STATE OF MINNESOTA
IN SUPREME COURT

Case No. A24-1134

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.

REPLY BRIEF OF PETITIONERS MINNESOTA ALLIANCE FOR RETIRED AMERICANS EDUCATIONAL FUND, TERESA MAPLES, AND KHALID MOHAMED

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INTRODUCTION

The Secretary's brief confirms that Minnesota's witness certification for absentee voters is merely "observational" and offers no substantive insight into a voter's qualifications. It does not confirm a voter's age, citizenship, residency, or felon status—the voter's declaration covers that. Nor does it verify the voter's identity: instead, the voter is required to enter their driver's license number or the last four digits of their social security number on the ballot envelope for election officials to review. But a voter who wishes to register and cast a mail ballot in Minnesota must nonetheless obtain a witness's endorsement as proof of their qualifications in order to have their ballot counted. These undisputed facts, among others set forth in Plaintiffs' Complaint, plainly state a claim for relief under the Voting Rights Act's (VRA) voucher rule and the Civil Rights Act's (CRA) materiality provision.[1]

The Secretary offers a diluted version of these landmark civil rights laws and repeatedly asks the Court to assume Congress did not mean what it said. For instance, where the VRA's voucher rule prohibits any requirement that a voter "prove his qualifications *by* the voucher of . . . members of any other class," 52 U.S.C. § 10501(b) (emphasis added), the Secretary insists that the VRA is triggered only when the witness vouches "*for*" the voter's qualifications.

[1] 52 U.S.C. § 10501(b) (voucher rule); *id.* § 10101(a)(2)(B) (materiality provision).

But by its plain terms, the prohibition applies whenever a voucher is the state's chosen vehicle for establishing voter qualifications—regardless of the voucher's content. The Secretary's atextual gloss would render the VRA powerless to address the most pernicious voucher requirements precisely because they are irrelevant to voter qualifications—a gaping loophole that Congress never authorized.

The Secretary also attempts to rewrite the CRA's materiality provision by cabining clear statutory text prohibiting states from denying an individual the right to vote based on an immaterial "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), to "registration" documents only. The Secretary's view that "application," "registration," and "other act requisite to voting" all mean the same thing—"registration"—grossly misapplies the *ejusdem generis* canon of construction and renders key statutory terms superfluous. But even under the court of appeals' narrow approach, the signature envelope—the "paper" on which the witness certification appears—is plainly a document related to "registration *or other assessment of the voter's qualifications*," Add. 24 (emphasis added), and as the Secretary's own concessions establish, that document is not material in determining voter qualifications. That is a straightforward violation of the CRA.

Without any clear answers to the plain text interpretation put forth by Plaintiffs, the Secretary hides behind contrived procedural arguments in an attempt to dissuade the Court from reaching the merits of Plaintiffs' VRA and CRA claims. None holds water. Plaintiffs did not "forfeit" any of their arguments, as their briefing below makes clear, and the Secretary's insistence that Plaintiffs were required to file a cross-appeal from a favorable judgment in order to advance an alternate basis for affirmance "is an unusual position, and one contrary to the manner in which [appellate] courts ordinarily behave." *Jennings v. Stephens*, 574 U.S. 271, 277 (2015).

The Court should reject these novel theories, apply the plain text of Congress's civil rights laws, and reverse the court of appeals.

ARGUMENT

I. Plaintiffs plausibly alleged a violation of the Voting Rights Act's voucher rule.

When a voter fills out their ballot and registers by mail, Minnesota law places an intermediary between the voter and election officials: a witness must review the voter's residency document, and then complete the witness certification, assuring election officials that the voter has proved his or her qualifications. Minn. R. 8210.0600, subps. 1b; Minn. Stat. § 203B.07, subd. 3. Without this critical step—and the witness's certification under oath—the voter's registration will be rejected, and the vote will not count because the

voter has failed to "prove his qualifications by" the required vehicle of the witness's "voucher." 52 U.S.C. § 10501(b). That is precisely what the VRA prohibits.

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

The Secretary's interpretation of the voucher rule substitutes his preferred terms for the statutory text and urges the Court to adopt language that Congress did not pass. As Plaintiffs have explained, the voucher rule's plain text prohibits any requirement that a person "prove his qualifications *by the voucher of* registered voters or members of any other class." 52 U.S.C. § 10501(b) (emphasis added). In this context, the word "by" means "through or through the medium of."[2] Thus, the voucher rule's plain language prohibits the use of a voucher as an instrument to prove qualifications.

The Secretary's interpretation inverts the structure of this provision and urges the Court to assume Congress meant to prohibit only vouchers that attest to the voter's qualifications. The biggest problem with this argument is that the provision says no such thing, as illustrated by the Secretary's various attempts to paraphrase his away around statutory text. *See, e.g.*, Resp. Br. 12 (arguing the vouching rule applies when a voter must "obtain . . . personal

[2] *By*, Webster's Seventh New Collegiate Dictionary 114 (1965), https://archive.org/details/webstersseventhn0000merr/page/n5/mode/2up.

assurance of the voter's ability to vote"). The phrase "by the voucher of" expressly prohibits all vouchers that are *used* to prove a voter's "qualifications" regardless of whether the witness is vouching *for* the voter's qualifications or something entirely irrelevant to voter eligibility. 52 U.S.C. § 10501(b).

