

STATE OF MINNESOTA
IN THE SUPREME COURT

Minnesota Alliance for Retired Americans
Educational Fund, Teresa Maples, and
Khalid Mohmed,

Appellate Court Case No. A24-1134

Petitioners,

**RESPONDENT'S OPPOSITION TO
PETITION FOR REVIEW**

vs.

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

Respondent.

The Court should deny further review for three reasons. First, Petitioners Minnesota Alliance for Retired Americans Educational Fund, Teresa Maples, and Khalid Mohmed's claims suffer from procedural defects that preclude reaching issues they raise. Second, the review criteria that Petitioners invoke are not satisfied. And third, the court of appeals engaged in a straightforward plain-language analysis to reach an unremarkable result.

ISSUES

Minnesota requires a witness to certify that voters follow certain procedures when voting absentee. Minn. Stat. § 203B.07, subd. 2. Petitioners claim this violates the Voting Rights Act's (VRA) anti-vouching prohibition, 52 U.S.C. § 10501, and the Civil Rights Act's (CRA) materiality provision, 52 U.S.C. § 10101(a)(2)(B). The court of appeals directed dismissal because Petitioners failed to state claims.

STATEMENT OF THE CASE AND FACTS

For over 150 years, Minnesota has required a witness to certify that absentee voters follow procedural requirements. 1862 Minn. Laws Spec. Sess. ch. 1, § 3. These certifications appear on the ballot-return envelopes and have been substantially similar since 1949. *Compare* 1949 Minn. Laws ch. 368, § 2, *with* Minn. Stat. § 203B.07, subd. 3. The certifications generally mirror election-security procedures at in-person polling places.

Witnesses make four certifications for all voters and two additional certifications for unregistered¹ voters:

- the voter showed me the blank ballots before voting;
- the voter marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter;
- the voter enclosed and sealed the ballots in the ballot envelope;
- I am at least 18 years of age on or before the day of the election and a citizen of the United States, or am a notary, or am authorized to give oaths;²


(unregistered only)

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

¹ This brief uses “unregistered voters” for voters who register when voting and “registered voters” for previously registered voters.

² This is the current certification, which has been used for elections after January 1, 2025. As discussed below, the law changed effective January 1, 2024 Minn. Laws ch. 112, art. 2, § 12. The Secretary is in the process of updating the corresponding rule, Minn. R. 8210.0600.

Minn. Stat. § 203B.07, subd. 3; Minn. R. 8210.0600, subps. 1a-1b. Sample envelopes appear below:

Put the Ballot Envelope in here, then seal flap 

Signature Envelope

Voter must complete this section please print clearly

Voter name

Voter MN address MN

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

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

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

Voter Signature ☒

Witness must complete this section

Witness name

Title — only required for authorized officials or notaries

I certify that:


- the voter showed me the blank ballots before voting;
- the voter marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter;
- the voter enclosed and sealed the ballots in the ballot envelope; and
- I am at least 18 years of age on or before the day of the election and a citizen of the United States, or am a notary, or am authorized to give oaths.

Witness Signature ☒

If notary, must affix stamp

For Official Use Only
☐ Accepted ☐ Rejected (reason):

Signature Envelope— Registered

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

Signature Envelope

Voter must complete this section please print clearly

Voter name

Voter MN address MN

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

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

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

Voter Signature ☒

Witness must complete this section

Witness name

Title — only required for authorized officials or notaries

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

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

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

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

☐ Tribal ID card

☐ Notice of late registration

☐ Previous registration in the same precinct

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

I certify that:

- the voter showed me the blank ballots before voting;
- the voter marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter;
- the voter enclosed and sealed the ballots in the ballot envelope;
- the voter registered to vote by filling out and enclosing a voter registration application in this envelope;
- the voter provided proof of residence as indicated above; and
- I am at least 18 years of age on or before the day of the election and a citizen of the United States, or am a notary, or am authorized to give oaths.

Witness Signature ☒

If notary, must affix stamp

For Official Use Only
☐ Accepted ☐ Rejected (reason):

Signature Envelope— Unregistered

These certifications have coexisted with the CRA and VRA since those acts' enactments over 60 years ago without (to the Secretary's knowledge) any challenge. But in 2024, Petitioners sued Respondent Secretary of State Steve Simon. Petitioners—an

organization and two individuals who routinely vote absentee—alleged that Minnesota’s witness requirement has violated the VRA and the CRA for the last 60 years. The district court denied the Secretary’s motion to dismiss, holding that Petitioners stated VRA claims only for unregistered voters and CRA claims only for registered voters. (Add. 41-42, 49.) The court of appeals granted the Secretary’s petition for discretionary review and reversed.

