No. A24-1134

STATE OF MINNESOTA
IN COURT OF APPEALS

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

Respondents,

v.

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

Appellant.

RESPONDENTS' BRIEF

RETRIEVED FROM DEMOCRACYDOCKET.COM

KEITH ELLISON
ATTORNEY GENERAL
STATE OF MINNESOTA

Angela Behrens
Allen Cook Barr
Emily B. Anderson
Madeleine DeMeules
Sarah Doktori
Assistant Attorneys General
445 Minnesota Street, Suite, 1100
St. Paul, Minnesota 55101
angela.behrens@ag.state.mn.us
allen.barr@ag.state.mn.us
emily.anderson@ag.state.mn.us
madeleine.demeules@ag.state.mn.us
sarah.doktori@ag.state.mn.us
(612) 223-5969

Attorneys for Appellant

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

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

Attorneys for Respondents

**Admitted pro hac vice in the district court*

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES 1

STATEMENT OF THE CASE 3

SUMMARY OF ARGUMENT 7

ARGUMENT 10

I. The district court did not err in finding that Plaintiffs adequately pleaded standing to challenge Minnesota's witness requirement. 10

A. The district court correctly found that individual plaintiffs have standing. 11

B. The district court correctly found that the Alliance has standing. 14

II. The district court did not err in finding that Plaintiffs adequately pleaded their claim that Minnesota's witness requirement violates the voucher prohibition of the Voting Rights Act. 17

A. The witness requirement forces new registrants to prove their qualifications by voucher. 17

B. The witness requirement forces registered voters to prove qualifications by voucher before voting absentee. 22

C. The witness requirement may be satisfied only by a registered voter or member of a class. 24

III. The district court did not err in finding that Plaintiffs adequately pleaded their claim that Minnesota's witness requirement violates the materiality provision of the Civil Rights Act. 26

A. The text of the materiality provision applies to all papers requisite to voting, including Minnesota's absentee signature envelope. 27

B. Even looking beyond the text of the materiality provision, the Secretary's reading has no merit. 30

C. The witness requirement is not material in determining registered voters' qualifications. 35

CONCLUSION 36

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF AUTHORITIES

Page(s)

Cases

Ali v. Fed. Bureau of Prisons,
552 U.S. 214 (2008) 34

All. for Metro. Stability v. Metro. Council,
671 N.W.2d 905 (Minn. App. 2003) 1, 14

Arcia v. Fla. Sec'y of State,
772 F.3d 1335 (11th Cir. 2014) 12

Bostock v. Clayton County,
590 U.S. 644 (2020) 33, 34

Brakebill v. Jaeger,
905 F.3d 553 (8th Cir. 2018) 11

Carcieri v. Salazar,
555 U.S. 379 (2009) 30

Charles H. Wesley Educ. Found., Inc. v. Cox,
408 F.3d 1349 (11th Cir. 2005) 1, 11

Common Cause/Ga. v. Billups,
439 F. Supp. 2d 1294 (N.D. Ga. 2006) 31

Common Cause/Ga. v. Billups,
554 F.3d 1340 (11th Cir. 2009) 1, 11, 13

Corner Post, Inc. v. Bd. of Govs. of Fed. Reserve Sys.,
144 S. Ct. 2440 (2024) 20

Enright v. Lehmann,
735 N.W.2d 326 (Minn. 2007) 10

Fish v. Schwab,
957 F.3d 1105 (10th Cir. 2020) 11

In re Georgia Senate Bill 202,
No. 1:21-CV-01259-JPB, 2023 WL 5334582 (N.D. Ga. Aug. 18, 2023) 2, 34

Gonidakis v. LaRose,
599 F. Supp. 3d 642 (S.D. Ohio 2022) 12

RETRIEVED FROM DEMOCRACYDOCKET.COM

Horne v. Flores,
557 U.S. 433 (2009) 13

Iverson v. United States,
973 F.3d 843 (8th Cir. 2020) 25

La Union del Pueblo Entero v. Abbott,
705 F. Supp. 3d 725 (W.D. Tex. 2023) 2, 31, 35

Liebert v. Millis,
No. 23-cv-672-JDP, 2024 WL 2078216 (W.D. Wis. May 9, 2024) 21, 34

Martin v. Crittenden,
347 F. Supp. 3d 1302 (N.D. Ga. 2018) 2, 34

Mi Familia Vota v. Fontes,
No. CV-22-00509-PHX-SRB, 2024 WL 862406 (D. Ariz. Feb. 29, 2024) 36

Migliori v. Cohen,
36 F.4th 153 (3d Cir. 2022) 35

Matter of NorthMet Project Permit to Mine Application Dated December 2017,
959 N.W.2d 731 (Minn. 2021) 25

Org. for Black Struggle v. Ashcroft,
493 F. Supp. 3d 790 (W.D. Mo. 2020) 12, 35

Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.,
97 F.4th 120 (3d Cir. 2024) 28, 31

Penn Anthracite Min. Co. v. Clarkson Sec. Co.,
205 Minn. 517 (1939) 22

People First of Alabama v. Merrill,
467 F. Supp. 3d 1179 (N.D. Ala. 2020) 12, 23

Reynolds v. Sims,
377 U.S. 533 (1964) 25

Rukavina v. Pawlenty,
684 N.W.2d 525 (Minn. App. 2004) 14

Saucedo v. Gardner,
335 F. Supp. 3d 202 (D.N.H. 2018) 25

RETRIEVED FROM DEMOCRACYDOCKET.COM

Schwier v. Cox,
340 F.3d 1284 (11th Cir. 2003) 34

State by Humphrey v. Philip Morris Inc.,
551 N.W.2d 490 (Minn. 1996).. 1, 14

State v. Haywood,
886 N.W.2d 485 (Minn. 2016).. 24

Stone v. Invitation Homes, Inc.,
986 N.W.2d 237 (Minn. App. 2023).. 10, 16

Stringer v. Hughs,
No. SA-20-CV-46-OG, 2020 WL 6875182 (W.D. Tex. Aug. 28, 2020) 12

Thomas v. Andino,
613 F. Supp. 3d 926 (D.S.C. 2020).. 24

United States v. Students Challenging Regulatory Agency Procedures,
412 U.S. 669 (1973) 10

Vote.org v. Ga. State Election Bd.,
661 F. Supp. 3d 1329 (N.D. Ga. 2023).. 2, 34

Voto Latino v. Hirsch,
712 F. Supp. 3d 637 (M.D.N.C. 2024) 25

Statutes and Regulations

52 U.S.C. § 10101 2

52 U.S.C. § 10101(a).. *passim*

52 U.S.C. § 10101(e).. 29

52 U.S.C. § 10310 29

52 U.S.C. § 10501 .... *passim*

52 U.S.C. § 10501(b).. *passim*

Minn. Stat. § 201.014 .... 4, 18, 22

Minn. Stat. § 201.061 .... 5, 19–21

Minn. Stat. § 203B.02.. 4

RETRIEVED FROM DEMOCRACYDOCKET.COM

Minn. Stat. § 203B.04 .... 32, 33

Minn. Stat. § 203B.07 .... *passim*

Minn. Stat. § 203B.121 .... *passim*

Minn. Stat. § 204B.45 5

Minn. Stat. § 204B.46 5

Minn. Stat. § 204C.18 32

Minn. Stat. § 204C.23 32

N.C. Gen. Stat. § 163-230.1 29

Voting Rights Act of 1965, Pub. L. No. 89-110, § 4(c), 79 Stat. 437 (1965) 20

Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, § 6, 84 Stat. 314 (1970) 20

Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, § 201, 89 Stat. 400 (1975) 20

Minn. R. 8200.5500 19

Minn. R. 8200.9310 19

Minn. R. 8210.0500 3

Minn. R. 8210.0600 .... 3, 18

Minn. R. 8210.2450 .... 3, 5

Other Authorities

Class, Black's Law Dictionary (5th ed. 1979) 25

H.R. Rep. No. 88-914 (1963) 36

Notary Public, Black's Law Dictionary (11th ed. 2019) 25

Vouch, Black's Law Dictionary (5th ed. 1979) 20

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATEMENT OF ISSUES

1. Did the district court err in finding that respondents had adequately pleaded standing to challenge Minnesota's witness requirement?