And this makes sense: the same provision categorically prohibits literacy tests and "good moral character" requirements as a prerequisite for voting because Congress was concerned that these "test[s] [and] device[s]," including vouchers, would be used to perpetuate discrimination in voting. *See United States v. Bd. of Comm'rs of Sheffield*, 435 U.S. 110, 119 & n.9 (1978) (interpreting section 4(a) of the VRA, which uses identical language in defining "tests and devices"). Under the Secretary's interpretation, unnecessary vouchers that merely serve as pretext to weed out certain categories of voters would be permissible under 52 U.S.C. § 10501 because the content of the voucher is irrelevant to voter qualifications. In other words, this particular "test or device" would be permitted for precisely the reason that Congress sought to prohibit them in the first place. That would be nonsensical.

As the court of appeals acknowledged: "a voter proves their eligibility to vote by another's voucher if another person's assurance is the evidence that [according to state law] proves the voter's eligibility." Add. 14. For previously unregistered voters, that is precisely what the witness certification does. *See* Minn. Stat. § 201.014, subd. 1 (requiring a witness to give "personal

assurances" that the voter provided "proof" of residence—an eligibility requirement). Without a witness's attestation and signature, the voter's attestation is insufficient, and the ballot will be rejected. It is no defense that the State's chosen method of proving qualifications—a witness voucher that provides little information about the voter—has no evidentiary value and only a tenuous relationship to the Secretary's stated purpose. That simply confirms that the witness certification is also immaterial in determining voter qualifications, in violation of the CRA. *See infra* Part II(B)(2).

Finally, the Secretary's reliance on *Thomas v. Andino*, 613 F. Supp. 3d 926 (D.S.C. 2020), *Liebert v. Millis*, 733 F. Supp. 3d 698 (W.D. Wis. 2024), and *People First of Ala. v. Merrill*, 467 F. Supp. 3d 1179 (N.D. Ala. 2020), is misplaced. As Plaintiffs have explained, *see* Pet'rs.' Br. 18, those statutes did not require the witness to certify that the voter had shown "proof" of residence or any other qualification to vote, nor did they apply to the voter registration process—in each of these cases, the plaintiffs challenged a witness requirement for absentee voters who were *already* registered to vote. *Thomas*, 613 F. Supp. 3d at 961 (witness must "confirm that the voter completes the voter's oath and signs the document"); *Liebert*, 733 F. Supp. 3d at 705 (witness must certify that "the voting procedure was executed" as stated in the voter's certification (citation omitted)); *People First*, 467 F. Supp. 3d at 1225 ("The witnesses' signature indicates only that they observed the voter sign the

affidavit."). The witness certification therefore was not used to "prove" the voter's "qualifications." 52 U.S.C. § 10501(b). Contrary to the Secretary's view, this distinction makes *all* the difference.

B. Witnesses must be members of a class.

The witness requirement also limits the persons who may serve as witnesses to a "class" of individuals within the plain meaning of the term: specifically, those who share the "common attributes" of being (1) U.S. Citizens and (2) over the age of 18. *Class*, Merriam-Webster, https://perma.cc/Q5PU-WAFV (last visited Oct. 5, 2025); *see also Class*, Black's Law Dictionary (4th rev. ed. 1968) ("a body of persons uncertain in number"; "a group of persons, things, qualities, or activities, having common characteristics or attributes"). Neither the Secretary's misplaced procedural arguments nor his illogical textual analysis can avoid this straightforward conclusion.

1. Plaintiffs did not "forfeit" this issue. *See* Resp. Br. 19. The question whether adult citizens constitute a "class" is necessarily subsumed within the first question presented in Plaintiffs' petition for review: whether the witness requirement violates the VRA's voucher rule as applied to unregistered voters. *See* Pet. for Review at 1 ("Section 201 of the VRA prohibits requiring a voter to 'prove his qualifications by the voucher of registered voters *or members of any other class*.' 52 U.S.C. § 10501." (emphasis added)). The petition stated Plaintiffs' position that the witness requirement violates the voucher rule and

briefly addressed why the court of appeals' contrary position was wrong. *Id.* at 6. Because the court of appeals erroneously held that the witness requirement is not a "voucher," it did not reach the question whether it is a voucher of a member of a "class." Plaintiffs were not required (and it would have been illogical) to assign error to a legal conclusion the court of appeals did not reach.

