No. A24-1134

FILED
June 11, 2025
OFFICE OF APPELLATE COURTS

State of Minnesota
In Supreme Court

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

v.

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

BRIEF OF REPUBLICAN NATIONAL COMMITTEE AND REPUBLICAN PARTY OF MINNESOTA IN OPPOSITION TO PETITION FOR REVIEW

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
(651) 757-1275

Counsel for Respondent

Benjamin L. Ellison (#0392777)
JONES DAY
90 South Seventh Street, Suite 4950
Minneapolis, MN 55402
(612) 217-8800

John M. Gore*
E. Stewart Crosland*
Louis J. Capozzi*
Nathaniel C. Sutton**
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939

Counsel for Proposed Intervenors

**Admitted pro hac vice in District Court*
***Application for pro hac vice pending*

Sybil L. Dunlop
Amran A. Farah
GREENE ESPEL PLLP
222 S. Ninth Street, Suite 2200
Minneapolis, MN 55402
(612) 373-0830

Uzoma N. Nkwonta
Richard A. Medina
William K. Hancock
Marisa A. O'Gara
ELIAS LAW GROUP LLP
250 Massachusetts Ave. N.W.,
Suite 400
Washington, D.C. 20001
(202) 968-4517

Counsel for Petitioners

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii
QUESTIONS PRESENTED 1
STATEMENT OF CRITERIA 1
STATEMENT OF THE CASE 1
ARGUMENT 3
I. THE LEGISLATURE'S AMENDMENT REMOVES ANY BASIS FOR THE COURT'S REVIEW 3
II. THE COURT OF APPEALS' DECISION HARMONIZES WITH EXISTING PRECEDENT. 5
III. THE DECISION BELOW IS CORRECT. 7
CONCLUSION 7

TABLE OF AUTHORITIES

Page(s)

CASES

Bell v. Gannaway,
227 N.W.2d 797 (Minn. 1975) 7

Buzzell v. Walz,
974 N.W.2d 256 (Minn. 2022) 5

DSCC v. Simon,
950 N.W.2d 280 (Minn. 2020) 5

In re Custody of D.T.R.,
796 N.W.2d 509 (Minn. 2011) 3, 4

In re Ga. Senate Bill 202,
2023 WL 5334582 (N.D. Ga. Aug. 18, 2023) 6

La Unión del Pueblo Entero v. Abbott,
705 F. Supp. 3d 725 (W.D. Tex. 2023) 6

Martin v. Crittenden,
347 F. Supp. 3d 1302 (N.D. Ga. 2018) 6

Minn. All. for Retired Ams. Educ. Fund v. Simon,
19 N.W.3d 480 (Minn. Ct. App. 2025) 3, 5–7

Org. for Black Struggle v. Ashcroft,
493 F. Supp. 3d 790 (W.D. Mo. 2020) 7

Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.,
97 F.4th 120 (3d Cir. 2024) 6

People First of Ala. v. Merrill,
467 F. Supp. 3d 1179 (N.D. Ala. 2020) 5

Ritter v. Migliori,
142 S. Ct. 1824 (2022) 6

Thomas v. Andino,
613 F. Supp. 3d 926 (D.S.C. 2020) 4, 5

Thomas v. Andino,
No. 3:20-cv-1552 (D.S.C. May 11, 2020) 5

Timmons v. Twin Cities Area New Party,
520 U.S. 351 (1997) 3, 7

Vote.org v. Ga. State Election Bd.,
661 F. Supp. 3d 1329 (N.D. Ga. 2023) 6

Webster v. Hennepin County,
910 N.W.2d 420 (Minn. 2018) 3

Wichelmann v. City of Glencoe,
273 N.W. 638 (Minn. 1937) 7

STATUTES

52 U.S.C. § 10101 1

52 U.S.C. § 10501 ..... 1, 4

2024 Minn. Laws, Chapter 112, Article 2, § 12, subd. 3 3

Minn. Stat. § 203B.07, subd. 3 ..... 1, 3

OTHER AUTHORITIES

Chief Justice Douglas K. Amdahl, *Appeals to the New Minnesota Court*,
10 WM. MITCHELL L. REV. 623 (1984) 1