    Appellant Secretary of State moved to dismiss the Complaint in this action on March 5, 2024. Doc. Index # 11. Respondents subsequently filed an Amended Complaint on May 1, 2024, Sec'y Add. 36, and the Secretary renewed his motion to dismiss the Amended Complaint. Sec'y Add. 58. The district court denied the Secretary's motion to dismiss on standing grounds, finding that respondent Teresa Maples had standing because she must vote absentee and she need not wait until she has been unable to vote to seek relief from the court. The district court also found that since Ms. Maples is a member of respondent Minnesota Alliance for Retired Americans Educational Fund with standing, the Alliance has associational standing, and that it also has direct organizational standing because it will divert resources to assist its members to comply with the witness requirement. Sec'y Add. 13–14. The Secretary sought permission to appeal from the district court's denial of his motion to dismiss, which this Court granted on August 13, 2024. Doc. Index # 97.

    Most apposite authorities:

    - *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490 (Minn. 1996)
    - *All. for Metro. Stability v. Metro. Council*, 671 N.W.2d 905 (Minn. App. 2003)
    - *Common Cause/Ga. v. Billups*, 554 F.3d 1340 (11th Cir. 2009)
    - *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349 (11th Cir. 2005)

2. Did the district court err in finding that respondents had adequately pleaded their claim that Minnesota's witness requirement violates the voucher prohibition of the Voting Rights Act?

    Respondents alleged in Count I of their Amended Complaint that Minnesota's witness requirement violates the Voting Rights Act of 1965. Sec'y Add. 46–47. Defendant Secretary of State moved to dismiss Count I of respondents' Complaint for failure to state a claim. Doc. Index # 11. The district court denied the motion to dismiss, finding that the witness requirement likely violates the Voting Rights Act of 1965 for unregistered voters because the witness, a registered

RETRIEVED FROM DEMOCRACYDOCKET.COM

voter, verifies the voter's residency—which is one of the criteria to vote in Minnesota. Sec'y Add. 19. Thus, the witness must vouch for the fact that the absentee voter is, in part, eligible to vote. *Id.* The Secretary sought permission to appeal from the district court's denial of his motion to dismiss, which this Court granted on August 13, 2024. Doc. Index # 97.

Most apposite authorities:

- 52 U.S.C. § 10501
- Minn. Stat. § 203B.07
- Minn. Stat. § 203B.121

3. Did the district court err in finding that respondents had adequately pled their claim that Minnesota's witness requirement violates the materiality provision of the Civil Rights Act?

Respondents alleged in Count II of their Amended Complaint that Minnesota's witness requirement violates the materiality provision of the Civil Rights Act. Sec'y Add. 47. Appellant Secretary of State moved to dismiss respondents' Count II for failure to state a claim. Doc. Index # 58. The district court denied the motion to dismiss because it found respondents had stated a claim under the materiality provision as to registered voters. Sec'y Add. 19–26. The district court held that the materiality provision applies to any paper requisite to voting and the witness requirement is not material in determining an absentee voter's qualifications. Sec'y Add. 25. The Secretary sought permission to appeal from the district court's denial of his motion to dismiss, which this Court granted on August 13, 2024. Doc. Index # 97.

Most apposite authorities:

- 52 U.S.C. § 10101
- *La Union del Pueblo Entero v. Abbott*, 705 F. Supp. 3d 725 (W.D. Tex. 2023)
- *In re Georgia Senate Bill 202*, No. 1:21-CV-01259-JPB, 2023 WL 5334582 (N.D. Ga. Aug. 18, 2023)
- *Vote.org v. Ga. State Election Bd.*, 661 F. Supp. 3d 1329 (N.D. Ga. 2023)
- *Martin v. Crittenden*, 347 F. Supp. 3d 1302 (N.D. Ga. 2018)

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATEMENT OF THE CASE

In the 2022 general election, Minnesota's election officials disenfranchised more than 6,000 absentee voters solely because of an archaic rule that required them to include the signature of a witness, along with the witness's street address, on the ballot's outer envelope. Sec'y Add. 6 n.1; Minn. Stat. §§ 203B.07, 203B.121; Minn. R. 8210.0500; Minn. R. 8210.0600; Minn. R. 8210.2450 (together, "the witness requirement"). Respondents Minnesota Alliance for Retired Americans Educational Fund, Teresa Maples, and Khalid Mohamed (collectively, "Plaintiffs")—an organization of retirees whose members rely heavily on absentee ballots and two frequent absentee voters—sued appellant Steve Simon, the Minnesota Secretary of State ("the Secretary"), to enjoin enforcement of the witness requirement in future elections. *See* Sec'y Add. 36.

The Complaint asserts two causes of action under federal law. Count I alleges that the witness requirement violates Section 201 of the Voting Rights Act ("VRA"), which prohibits the state from denying any citizen's right to vote for "failure to comply with any test or device," including any requirement that a voter prove their qualifications by the voucher of another. 52 U.S.C. § 10501. Count II alleges that the witness requirement violates the materiality provision of the Civil Rights Act, which prohibits the denial of the right to vote based on immaterial paperwork errors. 52 U.S.C. § 10101(a)(2)(B).

Plaintiffs filed their Complaint on February 15, 2024, in Ramsey County District Court. Doc. Index # 2. The Secretary moved to dismiss. Doc. Index # 11. On May 1, 2024, Plaintiffs filed an amended complaint, and the Secretary renewed his motion to dismiss. Sec'y Add. 36, Doc. Index # 58.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The district court, the Honorable Edward Sheu, denied the Secretary's motion, concluding that Plaintiff Teresa Maples had standing and that Plaintiff Alliance for Retired Americans Education Fund had both associational and direct organizational standing. Sec'y Add. 13-14. The district court also found that the witness requirement appears to violate the VRA with regard to unregistered absentee voters because the witness, who must be a registered voter or a member of a class, must vouch for the witness's residency—one of the statutory criteria for voting eligibility. *Id.* at 19. Likewise, the district court found that the witness requirement appears to violate the Civil Rights Act of 1964 because it requires election officials to invalidate a registered absentee voter's ballot based on immaterial paperwork mistakes on the certificate of eligibility form located on the absentee ballot envelope. *Id.* at 19-26. The district court denied Plaintiffs' motion for temporary injunction, however, based on its finding that it would be too difficult for the Secretary to implement Plaintiffs' requested relief so close to an election. It also denied the Republican Committees' motion to intervene.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Secretary then petitioned this Court for discretionary review of the district court's decision to deny his motion to dismiss. Doc. Index # 88. This Court granted that petition. Doc. Index # 98.

STATEMENT OF FACTS

In Minnesota, an "eligible voter" must be (1) at least 18 years of age, (2) a United States citizen, and (3) a Minnesota resident who has maintained residence in the state for 20 days immediately preceding the election. Minn. Stat. § 201.014, subd. 1. All eligible voters are entitled to vote by absentee ballot. Minn. Stat. § 203B.02, subd. 1. For some

Minnesota voters, absentee voting is the *only* option because they live in a rural area without an in-person voting location. *See generally* Minn. Stat. §§ 204B.45, 204B.46 (authorizing mail-only balloting for any precinct having fewer than 100 registered voters).

An absentee ballot cannot be counted unless it is returned in a designated envelope containing a "certificate of eligibility" that must be completed and signed by both the voter *and* a qualified witness. Minn. Stat. § 203B.07, subd. 3. The witness must be either (1) a registered Minnesota voter, (2) a notary public, or (3) another individual authorized to administer oaths. *Id.* The witness section of the signature envelope includes an attestation stating that "(1) the ballots were displayed to that individual unmarked; (2) the voter marked the ballots in that individual'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 (3) if the voter was not previously registered, the voter has provided proof of residence as required by section 201.061, subdivision 3." *Id.*

RETRIEVED FROM DEMOCRACYDOCKET.COM

Once submitted, each absentee ballot must be reviewed by the ballot board for compliance with the witness requirement, and to determine whether "the voter is registered and eligible to vote." Minn. Stat. § 203B.121, subd. 2; *see also* Minn. R. 8210.2450. To that end, the Secretary has promulgated guidance instructing ballot boards to reject absentee ballots where 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 as an address. *See* Sec'y Add. 5. A signature envelope that fails to comply with the witness requirement to the satisfaction of two members of the ballot board must

be marked "rejected" and the ballot inside cannot be opened or counted. Minn. Stat. § 203B.121, subd. 2.

