall short of establishing standing, particularly when the witness requirement has been longstanding rather a new law that would require the organization to shift resources from preexisting endeavors. Moreover, the Alliance's pleadings were silent as to whether its alleged member-connecting activities use "significant" resources beyond the member connection it already engages in as a matter of course. And absent allegations of such an impact, the Alliance is not injured and lacks standing. The Court should accordingly reverse the district court's standing decision.

## **II. THE WITNESS CERTIFICATIONS DO NOT VIOLATE THE VOTING RIGHTS ACT.**

Even if the Court affirms that Respondents adequately pleaded standing, it should reverse on the merits. The Voting Rights Act prohibits states from requiring 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(b). To "vouch" means "to give personal assurances or a guarantee," *Vouch*, AMERICAN HERITAGE DICTIONARY 1943 (5th ed. 2016), or "to answer for (another); [or] to personally assure" *Vouch*, BLACK'S LAW DICTIONARY 1714 (9th ed. 2009); accord *Liebert v. Millis*, No. 23-cv-672, 2024 WL 2078216, at \*7 (W.D. Wis. May 9, 2024) (discussing historical role of absentee witnesses). Thus, for a state's certification requirement to violate the Voting Rights Act's vouching prohibition, the state must require that a voter obtain someone else's

personal assurance or guarantee of their “qualifications.” Because the voter is the only person who attests to the voter’s eligibility to vote, none of Minnesota’s witness certifications violate this prohibition. The district court therefore erred by holding that witnesses for unregistered voters verify eligibility criteria, and this Court should reverse the denial of dismissal of Respondents’ Voting Rights Act claim.

**A. The Certifications that Apply to All Voters Do Not Violate the Voting Rights Act.**

For all voters, the witness must certify that: (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 [the witness] am or have been registered to vote in Minnesota, or am a notary, or am authorized to give oaths.” Minn. R. 8210.0600, subps. 1a-1b. The district court correctly held that these generally applicable certifications only amount to certifying that “a witness observed that the voter—as opposed to someone else—completed the ballot” and do not violate the Voting Rights Act. (Add. 18-19.)

Beginning with the first three certifications about what the voter did, none of them require vouching for qualifications. Each certification pertains to voting mechanics, not any guarantee of the voters’ qualifications. Specifically, witnesses certify that the person who signed that voter eligibility certification is the same person who marked the ballot and that that person was not subject to any inappropriate influence while marking the ballot. The witness certifies that the ballot was blank before the voter marked it, that the voter was

the one who marked the ballot, and that the voter sealed the ballot in the envelope to prevent modification. These certifications parallel what election judges observe in polling places: that the voter received a blank ballot, that only the voter marks the ballot, and that voter inserts the ballot into the ballot box without anyone else tampering with it. None of these certifications “prove [the voter’s] qualifications.” 52 U.S.C. § 10501(b). Therefore, the district court correctly held that they do not violate the Voting Rights Act.

The fourth certification similarly does not violate the Voting Rights Act. It deals only with information about the witness. Because it says nothing about the voter at all, it does not guarantee the voter’s qualifications. Accordingly, it does not violate the Voting Rights Act.

There is one certification on the form where someone does certify the voter’s eligibility. Specifically, the voter signs the “voter signature” line and certifies their own eligibility. But this attestation is made by the voter and only the voter (and is not challenged by Respondents). None of the witness certifications, in contrast, require the witness to say anything about whether the voter is or is not eligible to vote.

Several other courts have reached similar conclusions. Most recently, a Wisconsin federal court rejected a virtually identical lawsuit, reasoning that “a witness does not vouch for a voter’s qualifications by simply confirming with a signature what he or she observed.” *Liebert*, 2024 WL 2078216, at \*5. And other federal courts have reached similar holdings about purely “observational” witness certifications. *See, e.g., People First of Ala. v. Merrill*, 467 F. Supp. 3d 1179, 1225 (N.D. Ala. 2020) (certification that witness “observed the voter sign the affidavit” not vouching); *Thomas v. Andino*, 613 F. Supp. 3d 926, 961

(D.S.C. 2020) (witness certification that “the voter completes the voter’s oath and signs the document” not vouching).

**B. The Certifications Applicable Only to Unregistered Voters Do Not Violate the Voting Rights Act.**

No vouching occurs in the context of unregistered voters either. Witnesses for unregistered absentee voters make two additional certifications: (1) “the voter registered to vote by filling out and enclosing a voter registration application in this envelope; and (2) “the voter provided proof of residence as indicated above.” Because these certifications do not vouch for voter qualifications, they also do not violate the Voting Rights Act.