2. Nor is this issue moot because Minnesota amended its law during the pendency of this appeal. *See* Resp. Br. 19. To be sure, the legal question is now slightly different than that addressed by the district court: the question is now whether "adult citizens," rather than notaries and other individuals "authorized to administer oaths" qualify as a "class." But that does not mean "a decision on the merits is no longer necessary or an award of effective relief is no longer possible." *State ex rel. Ford v. Schnell*, 933 N.W.2d 393, 401 (Minn. 2019) (citation omitted). The witness requirement remains in effect and the resultant injury to Plaintiffs is ongoing. Notably, the Secretary no longer contests Plaintiffs' *standing* to challenge the witness requirement. Resp. Br. 11 n.5. And if Plaintiffs still have standing, the claim cannot be moot. *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005) ("[M]ootness can be described as the doctrine of standing set in a time frame: the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." (citation omitted)).

The Secretary's real complaint seems to be that the district court did not have an opportunity to address this question in the first instance. At best, that is an argument for remand, not mootness. But remand is not necessary here because the question is purely legal and the analysis is not meaningfully different from the district court's analysis of the prior version of the statute. *Cf. State v. Her*, 781 N.W.2d 869, 875 (Minn. 2010) (explaining that remand is appropriate when an intervening change in law requires the finding of additional facts).

3. Finally, the Secretary identifies no statutory text that would support his arbitrary determination that a class of "adult citizens" is too big to satisfy the statute's definition. The closest support the Secretary offers is *Thomas v. Andino*, Resp. Br. 20-21, which addressed a witness requirement that "does not specify who must witness the oath," other than requiring that the witness be an adult. 613 F. Supp. 3d at 962; S.C. Code Ann. § 7-15-380. Minnesota's requirement is not so broad: it is limited to adult *citizens*—a class of persons that has at least one more "common attribute" than did the allowed witnesses in *Thomas*—and excludes the approximately 12.8 million lawful residents of the United States who have not been granted citizenship.[3]

[3] *See* Sarah Miller, *Estimates of the Lawful Permanent Resident Population in the United States and the Subpopulation Eligible to Naturalize: 2024 and Revised 2023*, U.S. Dep't of Homeland Sec., Off. of Homeland Sec. Statistics, at

Furthermore, the Secretary's observation that the "the witness requirement allows multiple types of individuals to serve as witnesses," Resp. Br. 21, would apply to virtually any conceivable "class," defined at any level of generality. Even the class of "registered voters" specifically referenced in the VRA covers "multiple types of individuals"—including registered voters of different races, different ages, and different occupations. 52 U.S.C. § 10501(b) (prohibiting requirement that voters prove qualifications "by the voucher of registered voters or members of any other class"). The Secretary's attempt to draw a distinction between a singular "class" and multiple "classes" is not well founded.

II. Plaintiffs plausibly alleged a violation of the Civil Rights Act's materiality provision.

The court of appeals also erred in dismissing Plaintiffs' claim under the CRA's materiality provision. As Plaintiffs argued in their opening brief (at 21-33), the appellate court seriously distorted the materiality provision's text, as well as the surrounding context in the CRA. Respondents' defense of that reasoning commits the same errors. But even were Respondents right about the materiality provision's scope, the witness requirement would still fail.

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3 (Sep. 2024), https://ohss.dhs.gov/sites/default/files/2024-11/2024_1108_ohss_lawful_permenent_resident_population_estimate_2024_and_revised_2023.pdf.

A. The materiality provision is not limited to "registration" documents.

Plaintiffs explained in their opening brief that the court of appeals made the critical error of conflating the materiality provision's "document type" clause with its "error type" clause. *See* Pet'rs.' Br. 23-28. Specifically, it read the provision's *carve-out* for "error[s] or omission[s]" that are "material in determining whether" a voter "is qualified under State law to vote," as narrowing the universe of "record[s] or paper[s] relating to any application, registration, or other act requisite to voting" that are subject to the materiality provision in the first place. From that error, it concluded that the provision applies only to papers related to voter registration. Add. 19-20. This reading fails to give meaning to the materiality provision's broad protections for errors and omissions in "*any* record or paper relating to *any* . . . act requisite to voting." 52 U.S.C. § 10101(a)(2)(B) (emphasis added).

1. Respondents ignore basic tenets of statutory interpretation.

The Secretary's attempt to overcome the plain meaning of Section 10101(a)(2)(B) comes up short in several respects:

a. To support his view that "the materiality provision does not apply to errors in documents used *after* 'determining whether [an] individual is qualified,'" the Secretary invokes *ejusdem generis*—that "a word may be known by the company it keeps." Resp. Br. 24 (citations omitted). But his argument

that the catch-all phrase covering "any . . . act requisite to voting" must, like "application and registration," include only "acts that test voter qualifications," *id.* at 25, is circular, for it does not adequately explain why "application" is so limited in the first place. If the term "application" is limited to "acts that test voter qualifications," "application" and "registration" would overlap entirely, and the former would be superfluous—not to mention inconsistent with Minnesota law, which uses the term "application" to refer to procedures outside voter registration. *See* Pet'rs.' Br. 25; *see also, e.g.*, *Vote.org v. Ga. State Election Bd.*, 661 F. Supp. 3d 1329, 1340 (N.D. Ga. 2023) (applying the materiality provision to a requirement that voters sign an absentee ballot application in ink).