Plaintiffs are two Minnesota voters, who regularly vote absentee and plan to do so in future elections, and the Minnesota Alliance for Retired Americans Educational Fund (the "Alliance")—a nonpartisan organization whose members include retirees from public and private sector unions, and community organizations. Absentee voting is particularly important for the Alliance's members, many of whom are home-bound or have limited mobility due to medical issues. *See* Sec'y Add. 38–39. As a result, an overwhelming majority of the Alliance's members vote by mail. *Id*. Alliance member Plaintiff Teresa Maples, for example, suffers from several chronic health conditions that compromise her mobility and make it difficult for her to drive herself to the polls. *Id.* at 39.

In February 2024, Plaintiffs sued the Secretary to enjoin enforcement of Minnesota's witness requirement because it unlawfully requires absentee voters to "prove [their] qualifications by the voucher of registered voters or members of any other class," in violation of the federal VRA, 52 U.S.C. § 10501(b). Plaintiffs further alleged that, to the extent that the "certificate of eligibility" can be construed as something other than a voucher of the voter's "qualifications," the requirement runs headlong into another federal law: the materiality provision of the Civil Rights Act. That provision prohibits denying the right to vote based on an error or omission on paperwork "relating to any . . . act requisite to voting, if such error or omission is not material in determining" the voter's qualifications. 52 U.S.C. § 10101(a)(2)(B).

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Secretary moved to dismiss the Complaint, and Plaintiffs subsequently filed an Amended Complaint and temporary injunction motion. Sec'y Add. 36, Doc. Index # 53-4. The Secretary opposed that motion and renewed his motion to dismiss as to the Amended Complaint. *Id.* The district court denied both motions in an order filed on June 14, 2024. *Id.* at 8, 35. The district court agreed that Plaintiffs have standing and that the Amended Complaint states a claim that Minnesota's witness requirement violates both the Civil Rights Act and the VRA. *Id.* at 2. But, noting that "[a]bsentee voting begins September 20, 2024," and that the Secretary "would incur substantial expense" if relief were granted at this stage, the court concluded that "the balance of harms does not support temporary injunctive relief." *Id.* at 29.

RETRIEVED FROM DEMOCRACYDOCKET.COM

SUMMARY OF ARGUMENT

The Secretary of State's own contradictory arguments demonstrate why Minnesota's witness requirement is unlawful. To defend against Plaintiffs' VRA claim, the Secretary insists that the witness requirement is not a voucher of qualifications, as Section 201 prohibits. In fact, the Secretary insists the required witness statement has nothing to do with qualifications at all. But if that is true, then the witness requirement necessarily violates the Civil Rights Act's separate prohibition on denying the right to vote based on "error[s] or omission[s]" that are not "material in determining a voter's qualifications." 52 U.S.C. § 10101(a)(2)(B). The Secretary's attempts to wriggle out of this bind rely on atextual readings of both Minnesota and federal law. Indeed, the Secretary's entire defense against Plaintiffs' Civil Rights Act claim rests on the premise that the materiality provision

does not apply to absentee voting *at all*. But as most federal courts to consider the issue have held, that reading is plainly unsupported by the statutory text.

1. At the threshold, the district correctly held that Plaintiffs have alleged more than sufficient facts to establish their standing to bring this action. Because the individual voter Plaintiffs are undisputedly subject to the witness requirement as absentee voters, they have suffered the necessary injury in fact. The Secretary's attempt to raise the standing bar by requiring an imminent risk of disenfranchisement has been routinely and resoundingly rejected by federal courts, and finds no basis in Minnesota law. And because at least one of its members—Plaintiff Teresa Maples—has standing, so too does the Alliance under the associational standing doctrine.

The Alliance also has standing in its own right as an organization because the witness requirement impairs its mission, thereby forcing the Alliance to divert resources to help its members navigate the requirement in order to vote. The Amended Complaint explains in detail the steps that the Alliance must undertake to counteract the law's effects on the Alliance's members, as well as the activities that the Alliance must divert resources *from* to support these efforts. And the Alliance must expend this effort to support both registered and unregistered voters. This more than suffices to satisfy Minnesota's "liberal" standard for organizational standing.

2. On the merits, Plaintiffs adequately stated a claim that Minnesota's witness requirement violates Section 201 of the VRA because it conditions absentee voting on a "test or device," which the VRA defines to include any requirement that the voter "prove his qualifications by the voucher of registered voters or members of any other class." 52

RETRIEVED FROM DEMOCRACYDOCKET.COM

U.S.C. § 10501. With respect to unregistered voters, a witness must certify—or "vouch"—that the voter has provided acceptable proof of residence from among a statutory enumerated list of documents. Residence is unquestionably a "qualification" to vote under Minnesota law. And absentee registrants have no option to prove their residence *other* than having a witness vouch for a residency document they provide.

The Secretary's semantic argument that the witness is merely vouching that they saw such proof, rather than vouching for the truth or accuracy of the document, is beside the point. The application of Section 201 does not turn on the content of the voucher, but rather the role played by the voucher requirement in the voting process—i.e., whether the voter is forced to "prove [their] qualifications *by* the voucher" of another. *Id*. The same is true for *registered* voters. Registered voters may not vote absentee unless they "prove" their qualifications by signing a "certificate of eligibility" which *also* must be signed by a qualified witness. Minn. Stat. § 203B.07, subd. 3.

3. Moreover, if the Secretary is right that the witness requirement has nothing to do with the voter's "qualifications," that demonstrates that Plaintiffs properly stated a claim under the materiality provision of the Civil Rights Act. The plain terms of the statute clearly apply to the absentee signature envelope bearing the witness certification because it is a "record or paper relating to any . . . act requisite to voting." 52 U.S.C. §10101(a)(2)(B). And as Plaintiffs alleged, election officials in Minnesota must reject absentee ballots because of errors or omissions on that witness certification—even though such errors are not material in determining the absentee voter's qualifications. This violates federal law.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Secretary's arguments to the contrary are completely divorced from the text of the materiality provision. *First*, the Secretary insists that the phrase "any application, registration, or other act requisite to voting" only includes *some* acts requisite to voting. But this artificially narrow reading is the minority view because it is not supported by text, structure, purpose, or history behind the Civil Rights Act. *Second*, the Secretary claims that errors or omissions on the witness certification are material in determining a voter's qualifications, even though election officials do not use the witness certifications to determine a voter's age, citizenship, or residency, or felony status. The Secretary's diluted view of materiality has no support and would render the materiality provision inert.

RETRIEVED FROM DEMOCRACYDOCKET.COM

ARGUMENT

I. The district court did not err in finding that Plaintiffs adequately pleaded standing to challenge Minnesota's witness requirement.

The Secretary's standing arguments misunderstand the doctrine and the cases applying it. "To demonstrate standing, the complaint must allege facts to show the plaintiff suffered 'some injury-in-fact . . . fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision.'" *Stone v. Invitation Homes, Inc.*, 986 N.W.2d 237, 248 (Minn. App. 2023) (quoting *Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 663 (Minn. 2014)). "An injury-in-fact is a concrete and particularized invasion of a legally protected interest." *Enright v. Lehmann*, 735 N.W.2d 326, 329 (Minn. 2007) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). That injury need not be insurmountable or even significant; "an identifiable trifle is enough." *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 689

n.14 (1973). And when challenging unlawful voting rules, "[a] plaintiff need not have the franchise wholly denied to suffer injury."[1] *Charles H. Wesley Educ. Found.*, *Inc*. *v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005).