ARGUMENT

While this case raises issues of first impression, the Court should deny the petition for at least three reasons: (1) procedural flaws make this case a poor vehicle for the issues Petitioners raise; (2) Petitioners do not satisfy the review criteria that they invoke; and (3) the court of appeals interpreted straightforward plain language to reach an unremarkable result.

I. PROCEDURAL BARS PRECLUDE REVIEW.

Petitioners brought VRA and CRA claims for both registered and unregistered voters. But statutory changes moot their VRA claim. And Petitioners did not preserve their unregistered-voter CRA claim. These defects make this case a poor vehicle for the petition’s issues.

A. Petitioners’ VRA Claim Is Moot.

An issue is moot and a court cannot reach the merits when a decision is no longer necessary. *Snell v. Walz*, 985 N.W.2d 277, 283-84 (Minn. 2023). Statutory changes affecting who can be a witness render Petitioners’ VRA claim moot. To maintain a VRA claim, Petitioners not only must establish vouching, they have to establish that the vouching must be by “registered voters or members of any other class.” 52 U.S.C. § 10501(b). When

Petitioners started this lawsuit, a witness had to be a registered Minnesota voter, notary, or person authorized to administer oaths. But since January 1, 2025, any adult citizen can serve as a witness. 2024 Minn. Laws, ch. 112, art. 2, § 12. Petitioners ignore this change. Regardless of whether they can prove the vouching element, they cannot establish the class-member element of their VRA claim. The statutory change therefore makes Petitioners' VRA claim moot.

B. Petitioners Failed to Preserve Their Unregistered-Voter CRA Claim.

Petitioners challenge the CRA's application to unregistered voters. (Pet. 8.) But Petitioners did not properly raise this issue to the court of appeals, that court did not address it, and it is not properly before this Court.

In an appeal, respondents must file a notice of related appeal to challenge constituent issues of a decision, even if the decision is in their favor and they normally could not appeal. *Arndt v. Am. Fam. Ins. Co.*, 394 N.W.2d 791, 793-94 (Minn. 1986). Although the district court denied the Secretary's motion, it concluded that Minnesota's witness requirement does not violate the CRA for unregistered voters. Petitioners did not file a notice of related appeal, and the court of appeals appropriately did not address the issue. (Add. 17 n.6.) Petitioners cannot now seek review of it. *See Arndt*, 396 N.W.2d at 793.

II. PETITIONERS DO NOT SATISFY THE CRITERIA FOR REVIEW.

Petitioners assert that this case raises important questions of first impression and that the court of appeals' decision has statewide impact. Neither criterion is satisfied.

A. Petitioners' Claims Are Novel Only Because Witness Requirements Have Longstanding Acceptance Under Federal and State Law.

Petitioners note that this case involves questions of first impression regarding decades-old federal voter protections. (Pet. 4.) But that does not mean these questions merit review. Rather, the 60-year coexistence of the VRA, CRA, and witness requirement without legal challenge is because they do not conflict. *Cf. City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 166 (Minn. 2017) (considering half-century of unchallenged practice in deciding whether civil rights were violated). Indeed, this Court has long recognized—even post-VRA and CRA—absentee voting procedures' permissibility as an election-integrity tool, due to voting occurring outside of the polling place. *E.g., In re Contest of Gen. Election Held on Nov. 4, 2008*, 761 N.W.2d 453, 462 (Minn. 2009); *Bell v. Gannaway*, 227 N.W.2d 797, 803 (Minn. 1975); *Wichelmann v. City of Glencoe*, 273 N.W. 638, 639-40 (Minn. 1937).

The court of appeals also rightly rejected Petitioners' related assertion that the weight of federal caselaw supports them. (Add. 20-22.) Regarding the VRA, federal courts have uniformly concluded that "a witness does not vouch for a voter's qualifications by simply confirming with a signature what he or she observed." *E.g., Liebert v. Millis*, 733 F. Supp. 3d 698, 705 (W.D. Wisc. 2024) (collecting cases). And regarding the CRA, the only circuit to squarely address the issue held that the materiality provision did not apply to absentee ballot envelopes. *Penn. State Conf. of NAACP Branches v. Sec'y Commonwealth of Penn.*, 97 F.4th 120, 127, 131 (3d Cir. 2024), *cert. denied*, 145 S. Ct. 1125 (2025).