Even if "application" performed some additional work under this reading, the expansive language Congress chose for the catch-all, "*any* . . . other act requisite to voting," would be meaningless. *Ejusdem generis* cannot be employed to "render the general words meaningless." *Orme v. Atlas Gas & Oil Co.*, 13 N.W.2d 757, 765 (Minn. 1944). Instead, Plaintiffs' reading, which defines the "class" preceding the residual clause to include any document required to execute a paper ballot, adequately constrains the provision's reach while respecting the words Congress chose to employ.

In any event, the Secretary's framing of the materiality provision's scope, even if correct, would not save Minnesota's witness requirement. The process

of determining whether an individual is qualified to vote does not end at registration. *See Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.*, 97 F.4th 120, 153 n.26 (3d Cir. 2024) ("*Pa. NAACP*") (Schwartz, J., dissenting); *see also* 52 U.S.C. § 21083(a)(2)(A)(iii) (procedures for identifying and removing ineligible voters—who were previously registered—from the registration rolls). And Minnesota law confirms this: ballot boards must review absentee ballot signature envelopes—the same document that contains the witness certification—to ensure "the voter is . . . eligible to vote" before accepting the ballot. Minn. Stat. § 203B.121, subd. 2. The materiality provision unquestionably applies to the signature envelope.

b. The Secretary's argument that the remedy available in an enforcement action limits the materiality provision's scope misunderstands the statute's enforcement scheme and the plain text of the remedy provision itself. *See* 52 U.S.C. § 10101(e). For one, the Secretary ignored the first statutory remedy: the Attorney General has broad authority to seek a "permanent or temporary injunction, . . . or other order" against "any act or practice" that would violate the materiality provision. *Id.* § 10101(c). The declaratory order that the Secretary invokes as evidence of the materiality provision's scope is a limited, supplemental remedy reserved for instances when the Attorney General can make a heightened showing that (1) the voter was deprived of their rights "on account of race or color," and (2) "such deprivation was

pursuant to a pattern or practice," neither of which are required to demonstrate a straightforward materiality provision violation. *Id.* § 10101(e). The Secretary also omits that the materiality provision is privately enforceable under 42 U.S.C. § 1983—the very basis for bringing this suit. *See, e.g.*, *Vote.Org v. Callanen*, 89 F.4th 459, 475 (5th Cir. 2023). The specific relief that Congress has authorized for materiality provision violations is *much* broader than the Secretary claims.

c. The Secretary's contextual arguments are similarly unpersuasive. Relying on surrounding provisions in the CRA, which expressly prohibit discrimination and the use of literacy tests "as a qualification for voting," *see* Resp. Br. 25-26 (emphasis omitted) (quoting 52 U.S.C. § 10101(a)(2)(A), (C)), the Secretary argues that the materiality provision too must apply "only to . . . errors before qualifications are determined." *Id.* at 26. But the materiality provision is structurally distinct from the other two clauses. As Plaintiffs argued (Br. 26), neither of those surrounding provisions—Section 10101(a)(2)(A) and 10101(a)(2)(C)—prohibits "deny[ing] the right of any individual to vote" by its own terms; but the materiality provision does. It thus makes sense that the materiality provision would have a different scope than the other two—after all, "distinctions in [statutory] language in the same context are presumed to be intentional." *In re Stadsvold*, 754 N.W.2d 323, 328-39 (Minn. 2008).

d. Finally, the Secretary fails to reconcile his narrow interpretation of the materiality provision with Congress's intentionally expansive definition of "vote" in the CRA. *See* 52 U.S.C. § 10101(a)(3), (e). He concedes, as he must, that this definition includes any "action necessary to make a vote effective," Resp. Br. 27 (citation omitted), but the statute doesn't stop there: it identifies the various stages of the voting process that are covered by the materiality provision's broad protection of the right to vote, including actions prerequisite to "voting," "casting a ballot," and "having such ballot counted." 52 U.S.C. § 10101(e). In other words, the statute expressly prohibits state officials from "deny[ing] the right of an[] individual to" engage in any of the activities listed under subsection (e)'s definition of "vote." *Id.* § 10101(a)(2)(B). The Secretary offers no cogent explanation as to how the materiality provision can protect both "registration" *and* "actions prerequisite to . . . having [a] ballot counted," while simultaneously excluding the latter from its ambit. Because a Minnesotan must satisfy the witness requirement "to make a vote effective," it is both an "act requisite to voting," and is protected by the statutory right to "vote" itself.