A. The district court correctly found that individual plaintiffs have standing.

Plaintiffs Teresa Maples and Khalid Mohamed are routine absentee voters who have been forced to navigate the burdens of complying with Minnesota's unlawful witness requirement in the past, and will face similar (and in Ms. Maples case, even greater) hurdles in the future. Sec'y Add. 39–40. That is all that is required to establish an injury in fact. Plaintiffs need not allege that they cannot vote through any other means, or that finding a witness would be impossible—and the Secretary, tellingly, does not point to a single court that has adopted this fictitious standard. *Id*. at 14.

On the contrary, courts have overwhelmingly recognized that the burden of complying with unlawful voting rules is enough by itself to establish the minimum injury required for standing. *See, e.g.*, *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1351–52 (11th Cir. 2009) ("Requiring a registered voter either to produce photo identification to vote in person or to cast an absentee or provisional ballot is an injury sufficient for standing."); *Fish v. Schwab*, 957 F.3d 1105, 1120 (10th Cir. 2020) (same); *Brakebill v. Jaeger*, 905 F.3d 553, 558 (8th Cir. 2018) ("[T]he burden of obtaining a qualifying identification or supplemental document is sufficient to constitute an injury that gives a

RETRIEVED FROM DEMOCRACYDOCKET.COM

[1] The Secretary does not dispute that Plaintiffs' injuries are traceable to the Secretary, nor that they are likely to be redressed by a decision in their favor. Only the injury-in-fact element of standing is at issue in this appeal.

citizen standing to sue."); *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014) (holding voters were injured by violation of federal voting statutes "[e]ven though they were ultimately not prevented from voting"); *see also, e.g.*, *Stringer v. Hughs*, No. SA-20-CV-46-OG, 2020 WL 6875182, at *9 (W.D. Tex. Aug. 28, 2020) (same); *Gonidakis v. LaRose*, 599 F. Supp. 3d 642, 655 (S.D. Ohio 2022) (same).

Even the cases that the Secretary himself cites to support the witness requirement ultimately reject the very standing argument he makes here. In *People First of Alabama v. Merrill*, for instance, the court concluded that individual voters subject to a photo identification requirement clearly had standing, and that when individuals are subject to the challenged voting laws, "[t]heir injury is a given and should not be challenged . . . regardless of whether [they] are able to obtain photo identification." 467 F. Supp. 3d 1179, 1197–98 (N.D. Ala. 2020). Also, in *Organization for Black Struggle v. Ashcroft*, standing was so obvious that the court did not require the plaintiff organizations to identify injured members; instead, the court acknowledged that the "individual members have the right to vote and thus standing to litigate an impingement on that right." 493 F. Supp. 3d 790, 798 (W.D. Mo. 2020).

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Secretary's argument that Plaintiffs' "risk of disenfranchisement" is "hypothetical," or not "imminent" therefore misses the point entirely. Sec'y Br. 14 n.6. Plaintiffs need not allege that they "were ever unable to find a witness or unable to vote in the past because of the witness requirement." *Id*. at 14. Correspondingly, complete disenfranchisement need not be "imminent" to demonstrate a likelihood of future injury. *Id*. Just as "the inability of a voter to pay a poll tax, for example, is not required to challenge

a statute that imposes a tax on voting," *Billups*, 554 F.3d at 1352 (citing *Harper v. Va. State Bd. of Elecs.*, 383 U.S. 663, 668 (1966)), the inability to find a witness is not a pre-requisite to challenge a burdensome witness requirement. The relevant question for standing is whether the individual Plaintiffs will be subject to the burdens imposed by the witness requirement in the future.

The Complaint answers that question definitively. It alleges that Plaintiff Teresa Maples is "70 years old and lives alone" and has "medical conditions that present mobility issues." Sec'y Add. 39. It also alleged that Ms. Maples's "son recently passed away and [she] has moved into a new building, where she does not know her neighbors and will have great difficulty finding a witness for her absentee ballot in the 2024 election." *Id.* In other words, Ms. Maples has encountered more or less every obstacle one could face in identifying a witness. As the district court observed, it is "hardly a choice that [Ms. Maples] must vote absentee" and she "need not wait until she has been unable to vote absentee before seeking relief from the court." *Id.* at 13.[2]

RETRIEVED FROM DEMOCRACYDOCKET.COM

[2] The Secretary wrongly claims that the district court "recognized that [Plaintiff] Mohamed lacked standing." Sec'y Br. 10. To the contrary, the district court stated that Plaintiff Mohamed—who was not a focus of the briefing below—"may lack standing" but expressly did not reach the question. Sec'y Add. at 14. Nor did the district court need to address the question because only one plaintiff need establish standing for the case to proceed. *Horne v. Flores*, 557 U.S. 433, 446 (2009). Regardless, the Complaint alleges that Plaintiff Khalid Mohamed "has struggled to find a registered voter or notary within his community who is willing and able to witness his ballot" and "expects to have difficulty finding someone to witness his absentee ballot in the 2024 election." Sec'y Add. 40.

B. The district court correctly found that the Alliance has standing.

Although only one Plaintiff need have standing to maintain this action, the district court also correctly held that the Alliance has standing to maintain this action, both as a representative of its members and in its own right.

First, because Ms. Maples has standing, so too does the Alliance. "[A]n organization may sue to redress injuries . . . to its members." *State by Humphrey v. Philip Morris Inc.*, 551 N.W. 2d 490, 497–98 (Minn. 1996). In addition to Ms. Maples, Plaintiffs allege that many of the Alliance's 84,282 members in Minnesota "rely heavily on absentee voting." Sec'y Add. 39. Many live alone and have mobility challenges such that they often struggle to identify and travel to potential witnesses to successfully vote absentee. *Id.* These allegations—which this Court must accept as true—more than satisfy Minnesota's broad interpretation of the associational standing doctrine, which the Minnesota Supreme Court has found is "relax[ed]. . . where the relief sought is equitable only." *Humphrey*, 551 N.W.2d at 498. Indeed, the Minnesota Supreme Court has routinely concluded that even organizations without formal members can establish associational standing. *Id*.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Second, the district court also correctly found that the Alliance has standing to sue in its own right as an organization because it "has to divert resources to help its members navigate the witness requirement in order to vote." Sec'y Add. 13. The Minnesota Supreme Court has "adopted a liberal standard for organizational standing," *All. for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 913 (Minn. App. 2003), recognizing "impediments to an organization's activities and mission as an injury sufficient for standing." *Rukavina v. Pawlenty*, 684 N.W.2d 525, 533 (Minn. App. 2004). Plaintiffs' allegations more than

suffice to meet that standard. The Alliance's mission is to ensure social and economic justice and full civil rights that retirees have earned after a lifetime of work. Critical to achieving that mission is ensuring its members can vote and that their votes are counted, which the Alliance does through "get out the vote" campaigns, such as phone banks and door-to-door canvassing. Sec'y Add. 38. Because the Alliance's members face the risk of disenfranchisement due to the witness requirement, the Alliance must divert its limited resources and volunteer time away from its efforts to mobilize voters and towards efforts to educate its members about the witness requirement and assist members to comply with it. *Id.* at 39.

The Secretary dismisses the Alliance's organizational standing allegations as "vague" and overly "broad" but only after turning a blind eye to specific allegations in the Complaint. Sec'y Br. 16–17. Plaintiffs clearly alleged that the Alliance not only "must expend money and volunteer time to educate its members on the witness requirement" but also to "connect its members with other local members who are willing and able to serve as a witness." Sec'y Add. 39. Plaintiffs then elaborate, explaining that "[s]pecificially," *id.*, the Alliance must incur "time and expense on a postcard campaign to ensure its members, including those registering to vote for the first time, know about and can try to comply with the witness requirement." *Id.* at 14. These activities, the Alliance explained, require diversion of resources "from the Alliance's other mission critical election-related programs, including phone drives, issue organizing, holding events, and canvassing." *Id.* at 39. The Alliance does not need to show that it used "significant" resources, or that its member-connecting efforts use more resources than its other activities, or that it meets any

RETRIEVED FROM DEMOCRACYDOCKET.COM

of the other goalposts that the Secretary has invented without citation to governing precedent. Sec'y Br. 17.