Minn. R. Civ. App. P. 117, subd. 2 ..... *passim*

Chief Justice Peter S. Popovich & Erin L. Miller, *Obtaining Review in the Minnesota Supreme Court*, 14 HAMLINE L. REV. 117 (1990) 1

QUESTIONS PRESENTED

Minnesota requires absentee voters to have a witness observe their completion of the absentee ballot. Minn. Stat. § 203B.07, subd. 3. The questions presented are whether the Court of Appeals correctly held—consistent with the precedent of both this Court and other courts—that this Witness Requirement does not violate Section 201 of the Voting Rights Act of 1964, 52 U.S.C. § 10501, or the Materiality Provision of the Civil Rights Act of 1964, 52 U.S.C. § 10101(a)(2)(B).

STATEMENT OF CRITERIA

Minn. R. Civ. App. P. 117, subd. 2(a)–(d).

STATEMENT OF THE CASE

Because "very few cases merit a second appeal," Chief Justice Douglas K. Amdahl, *Appeals to the New Minnesota Court*, 10 WM. MITCHELL L. REV. 623, 624 (1984), this Court requires a particularly compelling justification to grant discretionary review. Only cases that raise "important" legal questions, implicate a statute's constitutionality, involve a lower court's "far depart[ure] from the accepted and usual course of justice," or whose resolution would "help develop, clarify, or harmonize the law" in this State may warrant this Court's intervention. Minn. R. Civ. App. P. 117, subd. 2. In fact, to ensure this Court reviews only the most broadly significant cases, an "effective" petition must ordinarily present a *combination* of these criteria. Chief Justice Peter S. Popovich & Erin L. Miller, *Obtaining Review in the Minnesota Supreme Court*, 14 HAMLINE L. REV. 117, 133 (1990).

Petitioners' Petition presents *none* of them. All agree that the Court of Appeals' decision does not implicate a statute's constitutionality or represent a "far depart[ure]" from

the usual course of justice. Minn. R. Civ. App. P. 117, subd. 2. And it does not raise any important legal question or create a lack of clarity in the law either. *See id.*

In the first place, the Legislature recently amended the Witness Requirement—something Petitioners do not even *mention*. Beginning this year, any adult citizen may serve as a witness in future Minnesota elections. That amendment thus undermines Petitioners' standing and confirms that their effort to revive federal-law challenges to a superseded version of the Witness Requirement does not merit this Court's intervention.

Moreover, while Petitioners suggest that the Court of Appeals' decision "depart[s] from the weight of federal caselaw," Pet. 5, precisely the *opposite* is true. Petitioners do not cite a single case construing Section 201, for an obvious reason: *Every* other court to have considered the question has concluded that witness requirements do not violate Section 201. Petitioners' attempt to show a split of authority on the Materiality Provision fares no better. The Court of Appeals' decision comports with the only on-point appellate precedent, while none of Petitioners' district court opinions involved a witness requirement—and most of those opinions were either unappealable interlocutory orders or remain pending on appeal. The Court of Appeals' reasoned decision not to follow those inapposite and unpersuasive opinions provides no occasion for this Court's review.

Petitioners therefore retreat to rehashing the merits. But this Court is not in the business of error correction, *see* Minn. R. Civ. App. P. 117, subd. 2, and even if it were, there is no error to correct. This Court should deny the Petition.

ARGUMENT

I. THE LEGISLATURE'S AMENDMENT REMOVES ANY BASIS FOR THE COURT'S REVIEW.

The Legislature's recent amendment to the Witness Requirement demonstrates that this case fails all of the criteria for this Court's review. This case has been litigated under a prior statutory regime, which limited witnesses to registered voters, notaries public, or persons authorized to administer oaths. *See* Minn. Stat. § 203B.07, subd. 3 (2023). But as of the new year, any U.S. citizen at least eighteen years old may now serve as a witness. 2024 Minn. Laws, ch. 112, art. 2, § 12, subd. 3.

This amendment creates a significant likelihood that the Court would dismiss Petitioners' appeal for lack of jurisdiction. *See In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011); *Webster v. Hennepin County*, 910 N.W.2d 420, 433–34 (Minn. 2018) (standing to appeal is required to seek the Court's review). The Court of Appeals held that the Alliance established organizational standing because it diverted volunteer time to "connect its members with other local members who are willing and able to serve as a witness" under the prior version of the statute. Am. Complaint, at 4 ¶10; *see Minn. All. for Retired Ams. Educ. Fund v. Simon*, 19 N.W.3d 480, 487 (Minn. Ct. App. 2025). An alleged difficulty finding "qualifying witness[es]" therefore underpinned the Alliance's injury. *Minn. All.*, 19 N.W.3d at 487.