2. The Secretary's extratextual arguments are unpersuasive.

Without identifying any ambiguity in the materiality provision's text, the Secretary turns to (1) legislative history, and (2) the canon against

absurdity, to support narrowing the materiality provision's scope to voter registration. Because the text alone resolves this case for Plaintiffs, the Court need not reach these arguments. But they are unpersuasive in any event.

The Secretary first points to the fact that Congress was particularly concerned with voter registration to prove that registration was its *exclusive* concern. *See* Resp. Br. 31-32. No doubt, Congress meant to eradicate pernicious racial discrimination in the voter registration process. But if registration was *all* that concerned Congress, it certainly knew how to say so. Instead, it included a catch-all provision to extend the materiality provision's protections to any denial of the right to vote for any immaterial paperwork error. The whole point of such a provision is that "it serves as a catchall for acts that Congress could not, at the time of enactment, have foreseen and specified." *Been v. O.K. Indus., Inc.*, 495 F.3d 1217, 1229 (10th Cir. 2007). The move is not surprising—Congress intended for the CRA to be a sweeping remedial statute, eradicating inequalities in the exercise of civil rights, including the right to vote. Affording the text its broadest sweep honors that purpose and intent—the Secretary's interpretation distorts it. *See Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543-44 (Minn. 1995) ("When engaging in statutory construction, we interpret remedial legislation broadly to better effectuate its purpose."); *Pascutoi v. Washburn-McReavy Mortuary, Inc.*, No. 4-75-Civil 110, 1975 WL 3615, at *2 (D. Minn. July 2, 1975) ("[T]he Civil Rights

Act of 1964 . . . [is] remedial in nature and should be given the broadest interpretation consistent with [its] benevolent purpose.").

Next, the Secretary claims the district court's interpretation of the materiality provision would produce absurd results, ineluctably invalidating scores of "longstanding and reasonable election-administration regulations." Resp. Br. 33. Plaintiffs have already explained why that concern is unfounded. *See* Pet'rs' Br. 29. The materiality provision is limited in four critical ways: (1) it applies only to paperwork errors; (2) even among paperwork errors, the provision does not apply to *ballots*; (3) it has no impact on regulations that do not require the state to reject ballots for a paperwork error; and (4) states may still reject ballots for paperwork errors that are, in fact, material in determining a voter's qualifications. *See id.*

The Secretary broadly insists that these "supposed limitations . . . do not withstand scrutiny." Resp. Br. 33. Yet there is no "scrutiny" to be found. The Secretary simply ignores most of the limitations that Plaintiffs identify above. His absurdity argument instead rests entirely on his view that the district court's construction of the materiality provision would extend to regulations of how to fill out a paper ballot. But nothing about Plaintiffs' position here compels the conclusion that the materiality provision encompasses the ballot itself—indeed, faithful application of *ejusdem generis* would preclude it. *Supra* Part II(A)(1). No court has *ever* applied the materiality provision to a ballot,

including those that have adopted Plaintiffs' view. And neither the Secretary's nor the RNC's (at 23-24) parade of horribles about the fate of ballot-casting requirements not challenged here justifies departing from the plain text of the statute Congress wrote. *Cf. Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 794 (2014).

Lastly, the Secretary leverages the few federal courts to agree with him on this issue, but he overplays his hand. Plaintiffs acknowledge that the Third Circuit and the District of Wisconsin have come down on the other side of this debate. But Plaintiffs have explained (Pet'rs' Br. 28-29) why the Court should not treat those decisions as persuasive. Both decisions deviate from the text and rely on legislative history and unfounded policy concerns. *Pa. NAACP*, 97 F.4th at 134 ("Unless we cabin the Materiality Provision's reach . . . we tie state legislatures' hands in setting voting rules."). And even within the Third Circuit, *Pa. NAACP*'s ruling is controversial. Not only did the opinion draw a strong dissent, but it was also directly contrary to an earlier opinion by *the same court* that had been vacated only on mootness grounds. *Migliori v. Cohen*, 36 F.4th 153, 162 n.56 (3d Cir. 2022) ("We find that the mail-in ballot squarely constitutes a paper relating to an act for voting."), *cert. granted, judgment vacated sub nom. Ritter v. Migliori*, 143 S. Ct. 297 (2022).

The Secretary mischaracterizes the remaining cases he cites on this issue. At the federal circuit level, the Secretary cites *United States v. Paxton*,

148 F.4th 335, 340 (5th Cir. 2025), as holding that the materiality provision "does not cover records or papers provided during the vote-casting stage." That was not the court's holding, but rather a reference to *Pa. NAACP*, which the Fifth Circuit described as "persuasive" but did not adopt. *See id.* Nor did the court conduct its own analysis of the statutory text. And *Schwier v. Cox*, 340 F.3d 1284 (11th Cir. 2003), did not address the materiality provision's intended reach at all—only whether it was privately enforceable under Section 1983, *id.* at 1294-97. Indeed, the court of appeals criticized the Secretary's reliance on *Schwier* as an "overstate[ment]" for this same reason. *See* Add. 23 n.8