Nor does it matter that the witness requirement is "longstanding." Sec'y Br. 16. As the district court observed, the Alliance's "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." Sec'y Add. at 14. And assisting members in complying with the witness requirement *does* in fact differ from the Alliance's "routine activities," which center around its mission of ensuring social and economic justice and full civil rights that retirees have earned after a lifetime of work. Sec'y Add. 38.

Finally, these organizational injuries suffice to confer standing on the Alliance to challenge the witness requirement as applied to both registered and unregistered voters. While the Secretary invites this Court to presume that the Alliance does not have any members who are unregistered, the governing standards for motions to dismiss require just the opposite: courts must "construe the complaint in favor of the complaining party." Sec'y Add. 11; *see also Stone*, 986 N.W.2d at 248 (same). The Alliance plainly alleged that the witness requirement injures its members, impairs its mission, and forces the organization to divert resources to assist members (which naturally includes unregistered individuals) in response. This appeal—from the denial of a motion to dismiss—is not the appropriate forum to quibble with these facts. *Stone*, 986 N.W.2d at 248.

RETRIEVED FROM DEMOCRACYDOCKET.COM

II. The district court did not err in finding that Plaintiffs adequately pleaded their claim that Minnesota's witness requirement violates the voucher prohibition of the Voting Rights Act.

The VRA's voucher rule squarely prohibits restrictions like the witness requirement. Section 201 of the VRA provides that:

> (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 . . . **(4) prove [their] qualifications by the voucher of registered voters or members of any other class**.

52 U.S.C. § 10501 (emphasis added). The voucher rule thus prohibits requirements that: (i) serve as a prerequisite for voting, (ii) compel voters to prove qualifications by voucher of a third party, and (iii) limit the pool of potential vouchers to registered voters or members of another class. *See id*. Minnesota's witness requirement checks all of these boxes. The Secretary's argument that the witness requirement is not, in fact, a "voucher of qualifications" disregards the plain language of the statute. And even if correct, the Secretary's argument simply demonstrates why the witness requirement violates the Civil Rights Act's materiality provision, as explained further below.

A. The witness requirement forces new registrants to prove their qualifications by voucher.

Section 201 of the VRA is straightforward: it states that voters cannot be required to obtain a "voucher of registered voters or members of any other class" in order to prove their qualifications to vote. 52 U.S.C. § 10501. The district court correctly determined that, for voters registering absentee, Minnesota's witness requirement does just that. Sec'y Add.

RETRIEVED FROM DEMOCRACYDOCKET.COM

19. It requires a witness to confirm that "the voter has provided proof of residence," choosing from among a list of acceptable forms of proof. Minn. Stat. § 203B.07, subd. 3(3); Minn. R. 8210.0600, subp. 1b. "Residence" is unquestionably a "qualification" for voting in Minnesota. *See* Minn. Stat. § 201.014, subd. 1 (defining an "eligible voter" as someone who, among other things, has maintained "residence in Minnesota for 20 days immediately preceding the election"). Therefore, Minnesota law requires the witness to attest that the voter has proved his or her "qualifications."

The Secretary attempts to supplement the plain text of the voucher rule such that it applies only when the witness "vouch[es] for voter qualifications," Sec'y Br. 20. But that is not what the VRA says. The statute prohibits "any requirement" that a person "prove [their] qualifications by the voucher of registered voters or members of any other class. 52 U.S.C. § 10501(b). The application of Section 201 does not turn on the subject of the voucher, but rather the role that the voucher plays in the voting process—in other words, whether the voter is forced to "prove [their] qualifications *by* the voucher" of another. 52 U.S.C. § 10501 (emphasis added). In Minnesota, an individual who is registering and voting absentee must "prove" their qualifications—i.e., their residency—"by" obtaining the signature of registered voter or notary public who "vouch[es]" that the voter has provided the requisite proof of residence. Indeed, absentee registrants have no other option to prove their residence beyond having a witness vouch for a residency document they provide. Because a witness's voucher is necessary for absentee registrants to prove their residence, the witness requirement straightforwardly violates Section 201.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Secretary's observation that regulations require the county auditor to subsequently "verify" "the accuracy of the information on the voter registration application" does not change the fact that the witness certification is unlawful voucher. *Id.* (citing Minn. R. 8200.5500, subp. 2). Minnesota's administrative rules provide that all voter registration applications "must be verified pursuant to part 8200.9310" of the Minnesota Administrative Code. Minn. R. 8200.5500, subp. 2. That regulation, in turn, explains that "verification" means "that the information provided by the applicant on the voter registration application *for all of the following categories* matches the information in the same categories" in state databases: "(a) name; (b) date of birth; (c) Minnesota driver's license or Minnesota state identification card number; or (d) last four digits of Social Security number, if the applicant has not been issued a Minnesota driver's license or Minnesota state identification card." Minn. R. 8200.9310, subp. 2(A) (emphasis added). Proof of residence is not among the items that the county auditor must verify. Instead, "verification" as used in these provisions refers only to items relevant to the voter's identity. There is no further procedure for verifying the voter's proof of residence—election officials must rely upon the voucher of the witness that the voter provided the requisite proof.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Secretary's description of "alternative means of providing proof of residency" is also mistaken. Sec'y Br. 21. There is only *one* "means of providing proof of residency" available to absentee registrants—getting a witness to vouch that the voter has provided such proof. Minn. Stat. § 203B.07, subd. 3(3). What the Secretary seems to be referring to is the list of acceptable *forms* of proof. *See* Minn. Stat. § 201.061, subd. 3. That list

includes, among other things, "having a voter who is registered to vote in the precinct . . . sign an oath in the presence of the election judge vouching that the voter . . . personally knows that the individual is a resident of the precinct." *Id.* § 201.061 subd. 3(a)(4) (emphasis added). But once the voter has obtained such a signed oath, the witness referenced in Section 203B.07 still must vouch that the voter has "provided" that form of proof. Minn. Stat. § 203B.07, subd. 3(3). In other words, the oath referenced in Section 201.61, subdivision 3(a)(4) does not displace the witness certification; it merely substitutes for a driver's license or other document proving residence. In either case, the witness's voucher is required in order to verify the voter's residence and "prove" their qualifications. 52 U.S.C. § 10501(b).

RETRIEVED FROM DEMOCRACYDOCKET.COM

That procedure is also consistent with contemporaneous dictionary definitions of the term "vouch." *See, e.g.*, *Corner Post, Inc. v. Bd. of Govs. of Fed. Reserve Sys.*, 144 S. Ct. 2440, 2451 (2024) (relying on contemporaneous dictionary definitions). The Secretary cites modern dictionary definitions of "vouch," Sec'y Br. 17, but the voucher prohibition was first enacted in 1965, expanded nationwide in 1970, and made permanent in 1975. Voting Rights Act of 1965, Pub. L. No. 89-110, § 4(c), 79 Stat. 437, 438-39 (1965); Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, § 6, 84 Stat. 314, 315 (1970); Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, § 201, 89 Stat. 400, 400 (1975). Contemporaneous dictionary definitions from that time period define "vouch" to include: "To substantiate with evidence; to verify." Black's Law Dictionary (5th ed. 1979) (defining "vouch"). Minnesota law deputizes the witness to "substantiate with evidence" a voter's residence by "verifying" that he or she has provided proof of such residence. The witness

certification does not merely require the witness to confirm that the voter has "provided" one of the documents listed in Minn. Stat. § 201.061, subd. 3(a), as the Secretary suggests. Sec'y Br. 21. It requires the witness to verify that the voter has provided "proof of residence" as required by that section. Minn. Stat. § 203B.07, subd. 3(3).

Finally, *Liebert v. Millis*, on which the Secretary briefly relies, Sec'y Br. 22, misapplied the relevant provisions of the VRA and is further distinguishable because it relied entirely on that court's construction of the challenged Wisconsin statute, which is materially different than the Minnesota statute challenged here. *See* No. 23-cv-672-JDP, 2024 WL 2078216, at *4 (W.D. Wis. May 9, 2024) ("The key dispute is over the interpretation of the portion of § 6.87(2) that describes what the witness must certify."). Unlike its Wisconsin counterpart, the Minnesota statute requires witnesses for unregistered absentee voters to certify that the voter has shown proof of residence—which plainly "prove[s the voter's] qualifications" under the VRA. 52 U.S.C. § 10501(b).

