

FILED

October 29, 2024

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A24-1633

Minnesota Voters Alliance, et al.,

Petitioners,

Republican Party of Minnesota,

Petitioner,

vs.

Ginny Gelms, in her official capacity as
elections official for Hennepin County,
Minnesota, et al.,

Respondents.

O R D E R

On October 15, 2024, petitioners Minnesota Voters Alliance, Karen Attia, Marlene Stoick, Richard “Randy” Sutter, and the Republican Party of Minnesota filed a petition under Minn. Stat. § 204B.44 (2022), against respondents Ginny Gelms, in her official capacity as elections official for Hennepin County, Daniel Rogan, in his official capacity as County Auditor for Hennepin County, and Hennepin County. This statute allows any individual to petition for the correction of a wrongful act, omission, or error of an “individual charged with any duty concerning an election.” *Id.* Petitioners allege that, in

appointing election judges to the Hennepin County Absentee Ballot Board for the 2024 general election, respondents violated Minnesota election law by failing “to appoint *any* election judges from the Republican Party of Minnesota’s dedicated list . . . of candidate election judges as required by law.” They contend that respondents had a statutory duty to recruit election judges for the absentee ballot board by first contacting Republican election judges residing in Hennepin County that were identified by the Republican Party on its party list—a list that major political parties provide to the Secretary of State in years when there are elections for partisan offices pursuant to Minn. Stat. § 204B.21 (2022 & Supp. 2023).

Based on information that Hennepin County provided in October 2024 in response to petitioners’ public data request submitted months earlier, petitioners allege that none of the election judges appointed to the Hennepin County Absentee Ballot Board were from the Republican Party of Minnesota’s list of candidate election judges (Republican Party List). And petitioners allege that, “[u]pon information and belief, [r]espondents did not exhaust the [Republican] Party List prior to additional election judges being appointed to the Hennepin County [Absentee Ballot Board].” Alleging that “election judges must be appointed by reference to the party list to ensure party balance for board election judges,” (capitalization altered), petitioners ask this court to direct “[r]espondents to appoint to the Hennepin County Absentee Ballot Board enough Republican-affiliated election judges from the [Republican] Party List to ensure (a) a sufficient number of election judges on the [Absentee Ballot Board] to perform its tasks, and such that (b) there is party-balance between Republican and Democratic affiliated election judges on the Hennepin County

[Absentee Ballot Board].” Petitioners’ argument largely relies on our recent opinion in *Minnesota Voters Alliance v. County of Ramsey (Alliance I)*, 971 N.W.2d 269 (Minn. 2022), which addresses the absentee ballot board statute’s requirements.

We ordered respondents and the Minnesota Secretary of State to respond to the petition. We also required respondents to provide certain information about the election judges appointed to the Hennepin County Absentee Ballot Board for the 2024 general election.

In their response, respondents state that “[t]here are no disputed material facts for which an evidentiary hearing is required.” Respondents maintain that the lists of election judge candidates from the major political parties (Party Lists) were exhausted by the cities within Hennepin County, including Minneapolis, which thus authorized respondents to appoint others not on the Republican Party List to the Hennepin County Absentee Ballot Board. Respondents confirm that they have appointed five election judges to the Hennepin County Absentee Ballot Board and that four of these election judges are affiliated with the Democratic-Farmer-Labor Party and the fifth is affiliated with the Republican Party. Respondents also confirm that signature verification is always conducted by two election judges of different political parties as required by Minn. Stat. § 203B.121, subd. 2(a) (Supp. 2023) (stating that election judges from different major political parties must verify signatures on absentee ballot envelopes when the law requires signature verification).

The Secretary of State also filed a response. The Secretary of State claims that he is generally without personal knowledge as to the facts alleged in the petition, but that even taking the petition’s allegations as true, Hennepin County did not violate state election law.

According to the Secretary of State, counties are not required to use or exhaust the Party Lists when appointing election judges to their absentee ballot boards. The Secretary of State further claims that the only party balance requirement that applies to election judges on absentee ballot boards is the requirement in Minn. Stat. § 203B.121, subd. 2(a), that, subject to certain exceptions, election judges performing signature verification “must be of different major political parties.”

Having described the allegations in the petition and the responses, we turn to whether the petition should be granted. Absentee ballot boards are governed by Minn. Stat. § 203B.121 (2022 & Supp. 2023). That law requires that “[t]he governing body of each county, municipality, and school district with responsibility to accept and reject absentee ballots or to administer early voting must, by ordinance or resolution, establish a ballot board.” *Id.*, subd. 1(a) (Supp. 2023). It also provides that “[t]he board must consist of a sufficient number of election judges appointed as provided in sections 204B.19 to 204B.22.” *Id.*

One of the cross-referenced sections, Minn. Stat. § 204B.21, covers the appointment of election judges for election precincts based on the Party Lists. In *Alliance I*, we determined that the requirements in section 204B.21 apply to the appointment of election judges on absentee ballot boards. 971 N.W.2d at 276–77. When describing those requirements, we stated that “[t]he governing body of each county or municipality appoints election judges from this list,” and that “[t]he governing body may appoint election judges not appearing on the major party lists *only after* it has exhausted the candidates on the list.” *Id.* at 276 (emphasis added).