The district court cases the Secretary cites move the needle no further. *Organization for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790, 803 (W.D. Mo. 2020), *applied* the materiality provision to a regulation concerning applications for mail ballots—which would fall outside of the Secretary's narrow construction of the provision's reach. In *Common Cause/Ga. League of Women Voters of Ga., Inc. v. Billups*, 439 F. Supp. 2d 1294 (N.D. Ga. 2006), the court held the materiality provision did not apply to a photo ID requirement because it was "not an 'error or omission on any record or paper'"—not because the requirement does not apply after the registration stage. *Id.* at 1357-58 (quoting *Ind. Democratic Party v. Rokita*, No. 1:05-CV-0634-SEB-VSS, 2006 WL 1005037, at *48 (S.D. Ind. Apr. 14, 2006)). The same is true of *Friedman v. Snipes*, 345 F. Supp. 2d 1356, 1372 (S.D. Fla. 2004), where the court held

that "omitting [*a*] *ballot as a whole* from the batch of absentee ballots to be counted" was not an "error or omission in filling out the absentee ballot[]." In fact, *Friedman* supports Plaintiffs' reading: the court recognized that "the express language of the [materiality] provision" applied to "the counting of ballots by individuals *already deemed qualified* to vote." *Id.* at 1371 (emphasis added). Finally, *Condon v. Reno*, 913 F. Supp. 946, 950 (D.S.C. 1995), did not involve a claim under the materiality provision at all. It merely noted in passing that the CRA prevents states from "den[ying] registration because of errors that were not material in determining eligibility,"—which, of course, it does. *Id.* In short, not one of these cases offers anything more than dicta suggesting that Congress was *particularly* concerned about practices at the registration stage, but not exclusively so.

B. Even under the court of appeals' narrowed interpretation, the witness requirement is subject to and violates the materiality provision.

Even if absentee ballot envelopes usually do not trigger the materiality provision's protections, Minnesota's do. As Plaintiffs explained in their opening brief (at 34-43), the witness requirement is just one part of a larger "certificate of eligibility" contained on the signature envelope. Minn. Stat. § 203B.07, subd. 3. Because the certificate of eligibility *does* relate to a voter's qualifications, it necessarily violates federal law: if the witness requirement is material in determining voter qualifications, then it violates the voucher rule, as explained

above. *Supra* Part I(A). If it is *not* material, then it violates the materiality provision.

Tellingly, the Secretary's primary response is to insist that Plaintiffs waived their arguments on this score. *See* Resp. Br. 38-42. As explained below, *infra* Part C, that contention is meritless. It is not surprising that the Secretary seeks to avoid the merits here—his responses are quite weak. He takes no more than a passing shot at contesting whether the signature envelope qualifies as "a paper used in determining a registered voter's qualifications," instead focusing on the argument that the witness requirement is, in fact, material. But this argument does not explain how the witness requirement is material *in determining voter qualifications*. It is not; therefore, the requirement violates the CRA.

1. The signature envelope is a paper used in determining a registered voter's qualifications.

As Plaintiffs explained (Br. 34-36), the witness certification is contained *within* the voter's "certificate of eligibility," Minn. Stat. § 203B, subd. 3, that appears on the signature envelope, and it therefore triggers the materiality provision's protections. The relevant unit of analysis for a claim under the materiality provision is the *paper* itself—here, the signature envelope. Were that not the case, the materiality provision's protections would be empty promises, for the State could evade enforcement for *every* violation simply by

claiming that the violative portion of the paperwork is exempt because it is not used in determining the voter's qualifications. Because voters must certify that they "meet[] all the legal requirements to vote," Minn. Stat. § 203B.07, subd. 3, and ballot boards must confirm that the voters are in fact eligible, *id.* § 203B.121, subd. 2, the certificate of eligibility is necessarily used in determining voter qualifications.

The Secretary does not meaningfully disagree with any of the above. Instead, he offers a terse argument that the court of appeals' ruling was even narrower, limiting the materiality provision to voter *registration* only. *See* Resp. Br. 39. But the court of appeals plainly held that the materiality provision's protections extend from voter registration to "comparable determinations of voter qualifications." Add. 24. The notion that a state law requiring voters to certify that they "will meet all the legal requirements to vote" on election day is simply unrelated to determining voter qualifications is absurd on its face.

2. The witness requirement is not material in determining a registered voter's qualifications.

The court of appeals had one thing right: the witness certifications for registered voters straightforwardly "do not implicate voter qualifications." Add. 22. The absence of a complete witness certification does not speak to whether the absentee voter is qualified to vote based on their "age, citizenship,

residency, or current imprisonment for a felony." Minn. Stat. § 201.014, subd. 1. 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). That alone ends the materiality inquiry.