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

RETRIEVED FROM DEMOCRACYDOCKET.COM

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

B. The witness requirement forces registered voters to prove qualifications by voucher before voting absentee.

Minnesota's witness requirement also requires voters who are already registered to vote to prove their qualifications by voucher in order to cast an absentee ballot. The district court erred in concluding otherwise. Sec'y Add. 19; *see Penn Anthracite Min. Co. v. Clarkson Sec. Co.*, 205 Minn. 517, 520 (1939) ("[I]f the record presents any good reason, even though it is not the one assigned by the trial judge, in support of the decision, plaintiff may use it.").[3]

The Secretary's sole argument on this point is that the witness merely attests to "voting mechanics," not the voter's qualifications, Sec'y Br. 18–19, once again ignoring the plain language of the challenged statute and the VRA itself. As explained above, the voucher rule's application does not turn on the contents of the voucher; the VRA prohibits states from requiring a voter to present any voucher of a third party to prove their qualifications. 52 U.S.C. § 10501 (emphasis added). Section 203B.07 of the Minnesota Statutes requires "a certificate of eligibility to vote by absentee ballot" to be printed on the back of every absentee ballot signature envelope. Minn. Stat. § 203B.07, subd. 3. As the Secretary points out, the voter must sign this certification to "certif[y] their own eligibility" under Section 201.014 of the Minnesota Statutes. Sec'y Br. 19. The "certificate" *also* must

RETRIEVED FROM DEMOCRACYDOCKET.COM

[3] Because the district court denied the Secretary's motion to dismiss and the case is before this Court on a grant of discretionary review, Plaintiffs have not appealed the district court's ruling on this point.

contain a "space for a statement signed by" a qualified witness. Minn. Stat. § 203B.07, subd. 3. This witness statement is part and parcel of the voter's "certificate of eligibility." A certificate of eligibility that is signed by the voter but lacks a signed and properly completed witness statement is invalid and will be rejected. The witness requirement thereby requires voters to "prove" their qualifications "by" the voucher of a witness—regardless of what the witness is actually vouching for.

The Secretary's narrow interpretation not only misreads the VRA's plain language, but it also attempts to straddle two conflicting theories on the role of a witness. Despite claiming that the witness does not vouch for qualifications (to escape liability under the voucher rule), the Secretary later argues that the witness requirement does not violate the materiality provision because "[w]itnesses 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." Sec'y Br. 34. In other words, the Secretary contends that the witness confirms the voter's identity. And that confirmation of identity, the Secretary argues, "is material because it provides assurance that only someone who has certified their own eligibility casts the ballot." *Id.*; *see also Merrill*, 467 F. Supp. 3d at 1225 (acknowledging that witness certification "that the voter is who she says she is" would arguably violate Section 201 of the VRA).

The Secretary cannot have it both ways. If the witness statement is necessary to ensure that only the qualified voter who has signed the certificate casts the ballot, then that voter is "proving" their qualifications "by" the witness's voucher of that fact. And if the Secretary is right that the witness's statement is irrelevant to eligibility, that simply

RETRIEVED FROM DEMOCRACYDOCKET.COM

confirms that errors or omissions on the witness's attestation are by definition immaterial in determining the voter's qualifications. In that case, the witness requirement separately violates the materiality provision of the Civil Rights Act, as explained further below. The Secretary still has not explained how the witness certificate has nothing to do with the voter's qualifications, and yet is "material in determining" whether the "individual is qualified . . . to vote." 52 U.S.C. § 10101(a)(2)(B).

C. The witness requirement may be satisfied only by a registered voter or member of a class.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Secretary briefly argues that the witness requirement does not violate the VRA because the statute designates "multiple, broad, non-arbitrary groups of people who might serve as witnesses," and because an amendment to the statute effective next year will expand the class of witnesses to include any adult citizen. Sec'y Br. 21–22 (citing 2024 Minn. Laws, ch. 112, art. 2, § 12). But the VRA by its plain terms forbids requiring "the voucher of registered voters *or members of any other class*"—without limiting the definition of "class" to particular categories of individuals. 52 U.S.C. § 10501(b). The law need not be restricted to a "single" class to violate the VRA. Nor is this prohibition limited only to arbitrary or narrow classifications. It simply forbids conditioning the right to vote on the voucher of a "class" of individuals.[4]

The VRA does not define the term "class," so the Court "should look to the dictionary definition[]" of the word to determine its "plain and ordinary meaning." *State v.*

---

[4] By contrast, the South Carolina statute in *Thomas v. Andino*, 613 F. Supp. 3d 926 (D.S.C. 2020), did not specify any class of witnesses at all. It merely stated that an absentee ballot "may not be counted unless the oath is properly signed and witnessed." *Id.* at 959.

Haywood, 886 N.W.2d 485, 488 (Minn. 2016); *see also Iverson v. United States*, 973 F.3d 843, 848 (8th Cir. 2020) ("Because the term is not statutorily defined, we consider its ordinary dictionary definition."). Here, the relevant definition of "class" is "a group, set, or kind sharing common attributes." *Class*, Merriam-Webster, perma.cc/UC55-ZWPJ (last updated Oct. 5, 2024); *see also, e.g.*, Black's Law Dictionary (5th ed. 1979) (defining "class" as "[a] group of people, things, qualities, or activities, having common characteristics or attributes."). The phrase "notary public or other individual authorized to administer oaths" refers to a single class of individuals who share a common characteristic or attribute: they are authorized to administer oaths. And a notary public is a member of that class. *See* Black's Law Dictionary (11th ed. 2019) (defining "Notary Public"). "Adult citizens" also satisfy this definition—they share the "common attributes" of being (1) U.S. Citizens and (2) over the age of 18. Thus, by its plain terms, the statute requires the voucher "of registered voters or members of any other class." 52 U.S.C. § 10501(b).[5]

RETRIEVED FROM DEMOCRACYDOCKET.COM

[5] Because the Secretary does not dispute that failure to comply with the witness requirement denies the right to vote under the VRA, *see* 52 U.S.C. § 10501(b), the Court need not reach that issue. *Matter of NorthMet Project Permit to Mine Application Dated December 2017*, 959 N.W.2d 731, 755 (Minn. 2021). But in any event, failure to comply with the witness requirement plainly does deny the right to vote. It is axiomatic that "[t]he right to vote includes the right to have the ballot counted." *Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964) (quotation omitted). Once a state elects to offer a manner of voting to some class of voters—as Minnesota has offered absentee voting to all Minnesota voters—it must do so in a way that complies with federal law. *See Voto Latino v. Hirsch*, 712 F. Supp. 3d 637, 677 (M.D.N.C. 2024) ("[T]he State, having offered the option of voting during [same-day registration], cannot discard [same-day registrants'] ballots due to governmental error and without notice and an opportunity to be heard simply on the ground that the voters should have known not to take such a risk."); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 217 (D.N.H. 2018) ("Having induced voters to vote by absentee ballot, the State must provide adequate process to ensure that voters' ballots are fairly considered and, if eligible, counted.").

III. The district court did not err in finding that Plaintiffs adequately pleaded their claim that Minnesota's witness requirement violates the materiality provision of the Civil Rights Act.