Like the certifications for registered voters, the witness (again paralleling the role of a polling-place election judge) simply confirms that the voter provided a proof-of-residency document from the list of options. Minn. Stat. § 203B.07, subd. 3(3) (incorporating election-day registration procedures of Minn. Stat. § 201.061, subd. 3, for absentee voters). The registration application is then sent to the relevant ballot board, at which point state law instructs the *county auditor* (not the witness or election judge) to verify “the accuracy of the information on the voter registration application.” Minn. R. 8200.5500, subp. 2; *see also* Minn. Stat. §§ 201.11–.195 (describing procedures for removal of ineligible voters from voter rolls).

Thus, the witness certifications pertain to registration mechanics and voter conduct (i.e., showing a document), not a guarantee of voter qualifications. Witnesses certify that the voter was the person who completed the voter-registration form and displayed a proof-of-residence document. The witness does not certify that the voter is actually eligible to

vote; the witness does not certify that she confirmed the proof-of-residence document is accurate or qualifies the voter to vote in his district.

Two *optional* alternative means of providing proof of residency underscore the narrow role that witnesses play. A voter can, but is not required to, prove residency by voucher of a “[r]egistered voter in the precinct” or of an “employee of a residential facility in the precinct.” Minn. R. 8210.0600, subp. 1b; *see also* Minn. Stat. § 201.061, subd. 3(a)(4). There, the registered voter or employee affirmatively attests to the registrant’s residence. But the legislature expressly made these options two of many, the remainder of which—such as certification that a driver’s license was *presented* but not independently *verified*—do not require vouching.

The district court nevertheless held that, because the voter displays a residency document and residency is an eligibility requirement, the witness vouches by “verif[ying] the voter’s residency.” (Add. 19.) This conclusion is wrong as a matter of law and significantly misstates what the witness certifies. The witness simply certifies that “the voter *provided* proof of residence as indicated above” in a form determined by law. Nothing in the witness certification (or any other step of the absentee voting process) requires the witness to verify that the provided document is accurate or that the document establishes “qualifications” to vote. Minn. R. 8210.0600, subp. 1b. Simply put, nothing about the witness’s certification that the voter showed a document requires the witness to guarantee that document qualifies the voter to vote.

The district court also went on to hold that this supposed voucher violated the Voting Rights Act on the theory that only “a registered voter[] or a member of a class of unique

individuals” could serve as witnesses. (Add. 19.) Although the Court need not reach this question, because the witness certifications do not constitute a voucher of qualifications at all, Minnesota law designates multiple, broad, non-arbitrary groups of people who might serve as witnesses. Thus, voters are not restricted to a single class of witnesses. Moreover, come January 1, 2025, any adult citizen will be able to serve as a witness. 2024 Minn. Laws, ch. 112, art. 2, § 12.

The recent federal decision from Wisconsin recognized that atextually expanding a document-handling certification into a guarantee of substantive qualifications would create numerous practical problems. There, the court rejected a challenge to an oath that the plaintiffs claimed required the witness to attest that the voter met a variety of qualification requirements. *Liebert*, 2024 WL 2078216, at \*4. The court observed that given that the certifications (like Minnesota’s) did not require the witness to know the voter, “[m]any witnesses would be unable to independently verify much of the required information.” *Id.* at \*5. As the court recognized there, “the most obvious problem with [this] interpretation is that it simply does not make any sense.” *Id.*

Similarly, here, the Court should not interpret the certification that a document was shown as certifying anything beyond that singular fact, because any broader reading of the certification would likewise require the witness to verify facts that are entirely unknowable from the one act—presenting a document—to which the witness attests. And properly construed, certifying that one act does not vouch for the voter’s qualifications. Consequently, Minnesota’s witness requirement does not violate the Voting Rights Act, and the Court should reverse the denial of dismissal of those claims.

### **III. THE WITNESS CERTIFICATIONS DO NOT VIOLATE THE CIVIL RIGHTS ACT.**

Respondents also alleged the witness certifications violate the materiality provision of the Civil Rights Act. That provision addresses errors and omissions in paperwork, providing that states cannot:

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 district court held that Minnesota's witness requirement violates this provision for registered voters, but not for unregistered voters. The district court nevertheless declined to dismiss any portion of Respondents' Civil Rights Act claims.