As he did below, the Secretary offers one argument otherwise: the witness's verification "that the same person who certifies their eligibility is the same person who actually cast the ballot . . . [is] material to determining whether the ballot was cast by a qualified individual." Resp. Br. 37. Therein lies the problem—the materiality provision does not exempt errors or omissions material in determining how a voter marked a ballot, Minn. Stat. § 203B.07, subd. 3, only those "material in determining whether [the voter] is qualified under State law to vote in such election," 52 U.S.C. § 10101(a)(2)(B).

Moreover, the term "material" requires more than minimal relevance or attenuated connections to qualifications. An error or omission is "material" in determining voter qualifications only if it is "substantial" or "important" to that determination. *See Material*, Black's Law Dictionary (4th rev. ed. 1968) ("Representation relating to matter which is so substantial and important as to influence party to whom made is 'material.'"). To illustrate: it is well known that Congress passed the materiality provision specifically in response to "tactics [such] as disqualifying an applicant who failed to list the exact number of months and days in his age." *Condon*, 913 F. Supp. at 949-50; *Schwier*, 340

F.3d at 1294. Age is a qualification for voting to be sure, but the materiality provision's error-type clause does not permit every redundant request with some tangential relationship to a voter's eligibility. *See Mi Familia Vota v. Fontes*, 129 F.4th 691, 721 (9th Cir. 2025) (holding that a checkbox confirming citizenship was not material in determining qualifications where applicant already provided proof of citizenship).

By the Secretary's own admission, the witness requirement adds nothing to the state's qualification inquiry. In Minnesota, an "eligible voter" must be (1) at least 18 years of age, (2) a U.S. 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. The voter certification confirms this—and does so far more directly than the witness's statement. Minn. Stat. § 203B.07, subd. 3.

That same certification also requires voters to provide their driver's license number or the last four digits of their social security numbers for identity verification. *Id.*; Resp. Br. 8 (signature envelope images); *see also* 52 U.S.C. § 21083(b) (identification requirements for voters who register and vote for the first time by mail). The witness certification, as the Secretary points out, verifies only that the voter "begins with a blank ballot, is the same person to mark that ballot, and then seals it in the envelope so that no one interferes with it after marking." Resp. Br. 36-37. Unlike the *voter* certification, none of

this relates to the State's eligibility determination. *See Mi Familia Vota*, 129 F.4th at 720 ("The erroneous or omitted information . . . must have probable impact on eligibility to vote."). Because the voter certification "is sufficient to show" the voter's qualifications, the witness certification "has no probable impact in determining [a voter's] eligibility." *Id.* at 721.[4]

The same reasoning supports Plaintiffs' narrower argument that, if the witness certification does not violate the voucher rule as to unregistered voters, then it necessarily violates the materiality provision as to the same group. In this context, the witness certification *is* part of the voter registration process—a point the Secretary does not dispute. Instead, the Secretary tries to avoid the interplay between the voucher rule and the materiality provision by, again, arguing that a witness certification is material because it "ensures that only the person who vouched for the person's own credentials casts the ballot." Resp. Br. 42. As discussed, this observation standing alone is not material *in*

[4] The Secretary's argument that the witness certification is meant to mirror the role of an election judge at a polling place does not change matters. Even assuming an election judge's role involves determining voter *qualifications*, witnesses are wholly unsuited for this purpose. And the state's reliance on witness attestations places Minnesota as a distinct outlier—one of only 11 states in the country that still require absentee voters to enlist a third party to help them register or vote. *See Table 14: How States Verify Voted Absentee/Mail Ballots*, Nat'l Conf. of State Legislators (Aug. 7, 2025), https://www.ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-absentee-mail-ballots.

determining the witness's qualifications—if it was, it would violate the voucher rule, even under the Secretary's narrow interpretation.

C. Plaintiffs have not forfeited any arguments.

The Secretary contends that Plaintiffs "forfeited" their argument that the witness requirement violates the materiality provision as to unregistered voters—but this claim is simply irreconcilable with the briefing below. Plaintiffs have consistently argued that the witness requirement violates the materiality provision as to *all* voters, registered and unregistered alike. Doc. Index # 52 ¶ 46; Br. of Respondents (Petitioners here) ("COA Br.") at 9, 17, 21-22, No. A24-1134 (Minn. Ct. App. Oct. 15, 2024). Indeed, Plaintiffs leveraged the Secretary's concession that the witness certification is "not a guarantee of voter qualifications" in support of their materiality provision argument. Appellant's Br. & Add. ("Sec. COA Br.") at 20, No. A24-1134 (Minn. Ct. App. Sep. 12, 2024). And this discussion appeared in "portions of [Plaintiffs'] brief relating to the Voting Rights Act," Resp. Br. 40, because it was *in response* to the VRA claim that the Secretary made his concession. Plaintiffs' principal argument against the requirements imposed on unregistered voters is that the witness certification is in fact a voucher used to prove qualifications in violation of the VRA; and to the extent the Court credits the Secretary's contrary argument, it runs headlong into the materiality provision. COA Br. 9, 17, 21-22.