The Alliance, however, has offered no allegation, let alone evidence, of any difficulty finding qualifying witnesses under the *new* version of the statute. *See, e.g.*, Am. Complaint, at 4 ¶10. It is far from obvious that any such difficulty persists now that *any*

adult U.S. citizen may serve as a witness. In any event, without evidence of an ongoing injury, the Alliance has failed to carry its burden to show standing at this stage. *See In re Custody of D.T.R.*, 796 N.W.2d at 512. Thus, at the threshold, the Petition should be denied for lack of standing.

Even setting aside that threshold question, Petitioners' federal-law challenges do not present "important" or unclarified legal questions. Minn. R. Civ. App. P. 117, subd. 2. For one thing, the amended statute underscores the failure of Petitioners' Section 201 claim. A violation of Section 201 occurs only when state law requires a voter to obtain the "voucher *of registered voters or members of any other class*." 52 U.S.C. § 10501(b) (emphasis added). The amended Witness Requirement does no such thing because the undifferentiated adult-citizen population of the United States does not constitute a "class." *Id.*; *accord Thomas v. Andino*, 613 F. Supp. 3d 926, 962 (D.S.C. 2020).

Finally, the amendment forecloses Petitioners' theory of "statewide impact." Pet. 4. Petitioners posit that such an impact is "undeniable" because election officials declined to count "6,000" absentee ballots under the prior version of the Witness Requirement in 2022. *Id.* This is doubly irrelevant. It says nothing about the amended Witness Requirement (which took effect only this year). And "statewide impact" is not a standalone criterion under Rule 117.

Nor could it be because virtually every decision of the Court of Appeals dealing with a state statute has such impact. Rather, the Rule directs the Court to consider first whether a decision "will help develop, clarify, or harmonize the law," and if so, whether "the resolution of the question presented has possible statewide impact." Minn. R. Civ.

App. P. 117, subd. 2(d)(3). Petitioners cannot make that first showing because the Court of Appeals' decision *already* harmonizes the law. *See infra* Part II. In all events, the amendment significantly reduces the "statewide impact" Petitioners allege. Pet. 4. By broadly expanding who may serve as a witness, the amendment will substantially reduce the number of voters who fail to comply with the Witness Requirement in future elections. For this reason as well, the Court should deny the Petition.

II. THE COURT OF APPEALS' DECISION HARMONIZES WITH EXISTING PRECEDENT.

The Court of Appeals' decision *follows*, rather than departs from, the "usual course of justice" and preserves, rather than eliminates, "clari[ty]" and "harmony" in "the law." Minn. R. Civ. App. P. 117, subd. 2(c), (d). Far from charting some novel course, the Court of Appeals used traditional principles of statutory interpretation laid down by this Court. *See Minn. All.*, 19 N.W.3d at 488. Looking first to the text, then to statutory context, and finally to persuasive authority, the decision below mirrored the approach this Court employed in *DSCC v. Simon*, 950 N.W.2d 280, 289–91 (Minn. 2020) and *Buzzell v. Walz*, 974 N.W.2d 256, 261–63 (Minn. 2022).

That approach led the Court of Appeals to come down on the same side as the weight of authority addressing Section 201 and the Materiality Provision. In fact, every court to have considered the question—except the district court in this case—has ruled that witness requirements do not violate Section 201. *See, e.g.*, *Thomas*, 613 F. Supp. 3d at 959–62; *People First of Ala. v. Merrill*, 467 F. Supp. 3d 1179, 1223–25 (N.D. Ala. 2020). The United States Department of Justice, which has authority to enforce Section 201, agrees.

See Statement of Interest of the Department of Justice, ECF No. 47, at 7–11, *Thomas v. Andino*, No. 3:20-cv-1552 (D.S.C. May 11, 2020). The Court of Appeals' alignment with this unanimous authority—which Petitioners again do not even *mention*—hardly "departed" from anything or eroded "harmon[y]" in the law. Minn. R. Civ. App. P. 117, subd. 2(c)–(d).