Plaintiffs adequately stated a claim under the materiality provision of the Civil Rights Act, which prohibits election officials from:

> [D]eny[ing] the right of any individual to vote . . . because of an error or omission on any record or paper relating to any . . . 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 materiality provision plainly applies to the witness requirement because the absentee signature envelope bearing the witness certification is a paper requisite to voting absentee in Minnesota. Therefore, Minnesota cannot reject absentee ballots merely because of an "error or omission" in the witness certification, unless that error or omission is material in determining the voter's qualifications. But as Plaintiffs pleaded below, the witness requirement directs election officials to reject absentee ballots for missing witness information or missing witness signatures—even though neither of those omissions are material in determining an absentee voter's qualifications under Minnesota law. Sec'y Br. 47–48. This is a straightforward and well-pleaded violation of the materiality provision.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Secretary's arguments to the contrary are internally inconsistent and distort the text of the Civil Rights Act. The Secretary insists that the unambiguous terms of the materiality provision must apply to only *some* papers or records requisite to voting, rather than "any record or paper relating to any . . . act requisite to voting." 52 U.S.C. § 10101(a)(2)(B). This tortured reading of the statute is transparently motivated by policy

concerns that similarly misrepresent the scope of the materiality provision. *See, e.g.*, Sec'y Br. 30. In short, the Secretary asks this Court to adopt a *minority* view of the materiality provision that is not supported by the weight of authority or the statute's text, structure, purpose, or history.

A. The text of the materiality provision applies to all papers requisite to voting, including Minnesota's absentee signature envelope.

The district court should be affirmed because the materiality provision means what it says. The broad terms of the statute prohibit the denial of the right to vote based on immaterial errors or omissions on "*any* record or paper relating to *any* . . . act requisite to voting." 52 U.S.C. § 10101(a)(2)(B) (emphases added). These terms plainly do not limit or narrow the scope of records or papers subject to the materiality provision, as the Secretary suggests. To reach a contrary reading, the Secretary inverts and distorts the text, asking this Court to forefront the "last clause of the materiality provision." Sec'y Br. 24–25. But the terms, structure, grammar, and surrounding statutory provisions all confirm Plaintiffs' straightforward reading of the statute.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The materiality provision of the Civil Rights Act is structured around two clauses. The primary clause prohibits election officials from "deny[ing] 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." 52 U.S.C. § 10101(a)(2)(B) (emphasis added). Then, in a secondary clause set off with a comma, the provision differentiates among possible errors or omissions based on whether they are "material in determining whether such individual is qualified under State law to vote." *Id.* Election

officials may deny an individual the right to vote only if "such error or omission *is* material in determining" that voter's qualifications. *Id.* In that way, the secondary clause operates solely as a carve-out to the primary clause.

The Secretary's reading inverts the materiality provision by insisting that the secondary clause defines and narrows the primary clause, in violation of the provision's grammar and structure. *Compare Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.*, 97 F.4th 120, 136 (3d Cir. 2024) ("*Pa. NAACP*") (admitting that elevating the secondary clause to define the scope of the materiality provision "is the tail that wags the dog"). In essence, the Secretary views the secondary clause as a modification of the terms "record or paper." Sec'y Br. 24–25. But by its terms, the secondary clause only modifies "error or omission" with the phrase "*such* error or omission," thereby specifying when the right to vote may be denied. 52 U.S.C. § 10101(a)(2)(B) (emphasis added). By contrast, when discussing the kinds of records or papers subject to the materiality provision, Congress used only the *broadest* possible terms: "*any* record or paper relating to *any* application, registration, or other act requisite to voting." *Id.* (emphasis added).

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Secretary also resists the plain meaning of the phrase "other act requisite to voting." Rather than meaning what it says, the Secretary argues that this phrase is redefined by the preceding terms "application" and "registration." Sec'y Br. 25. But this renders the terms "other act requisite to voting" wholly superfluous, as there would be no need for Congress to go further than "application" and "registration" under the Secretary's reading. Moreover, the Secretary overreads "application" as an overly narrow synonym for

"registration." Sec'y Br. 25–26. But some states expressly refer to the envelope enclosing the absentee ballot—akin to Minnesota's signature envelope—as an "absentee ballot application." *See, e.g.*, N.C. Gen. Stat. § 163-230.1. Properly understood, the terms preceding "other act requisite to voting" are simply examples of other kinds of paperwork voters may need to complete before they can vote.

The Secretary's reading also conflicts with the definition of "vote" under the Civil Rights Act, which expressly includes "all action necessary to make a vote effective including, but not limited to, registration or other action required by State law *prerequisite to voting*, casting a ballot, and having such ballot counted and included in the appropriate totals." 52 U.S.C. § 10101(e) (emphasis added). The Secretary confusingly attempts to parry this definition by claiming that it applies to the phrase "deny the right . . . to vote," at the outset of the materiality provision. Sec'y Br. 25. *Plaintiffs agree*. The materiality provision—in subsection (a)—expressly protects against denial of the right to vote. And the definition of "vote" expressly recognizes that this right could be denied at any stage of the voting process—not just at the registration stage. Therefore, any attempt to protect against denial of the right to vote in subsection (a) would have to include every stage of the voting process described in subsection (e). This parallel is confirmed by Congress's use of mirrored language in each section: "other act requisite to voting," in the materiality provision, and "State law prerequisite to voting" in subsection (e).[6] The Secretary's reading

RETRIEVED FROM DEMOCRACYDOCKET.COM

[6] Nearly identical language is also used in the definition of "vote" in the VRA, and no one has suggested that the VRA only applies at the voter registration stage. *See* 52 U.S.C. § 10310 (defining "vote" to include "all action necessary to make a vote effective . . . including, but not limited to,

requires that nearly identical language describing requisites to voting would mean entirely different things across subsections of the same statute.

Finally, the Secretary argues that the materiality provision should be rewritten to match the surrounding provisions, which focus exclusively on voter registration. Sec'y Br. 26. This argument ignores the crucial differences among the subsections of the Civil Rights Act. First, the fact that Congress was able to draft subparts (A) and (C) with an exclusive focus on voter registration demonstrates that Congress knew *how* to draft a narrower provision but chose not to with subpart (B): the materiality provision. Second, the materiality provision is the only subpart that begins with the phrase "deny the right to vote," which demonstrates the broader focus of that provision. Indeed, it would be strange for Congress to expansively define "vote" in subsection (e), only for the operative provisions of the Civil Rights Act to be limited to the voter registration stage.

B. Even looking beyond the text of the materiality provision, the Secretary's reading has no merit.

To justify a distorted reading of the Civil Rights Act, the Secretary argues this Court should look behind the text to evaluate legislative history and policy concerns. Sec'y Br. 28–30. Not only are these extratextual arguments unjustified given the plain, unambiguous meaning of the materiality provision, but they also lack merit. *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009) (holding where "the statutory text is plain and unambiguous" courts must

RETRIEVED FROM DEMOCRACYDOCKET.COM

---

registration, listing pursuant to this chapter, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly").

"apply the statute according to its terms"). The policy and legislative history behind the materiality provision only support Plaintiffs' reading.

Both the Secretary and the federal cases upon which he relies justify departing from the plain text of the materiality provision based on a misplaced concern that all "reasonable election-administration regulations" would violate the materiality provision. Sec'y Br. 30; *see also Pa. NAACP,* 97 F.4th at 134 ("Unless we cabin the Materiality Provision's reach . . . we tie state legislatures' hands in setting voting rules."). But the materiality provision is already limited across four dimensions. First, if an election administration requirement does not manifest as paperwork, the materiality provision does not apply. *See, e.g.*, *Common Cause/Ga. v. Billups*, 439 F. Supp. 2d 1294, 1358 (N.D. Ga. 2006) (rejecting application of materiality provision to photo ID requirement). Second, even among election paperwork, the provision applies only to paper "requisite[s] to voting," not the paper ballot itself. 52 U.S.C. § 10101(a)(2)(B). Third, even if an election paper is subject to the materiality provision, a statutory violation could only occur if a state decided to *reject* ballots based on paperwork errors. *Compare La Union del Pueblo Entero v. Abbott*, 705 F. Supp. 3d 725, 750 (W.D. Tex. 2023) ("*LUPE*") (rejecting materiality provision claim against provisions which did not require that "mail-in ballots be rejected" based on paperwork issues). And fourth, states can reject ballots based on paperwork errors that are *material* in determining the voter's qualifications.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Given the limited application of the materiality provision, there is no threat to election administration writ large. In fact, the Secretary has not provided a *single* example of an election administration regulation that would be imperiled by the materiality

provision. All the Secretary's examples relate to how voters fill out the *ballot* itself, which is *not* covered by the materiality provision. The language of the materiality provision expressly ends its scope at "*requisite[s]* to voting," and does not include the paper vote itself. 52 U.S.C. § 10101(a)(2)(B) (emphasis added). This distinction is also evident in Minnesota statutes. The ballot counting rules are entirely separate statutes that apply only *after* the ballot is separated from the signature envelope and placed in the ballot box. Minn. Stat. §§ 204C.23; 204C.18. Whereas the witness requirement applies to a separate piece of paper—the signature envelope—which is examined *before* the paper ballot is placed in the ballot box. Minn. Stat. §§ 203B.121, 203B.07.