Petitioners rely on our prior articulation of this statutory list-exhaustion requirement in *Alliance I* in arguing that Hennepin County’s failure to first appoint from the Republican Party List violated Minnesota election law. We agree. Our decision in *Alliance I* required Hennepin County, as the governing body for its absentee ballot board, to appoint election judges from the Party Lists and to exhaust the Party Lists before appointing candidates not on the Party Lists. To exhaust the Party Lists for a county absentee ballot board, a county must first attempt to appoint all potential election judges on the Party Lists who reside within the county. But respondents appointed election judges to the Hennepin County Absentee Ballot Board from outside the Party Lists without first contacting Hennepin County residents on the lists. Because respondents here failed to comply with this statutory duty, we grant the petition in part and order appropriate relief to correct this error.

Although our decision in *Alliance I* directly addresses the governing body’s obligation to exhaust Party Lists in appointing election judges to an absentee ballot board, we recognized but expressly left *undecided* the question of whether the party balance requirement in Minn. Stat. § 204B.19, subd. 5—which requires that “ ‘[n]o more than half of the election judges in a precinct’ for in-person voting may be affiliated with the same major political party”—also applies to election judges serving on an absentee ballot board. *Alliance I*, 971 N.W.2d at 277 n. 7 (quoting Minn. Stat. § 204B.19, subd. 5). We likewise decline to reach that issue here. Although the petition refers to this party balance requirement as being applicable to the Hennepin County Absentee Ballot Board, petitioners do nothing more than cite generally to Minn. Stat. §§ 204B.19–22 (2022 & Supp. 2023) and Minn. Stat. § 203B.121, subd. 1, without further argument or analysis. But these are

the same statutory sections we identified when we intentionally left open the question of section 204B.19, subdivision 5's applicability to county absentee ballot boards.

Moreover, petitioners do not claim—and the undisputed record before us does not support any claim—that the Hennepin County Absentee Ballot Board, as currently constituted, violates the statutory requirement for two election judges from two different major political parties to perform signature verifications. *See Alliance I*, 971 N.W.2d at 280 (noting that the one task “committed to election judges alone” and the only task for which “[t]he ‘different major political parties’ requirement applies” is signature verification (quoting Minn. Stat. § 203B.121, subd. 2(a))). The record before us shows that there is at least one election judge on the Hennepin County Absentee Ballot Board whose party affiliation is Republican and at least one election judge whose party affiliation is Democratic-Farmer-Labor.

“[W]e have held that a section 204B.44 petitioner has the burden to prove that an election official committed an error, omission, or wrongful act.” *Jacobs v. City of Columbia Heights*, 9 N.W.3d 536, 540 (Minn. 2024). On the issue of whether the party balance requirement in Minn. Stat. § 204B.19, subd. 5, applies to county absentee ballot boards, petitioners have failed to provide any legal argument or analysis upon which we can decide now what we left unresolved in *Alliance I*. We therefore decline to reach that issue here as well and deny the petition's claim for relief on party balance grounds.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The petition of Minnesota Voters Alliance, Karen Attia, Marlene Stoick, Richard “Randy” Sutter, and the Republican Party of Minnesota is granted to the extent that it seeks compliance with respondents’ duties under Minn. Stat. § 203B.121, subd. 1, and Minn. Stat. § 204B.21, subd. 2—as stated by our court in *Alliance I*, 971 N.W.2d at 276–77—that the governing body of the Hennepin County Absentee Ballot Board must appoint election judges from the Republican Party List and may appoint Republican-affiliated election judges not appearing on that list only after it has exhausted the candidates on the list.

2. Respondents are ordered to comply with this duty to exhaust the Republican Party List by Friday, November 1, 2024. In ordering this relief, we are cognizant that “[t]he absentee ballot board statute leaves the Counties with the discretion to decide what constitutes a ‘sufficient number’ of election judges.” *Alliance I*, 971 N.W.2d at 279. For guidance as to what a county may do in the exercise of its discretion and consistent with the requirements of the absentee ballot board statute in Minn. Stat. § 203B.121, we direct respondents to Ramsey County’s and Olmsted County’s compliance with their statutory obligations for appointing members to absentee ballot boards in *Alliance I*.

3. So as not to impair the orderly election process, this order is issued with an opinion to follow.

Dated: October 29, 2024

BY THE COURT:



Natalie E. Hudson
Chief Justice

THISSEN, J., took no part in the consideration or decision of this case.