The Court should reverse because none of Minnesota's witness certifications violate the materiality provision. Minnesota's witness certifications for registered voters do not violate the materiality provision because the materiality provision does not apply to the mechanics of how a registered voter votes. Alternatively, even if the Court construes the law so broadly as to apply to all paperwork that may arise in the voting process, the witness certifications are material within the meaning of the Civil Rights Act as they provide assurances that the person casting the submitted absentee ballot followed applicable procedures. And, with respect to the certifications for unregistered voters, as the district court recognized, they are also material.

**A. The Materiality Provision Does Not Apply Outside the Voter-Registration Context.**

The materiality provision's plain language applies only to errors and omissions on documents used to determine whether an "individual is qualified under State law to vote." The law therefore applies only to documents used during the voter-*registration* process, not to documents that registered voters use to vote. This interpretation is further supported by the provision's legislative history and persuasive decisions from other jurisdictions. Because the materiality provision does not apply to the witness certifications for registered voters, the district court erred and this Court should reverse.

**1. The materiality provision's plain language does not apply to voting mechanics after registration.**

Questions of federal statutory interpretation begin with the plain meaning of the statute. *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). Plain meaning is not determined in isolation, but rather by considering the language and design of the statute as a whole. *K Mart Corp. v. Cartier, Inc.*, 485 U.S. 281, 291 (1988). Courts interpret federal statutes to give effect to every clause and word and presume that Congress deliberately chose particular words. *PolSELLI v. Internal Revenue Serv.*, 598 U.S. 432, 441 (2023); *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 353 (2013).

Here, the last clause of the materiality provision is critical to its meaning. It prohibits states from denying voting rights based on paperwork errors or omissions that are "not material in *determining* whether [an] individual is qualified . . . to vote." 52 U.S.C. § 10101(a)(2)(B) (emphasis added). Thus, if an error occurs in a document used to determine whether a voter is qualified (i.e., eligible) to vote, but the error is immaterial

to assessing the voter's eligibility, it cannot be the basis for denying the right to vote. In other words, the error or omission must be in paperwork that serves a gatekeeping function between deeming potential voters qualified and unqualified, such as "minor misspelling errors or mistakes in age or length of residence" on voter-registration applications. H.R. Rep. No. 88-914, pt. 2, at 5 (1963), *as reprinted in* 1964 U.S.C.C.A.N. 2391, at 2491.

On the other hand, the materiality provision does not apply to errors in documents used *after* "determining whether [an] individual is qualified" has occurred. 52 U.S.C. § 10101(a)(2)(B). Thus, the materiality provision applies to documents such as voter registrations, applications, and other similar documents (whatever states may call them), but not to documents that qualified voters use to cast votes in accordance with their states' laws, such as ballots and ballot envelopes.

The district court disagreed, reasoning that because the materiality provision covers "other act[s] requisite to voting" and "vote" is broadly defined in the Civil Rights Act as "all action necessary to make a vote effective," the materiality provision governs the witness requirement. (Add. 25.) This was error because "vote" and "act requisite to voting" are not synonymous. The broad definition of "vote" applies to the Civil Rights Act's prohibition on denying the "right . . . to vote." But the same act cannot both be voting and a prerequisite for voting at the same time. Instead, "a word may be known by the company it keeps." *Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 287 (2010) (internal quotation marks omitted). Here, the "other act" language follows two specific acts: application and registration. That "company" indicates

that the covered “other acts” must be of the same kind: acts that test voter qualifications, not vote casting procedural rules.

Other provisions of the Civil Rights Act confirm this interpretation. Under the Civil Rights Act, the U.S. Attorney General may commence an action for violations of the materiality provision. 52 U.S.C. § 10101(c). If he prevails, the remedy is “an order declaring [the voter] qualified to vote.” *Id.* § 10101(e). This clearly indicates that if a voter has already been determined qualified to vote, then there is no work left for the materiality provision to do.

Similarly, the paragraph of the Civil Rights Act that contains the materiality provision has two other prohibitions. The first prohibits states from using discriminatory standards “in determining whether any individual is qualified under State law or laws to vote,” and the second prohibits “employ[ing] any literacy test as a qualification for voting.” *Id.* § 10101(a)(2)(A), (C). Significantly, both are directed against state practices that gatekeep voter eligibility. That focus indicates that the materiality provision, which is sandwiched between these two other provisions, likewise applies only to the materiality of errors before eligibility is determined.