The Secretary next argues that Plaintiffs forfeited their materiality provision claim as it applies to unregistered voters by failing to seek a discretionary cross-appeal from a *favorable* interlocutory ruling. That statement is puzzling because the district court denied the Secretary's motion to dismiss, and Plaintiffs seek affirmance of the district court's order. The Secretary appears to believe that Plaintiffs must appeal the district court's *reasoning*—rather than its actual judgment—in order to advance an argument that the district court did not accept. But this theory is contrary to courts' "ordinary" behavior, which "reduce their opinions . . . to judgments precisely to define the [parties'] rights and liabilities." *Jennings v. Stephens*, 574 U.S. 271, 276 (2015). Plaintiffs seek to uphold the district court's order denying the Secretary's motion to dismiss, and it is well settled that "a respondent may, *without taking a cross-appeal*, urge in support of a decree any matter appearing in the record, even though the argument may involve an attack upon the reasoning of the lower court." *Hunt by Hunt v. Sherman*, 345 N.W.2d 750, 753 n.3 (Minn. 1984) (emphasis added); *Jennings*, 574 U.S. at 276 (same). Where a party "litigate[s] two separate grounds for recovery," as Plaintiffs have done here, "'and the district court made its decision based on one and not the other, that party can 'stress any sound reason for affirmance' even if 'it is not the one assigned by the trial judge, in support of the decision.'" *Day Masonry v. Indep.*

Sch. Dist. 347, 781 N.W.2d 321, 331 (Minn. 2010) (quoting *Penn Anthracite Mining Co. v. Clarkson Sec. Co.*, 287 N.W. 15, 17 (Minn. 1939)).

For the same reason, the only case the Secretary cites for his novel forfeiture argument, *Arndt v. American Family Insurance Co.*, 394 N.W.2d 791, 793-94 (Minn. 1986), does not help him. There, the court of appeals held that Rule 106 of the Minnesota Rules of Civil Appellate Procedure required the appellee to file a cross-appeal in order to challenge a district court ruling that allowed the plaintiffs to amend their complaint. *Id.* at 793. But a ruling granting such relief over an appellee's objection is precisely the type of adverse order or judgment that may be designated for appellate review. *Arndt* did not require the appellee to cross-appeal the district court's *reasoning* while simultaneously seeking affirmance of the court's judgment. That is consistent with Rule 106 itself which only authorizes the review of a "judgment or order . . . that may adversely affect respondent." Minn. R. Civ. App. 106.

Regardless, the question whether the witness requirement violates the materiality provision as to both registered *and* unregistered voters was already presented in the Secretary's Petition for Discretionary Review. The second issue identified by the petition is: "Does the witness requirement violate the CRA?" Doc. Index 88 at 7. It does not distinguish between the witness requirement as applied to registered voters and the witness requirement as applied to unregistered voters. There was therefore no need to file a notice of

related appeal under Rule 106, because the issue was already placed before the court by the Secretary's Petition.

Finally, Plaintiffs preserved their argument that the signature envelope is used to assess voter eligibility and is therefore covered by the materiality provision even under the Secretary's interpretation. Pet'rs' Br. 34. In fact, Plaintiffs' brief before the court of appeals said exactly that:

> All registered absentee voters must separately attest to their qualifications . . . on the certificate of eligibility that appears above the witness certification. And Minnesota law instructs the ballot board to ensure that 'the voter is . . . eligible to vote' by reviewing the signature envelope before accepting the ballot. In that way, the materiality provision would apply to Minnesota's witness requirement even under the Secretary's reading.

COA Br. 33.[5] Elsewhere in the same brief, Plaintiffs argued that "[t]he 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," COA Br. 26 (emphasis added). Regardless, the court of appeals held that the materiality provision applies to documents relating to "registration *or other assessment of the voter's qualifications*." Add. 24 (emphasis added). And in their opening brief before

[5] The Secretary's references to the "voter-registration process," Sec. COA Br. 24, stems from his mistaken belief that assessments of voter qualifications occur only at the voter registration stage. As Plaintiffs explained below, Minnesota law debunks this theory. *See* COA Br. 33 (citing Minn. Stat. § 203B.121, subd. 2.).

this Court, Plaintiffs explained, consistent with their arguments below, why the signature envelope satisfies the second half of the court of appeals' interpretation: "other assessment of the voter's qualifications." The Court should reject the Secretary's invitation to ignore arguments that Plaintiffs have pressed repeatedly.

CONCLUSION

This Court should reverse the decision of the court of appeals and affirm the district court's denial of the Secretary's motion to dismiss.

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CERTIFICATE OF DOCUMENT LENGTH

I hereby certify that this Brief of Petitioners, filed herewith, complies with the requirements of Minnesota Rules of Civil Appellate Procedure 132, in that it is printed in 13-point font, is the proper length, excluding exempted parts, and has proportionally spaced typeface, utilizing processing program and version: Microsoft Word for Office 365 (16.0) and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations, exclusive of the caption and signature block.

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