Moreover, as even Petitioners acknowledge, the Court of Appeals adopted the same reading of the Materiality Provision as the only on-point appellate decision and the lone federal district court opinion postdating that decision. *See* Pet. 7 n.1 (citing *Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.*, 97 F.4th 120, 131–32 (3d Cir. 2024) and *Liebert v. Millis*, 733 F. Supp. 3d 698, 705–06 (W.D. Wis. 2024)). Like the Third Circuit, the Court of Appeals recognized that the Materiality Provision applies only to voter-qualification rules that "restrict *who* may vote," not to vote-casting rules like the Witness Requirement that govern "*how* qualified voters must cast a valid ballot." *Pa. State Conf. of NAACP Branches*, 97 F.4th at 130 (emphasis in original); *see also Minn. All.*, 19 N.W.3d at 493; *accord Ritter v. Migliori*, 142 S. Ct. 1824, 1825 (2022) (Alito, J., dissental).

Petitioners' invocation of "five different federal cases" pre-dating the Third Circuit decision, Pet. 7 n.1, thus does not prove importance or a lack of harmony here. None of those cases involved a challenge to a witness requirement, and the majority involved unappealable interlocutory orders or remain pending on appeal. *See, e.g.*, *In re Ga. Senate Bill 202*, 2023 WL 5334582 (N.D. Ga. Aug. 18, 2023), *appeal pending* No. 23-13085 (11th Cir.); *Vote.org v. Ga. State Election Bd.*, 661 F. Supp. 3d 1329, 1340 (N.D. Ga. 2023) (denial of motion to dismiss); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308 (N.D. Ga.

2018) (birth-year requirement); *La Unión del Pueblo Entero v. Abbott*, 705 F. Supp. 3d 725, 756 (W.D. Tex. 2023), *appeal pending* No. 23-50885 (5th Cir.); *Org. for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790, 803 (W.D. Mo. 2020) (no witness requirement). The Court of Appeals' reasoned decision to side with the Third Circuit and subsequent cases over Petitioners' prior off-point and unpersuasive district court opinions, *see Minn. All.*, 19 N.W.3d at 493–94, provides no basis for this Court's review, *see* Minn. R. Civ. App. P. 117, subd. 2.

III. THE DECISION BELOW IS CORRECT.

Petitioners devote a significant portion of their Petition to rehashing the merits, *see* Pet. 4–8, but this Court is not a court of error, Minn. R. Civ. App. P. 117, subd. 2. Even if it were, there is no error in the Court of Appeals' decision that aligns with the weight of authority. *See supra* Part II. Moreover, as this Court has long held, absentee voting is a "privilege rather than . . . a right," and the Legislature may prescribe "many safeguards" to prevent fraud in absentee voting. *Bell v. Gannaway*, 227 N.W.2d 797, 802–03 (Minn. 1975) (internal quotations omitted); *accord Wichelmann v. City of Glencoe*, 273 N.W. 638, 639–40 (Minn. 1937) (The State need not "let down the bars necessary for honest elections" when they expand the privilege of absentee voting); *accord Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). Denying review would reinforce that commonsense conclusion.

CONCLUSION

The Court should deny the Petition.

Dated: June 11, 2025

Respectfully submitted,

/s/ Benjamin L. Ellison

Benjamin L. Ellison (#0392777)
JONES DAY
90 South Seventh Street, Suite 4950
Minneapolis, MN 55402
Tel: (612) 217-8800
Email: bellison@jonesday.com

John M. Gore*
E. Stewart Crosland*
Louis J. Capozzi*
Nathaniel C. Sutton**
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Tel: (202) 879-3939

Counsel for Proposed Intervenors

**Admitted pro hac vice in District Court*
***Application for pro hac vice pending*

CERTIFICATE OF DOCUMENT LENGTH

I hereby certify that this brief complies with the word limitations of Minnesota Rule of Civil Appellate Procedure 117, subdivision 3, and the typeface requirements of Rule 132.01, subdivisions 1 and 3. This brief was prepared with proportional font using Microsoft Word 365, which reports that the petition contains 1940 words, exclusive of caption, tables, and signature block.

Dated: June 11, 2025

/s/ Benjamin L. Ellison
Benjamin L. Ellison (#0392777)

Counsel for Proposed Intervenors