Both federal circuit cases to have addressed the materiality provision have also held that the provision is limited to documents related to voter registration. Most recently, the Third Circuit rejected a materiality provision challenge to Pennsylvania’s requirement that voters date their absentee-ballot envelopes, despite the state’s concession that that date was not material to determining voter eligibility. *Penn. State Conf. of NAACP Branches v. Sec’y Commonwealth of Penn.*, 97 F.4th 120, 127, 131 (3d Cir. 2024), *reh’g denied* (Apr. 30,

2024). The court held that “it makes no sense to read the Materiality Provision to prohibit enforcement of vote-casting rules that are divorced from the process of ascertaining whether an individual is qualified to vote.” *Id.* at 127, 134. And the Eleventh Circuit has similarly recognized that the materiality provision’s purpose is to “address the practice of requiring unnecessary information *for voter registration*.” *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003) (emphasis added). Congress necessarily addressed those practices because “such requirements would increase the number of errors or omissions *on the application forms*.” *Id.* (emphasis added).

Lower federal courts have reached similar holdings. Most recently, the same federal court that rejected Voting Rights Act claims similar to Respondents’ claims also rejected similar materiality-provision claims. *Liebert*, 2024 WL 2078216, at \*2. That court held that the materiality provision is “limited to those [acts] that are part of a process for determining voter qualifications.” *Id.* at \*11. Accordingly, it did not apply to Wisconsin’s witness requirement, which similarly requires the witness to certify certain aspects of voter conduct. *Id.* Other federal courts have reached similar holdings limiting the materiality provision to voter registration procedures. *E.g.*, *Org. for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790, 803 (W.D. Mo. 2020); *Common Cause/Ga. v. Billups*, 439 F. Supp. 2d 1294, 1358 (N.D. Ga. 2006); *Friedman v. Snipes*, 345 F. Supp. 2d 1356, 1370-71 (S.D. Fla. 2004); *Condon v. Reno*, 913 F. Supp. 946, 949-50 (D.S.C. 1995).

**2. Post-ambiguity tools also demonstrate that the materiality provision does not apply to voting mechanics after registration.**

The preceding discussion shows that the materiality provision's plain language resolves Respondents' claim. But even if the materiality provision is ambiguous, the Court should reverse. When a federal statute is ambiguous, courts may consider the provision's legislative history, as well as whether absurd results would flow from a particular interpretation. *Delaware v. Pennsylvania*, 598 U.S. 115, 138-39 (2023) (legislative history); *McNeill v. United States*, 563 U.S. 816, 822 (2010) (avoiding absurdity). Both considerations confirm that the materiality provision is narrow and does not reach post-registration documents.

Beginning with legislative history, in discussing the voting sections of the Civil Rights Act, the House Judiciary Committee uniformly focused on how the act was intended to tackle discrimination in voter-registration procedures; the committee did not discuss post-registration activities. *See generally* H.R. Rep. No. 88-914 (1963), *as reprinted in* 1964 U.S.C.C.A.N. 2391. The Committee explained that it designed the section with the materiality provision "to insure nondiscriminatory practices in the registration of voters." *Id.* pt. 1, at 19, *as reprinted at* 2394.

The committee's intended limited scope was further echoed by committee member and long-time civil rights advocate William McCulloch. In writing on behalf of a smaller group of representatives, McCulloch focused solely on voter *registration*, citing the low number of voting-age Black citizens who were "*registered to vote*," states' various use of "*registration techniques*," and disparities in voter registrations. *Id.* pt. 2, at 2-4, *as reprinted*

at 2488-90 (emphasis added). McCulloch identified the materiality provision's purpose as addressing some states and local governments' efforts to "defeat [Black] registration," and evidence that "registrars will overlook minor misspelling errors or mistakes in age or length of residence of white applicants, while rejecting a [Black] application for the same or more trivial reasons." *Id.* at 5, as reprinted at 2491.

The absurd consequences that would flow from Respondents' interpretation confirm that the materiality provision is limited to qualification-determining documents. Myriad election regulations promote election integrity and administration by regulating *how* people vote without regulating *who* may vote. If the materiality provision applies to how people vote after their qualifications have been determined, such regulations would be impermissible. Such administrability regulations do not exist just for their own sake. Rather, a well-administered election system promotes confidence in results, gives clear direction to officials (many of whom are local, volunteers, and new to elections each cycle), and reduces administrative costs. These are tangible benefits that would be lost if any regulation involving paperwork that does not relate to determining voter eligibility could be subject to challenge.