RETRIEVED FROM DEMOCRACYDOCKET.COM

More importantly, the Secretary's artificially narrow reading of the materiality provision would render it wholly ineffective. Under the Secretary's reading—where the materiality provision does not apply "after registration," Sec'y Br. 24—states would be free to impose any paperwork requirement and disenfranchise registered voters for their paperwork errors, even if those errors did not show that a voter was ineligible. Indeed, that is precisely what Minnesota does: it double- and triple-checks an absentee voter's eligibility multiple times after they are already registered. When a registered voter requests an absentee ballot, they must submit information concerning their qualifications—including age and residence—which the Secretary must verify. Minn. Stat. § 203B.04, subd. 1. Then, the voter certifies their eligibility again on the absentee signature envelope. Minn. Stat. § 203B.07, subd. 3. Allowing states to disenfranchise voters based on paperwork errors, so long as the voter is already registered, would eviscerate the purpose of the materiality provision.

Fundamentally, the reading adopted by the Secretary, the Third Circuit, and the *Liebert* court suffer from the misapprehension that determinations of voter eligibility can be cleanly and simply segregated to the voter registration stage. But voter eligibility becomes relevant at several stages of the voting process, as states often revisit, double-check, or confirm voter qualifications. Even assuming that states like Wisconsin and Pennsylvania limit their assessment of a voter's eligibility to the voter registration stage, Minnesota does not. All registered absentee voters must separately attest to their qualifications twice over before voting absentee—once on the request for an absentee ballot, and again on the certificate of eligibility that appears above the witness certification. *See* Minn. Stat. §§ 203B.04 & 203B.07. And Minnesota law instructs the ballot board to ensure that "the voter is . . . eligible to vote" by reviewing the signature envelope before accepting the absentee ballot. Minn. Stat. §§ 203B.121, subd. 2. In that way, the materiality provision would apply to Minnesota's witness requirement even under the Secretary's reading.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Secretary's invocation of legislative history is similarly unavailing. Legislative history cannot create ambiguity or alter the text of the statute. *Bostock v. Clayton County*, 590 U.S. 644, 674 (2020). The statements referenced by the Secretary merely indicate that voter registration was the focus of legislators at the time; not that they intended the statute to be confined exclusively to voter registration. Sec'y Br. 28. Indeed, Congress expressed that focus in the materiality provision itself. It would have been sufficient to draft the materiality provision to apply just to "act[s] requisite to voting," but Congress expressly identified voter registration as an area with a history of arbitrary paperwork requirements.

That addition showed that Congress "intended to remove any doubt that" the provision also applies to voter registration paperwork. *See Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 226–27 (2008). Even if Congress did not expressly anticipate the range of "unexpected" paperwork issues that voters could confront at other stages of the voting process, that is not a legitimate basis to rewrite the "plain terms" of the Civil Rights Act. *Bostock*, 590 U.S. at 676.

Indeed, the weight of authority supports Plaintiffs' reading. Only a divided panel of the Third Circuit and one district court judge in Wisconsin have adopted the Secretary's view. Contrary to the Secretary's representation, the Eleventh Circuit did not "similarly recognize" that the materiality provision only applies to voter registration documents. Sec'y Br. 27. Instead, the Eleventh Circuit merely held that the materiality provision does apply to voter registration papers. *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003). That is why courts within the Eleventh Circuit have repeatedly recognized that the materiality provision applies beyond the voter registration stage. *See*, *e.g.*, *In re Georgia Senate Bill 202*, No. 1:21-CV-01259-JPB, 2023 WL 5334582, at *10 (N.D. Ga. Aug. 18, 2023) (rejecting argument that the materiality provision did not apply to absentee ballot envelope requirements); *Vote.org v. Ga. State Election Bd.*, 661 F. Supp. 3d 1329, 1338 (N.D. Ga 2023) (rejecting argument that the materiality provision did not apply to absentee ballot applications); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308–09 (N.D. Ga. 2018) (applying the materiality provision to absentee ballot envelopes).

The Secretary is also inaccurate in suggesting that multiple "[l]ower federal courts have reached similar holdings." Sec'y Br. 27. The only other court to do so is *Liebert*, 2024

RETRIEVED FROM DEMOCRACYDOCKET.COM

WL 2078216, at *2. Indeed, one of the cases cited by the Secretary applied the materiality provision to absentee ballot envelopes—just like the ones at issue here. *See Org. for Black Struggle*, 493 F. Supp. 3d at 803. And, as noted above, there are several other cases where federal courts have applied the materiality provision outside the voter registration context. *See also LUPE*, 705 F. Supp. 3d at 756-58, *stayed pending appeal sub nom. United States v. Paxton*, No. 23-50885 (5th Cir. Dec. 15, 2023) (applying the materiality provision to absentee ballot envelopes).

C. The witness requirement is not material in determining registered voters' qualifications.

When an absentee voter fails to obtain a witness, or if there is an issue with the witnesses' address information, that voter's absentee ballot must be rejected under Minnesota law. But neither of those errors or omissions—the witness as a whole or the information about the witness—speak to whether the absentee voter is qualified to vote based on their "age, citizenship, residency, or current imprisonment for a felony." *Migliori v. Cohen*, 36 F.4th 153, 163 (3d Cir. 2022), *cert. granted, judgment vacated sub nom. Ritter v. Migliori*, 143 S. Ct. 297 (2022). As a result, these errors or omissions are not "material in determining whether such individual is qualified under State law." 52 U.S.C. § 10101(a)(2)(B).

The Secretary essentially argues that the witness requirement must be "material" because there is a logic behind it, but that framing ignores the unique dangers of conducting election procedures through paperwork. In contrast to in-person requirements—which can be explained, negotiated, repeated, or fixed in the moment—paperwork requirements pose

RETRIEVED FROM DEMOCRACYDOCKET.COM

unique issues because voters often do not have an opportunity to address or correct errors in real time. As the legislative history behind the materiality provision explains, this creates opportunities to "apply[] more rigid standards of accuracy" to some voters, handle paperwork in a dilatory fashion, or fail to timely notify voters of issues with their paperwork. H.R. Rep. No. 88-914 (1963), as reprinted in 1964 U.S.C.C.A.N. 2391, 2491. As a result, it is not enough for the paperwork version to serve "administrative purposes;" it must actually be material in determining whether an absentee voter is qualified to pass muster under the materiality provision. *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406, at *38 (D. Ariz. Feb. 29, 2024).

Finally, even if the witness requirement—as a whole—is considered material in determining a voter's qualifications, the witness's address information is certainly not. Nevertheless, election officials are *directed* to reject absentee ballots if the witness (1) omits their street name or number, (2) omits their city, (3) lists an address that appears to be outside of Minnesota, or (4) lists a P.O. Box as an address. Sec'y Add. 47. None of those pieces of witness information speak to the absentee voter's age, residency, citizenship, or felony status. Indeed, Minnesota election officials do not even endeavor to verify the witness's information, which demonstrates that it is not material to any determination of the voter's qualifications. *Mi Familia Vota*, 2024 WL 862406, at *37.

CONCLUSION

The Court should affirm the district court's denial of the Secretary's motion to dismiss.

RETRIEVED FROM DEMOCRACYDOCKET.COM

DATED: October 15, 2024

Respectfully submitted,

GREENE ESPEL PLLP

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

ELIAS LAW GROUP LLP

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

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

**Admitted Pro Hac Vice by the district court*

RETRIEVED FROM DEMOCRACYDOCKET.COM