B. The Court of Appeals' Decision Does Not Have Statewide Impact.

Petitioners also incorrectly assert that the court of appeals' decision has statewide impact, claiming that the decision "eliminated protections that voters have depended on for more than half a century." (Pet. 5.) The decision had no impact; it merely maintained longstanding existing procedures. Aside from the recent change *expanding* who can be a witness, Minnesota's absentee-voter protections are the same today as they were before Petitioners sued.³

III. THE COURT OF APPEALS DECISION IS UNREMARKABLE.

Petitioners mostly argue that the court of appeals decided the case incorrectly. (Pet. 5-8.) But this Court is not an error-correcting court, and mere allegations of error are not grounds for review. Moreover, the court of appeals correctly applied straightforward plain language to reach an unremarkable result that does not necessitate review.

A. The Witness Requirement Complies with the VRA.

The VRA prohibits requiring voters to prove their qualifications by the "voucher" of registered voters or members of any other class. 52 U.S.C. § 10501(b). The court of appeals correctly applied dictionary definitions to conclude that "a person vouches for another if they give their personal assurance as evidence to prove or verify something for

³ Petitioners also assert that more than 6,000 absentee ballots were rejected due to the witness requirement in 2022. (Pet. 4.) This number is outside the record and lacks context. For example, rejections may have nothing to do with the inability to find a witness. Rather, if witnesses refused to sign because voters failed to follow voting procedures or could not provide a proof of residency document, then the certifications properly ensured that voting procedures were followed. Nor does the number indicate whether those voters were otherwise eligible to vote.

the other.” (Add. 11.) Thus, vouching requires a witness to personally assure the voter’s eligibility to vote.

The court correctly held that the witness requirement does not require vouching. (Add. 12-16.) Instead, witnesses attest only to registration mechanics, voting mechanics, and voter conduct. While witnesses attest that the unregistered voters “provided” a permissible type of proof of residence, the witness does not personally assure that the document’s information is valid or accurate. Instead, that verification happens on the backend; county auditors must verify all new voter registrations and investigate any discrepancies. Minn. R. 8200.5500, subp. 2. Consequently, the witness requirement is not an illegal voucher under the VRA.

B. The Witness Requirement Complies with the CRA.

The materiality provision prohibits denying voting rights based on errors on “any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified.” 52 U.S.C. § 10101(a)(2)(B). Because it is undisputed that the witness certifications are not part of registered voters’ applications or registrations, the court of appeals focused on whether the residual “other act requisite to voting” covered the witness certifications. (Add. 17.) The court again relied on a routine plain-language analysis to conclude it did not.

First, as a residual clause, the “other act” clause is limited to acts like “applications” and “registrations” that test qualifications, not vote-casting procedures. *Fischer v. United States*, 603 U.S. 480, 486-87 (2024). Second, because the materiality provision addresses

errors that are immaterial to determining qualifications, its target is limited to documents used for such determinations. 52 U.S.C. § 10101(a)(2)(B). Third, surrounding CRA provisions focus on conduct when determining qualifications. *Id.* § 10101(a)(2)(A), (C). And the remedy for violations is declaring the individual qualified to vote, reflecting that—once qualification determinations are made—the provision has no further work to do. *Id.* § 10101(e). Finally, because of the CRA’s broad definition of “vote,” reading “act requisite to voting” to include the witness certifications would illogically collapse “vote” and “act requisite to voting.” *See id.*

Although the text is clear, legislative history underscores this conclusion. Congress did not intend the narrow materiality provision to serve as a broad vehicle for addressing every concern of the Civil Rights era. The provision’s legislative history discussed only voter-registration procedures, not post-registration activities. *See generally* H.R. Rep. No. 88-914, pt. 1, at 19 (1963), *as reprinted in* 1964 U.S.C.C.A.N. 2391, at 2394. Additionally, absurd consequences would follow from a broader application. Petitioners’ interpretation would allow voters to disregard necessary election-administration regulations, such as marking ballots in a way readable by a tabulation machine or prohibiting identifying marks on ballots that would destroy ballot secrecy. *See, e.g.,* Minn. Stat. §§ 204C.18, subd. 2, 204B.36, subd. 2; Minn. R. 8210.0500, subps. 2-3, 8250.1810, subp. 4.

CONCLUSION

Because the petition does not meet the criteria for further review, the Court should deny the petition.

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Respectfully submitted,

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