For example, a voter might sign the voter's name on the ballot, destroying the ballot's secrecy. *See* Minn. Stat. § 204C.18, subd. 2 (criminalizing placing identifying marks on a ballot). Under Respondents' interpretation, such markings are an "error or omission" on a paper (the ballot) requisite to voting, but they are not material to determining the voter's eligibility. Likewise, if a voter mistakenly under- or over voted in a race, and then tried to obtain a second ballot to vote for those other offices, Respondents'

interpretation would require election officials to accommodate under- or over-voting paperwork errors, functionally destroying the ability to administer elections in an orderly manner.<sup>7</sup> *See, e.g., id.* § 204B.36, subd. 2 (providing direction about how many candidates voter may select). Or a voter might refuse to complete a ballot in a way that can be read by a tabulation machine or election judge but demand the vote be counted. *See, e.g., Minn. R.* 8210.0500, subps. 2-3 (directing voters to use black ink); *id.* 8250.1810, subp. 4 (directing voters to completely fill in oval or other target shape next to their choice of candidate). The logical conclusion of Respondents' argument is that even these straightforward election-administration laws would violate the materiality provision and should be overturned.

It would be absurd to conclude that, in enacting the materiality provision, Congress intended to nullify all such longstanding and reasonable election-administration regulations.<sup>8</sup> Accordingly, the Court should reject an interpretation of the materiality provision that would enable such challenges.

**B. If the Materiality Provision Applies to Vote-Casting Regulations, The Witness Certifications Are Material.**

If the Court concludes that the materiality provision applies beyond voter-registration documents to reach the witness certifications for registered voters, the Court

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<sup>7</sup> Notably, the first ballot could not be spoiled because once inserted into the ballot box, there is no way to correlate a ballot to its voter.

<sup>8</sup> And unreasonable regulations are prevented by the availability of constitutional challenges, which expressly call for courts to balance interests such as voters' election-integrity interests against the burdens that a regulation imposes. *See, e.g., Independence-Alliance Party of Minn. v. Simon*, 87 F.4th 872, 876 (8th Cir. 2023) (weighing burden of Minnesota's process for minor party candidates to obtain ballot access and ultimately upholding process as reasonable, nondiscriminatory restriction).

should still reverse. Those certifications mirror polling-place election procedures for in-person voters, as adapted to the absentee context. And, like those in-person procedures, they are material to determining that only qualified voters cast ballots. Therefore, those certifications—like common sense in-person voting procedures—do not violate the materiality provision.

**1. Materiality under the Civil Rights Act is broadly construed.**

“Material” has both broad and narrow definitions, as it may broadly refer to “having some logical connection with the consequential facts” or being “of such a nature that knowledge of the item would affect a person’s decision-making,” or narrowly mean “essential.” *Material*, BLACK’S LAW DICTIONARY 1065. Three federal circuit courts have addressed whether materiality should be read narrowly or broadly, and all three agree that it should be read broadly to avoid disrupting legitimate voter-fraud reduction regulations. First, in a challenge to providing a driver’s license or partial social security number, the Eleventh Circuit recognized that “there appears to be two kinds of ‘materiality,’ one similar to minimal relevance and the other closer to outcome-determinative.” *Browning*, 522 F.3d at 1174. The court rejected the outcome-determinative test, reasoning that the materiality provision “does not establish a least-restrictive-alternative test for voter registration applications.” *Id.* at 1175. Instead, even if “more error-tolerant ways of verifying identity” exist, a state’s decision not to use them does not violate the materiality provision. *Id.* at 1175.

Second, the Fifth Circuit reached a similar conclusion in a materiality challenge to requiring an original signature on voter registration forms. *Vote.org*. 89 F.4th at 485. The

court observed that such a requirement “meaningfully, even if quite imperfectly” promoted the state’s interest in assuring that people applying to vote are who they say they are. *Id.* at 489. Notwithstanding that decidedly “imperfect” fit, the court rejected the materiality challenge, reasoning that even if “the effect . . . may not be dramatic” its advances on voter integrity were legitimate and therefore the requirement was satisfactorily material. *Id.* Third, the Third Circuit also recognized (albeit in the context of whether the materiality provision applies at all, not whether, assuming it applies, an error is material) that unless the materiality provision is cabined in some way, it would “tie state legislatures’ hands in setting voting rules.” *Penn. NAACP Branches*, 97 F.4th at 134.

Although not specifically addressing the materiality provision, Minnesota’s courts have likewise long recognized that election regulations are not cast aside merely by the state authorizing absentee voting. The Minnesota Supreme Court recognized this almost ninety years ago when it held that “[w]hile the purpose of the [absentee] statute is to extend the privilege of voting, its provisions clearly indicate an intention not to let down the bars necessary for honest elections.” *Wichelmann v. City of Glencoe*, 273 N.W. 638, 639-40 (Minn. 1937). It has repeatedly echoed these holdings in the years since, including for decades after the enactment of the Civil Rights Act. *See, e.g., In re Contest of Gen. Election Held on Nov. 4, 2008*, 767 N.W.2d 453, 462 (Minn. 2009); *Bell v. Gannaway*, 277 N.W.2d 797, 803 (Minn. 1975). The certifications required by Minnesota’s witness requirement are such regulations.

## **2. Minnesota's witness requirement is material under the Civil Rights Act.**

Turning to the specifics of Minnesota's witness requirement, witnesses for all absentee voters make four certifications: (1) the voter showed the witness a blank ballot before voting; (2) the voter marked the ballot in private or directed another person how to mark it; (3) the voter sealed the ballot in a ballot envelope; and (4) the witness is qualified to be a witness under Minnesota law. Minn. R. 8210.0600, subps. 1a-1b.

These procedures are material because they mirror polling-place requirements that limit voting to people who certify their eligibility to vote. In a polling place, the voting process is highly controlled. In particular, election judges can see that the person who is screened for registration at check-in is the same person who receives and marks their ballot. They can see that the ballot is blank before being handed to the voter. And they can see that, after a voter has marked the ballot, no one interferes with the ballot before it is inserted into the ballot box.

The witness certifications translate the in-person voting protections to the absentee context. They require that a known person (either a registered voter, a notary, or someone holding an office specifically authorized to administer oaths) certify that the person signing as "the voter" (and thereby certifying their own eligibility to vote) begins with a blank ballot, is the person to mark that ballot, and then seals it in the envelope so that no one interferes with it after marking. Thus, like election judges in polling places, the witness certifications are material to this process.

The district court erred by construing materiality narrowly and thereby converting the materiality provision into a least-restrictive-means test in contradiction of *Browning*. For example, with respect to registered voters, the court reasoned that such voters' eligibility has already been determined, and that the witness "merely" attests that "a person" filled out the ballot without providing identification. (Add. 26.) As a matter of law, this understates the content of the witness certifications. Witnesses do not merely certify that "a person" filled out the ballot, they certify that "the voter" (the specific person who signed the certification of qualification) filled out the ballot. Minn. R. 8210.0600, subps. 1a-1b. That certification is material because it provides assurance that only someone who has certified their own eligibility casts the ballot.

While the district court might believe there are better ways of determining that only eligible voters cast absentee ballots, such judgments belong to the legislature, not the judicial branch. *Chrz v. Mower Cty.*, 986 N.W.2d 481, 487 (Minn. 2023). Respondents did not bring any constitutional claim that would subject the witness requirement to strict scrutiny or any other balancing test. Instead, because the witness certifications incrementally (at a minimum) increase the likelihood that the person casting the ballot meets voter qualifications, they comply with the materiality provision. The Court should accordingly reverse the district court's holding to the contrary.

**C. The Unregistered Voter Certifications Do Not Violate the Materiality Provision.**

Like the generally applicable witness certifications, the certifications for unregistered voters mirror in-person procedures for election day registration. They are therefore likewise permitted by the materiality provision.

In addition to the general certifications, witnesses for new registrants must make two additional certifications: “the voter registered to vote by filling out and enclosing a voter registration application in this envelope” and “the voter provided proof of residence as indicated above.” Minn. R. 8210.0600, subp. 1b.

These procedures mirror polling place procedures. Minnesota has same-day voter registration at polling places. To register at a polling place, a voter must complete a registration application, take an eligibility oath, and provide proof of residence to an election judge. Minn. Stat. § 201.061, subd. 3(a). When these activities take place in-person, election judges are able to observe that the person who filled out the registration, took the oath, and provided proof of residence is the same person who proceeded to receive a ballot and vote that ballot.

The new registrant certifications translate these procedures to the absentee context. Witnesses certify that the person who cast the ballot in the envelope is the same as the person who registered to vote and took the voter-eligibility oath on the signature envelope. And they certify that that person is also the same person as provided proof of residence. Both are material to whether a qualified voter cast the ballot contained within the envelope, and therefore both satisfy the materiality provision.

## CONCLUSION

Respondents lack standing, but even if they have standing, Minnesota's witness requirement comports with both the Voting Rights Act and the Civil Rights Act. The Court should reverse.

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